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MEDICAL DIRECTOR AGREEMENT¹

THIS MEDICAL DIRECTOR AGREEMENT (this "**Agreement**") is made and entered into this _____ day of _____, 20__, by and between _____ ("**Company**") and _____, M.D. ("**Physician**").

BACKGROUND

A. Company is a _____ organized under the laws of the State of _____ and engaged in the business of dispensing medications in response to physician prescriptions (the "**Business**").

B. Physician is duly licensed by the State of _____ and has special knowledge in determining the drugs that are effective for multiple disease states.

C. Physician has particular skills, knowledge, and abilities useful to the Business.

D. To fulfill its duties to its customers, Company requires the services of a physician to serve as its Medical Director.

E. Physician agrees to serve as Company's Medical Director.

NOW, THEREFORE, for and in consideration of the promises and mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. MEDICAL DIRECTOR SERVICES

1.1. SERVICES TO BE RENDERED BY PHYSICIAN. Physician will spend such time as is necessary, but not less than _____ hours per month, performing the following services ("**Services**") as Company's Medical Director.

1.1.1. Physician will review patient records, physician orders, coverage requirements of third party payors, and other information and provide guidance to Company on any identified issues.

1.1.2. Physician will monitor and evaluate the drugs dispensed and pharmacy services provided by Company's personnel to customers.

1.1.3. Physician will evaluate Company's practices from a medical perspective and provide recommendations for improvement.

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1.1.4. The physician will assist in reviewing and offering suggestions to the plan of care for customers of Company.

1.1.5. Physician will be available at all times to answer questions and provide guidance to Company's personnel.

1.1.6. Physician will update Company concerning recent health care developments that, in the Physician's opinion, will be beneficial to Company's customers.

1.1.7. Upon request, Physician will provide the following Services:

a. Physician will assist Company in implementing new patient care practices.

b. Physician will assist Company in the development of a procedure manual and treatment protocols.

c. Physician will assist Company in the development of standards and procedures designed to (i) ensure that physicians' orders are appropriate, (ii) guide discussions with physicians about problematic orders, and (iii) guide responses to requests for consultations concerning appropriate care.

d. Physician will assist in the development and review of quality assurance policies, standards, and criteria.

e. Physician will assist in the development of standards for staff to ensure that the individuals providing pharmacy services are qualified.

f. Physician will assist Company in identifying and addressing accreditation requirements of the Company.

g. Physician will assist Company in complying with third party payor requirements.

h. Physician will provide in-service training to Company's personnel.

i. Physician will review Company's policies regarding the dispensing of prescription medications and the provision of pharmacy services. Physician will recommend revisions to such policies.

j. Physician will assist Company in complying with state and federal regulations.

If any state or federal law or regulation prohibits Physician from rendering a Service, then Physician will not render that Service, and the obligation to do so will be automatically deemed stricken from this Agreement. In addition to the foregoing, Physician and Company may be subject to the strictures of the Medicare and Medicaid anti-kickback statute, 42 U.S.C. §1320a-7b(b), and any other law or rule that governs kickback payments or illegal remuneration (collectively, the

“Anti-Kickback Laws”). The parties in good faith believe that this Agreement fully complies with the provisions of the Anti-Kickback Laws. Neither Physician nor Company are, by virtue of this Agreement or otherwise, willfully offering, paying, soliciting, or receiving remuneration in return for referring an individual to or from each other for the furnishing of any item or service reimbursed under the Medicare or state health care programs. Pricing hereunder does not take into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a state health care program. The parties understand and agree that if any provision is found to violate any Anti-Kickback Law, it shall be immediately stricken from the Agreement and of no further force or effect.

1.2. PHYSICIAN QUALIFICATIONS. Physician represents and warrants that he has all qualifications, certificates, and/or licenses required by federal, state, or local law, and any other governmental regulation, to fully perform his duties hereunder.

1.3. MEDICARE AND MEDICAID STATUS. Physician represents and warrants that Physician has never been: (i) convicted of a criminal offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid, or any other federal or state health care program; or (ii) excluded from participation in any federal or state health care program, including, but not limited to, Medicare and Medicaid.

1.4. NOTIFICATION REQUIREMENTS. Physician shall notify Company immediately in the event that Physician is: (i) convicted of a criminal offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid, or another federal or state health care program; or (ii) excluded from participation in any federal or state health care program, including but not limited to, Medicare and Medicaid.

ARTICLE 2. COMPENSATION

21. COMPENSATION FOR SERVICES. In consideration for the Services rendered by Physician pursuant to this Agreement, Company will pay Physician a fixed annual fee of \$_____, which shall be paid in 12 equal monthly payments of \$_____. On or before the fifth day of each month, Physician shall submit to Company a monthly report describing the Services rendered by Physician during the preceding month, along with the number of hours expended by the Physician during the preceding month. The monthly report shall be provided on the form provided in **Addendum A**. Company shall pay Physician for Services rendered during the preceding month within 10 days after receipt of the Physician's monthly report.

22. EXPENSES. Except as otherwise provided herein, Physician shall be responsible for his expenses in rendering Services pursuant to this Agreement.

23. FRINGE BENEFITS AND TAXES. Physician acknowledges and agrees that (i) he shall not be entitled to any employee benefits provided by Company to its employees, including, but not limited to disability, life insurance, pension and annuity benefits, educational allowances, professional membership dues, and sick, holiday or vacation pay; (ii) Company will not withhold income taxes or pay Social Security or unemployment taxes for Physician, such being the exclusive responsibility of Physician, which Physician agrees to discharge fully; and (iii) Physician shall indemnify and hold harmless Company against any and all liability related to withholding or

failure to withhold income taxes or paying or not paying Social Security or unemployment taxes for Physician. If the Internal Revenue Service or any other governmental agency challenges the independent contractor status of the Physician, the parties agree that Physician and Company shall have the right to participate in any discussion or negotiation that occurs in the course of such challenge.

ARTICLE 3. TERM AND TERMINATION

3.1. TERM. The term of this Agreement shall be for one year beginning on the _____ day of _____, 20_ (the “**Effective Date**”), and terminating on the day of _____, 20_ unless earlier terminated as provided herein. This Agreement shall be automatically renewed for additional terms of 12 months unless one party notifies the other on or before 30 days prior to the end of the then-current term, in writing, of its intent to terminate. “**Term**,” as used herein, shall refer to the initial term as well as any renewal term while this Agreement is in effect.

3.2. TERMINATION UPON DEFAULT. In the event a party defaults under the terms of this Agreement (“**Defaulting Party**”) then the other party (“**Non-Defaulting Party**”) shall give the Defaulting Party written notice of the default. The Defaulting Party shall then have 15 days within which to cure the default to the reasonable satisfaction of the Non-Defaulting Party. In the event that the Defaulting Party does not cure the default as specified in the preceding sentence, then the Non-Defaulting Party may immediately terminate this Agreement and/or may exercise all remedies allowed by law.

3.3. IMMEDIATE TERMINATION. Company may immediately terminate this Agreement upon giving written notice thereof to Physician (but without giving the Physician a right to cure) in the event that (i) Company reasonably concludes that Physician has engaged in acts that adversely affect the name or goodwill of Company; (ii) the Physician is convicted of a criminal offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid, or another federal or state health care program; (iii) the Physician is excluded from participation in any federal or state health care program, including, but not limited to, Medicare and Medicaid; or (iv) the Physician breaches his duties set forth in the Business Associate Addendum.

3.4. TERMINATION WITHOUT CAUSE. Either party may terminate this Agreement at any time without cause upon 30 days’ prior written notice.

3.5. MUTUAL TERMINATION. This Agreement may be immediately terminated at any time by mutual agreement of the parties.

3.6. EFFECT OF TERMINATION. In the event of termination of this Agreement, Physician shall be entitled to accrued but unpaid compensation, as provided in this Agreement. All amounts payable shall be paid within 30 days of the date of termination. If this Agreement is terminated for any reason within one year of the Effective Date, the parties shall not enter into any additional agreement for the same or similar services during the remainder of the original year of this Agreement.

ARTICLE 4 INSURANCE

Physician will maintain, at his sole expense, a valid policy of insurance covering professional liability arising from the acts or omissions of Physician, his agents and employees, in an amount generally considered standard for a physician in the practice area and locality of Physician. Physician will forward a certificate of insurance to Company, upon request, and will give Company prompt written notice of any material change in Physician's professional liability coverage.

ARTICLE 5 PROTECTED HEALTH INFORMATION

The provisions detailed on **Addendum B** are included for purposes of complying with the Security Standards for the Protection of Electronic Protected Health Information and the Standards for Privacy of Individually Identifiable Health Information (collectively the "**HIPAA Standards**"), 45 CFR parts 160 and 164, and apply with respect to all Protected Health Information ("**PHI**"), as defined in 45 CFR § 164.501, created, received, maintained, or transmitted by Physician ("**Business Associate**") in performing his duties under this Agreement.

ARTICLE 6. INDEPENDENT CONTRACTOR RELATIONSHIP

Nothing in this Agreement shall be construed to constitute either party a partner, employee or agent of the other, nor shall either party have authority to bind the other in any respect, it being intended that each shall remain an independent contractor solely responsible for its own actions. No employee or agent of one party hereto shall be considered an employee or agent of the other party hereto.

ARTICLE 7. MISCELLANEOUS

7.1. CONFORMANCE WITH LAW. The parties recognize that this Agreement is subject to, and agree to comply with, applicable local, state and federal statutes, rules and regulations. Any provisions of applicable statutes, rules or regulations that invalidate any term of this Agreement, that are inconsistent with any term of this Agreement, or that would cause one or both of the parties hereto to be in violation of law shall be deemed to have superseded the terms of this Agreement; provided, however, that the parties shall use their best efforts to accommodate the terms and intent of this Agreement to the greatest extent possible consistent with the requirements of applicable statutes, rules and regulations and negotiate in good faith toward amendment of this Agreement in such respect.

7.2. REFERRALS. Under no circumstances shall Physician be required to refer patients to Company or require Company to serve the needs of any patient. Compensation paid to Physician pursuant to this Agreement is based solely on the fair market value of services actually provided and not on current or potential referrals of patients, items, or services.

7.3. NOTICES. All notices, demands, or other communications required or provided hereunder shall be in writing and shall be deemed to have been given at the earlier of actual receipt or three (3) days after deposit in the United States mail as provided below. Notice may be sent by electronic mail, facsimile, personal delivery, or by deposit in the United States mail, certified or registered, postage prepaid, return receipt requested. Notice to either party shall be delivered to:

To Company:

To Physician:

_____, M.D.

or at such other address as either may notify the other in writing.

7.4. APPLICABLE LAW. This Agreement and the obligations of the parties hereunder shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of _____. Venue for any disputes arising hereunder shall _____ County, _____.

7.5. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties relative to the matters covered and supersedes any and all other oral and written agreements, express or implied, concerning the subject matter of this Agreement. No variations, modifications, or changes in this Agreement shall be binding unless set forth in a document duly executed by both parties.

7.6. ASSIGNABILITY. Neither this Agreement, nor the rights and obligations created under it, may be assigned by either party without the prior written consent of the other party.

7.7. CONFIDENTIALITY OF BUSINESS INFORMATION. Physician acknowledges that in the course of providing the Services required hereunder, Physician will acquire financial, economic, proprietary, and confidential information. Therefore, Physician hereby agrees that Physician shall not make unauthorized disclosures in any manner to any entities or individuals, either during the term of this Agreement or thereafter, of any such information, including, but not limited to, the terms and conditions of this Agreement, business records, or any other matter reflecting on or related to the business, operation, or activities of Company. Without limiting other possible remedies to Company, Physician agrees that injunctive or other equitable relief shall be available to enforce this covenant.

7.8. CONSENT AND WAIVER. No consent or waiver, express or implied, by any party hereto of any breach or default by the other party shall be deemed or construed to be a consent or waiver to or of any other breach or default. Failure on the part of any party to complain of any

act or failure to act by the other party or to declare the other party in default, irrespective of how long the failure continues, shall not constitute a waiver by that party of its rights hereunder.

7.9. SEVERABILITY. If any provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable to any extent, the illegality or unenforceability shall extend to that provision only, and the remainder of this Agreement shall be enforced to the greatest extent permitted by law as if such illegal or unenforceable provision were not incorporated herein.

7.10. ADDITIONAL ACTS. In connection with this Agreement, as well as in all transactions contemplated by this Agreement, Physician agrees to execute and deliver such additional documents or perform such additional acts as may be necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of this Agreement.

7.11. COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall serve as an original for all purposes, but all copies of which shall constitute but one and the same agreement.

7.12. HEADINGS AND CAPTIONS. The article and section headings and other captions contained in this Agreement are inserted only as a matter of convenience, do not form a part of this Agreement, and in no way define, limit, extend, or describe the scope, meaning, construction, or effect of this Agreement or any provision hereof or the intent of the parties.

7.13. ENFORCEMENT. If it becomes necessary for any party hereto to file suit to enforce this Agreement or any provision contained herein, the prevailing party in the action shall be entitled to recover, in addition to all other remedies or damages, court costs, expenses of litigation, and reasonable attorney's fees incurred.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date set forth above, to be effective as of the Effective Date.

Company: _____

By: _____
_____, _____

Physician: _____
_____, M.D.

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ADDENDUM A

MONTHLY RECORD OF SERVICES

[illegible]

ADDENDUM B

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (the "Addendum") to the Medical Director Agreement (the "Agreement") between _____ ("Covered Entity") and _____ ("Business Associate") is incorporated into and made part of the Agreement for purposes of complying with the Privacy, Security, Breach Notification, and Enforcement regulations at 45 CFR parts 160 and 164 (collectively the "HIPAA Standards"). The provisions of this Addendum apply with respect to all Protected Health Information ("PHI"), as defined in 45 CFR § 160.103, created, received, maintained or transmitted by Business Associate in its representation of Covered Entity.

TERMS

In consideration of the mutual covenants contained herein, Business Associate and Covered Entity agree as follows:

1. Obligations of Business Associate.

(a) Business Associate will not use or disclose PHI other than as permitted or required by this Addendum or as required by law.

(b) Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Standards, and to prevent use or disclosure of PHI other than as provided for by this Addendum. Business Associate will comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI.

(c) Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Addendum.

(d) To the extent the Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, Business Associate will comply with the requirements of 45 CFR Part 164, Subpart E that apply to Covered Entity in the performance of such obligations.

(e) Business Associate will report to Covered Entity (i) any use or disclosure of PHI not provided for by this Addendum of which Business Associate becomes aware, and (ii) any security incident (as defined in 45 CFR § 164.304) of which it becomes aware. Business Associate will notify Covered Entity of any breach of unsecured PHI, as defined in 45 CFR

§ 164.402, without unreasonable delay and in no case later than 10 calendar days after Business Associate discovers the breach.

(f) Business Associate will ensure that any agent, including a subcontractor, that receives PHI from Business Associate, or creates, receives, maintains, or transmits PHI on behalf of Business Associate, agrees to the same restrictions, conditions and requirements that apply to Business Associate with respect to such PHI, and agrees to implement reasonable and appropriate safeguards to protect the security and privacy of such PHI, by entering into an agreement with Business Associate that meets the applicable requirements of the HIPAA Standards.

(g) Business Associate will make books and records relating to the use and disclosure of PHI available to the Secretary of Health and Human Services ("Secretary") or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Standards.

(h) At Covered Entity's request, Business Associate will make available PHI in Business Associate's possession to enable Covered Entity to respond to a request by an individual for access to PHI in accordance with 45 CFR § 164.524.

(i) At Covered Entity's request, Business Associate will make available PHI in Business Associate's possession for amendment, and will incorporate any amendments to PHI, in accordance with 42 CFR § 164.526.

(j) Business Associate will maintain and will provide to Covered Entity on request such documentation of disclosures of PHI as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Upon receipt of a request for an accounting directly from an individual, Business Associate will provide to the individual an accounting of disclosures made by Business Associate containing the information described in 42 CFR § 164.528.

2. Uses and Disclosures by Business Associate.

(a) Business Associate may use or disclose PHI to perform services for or on behalf of Covered Entity, provided that such use or disclosure would not violate the HIPAA Standards if made by Covered Entity.

(b) Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(c) Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, if (1) the disclosure is required by law, or (2) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held

confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

3. Remedies for Breach. Upon Covered Entity's knowledge of a material breach of this Addendum by Business Associate, Covered Entity may either (i) provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this Addendum if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; (ii) immediately terminate this Addendum if Business Associate has breached a material term of this Addendum and cure is not possible; or (iii) if neither termination nor cure is feasible, report the violation to the Secretary.

4. Return or Destruction of PHI Upon Termination. Upon termination of this Agreement, for any reason, Business Associate will return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, if feasible. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate will extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

COVERED ENTITY:

By:

[Name, Title]

BUSINESS ASSOCIATE:

By:

[Name, Title]