

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (date of earliest event reported): November 24, 2020

TherapeuticsMD, Inc.
(Exact Name of Registrant as Specified in Its Charter)

Nevada
(State or Other Jurisdiction
of Incorporation)

001-00100
(Commission
File Number)

87-0233535
(IRS Employer
Identification No.)

951 Yamato Road, Suite 220
Boca Raton, FL 33431
(Address of principal executive office) (zip code)

Registrant's telephone number, including area code: (561) 961-1900

Not Applicable
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	TXMD	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry Into a Material Definitive Agreement.

On November 27, 2020, TherapeuticsMD, Inc., a Nevada corporation (the “Company”), entered into a Controlled Equity OfferingSM Sales Agreement (the “Sales Agreement”) with Cantor Fitzgerald & Co., as sales agent (“Cantor Fitzgerald”), pursuant to which the Company may offer and sell, from time to time, through Cantor Fitzgerald, shares of the Company’s common stock, par value \$0.001 per share (the “Shares”), having an aggregate offering price of up to \$50.0 million (the “ATM Offering”). The Shares will be offered and sold pursuant to the Company’s existing shelf registration statement on Form S-3 (File No. 333-226452). Subject to the terms and conditions of the Sales Agreement, Cantor Fitzgerald will use its commercially reasonable efforts to sell the Shares from time to time, based upon the Company’s instructions. The Company has provided Cantor Fitzgerald with customary indemnification rights, and Cantor Fitzgerald will be entitled to a commission of 3.0% of the gross proceeds from each sale of the Shares. Sales of the Shares, if any, under the Sales Agreement may be made in transactions that are deemed to be “at the market offerings” as defined in Rule 415(a)(4) under the Securities Act of 1933, as amended. The Company has no obligation to sell any of the Shares and may at any time suspend offers under the Sales Agreement or terminate the Sales Agreement.

This description of the Sales Agreement does not purport to be complete and is qualified in its entirety by reference to the Sales Agreement, which is attached hereto as Exhibit 1.1 and is incorporated herein by reference. The legal opinion of Greenberg Traurig, LLP relating to the Shares being offered pursuant to the Sales Agreement is filed as Exhibit 5.1 to this Current Report on Form 8-K.

This Current Report on Form 8-K shall not constitute an offer to sell or a solicitation of an offer to buy the Shares nor shall there be any sale of the Shares in any state or jurisdiction in which such offer, solicitation, or sale would be unlawful prior to registration or qualification under the securities laws of such state or other jurisdiction.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On November 24, 2020 (the “Effective Date”), the Company entered into Amended and Restated Employment Agreements with Mr. Robert G. Finizio, the Chief Executive Officer and a director of the Company (the “Finizio Agreement”), Mr. John C.K. Milligan, IV, the President and Secretary of the Company (the “Milligan Agreement”), and Mr. Michael Donegan, the Chief Accounting Officer of the Company (the “Donegan Agreement” and, together with the Finizio Agreement and the Milligan Agreement, each an “Agreement” and, collectively, the “Agreements”).

Each Agreement provides for a two-year term, subject to automatic one-year renewal terms, unless earlier terminated. There is no change to any of the executives’ current base salaries and no change to the target annual bonus awards for Mr. Finizio or Mr. Milligan. Mr. Donegan’s annual targeted bonus award will increase from 25% to 30% of his base salary.

In the event that the executive’s employment is terminated by the Company without cause or by the executive with good reason (in each case as defined in the applicable Agreement) and provided that the executive signs, and does not revoke, a release of all claims against the Company and its affiliates, (i) Mr. Finizio will continue to receive his then current annual base salary for 24 months and Mr. Milligan and Mr. Donegan will continue to receive his then current annual base salary for 12 months (18 months for Mr. Milligan or Mr. Donegan if his employment is terminated within 12 months following a change in control of the Company), (ii) the executive will receive an amount equal to his targeted annual bonus award (or 1.5 times his targeted annual bonus award if he is terminated within 12 months following a change in control of the Company) for the calendar year in which his termination occurs, payable in a single lump sum, (iii) the executive will receive monthly payments for the cost of COBRA continuation of health insurance benefits for periods specified in the Agreements, (iv) all unvested equity compensation held by the executive will vest as of the effective date of such termination, and (v) the executive will receive any earned but unpaid annual short-term incentive compensation for the calendar year immediately preceding the calendar year in which termination occurs. The Agreements provide for customary non-competition and non-solicitation restrictions and other restrictive covenants in favor of the Company.

As consideration for entering into the Agreements, on the Effective Date, the Company granted to each of Mr. Finizio, Mr. Milligan and Mr. Donegan restricted stock units (“RSUs”) under the TherapeuticsMD, Inc. 2019 Stock Incentive Plan with respect to one, 360,000 and 230,000 shares, respectively, of the Company’s common stock, which RSUs will vest (i) 50% on the first anniversary of the Effective Date and (ii) 50% on the second anniversary of the Effective Date (100% on the second anniversary of the Effective Date in the case of Mr. Finizio), subject to the executive’s continued employment with the Company and the terms of the corresponding award agreement.

The foregoing summary of the Agreements does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Finizio Agreement, Milligan Agreement and Donegan Agreement, copies of which are filed as Exhibits 10.1, 10.2 and 10.3, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Index	
Exhibit No.	Description
1.1	Controlled Equity Offering SM Sales Agreement, dated November 27, 2020, by and between TherapeuticsMD, Inc. and Cantor Fitzgerald & Co.
5.1	Opinion of Greenberg Traurig, LLP.
10.1	Amended and Restated Employment Agreement, dated as of November 24, 2020, by and between TherapeuticsMD, Inc. and Robert Finizio.
10.2	Amended and Restated Employment Agreement, dated as of November 24, 2020, by and between TherapeuticsMD, Inc. and John C.K. Milligan, IV.
10.3	Amended and Restated Employment Agreement, dated as of November 24, 2020, by and between TherapeuticsMD, Inc. and Michael Donegan.
23.1	Consent of Greenberg Traurig, LLP (contained in Exhibit 5.1).
104	Cover Page Interactive Data File (embedded within the inline XBRL document).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

THERAPEUTICSMD, INC.

Date: November 27, 2020

By: /s/ James C. D'Arecca

James C. D'Arecca

Chief Financial Officer

TherapeuticsMD, Inc.
Shares of Common Stock
(par value \$0.001 per share)

Controlled Equity OfferingSM

Sales Agreement

November 27, 2020

Cantor Fitzgerald & Co.
499 Park Avenue
New York, NY 10022

Ladies and Gentlemen:

TherapeuticsMD, Inc., a Nevada corporation (the “**Company**”), confirms its agreement (this “**Agreement**”) with Cantor Fitzgerald & Co. (the “**Agent**”), as follows:

1. **Issuance and Sale of Shares.** The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it may issue and sell through the Agent, shares of common stock (the “**Placement Shares**”) of the Company, par value \$0.001 per share (the “**Common Stock**”); *provided, however*, that in no event shall the Company issue or sell through the Agent such number or dollar amount of Placement Shares that would (a) exceed the number or dollar amount of shares of Common Stock registered on the effective Registration Statement (defined below) pursuant to which the offering is being made, (b) exceed the number of authorized but unissued shares of Common Stock (less shares of Common Stock issuable upon exercise, conversion or exchange of any outstanding securities of the Company or otherwise reserved from the Company’s authorized capital stock), (c) exceed the number or dollar amount of shares of Common Stock permitted to be sold under Form S-3 (including General Instruction I.B.6 thereof, if applicable) or (d) exceed the number or dollar amount of shares of Common Stock for which the Company has filed a Prospectus Supplement (defined below) (the lesser of (a), (b), (c) and (d), the “**Maximum Amount**”). Notwithstanding anything to the contrary contained herein, the parties hereto agree that compliance with the limitations set forth in this Section 1 on the amount of Placement Shares issued and sold under this Agreement shall be the sole responsibility of the Company and that the Agent shall have no obligation in connection with such compliance. The offer and sale of Placement Shares through the Agent will be effected pursuant to the Registration Statement (as defined below) filed by the Company and declared effective by the Securities and Exchange Commission (the “**Commission**”) on May 5, 2020, although nothing in this Agreement shall be construed as requiring the Company to use the Registration Statement to issue Common Stock.

The Company has filed, in accordance with the provisions of the Securities Act of 1933, as amended (the “**Securities Act**”) and the rules and regulations thereunder (the “**Securities Act Regulations**”), with the Commission a registration statement on Form S-3ASR (File No. 333-26452), including a base prospectus, relating to certain securities, including the Placement Shares to be issued from time to time by the Company, and which incorporates by reference documents that the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), and the rules and regulations thereunder. Such registration statement and an automatic post-effective amendment thereto on Form POSASR filed on February 24, 2020 became effective on filing, and a post-effective amendment to such registration statement on Form POS AM requesting that the registration statement be converted to a non-automatic shelf registration statement was filed on February 24, 2020 and was declared effective by the Commission on May 5, 2020. The Company has prepared a prospectus or a prospectus supplement to the base prospectus included as part of the registration statement, which prospectus or prospectus supplement relates to the Placement Shares to be issued from time to time by the Company (the “**Prospectus Supplement**”). The Company will furnish to the Agent, for use by the Agent, copies of the prospectus included as part of such registration statement, as supplemented, by the Prospectus Supplement, relating to the Placement Shares to be issued from time to time by the Company. The Company may file one or more additional registration statements from time to time that will contain a base prospectus and related prospectus or prospectus supplement, if applicable (which shall be a Prospectus Supplement), with respect to the Placement Shares. Except where the context otherwise requires, such registration statement(s), including all documents filed as part thereof or incorporated by reference therein, and including any information contained in a Prospectus (as defined below) subsequently filed with the Commission pursuant to Rule 424(b) under the Securities Act Regulations or deemed to be a part of such registration statement pursuant to Rule 430B of the Securities Act Regulations, is herein called the “**Registration Statement**.” The base prospectus or base prospectuses, including all documents incorporated therein by reference, included in the Registration Statement, as it may be supplemented, if necessary, by the Prospectus Supplement, in the form in which such prospectus or prospectuses and/or Prospectus Supplement have most recently been filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act Regulations, together with the then issued Issuer Free Writing Prospectus(es), is herein called the “**Prospectus**.”

Any reference herein to the Registration Statement, any Prospectus Supplement, Prospectus or any Issuer Free Writing Prospectus (defined below) shall be deemed to refer to and include the documents, if any, incorporated by reference therein (the “**Incorporated Documents**”), including, unless the context otherwise requires, the documents, if any, filed as exhibits to such Incorporated Documents. Any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement, any Prospectus Supplement, the Prospectus or any Issuer Free Writing Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act on or after the most-recent effective date of the Registration Statement, or the date of the Prospectus Supplement, Prospectus or such Issuer Free Writing Prospectus, as the case may be, and incorporated therein by reference. For purposes of this Agreement, all references to the Registration Statement, the Prospectus or to any amendment or supplement thereto shall be deemed to include the most recent copy filed with the Commission pursuant to its Electronic Data Gathering Analysis and Retrieval system, or if applicable, the Interactive Data Electronic Application system when used by the Commission (collectively, “**EDGAR**”).

2. **Placements.** Each time that the Company wishes to issue and sell Placement Shares hereunder (each, a “**Placement**”), it will notify the Agent by email notice (or other method mutually agreed to by the parties) of the number of Placement Shares to be issued, the time period during which sales are requested to be made, any limitation on the number of Placement Shares that may be sold in any one day and any minimum price below which sales may not be made (a “**Placement Notice**”), the form of which is attached hereto as Schedule 1. The Placement Notice shall originate from any of the individuals from the Company set forth on Schedule 3 (with a copy to each of the other individuals from the Company listed on such schedule), and shall be addressed to each of the individuals from the Agent set forth on Schedule 3, as such Schedule 3 may be amended from time to time. The Placement Notice shall be effective unless and until (i) the Agent declines to accept the terms contained therein for any reason, in its sole discretion, (ii) the entire amount of the Placement Shares thereunder have been sold, (iii) the Company suspends or terminates the Placement Notice or (iv) this Agreement has been terminated under the provisions of Section 12. The amount of any discount, commission or other compensation to be paid by the Company to Agent in connection with the sale of the Placement Shares shall be calculated in accordance with the terms set forth in Schedule 2. It is expressly acknowledged and agreed that neither the Company nor the Agent will have any obligation whatsoever with respect to a Placement or any Placement Shares unless and until the Company delivers a Placement Notice to the Agent and the Agent does not decline such Placement Notice pursuant to the terms set forth above, and then only upon the terms specified therein and herein. In the event of a conflict between the terms of this Agreement and the terms of a Placement Notice, the terms of the Placement Notice will control.

3. Sale of Placement Shares by the Agent. Subject to the provisions of Section 5(a), the Agent, for the period specified in the Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable state and federal laws, rules and regulations and the rules of the Nasdaq Global Select Market (the “Exchange”), to sell the Placement Shares up to the amount specified, and otherwise in accordance with the terms of such Placement Notice. The Agent will provide written confirmation to the Company no later than the opening of the Trading Day (as defined below) immediately following the Trading Day on which it has made sales of Placement Shares hereunder setting forth the number of Placement Shares sold on such day, the compensation payable by the Company to the Agent pursuant to Section 2 with respect to such sales, and the Net Proceeds (as defined below) payable to the Company, with an itemization of the deductions made by the Agent (as set forth in Section 5(b)) from the gross proceeds that it receives from such sales. Subject to the terms of the Placement Notice, the Agent may sell Placement Shares by any method permitted by law deemed to be an “at the market offering” as defined in Rule 415(a)(4) of the Securities Act Regulations, including sales made directly on or through the Exchange or any other existing trading market for the Common Stock, in negotiated transactions at market prices prevailing at the time of sale or at prices related to such prevailing market prices and/or any other method permitted by law. “Trading Day” means any day on which Common Stock is traded on the Exchange.

4. Suspension of Sales. The Company or the Agent may, upon notice to the other party in writing (including by email correspondence to each of the individuals of the other party set forth on Schedule 3, if receipt of such correspondence is actually acknowledged by any of the individuals to whom the notice is sent, other than via auto-reply) or by telephone (confirmed immediately by verifiable facsimile transmission (in the case of notice to the Agent) or email correspondence to each of the individuals of the other party set forth on Schedule 3), suspend any sale of Placement Shares (a “Suspension”); *provided, however*, that such Suspension shall not affect or impair any party’s obligations with respect to any Placement Shares sold hereunder prior to the receipt of such notice. While a Suspension is in effect any obligation under Sections 7(l), 7(m), and 7(n) with respect to the delivery of certificates, opinions, or comfort letters to the Agent, shall be waived. Each of the parties agrees that no such notice under this Section 4 shall be effective against any other party unless it is made to one of the individuals named on Schedule 3 hereto, as such Schedule may be amended from time to time.

5. Sale and Delivery to the Agent; Settlement.

(a) Sale of Placement Shares. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, upon the Agent's acceptance of the terms of a Placement Notice, and unless the sale of the Placement Shares described therein has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement, the Agent, for the period specified in the Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable law and regulations to sell such Placement Shares up to the amount specified, and otherwise in accordance with the terms of such Placement Notice. The Company acknowledges and agrees that (i) there can be no assurance that the Agent will be successful in selling Placement Shares, (ii) the Agent will incur no liability or obligation to the Company or any other person or entity if it does not sell Placement Shares for any reason other than a failure by the Agent to use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable law and regulations to sell such Placement Shares as required under this Agreement and (iii) the Agent shall be under no obligation to purchase Placement Shares on a principal basis pursuant to this Agreement, except as otherwise agreed to by the Agent and the Company.

(b) Settlement of Placement Shares. Unless otherwise specified in the applicable Placement Notice, settlement for sales of Placement Shares will occur on the second (2nd) Trading Day (or such earlier day as is industry practice for regular-way trading) following the date on which such sales are made (each, a "**Settlement Date**"). The Agent shall notify the Company of each sale of Placement Shares no later than the opening of the Trading Day immediately following the Trading Day on which it has made sales of Placement Shares hereunder. The amount of proceeds to be delivered to the Company on a Settlement Date against receipt of the Placement Shares sold (the "**Net Proceeds**") will be equal to the aggregate sales price received by the Agent, after deduction for (i) the Agent's commission, discount or other compensation for such sales payable by the Company pursuant to Section 2 hereof, and (ii) any transaction fees imposed by any Governmental Authority in respect of such sales.

(c) Delivery of Placement Shares. On or before each Settlement Date, the Company will, or will cause its transfer agent to, electronically transfer the Placement Shares being sold by crediting the Agent's or its designee's account (provided the Agent shall have given the Company written notice of such designee at least one Trading Day prior to the Settlement Date) at The Depository Trust Company through its Deposit and Withdrawal at Custodian System or by such other means of delivery as may be mutually agreed upon by the parties hereto which in all cases shall be freely tradable, transferable, registered shares in good deliverable form. On each Settlement Date, the Agent will deliver the related Net Proceeds in same day funds to an account designated by the Company on, or prior to, the Settlement Date. The Company agrees that if the Company, or its transfer agent (if applicable), defaults in its obligation to deliver Placement Shares on a Settlement Date, the Company agrees that in addition to and in no way limiting the rights and obligations set forth in Section 10(a) hereto, it will (i) hold the Agent harmless against any loss, claim, damage, or expense (including reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company or its transfer agent (if applicable) and (ii) pay to the Agent any commission, discount, or other compensation to which it would otherwise have been entitled absent such default.

(d) Denominations; Registration. Certificates for the Placement Shares, if any, shall be in such denominations and registered in such names as the Agent may request in writing at least one full Business Day (as defined below) before the Settlement Date. The certificates for the Placement Shares, if any, will be made available by the Company for examination and packaging by the Agent in The City of New York not later than noon (New York time) on the Business Day prior to the Settlement Date.

(e) Limitations on Offering Size. Under no circumstances shall the Company cause or request the offer or sale of any Placement Shares if, after giving effect to the sale of such Placement Shares, the aggregate gross sales proceeds of Placement Shares sold pursuant to this Agreement would exceed the lesser of (A) together with all sales of Placement Shares under this Agreement, the Maximum Amount and (B) the amount authorized from time to time to be issued and sold under this Agreement by the Company's board of directors, a duly authorized committee thereof or a duly authorized executive committee, and notified to the Agent in writing. Under no circumstances shall the Company cause or request the offer or sale of any Placement Shares pursuant to this Agreement at a price lower than the minimum price authorized from time to time by the Company's board of directors, a duly authorized committee thereof or a duly authorized executive committee. Further, under no circumstances shall the Company cause or permit the aggregate offering amount of Placement Shares sold pursuant to this Agreement to exceed the Maximum Amount.

6. Representations and Warranties of the Company. The Company represents and warrants to, and agrees with Agent that as of the date of this Agreement and as of each Applicable Time (as defined below):

(a) Registration Statement and Prospectus. An "automatic shelf registration statement" as defined under Rule 405 of the Securities Act, on Form S-3ASR (File No. 333-226452) in respect of the Placement Shares was filed with Commission on July 31, 2018; such registration statement and an automatic post-effective amendment thereto on Form POSASR filed on February 24, 2020 became effective on filing; a post-effective amendment to such registration statement on Form POS AM requesting that the registration statement be converted to a non-automatic shelf registration statement was filed on February 24, 2020 and was declared effective by the Commission on May 5, 2020; and no stop order suspending the effectiveness of such registration statement or any part thereof has been issued and no proceeding for that purpose or pursuant to Section 8A of the Securities Act against the Company or related to the offering of the Placement Shares has been initiated or threatened by the Commission, and no notice of objection of the Commission to the use of such registration statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act has been received by the Company. No order preventing or suspending the use of any base prospectus, Prospectus Supplement or Issuer Free Writing Prospectus has been issued by the Commission, and each of any base prospectus, Prospectus Supplement or Issuer Free Writing Prospectus, at the time of filing thereof, conformed in all material respects to the requirements of the Securities Act and the rules and regulations of the Commission thereunder, and did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with the Agent Information (as defined in Section 10(b) of this Agreement).

(b) Conformity with Securities Act and Exchange Act. The Registration Statement complies as to form, and the Prospectus and any further amendments or supplements to the Registration Statement and the Prospectus will comply as to form, in all material respects to the requirements of the Securities Act and the rules and regulations of the Commission thereunder and do not and will not, as of the applicable effective date as to each part of the Registration Statement, and as of the applicable filing date as to the Prospectus and any amendment or supplement thereto, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The documents incorporated by reference in the Prospectus, when they became effective or were filed with the Commission, as the case may be, complied as to form in all material respects to the requirements of the Securities Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder, and none of such documents contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading; any further documents so filed and incorporated by reference in the Prospectus or any further amendment or supplement thereto, when such documents become effective or are filed with the Commission, as the case may be, will comply as to form in all material respects to the requirements of the Securities Act or the Exchange Act, as applicable, and the rules and regulations of the Commission thereunder and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, however, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with the Agent Information; and no such documents were filed with the Commission since the Commission's close of business on the business day immediately prior to the date of this Agreement and prior to the execution of this Agreement. There are no contracts or other documents required to be described in the Prospectus or to be filed as exhibits to the Registration Statement which have not been described or filed as required.

(c) Financial Information. The financial statements filed with the Commission and included or incorporated by reference in the Registration Statement and the Prospectus present fairly the consolidated financial position of the Company and its subsidiaries as of the dates indicated and the results of their operations, changes in stockholders' equity and cash flows for the periods specified. Such financial statements have been prepared in conformity with accounting principles generally accepted in the United States applied on a consistent basis throughout the periods involved, except as may be expressly stated in the related notes thereto. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement and the Prospectus fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto. No other financial statements or supporting schedules are required to be included in the Registration Statement or the Prospectus. To the Company's knowledge, no person who has been suspended or barred from being associated with a registered public accounting firm, or who has failed to comply with any sanction pursuant to Rule 5300 promulgated by the PCAOB (defined below), has participated in or otherwise aided the preparation of, or audited, the financial statements, supporting schedules or other financial data filed with the Commission and included or incorporated by reference in the Registration Statement and the Prospectus.

(d) Conformity with EDGAR Filing. The Prospectus delivered to Agent for use in connection with the sale of the Placement Shares pursuant to this Agreement will be identical to the versions of the Prospectus created to be transmitted to the Commission for filing via EDGAR, except to the extent permitted by Regulation S-T.

(e) Organization. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation and has the corporate power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement and the Prospectus and to enter into and perform its obligations under this Agreement. The Company is duly qualified as a foreign corporation to transact business and is in good standing in the State of Florida and each other jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to be so qualified or in good standing could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect (defined below).

(f) Subsidiaries.

(i) Each of the Company's "subsidiaries" (for purposes of this Agreement, as defined in Rule 405 under the Securities Act) has been duly incorporated or organized, as the case may be, and is validly existing as a corporation, partnership or limited liability company, as applicable, in good standing under the laws of the jurisdiction of its incorporation or organization and has the power and authority (corporate or other) to own, lease and operate its properties and to conduct its business as described in the Registration Statement and the Prospectus. Each of the Company's subsidiaries is duly qualified as a foreign corporation, partnership or limited liability company, as applicable, to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to be so qualified or in good standing could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. All of the issued and outstanding capital stock or other equity or ownership interests of each of the Company's subsidiaries have been duly authorized and validly issued, are fully paid and nonassessable and are owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance or adverse claim. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than vitaMedMD, LLC, a Delaware limited liability company, BocaGreenMD, Inc., a Nevada corporation, and VitaCare Prescription Services, Inc., a Florida corporation.

(ii) Subject to the existence of legally available funds, no subsidiary of the Company is prohibited or restricted, directly or indirectly, from paying dividends to the Company, or from making any other distribution with respect to such subsidiary's equity securities or from repaying to the Company or any other subsidiary of the Company any amounts that may from time to time become due under any loans or advances to such subsidiary from the Company or from transferring any property or assets to the Company or to any other subsidiary.

(g) No Violation, Default or Conflicts. Neither the Company nor any of its subsidiaries is in violation of its charter or by-laws, partnership agreement or operating agreement or similar organizational documents, as applicable, or is in default (or, with the giving of notice or lapse of time, would be in default) under any indenture, loan, credit agreement, note, lease, license agreement, contract, franchise or other instrument (including, without limitation, any pledge agreement, security agreement, mortgage or other instrument or agreement evidencing, guaranteeing, securing or relating to indebtedness) to which the Company or any of its subsidiaries is a party or by which it or any of them may be bound, or to which any of their respective properties or assets are subject (each, an “**Existing Instrument**”), except for such defaults as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. The Company’s execution, delivery and performance of this Agreement, consummation of the transactions contemplated hereby and by the Registration Statement and the Prospectus and sale of the Placement Shares (i) have been duly authorized by all necessary corporate action and will not result in any violation of the provisions of the charter or by-laws, partnership agreement or operating agreement or similar organizational documents, as applicable, of the Company or any subsidiary, (ii) will not conflict with or constitute a breach of, or default or a Debt Repayment Triggering Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, or require the consent of any other party to, any Existing Instrument, except as could not be reasonably expected, individually or in the aggregate, to have a Material Adverse Effect and (iii) will not result in any violation of any law, administrative regulation or administrative or court decree applicable to the Company or any of its subsidiaries. No consent, approval, authorization or other order of, or registration or filing with any Governmental Authority is required for the Company’s execution, delivery and performance of this Agreement and consummation of the transactions contemplated hereby and by the Registration Statement and the Prospectus, except such as have been obtained or made by the Company and are in full force and effect under the Securities Act and such as may be required under applicable state securities or blue sky laws or the Financial Industry Regulatory Authority (“**FINRA**”). As used herein, a “Debt Repayment Triggering Event” means any event or condition which gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

(h) No Material Adverse Change. Except as otherwise disclosed in the Registration Statement and the Prospectus, subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus: (i) there has been no material adverse change, or any development that could reasonably be expected to result in a material adverse change, in the condition, financial or otherwise, or in the earnings, business, properties, operations, assets, liabilities or prospects of the Company and its subsidiaries, considered as one entity (a “**Material Adverse Effect**”); (ii) the Company and its subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, including without limitation any losses or interference with their business from fire, explosion, flood, earthquakes, accident or other calamity, whether or not covered by insurance, or from any strike, labor dispute or court or governmental action, order or decree, that is material, individually or in the aggregate, to the Company and its subsidiaries, considered as one entity, or entered into any material transactions not in the ordinary course of business; and (iii) there has not been any material decrease in the capital stock or any material increase in any short-term or long-term indebtedness of the Company or its subsidiaries and there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for dividends paid to the Company or other subsidiaries, by any of the Company’s subsidiaries on any class of capital stock, or any repurchase or redemption by the Company or any of its subsidiaries of any class of capital stock.

(i) Capitalization. The authorized, issued and outstanding capital stock of the Company is as set forth in the Registration Statement and the Prospectus (other than for subsequent issuances, if any, pursuant to employee benefit plans or upon the exercise of outstanding options or warrants, in each case described in the Registration Statement and the Prospectus). The Placement Shares conform in all material respects to the description thereof contained in the Prospectus. All of the issued and outstanding capital stock of the Company have been duly authorized and validly issued, are fully paid and nonassessable and have been issued in compliance with all federal and state securities laws. None of the outstanding shares of capital stock of the Company was issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its subsidiaries other than those described in the Registration Statement and the Prospectus, including the incentive and stock purchase plans described thereunder. The descriptions of the Company's stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the Registration Statement and the Prospectus accurately and fairly present the information required to be shown with respect to such plans, arrangements, options and rights.

(j) Authorization; Enforceability. This Agreement has been duly authorized, executed and delivered by the Company.

(k) Authorization of Placement Shares. The Placement Shares have been duly authorized and, when issued and delivered against payment therefor as provided herein, will be duly and validly issued and fully paid and nonassessable and will not be subject to any preemptive rights, rights of first refusal or other similar rights of the Company or granted by the Company to subscribe for or purchase the Placement Shares.

(l) No Preferential Rights. There are no persons with registration or other similar rights to have any equity or debt securities registered for sale under the Registration Statement or included in the offering or sale of the Placement Shares, except for such rights as have been duly waived.

(m) Independent Public Accounting Firm. Grant Thornton LLP, who have certified certain financial statements of the Company and its subsidiaries, and have audited the Company's internal control over financial reporting and management's assessment thereof, is (i) an independent registered public accounting firm as required by the Securities Act, the Exchange Act and the rules of the Public Company Accounting Oversight Board ("PCAOB"), (ii) in compliance with the applicable requirements relating to the qualification of accountants under Rule 2-01 of Regulation S-X under the Securities Act and (iii) a registered public accounting firm as defined by the PCAOB whose registration has not been suspended or revoked and who has not requested such registration to be withdrawn.

(n) Third Party Agreements. Neither the Company nor any of its subsidiaries has sent or received any communication regarding termination of, or intent not to renew, any of the contracts or agreements referred to or described in the Prospectus, or referred to or described in, or filed as an exhibit to, the Registration Statement, or any document incorporated by reference therein, and no such termination or non-renewal has been threatened by the Company or any of its subsidiaries or, to the Company's knowledge, any other party to any such contract or agreement, which threat of termination or non-renewal has not been rescinded as of the date hereof, except, in each case, as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(o) No Litigation. Except as disclosed in the Registration Statement and the Prospectus, there is no action, suit, proceeding, inquiry or investigation brought by or before any Governmental Authority now pending or, to the knowledge of the Company, threatened, against or affecting the Company or any of its subsidiaries, which could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect or materially and adversely affect the consummation of the transactions contemplated by this Agreement or the performance by the Company of its obligations hereunder; and the aggregate of all pending legal or governmental proceedings to which the Company or any such subsidiary is a party or of which any of their respective properties or assets is the subject, including ordinary routine litigation incidental to the business, if determined adversely to the Company, could not reasonably be expected to have a Material Adverse Effect. None of the Company or any of its subsidiaries is a party to or has any ongoing reporting obligations pursuant to any corporate integrity agreement, deferred prosecution agreement, monitoring agreement, consent decree, settlement order, plan of correction or similar agreement imposed by any governmental authority.

(p) Consents and Permits. The Company and its subsidiaries possess such material certificates, approvals, clearances, authorizations, licenses, registrations or permits, and all supplements or amendments thereto, required by local, state, federal or foreign Governmental Authority to conduct their respective businesses as currently conducted and as described in the Registration Statement or the Prospectus ("Permits"). Neither the Company nor any of its subsidiaries is in violation of, or in default under, any Permit or has received any notice of proceedings relating to the revocation or modification of, or non-compliance with, any such Permit. The Company and its subsidiaries have fulfilled and performed all of their obligations with respect to the Permits and, to the Company's and its subsidiaries' knowledge, no event has occurred which allows, or after notice or lapse of time would allow, revocation, suspension, material modification, or termination thereof or results or would result in any other material impairment of the rights of the holder of any Permit. All such Permits are in full force and effect. The Company and, to the Company's knowledge, its subsidiaries have each operated and currently are in compliance in all material respects with all applicable laws, rules, regulations and policies of all Governmental Authorities. Neither the Company nor any of its subsidiaries has received any FDA Form 483, notice of adverse finding, "dear doctor" letter, recall, field notification, field correction, market withdrawal or replacement, safety letter, warning letter, untitled letter or other correspondence or notice from any other Governmental Authority alleging or asserting noncompliance with any applicable laws or any Permit. The Company and its subsidiaries, and, to the Company's knowledge, any person acting on behalf of or for the Company, have submitted all applications, notifications, submissions, information, claims, reports and statistics, filings, and other data and conclusions derived therefrom (collectively, the "Submissions") to the United States Food and Drug Administration (the "FDA") or other Governmental Authorities as required for the conduct of their respective businesses as currently conducted, and all such Submissions, when submitted to the FDA or other Governmental Authority were true, complete and correct in all material respects as of the date of submission, and any necessary or required updates, changes, corrections or modification to such Submissions have been submitted to the FDA or other Governmental Authority. The claims for the Company's and its subsidiaries' products as disclosed in the Registration Statement and the Prospectus comply in all material respects with applicable law, and are supported by valid and proper research, design, testing, analysis and disclosure.

(q) Intellectual Property. Except as disclosed in the Registration Statement and the Prospectus, the Company and its subsidiaries own, or have obtained valid and enforceable licenses for, the inventions, patent applications, patents, trademarks, trade names, service names, copyrights, trade secrets and other intellectual property described in the Registration Statement and the Prospectus as being owned or licensed by them or which are necessary for the conduct of their respective businesses as currently conducted or as currently proposed to be conducted (collectively, “**Intellectual Property**”). Except as disclosed in the Registration Statement and the Prospectus, the Company has not granted to any third party any rights or licenses under the Intellectual Property other than non-exclusive licenses granted in the ordinary course of business. Except as disclosed in the Registration Statement and the Prospectus, there are no liens or security interests in the Intellectual Property. To the Company’s knowledge: (i) there is no material infringement by third parties of any Intellectual Property and the Company is unaware of the occurrence of any event that with notice or the passage of time would constitute a material infringement of any Intellectual Property; and (ii) except as disclosed in the Registration Statement and the Prospectus, there is no material infringement by the Company or its subsidiaries of any patent, trademark, trade name, service name, copyright, trade secret or other proprietary rights of others and the Company is unaware of the occurrence of any event that with notice or the passage of time would constitute material infringement. Except as disclosed in the Registration Statement and the Prospectus, there is no material pending or, to the Company’s knowledge, threatened action, suit, proceeding or claim by others: (A) challenging the Company’s rights in or to any Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim; (B) challenging the validity, enforceability or scope of any Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim; or (C) asserting that the Company or any of its subsidiaries infringes or otherwise violates, or would, upon the commercialization of any product or service described in the Registration Statement or the Prospectus as under development, infringe or violate, any patent, trademark, trade name, service name, copyright, trade secret or other proprietary rights of others, and the Company is unaware of any facts which would form a reasonable basis for any such action, suit, proceeding or claim. The Company and its subsidiaries have complied with the terms of each agreement pursuant to which Intellectual Property has been licensed to the Company or any subsidiary, and all such agreements are in full force and effect. No Intellectual Property has been obtained or is being used by the Company or its subsidiaries in violation of any contractual obligations binding on the Company or in violation of any contractual rights of the Company’s employees. Except as disclosed in the Registration Statement and the Prospectus, the product referred to as TX-001HR or BIJUVA, the product referred to as ANNOVERA and the product referred to as TX-004HR or IMVEXXY and described in the Registration Statement and the Prospectus as developed by the Company or any subsidiary fall within the scope of the claims of one or more patents owned by, or exclusively licensed with respect to commercialization in the U.S. to, the Company or any subsidiary, and the product candidates referred to as TX-005HR, TX-006HR, TX-007HR, TX-008HR and TX-009HR and described in the Registration Statement and the Prospectus as under development by the Company or any subsidiary fall within the scope of the claims of one or more patents or patent applications owned by, or exclusively licensed to, the Company or any subsidiary. To the Company’s knowledge, (x) all patent applications and patents within the Intellectual Property have been diligently prosecuted and no person having a duty of candor to the United States Patent Office with respect to the prosecution of such patent applications and patents has breached such duty, and (y) there is no material defect in such prosecution that would preclude the issuance of patents with respect to such patent applications or that would render any such issued patents invalid or unenforceable.

(r) Clinical Studies.

(i) To the knowledge of the Company, the preclinical tests and clinical trials that are described in, or the results of which are referred to in, the Registration Statement or the Prospectus were and, if still pending, are being conducted in all material respects in accordance with the protocols established for each such preclinical test or clinical trial and all applicable laws, rules and regulations of the Governmental Authorities, including, without limitation, 21 C.F.R. Parts 50, 54, 56, 58, 312 and 812;

(ii) each description of the results of such preclinical tests and clinical trials is accurate and complete in all material respects and fairly presents the data derived from such preclinical tests and clinical trials, and the Company and its subsidiaries have no knowledge of any other preclinical tests or clinical trials the results of which are inconsistent with, or otherwise call into question, the results described or referred to in the Registration Statement or the Prospectus; and

(iii) neither the Company nor any of its subsidiaries has received any notice of, or correspondence from, any Governmental Authority or institutional review board or analogous entity requiring the termination, suspension or material modification of any preclinical tests or clinical trials that are, or whose results of which are, described or referred to in the Registration Statement or the Prospectus.

(s) No Material Defaults. Neither the Company nor any of the Subsidiaries has defaulted on any installment on indebtedness for borrowed money or on any rental on one or more long-term leases, which defaults, individually or in the aggregate, would have a Material Adverse Effect. The Company has not filed a report pursuant to Section 13(a) or 15(d) of the Exchange Act since the filing of its last Annual Report on Form 10-K, indicating that it (i) has failed to pay any dividend or sinking fund installment on preferred stock or (ii) has defaulted on any installment on indebtedness for borrowed money or on any rental on one or more long-term leases, which defaults, individually or in the aggregate, would have a Material Adverse Effect.

(t) Certain Market Activities. Neither the Company nor any of its subsidiaries has taken, directly or indirectly, any action designed to or that might reasonably be expected to cause or result in stabilization or manipulation of the price of the Placement Shares or of any “reference security” (as defined in Rule 100 of Regulation M under the Exchange Act (“**Regulation M**”)) with respect to the capital stock of the Company, whether to facilitate the sale or resale of the Placement Shares or otherwise, and has taken no action which would directly or indirectly violate Regulation M.

(u) Broker/Dealer Relationships. Neither the Company nor any of the Subsidiaries (i) is required to register as a “broker” or “dealer” in accordance with the provisions of the Exchange Act or (ii) directly or indirectly through one or more intermediaries, controls or is a “person associated with a member” or “associated person of a member” (within the meaning set forth in the FINRA Manual).

(v) No Reliance. The Company has not relied upon the Agent or legal counsel for the Agent for any legal, tax or accounting advice in connection with the offering and sale of the Placement Shares.

(w) Taxes. The Company and its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed or have properly requested extensions thereof, and all such tax returns are true, complete and accurate in all material respects. The Company and its subsidiaries have paid all taxes required to be paid by any of them and, if due and payable, any related or similar assessment, fine or penalty levied against any of them except as may be being contested in good faith and by appropriate proceedings. The Company and its subsidiaries have made adequate charges, accruals and reserves in the applicable financial statements referred to in Section 6(c) above in respect of all federal, state, local and foreign taxes not yet due and payable in accordance with U.S. generally accepted accounting principles, and neither the Company nor any of its subsidiaries has received written notice of any actual or proposed additional material tax assessment from a tax authority of any jurisdiction.

(x) Title to Real and Personal Property. The Company and its subsidiaries have good and marketable title to all of the real and personal property and other assets reflected as owned in the financial statements referred to in Section 6(c) above (or elsewhere in the Registration Statement or the Prospectus), in each case free and clear of any security interests, mortgages, liens, encumbrances, equities, adverse claims and other defects, except for those described in the Registration Statement or the Prospectus, or such as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. The real property, improvements, equipment and personal property held under lease by the Company or any of its subsidiaries are held under valid and enforceable leases, with such exceptions as are not material and do not materially interfere with the use made or proposed to be made of such real property, improvements, equipment or personal property by the Company or such subsidiary.

(y) Environmental Laws. Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) neither the Company nor any of its subsidiaries is in violation of any federal, state, local or foreign statute, law, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products (collectively, “**Hazardous Materials**”) or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, “**Environmental Laws**”); (ii) the Company and its subsidiaries have all permits, authorizations and approvals required under any applicable Environmental Laws and are each in compliance with their requirements; (iii) there are no pending or threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations or proceedings relating to any Environmental Law against the Company or any of its subsidiaries; and (iv) there are no events or circumstances that might reasonably be expected to form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or governmental body or agency, against or affecting the Company or any of its subsidiaries relating to Hazardous Materials or any Environmental Laws. In the ordinary course of its business, the Company conducts, from time to time, a review reasonable in light of the Company’s business of the effect of Environmental Laws on the business, operations and properties of the Company and its subsidiaries, in the course of which it identifies and evaluates associated costs and liabilities (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties). No facts or circumstances have come to the Company’s attention that could result in costs or liabilities due to the violation of any Environmental Laws that could be expected, individually or in the aggregate, to have a Material Adverse Effect.

(z) Disclosure Controls. The Company and each of its subsidiaries make and keep accurate books and records and maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and (v) the interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement and the Prospectus fairly presents the information called for in all material respects and is prepared in accordance with the Commission's rules and guidelines applicable thereto. The Company has established and maintains disclosure controls and procedures (as defined in Rules 13a-15 and 15d-15 under the Exchange Act), which (i) are designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the Company's principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the Exchange Act are being prepared; (ii) have been evaluated by management of the Company for effectiveness as of the end of the Company's most recent fiscal quarter; and (iii) are effective in all material respects to perform the functions for which they were established as of the end of the Company's most recent fiscal quarter. Since December 31, 2019, there have been no significant deficiencies or material weaknesses in the Company's internal control over financial reporting (whether or not remediated) and no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company is not aware of any change in its internal control over financial reporting that has occurred during its most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(aa) Sarbanes-Oxley. The Company and the Company's directors and officers, in their capacities as such, are in compliance with all applicable provisions of the Sarbanes-Oxley Act and the rules and regulations of the Commission thereunder.

(bb) Finder's Fees. Except pursuant to this Agreement, and for any fees payable to Greenhill & Co. in connection with this offering, there is no broker, finder or other party that is entitled to receive from the Company any brokerage or finder's fee or other fee or commission as a result of any transactions contemplated by this Agreement.

(cc) Labor Disputes. No material labor dispute with the employees of the Company or any of its subsidiaries, or with the employees of any principal supplier, manufacturer, customer or contractor of the Company or any of its subsidiaries, exists or, to the knowledge of the Company, is threatened or imminent.

(dd) Investment Company Act. The Company is not, and will not be, either after receipt of payment for the Placement Shares or after the application of the proceeds therefrom as described under "Use of Proceeds" in the Registration Statement or the Prospectus, required to register as an "investment company" under the Investment Company Act of 1940, as amended.

(ee) Operations. The operations of the Company and its subsidiaries are, and have been conducted at all times, in compliance with applicable financial recordkeeping and reporting requirements of the Currency and the Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar applicable rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "Money Laundering Laws") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(ff) Underwriter Agreements. The Company is not a party to any agreement with an agent or underwriter for any other "at the market" or continuous equity transaction.

(gg) ERISA. The Company and its subsidiaries and any "employee benefit plan" (as defined under the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, "ERISA")) established or maintained by the Company, its subsidiaries or their ERISA Affiliates (as defined below) are in compliance in all material respects with ERISA. "ERISA Affiliate" means, with respect to the Company or any of its subsidiaries, any member of any group of organizations described in Sections 414(b), (c), (m) or (o) of the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (the "Code") of which the Company or such subsidiary is a member. No "reportable event" (as defined under ERISA) has occurred or is reasonably expected to occur with respect to any "employee benefit plan" established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates. No "employee benefit plan" established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates, if such "employee benefit plan" were terminated, would have any "amount of unfunded benefit liabilities" (as defined under ERISA). Neither the Company, its subsidiaries nor any of their ERISA Affiliates has incurred or reasonably expects to incur any liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "employee benefit plan" or (ii) Sections 412, 4971, 4975 or 4980B of the Code. Each employee benefit plan established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or failure to act, which could reasonably be expected to result in or cause the loss of such qualification.

(hh) Forward-Looking Statements. Each financial or operational projection or other “**Forward-Looking Statement**” (as defined by Section 27A of the Securities Act or Section 21E of the Exchange Act) contained in the Registration Statement or the Prospectus (i) was so included by the Company in good faith and with reasonable basis after due consideration by the Company of the underlying assumptions, estimates and other applicable facts and circumstances and (ii) is accompanied by meaningful cautionary statements identifying those factors that could cause actual results to differ materially from those in such forward-looking statement. No such statement was made with the knowledge of an executive officer or director of the Company that it was false or misleading.

(ii) Agent Purchases. The Company acknowledges and agrees that Agent has informed the Company that the Agent may, to the extent permitted under the Securities Act and the Exchange Act, purchase and sell Common Stock for its own account while this Agreement is in effect, *provided*, that (i) no such purchase or sales shall take place while a Placement Notice is in effect (except to the extent the Agent may engage in sales of Placement Shares purchased or deemed purchased from the Company as a “riskless principal” or in a similar capacity) and (ii) the Company shall not be deemed to have authorized or consented to any such purchases or sales by the Agent.

(jj) Margin Rules. Neither the issuance, sale and delivery of the Placement Shares nor the application of the proceeds thereof by the Company as described in the Registration Statement and the Prospectus will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

(kk) Insurance. Each of the Company and its subsidiaries is insured by recognized, financially sound and reputable institutions with policies in such amounts and with such deductibles and covering such risks as are generally deemed adequate and customary for their businesses including, but not limited to, policies covering real and personal property owned or leased by the Company and its subsidiaries against theft, damage, destruction, acts of vandalism and earthquakes and policies covering the Company and its subsidiaries for product liability claims and clinical trial liability claims. The Company has no reason to believe that it or any of its subsidiaries will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that could not be expected to have a Material Adverse Effect. Neither the Company nor any of its subsidiaries has been denied any insurance coverage which it has sought or for which it has applied.

(ll) No Improper Practices. Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any employee or agent of the Company or any subsidiary, has made any contribution or other payment to any official of, or candidate for, any federal, state or foreign office in violation of any law or of the character required to be disclosed in the Registration Statement or the Prospectus. Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee, affiliate or other person acting on behalf of the Company or any of its subsidiaries has, in the course of its actions for, or on behalf of, the Company or any of its subsidiaries (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any domestic government official, “foreign official” (as defined in the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (collectively, the “FCPA”) or employee from corporate funds; (iii) violated or is in violation of any provision of the FCPA or any applicable non-U.S. anti-bribery statute or regulation; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any domestic government official, such foreign official or employee; and the Company and its subsidiaries and, to the knowledge of the Company, the Company’s affiliates have conducted their respective businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(mm) Status Under the Securities Act. At the time of filing the Registration Statement and any post-effective amendment thereto, at the earliest time thereafter that the Company or any offering participant made a *bona fide* offer (within the meaning of Rule 164(h)(2) under the Securities Act) of the Shares, and at the date hereof, the Company was not and is not an “ineligible issuer,” as defined in Rule 405 under the Securities Act.

(nn) No Misstatement or Omission in an Issuer Free Writing Prospectus. Each Issuer Free Writing Prospectus, as of its issue date and as of each Applicable Time (as defined in Section 23 below), did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement or the Prospectus, including any incorporated document deemed to be a part thereof that has not been superseded or modified. The foregoing sentence does not apply to statements in or omissions from any Issuer Free Writing Prospectus based upon and in conformity with written information furnished to the Company by the Agent specifically for use therein.

(oo) Sanctions. Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, after due inquiry, any director, officer, agent, employee, affiliate or person acting on behalf of the Company or any of its subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“**OFAC**”), nor is the Company or any of its subsidiaries located, organized or resident in a country or territory that is the subject or target of any U.S. sanctions administered by OFAC; and the Company will not directly or indirectly use the proceeds of this offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, or any joint venture partner or other person or entity, for the purpose of financing the activities of or business with any person, or in any country or territory, that currently is subject to any U.S. sanctions administered by OFAC or in any other manner that will result in a violation by any person (including any person participating in the transaction whether as underwriter, advisor, investor or otherwise) of U.S. sanctions administered by OFAC.

(pp) Stock Transfer Taxes. On each Settlement Date, all stock transfer or other taxes (other than income taxes) which are required to be paid in connection with the sale and transfer of the Placement Shares to be sold hereunder will be, or will have been, fully paid or provided for by the Company and all laws imposing such taxes will be or will have been fully complied with.

(qq) Statistical and Market-Related Data. All statistical, demographic and market-related data included in the Registration Statement or the Prospectus are based on or derived from sources that the Company believes, after reasonable inquiry, to be reliable and accurate. To the extent required, the Company has obtained the written consent of such sources for the use of such data.

(rr) Cybersecurity. The Company and its subsidiaries' information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications and databases (collectively, "IT Systems") are adequate for, and operate and perform in all material respects as required in connection with the operation of the business of the Company and its subsidiaries as currently conducted, free and clear of all material bugs, errors, defects, Trojan Horses, time bombs, malware and other corruptants. The Company and its subsidiaries have implemented and maintained commercially reasonable controls, policies, procedures and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of their IT Systems and data (including all personal, personally identifiable, sensitive, confidential or regulated data ("Personal Data")) used in connection with their businesses, and there have been no breaches, violations, outages or unauthorized uses of or accesses to the same, except for those that have been remedied without material cost or liability or the duty to notify any other person, nor any incidents under internal review or investigations relating to the same. The Company and its subsidiaries are presently in material compliance with all applicable U.S. laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification.

(ss) Compliance with Data Privacy Laws. The Company and its subsidiaries are, and at all prior times were, in material compliance with all applicable state and federal data privacy and security laws and regulations, including without limitation HIPAA, CCPA, and the European Union General Data Protection Regulation ("GDPR") (EU 2016/679) (collectively, the "Privacy Laws"). To ensure compliance with the Privacy Laws, the Company has in place, complies with, and takes appropriate steps to ensure compliance in all material respects with their policies and procedures relating to data privacy and security and the collection, storage, use, processing, disclosure, handling, and analysis of Personal Data and Confidential Data (the "Policies"). The Company has at all times made all disclosures to users or customers required by applicable laws and regulatory rules or requirements, and none of such disclosures made or contained in any Policy have been inaccurate or in violation of any applicable laws and regulatory rules or requirements in any material respect. The Company further certifies that neither it nor any subsidiary: (i) has received notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the Privacy Laws, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation, or other corrective action pursuant to any Privacy Law; or (iii) is a party to any order, decree, or agreement that imposes any obligation or liability under any Privacy Law.

(tt) Nasdaq. The Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act and is listed on the Nasdaq Global Select Market (the “Nasdaq”), and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Stock under the Exchange Act or delisting the Stock from the Nasdaq, nor has the Company received any notification that the Commission or the Nasdaq is contemplating terminating such registration or listing. The Company has complied in all material respects with the applicable listing requirements of the Nasdaq.

(uu) No Related-Party Transactions. There are no business relationships or related-party transactions involving the Company or any of its subsidiaries or any other person who is a related party (as defined in Rule 404 of Regulation S-K) required to be described in the Registration Statement or the Prospectus that have not been described as required. There are no outstanding loans, advances (except normal advances for business expenses in the ordinary course of business) or guarantees of indebtedness by the Company to or for the benefit of any of the officers or directors of the Company.

(vv) Information Furnished to the Agent. All of the information provided to the Agent or to counsel for the Agent by the Company, its counsel, its officers and directors and the holders of any securities (debt or equity) or options to acquire any securities of the Company in connection with the offering of the Shares is true, complete, correct and compliant with FINRA’s rules, and any letters, filings or other supplemental information provided to FINRA pursuant to FINRA’s rules is true, complete and correct.

(ww) FINRA. To enable the Agent to rely on FINRA Rule 5110(h)(1)(C), (i) the Company was subject to the requirements of Section 12 or 15(d) of the Exchange Act and filed all the material required to be filed pursuant to Sections 13, 14, or 15(d) for a period of at least thirty-six calendar months immediately preceding the date of this Agreement; (ii) the Company filed in a timely manner all reports required to be filed pursuant to Section 13, 14 or 15(d) of the Exchange Act during the twelve calendar months and any portion of a month immediately preceding the date of this Agreement; (iii) the last reported sale price of the Company’s common stock on the Nasdaq on November 25, 2020 was \$1.34 per share; (iv) as of such date, there were greater than 175 million shares of the Company’s common stock outstanding and held by non-affiliates of the Company; and (v) the Company has annual trading volume of 3 million shares or more.

(xx) Healthcare.

(i) Except where failure to be so in compliance would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (i) the Company and its subsidiaries and, to the knowledge of the Company, its respective directors, officers, employees and agents, have been and are in compliance with all applicable laws, rules and regulations, including, without limitation: the Federal Food, Drug and Cosmetic Act and implementing regulations applicable to the Company and its subsidiaries relating to the ownership, testing, development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, sale, offer for sale, storage, import, export or disposal of any product manufactured or distributed by or on behalf of the Company; the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), criminal false claims statutes (e.g. 18 U.S.C. §§ 287 and 1001), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the federal Physician Payment Sunshine Act (42 U.S.C. Section 1320a-7h), the applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.), as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. §§ 17921 et seq.), the exclusion laws (42 U.S.C. § 1320a-7), the Medicare program (Title XVIII of the Social Security Act, including the amendments implemented by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and the Medicare Improvements for Patients and Providers Act of 2008), the Medicaid program (Title XIX of the Social Security Act), the Veterans Health Care Act of 1992, the Prescription Drug Marketing Act of 1987 (P.L. 100-293, 102 Stat. 95), the Drug Quality and Security Act of 2013 (Pub. L. No. 113-54), the Patient Protection and Affordable Care Act (“ACA”) (Pub. L. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), the regulations promulgated pursuant to such laws, and any other similar local, state or federal law, each as amended from time to time; and (ii) the Company maintains a compliance program of the type described in the U.S. Department of Health and Human Services Office of Inspector General Compliance Program Guidance for Pharmaceutical Manufacturers (May 5, 2003) and the Pharmaceutical Research and Manufacturers of America and has conducted its operations in accordance with its compliance program in all material respects and in compliance with the laws and regulations described in (i) of this Section.

(ii) None of the Company, its subsidiaries nor, to the knowledge of the Company, any of its respective officers, directors or managing employees (as defined in 42 U.S.C. § 1320a-5(b)), or any person acting on behalf of or for the Company, is or has been excluded, suspended or debarred from participation in any state or federal health care program pursuant to 42 U.S.C. § 1320a-7, or debarred or convicted of any crime or engaged in any conduct that would reasonably be expected to result in debarment under 21 U.S.C. § 333(a) or (b) or any similar law, or made subject to any pending or, to the Company's knowledge, threatened or contemplated action which could reasonably be expected to result in such exclusion, suspension or debarment.

Any certificate signed by an officer of the Company and delivered to the Agent or to counsel for the Agent pursuant to or in connection with this Agreement shall be deemed to be a representation and warranty by the Company, as applicable, to the Agent as to the matters set forth therein.

7. Covenants of the Company. The Company covenants and agrees with Agent that:

(a) Registration Statement Amendments. After the date of this Agreement and during any period in which a Prospectus relating to any Placement Shares is required to be delivered by Agent under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act or similar rule), (i) the Company will notify the Agent promptly of the time when any subsequent amendment to the Registration Statement, other than documents incorporated by reference, has been filed with the Commission and/or has become effective or any subsequent supplement to the Prospectus has been filed and of any request by the Commission for any amendment or supplement to the Registration Statement or Prospectus or for additional information, (ii) the Company will prepare and file with the Commission, promptly upon the Agent's request, any amendments or supplements to the Registration Statement or Prospectus that, in the Agent's reasonable opinion, may be necessary or advisable in connection with the distribution of the Placement Shares by the Agent (*provided, however*, that the failure of the Agent to make such request shall not relieve the Company of any obligation or liability hereunder, or affect the Agent's right to rely on the representations and warranties made by the Company in this Agreement and *provided, further*, that the only remedy the Agent shall have with respect to the failure to make such filing shall be to cease making sales under this Agreement until such amendment or supplement is filed); (iii) the Company will not file any amendment or supplement to the Registration Statement or Prospectus relating to the Placement Shares or a security convertible into the Placement Shares unless a copy thereof has been submitted to Agent within a reasonable period of time before the filing and the Agent has not objected thereto (*provided, however*, that the failure of the Agent to make such objection shall not relieve the Company of any obligation or liability hereunder, or affect the Agent's right to rely on the representations and warranties made by the Company in this Agreement and *provided, further*, that the only remedy the Agent shall have with respect to the failure by the Company to obtain such consent shall be to cease making sales under this Agreement) and the Company will furnish to the Agent at the time of filing thereof a copy of any document that upon filing is deemed to be incorporated by reference into the Registration Statement or Prospectus, except for those documents available via EDGAR; and (iv) the Company will cause each amendment or supplement to the Prospectus to be filed with the Commission as required pursuant to the applicable paragraph of Rule 424(b) of the Securities Act or, in the case of any document to be incorporated therein by reference, to be filed with the Commission as required pursuant to the Exchange Act, within the time period prescribed (the determination to file or not file any amendment or supplement with the Commission under this Section 7(a), based on the Company's reasonable opinion or reasonable objections, shall be made exclusively by the Company).

(b) Notice of Commission Stop Orders. The Company will advise the Agent, promptly after it receives notice or obtains knowledge thereof, of the issuance or threatened issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, of the suspension of the qualification of the Placement Shares for offering or sale in any jurisdiction, or of the initiation or threatening of any proceeding for any such purpose; and it will promptly use its commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal if such a stop order should be issued. The Company will advise the Agent promptly after it receives any request by the Commission for any amendments to the Registration Statement or any amendment or supplements to the Prospectus or any Issuer Free Writing Prospectus or for additional information related to the offering of the Placement Shares or for additional information related to the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus.

(c) Delivery of Prospectus; Subsequent Changes. During any period in which a Prospectus relating to the Placement Shares is required to be delivered by the Agent under the Securities Act with respect to the offer and sale of the Placement Shares, (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act or similar rule), the Company will comply with all requirements imposed upon it by the Securities Act, as from time to time in force, and to file on or before their respective due dates (taking into account any extensions available under the Exchange Act) all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14, 15(d) or any other provision of or under the Exchange Act. If the Company has omitted any information from the Registration Statement pursuant to Rule 430B under the Securities Act, it will use its best efforts to comply with the provisions of and make all requisite filings with the Commission pursuant to said Rule 430B and to notify the Agent promptly of all such filings. If during such period any event occurs as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during such period it is necessary to amend or supplement the Registration Statement or Prospectus to comply with the Securities Act, the Company will promptly notify the Agent to suspend the offering of Placement Shares during such period and the Company will promptly amend or supplement the Registration Statement or Prospectus (at the expense of the Company) so as to correct such statement or omission or effect such compliance.

(d) Listing of Placement Shares. Prior to the date of the first Placement Notice, the Company will use its commercially reasonable efforts to cause the Placement Shares to be listed on the Exchange.

(e) Delivery of Registration Statement and Prospectus. The Company will furnish to the Agent and its counsel (at the expense of the Company) copies of the Registration Statement, the Prospectus (including all documents incorporated by reference therein) and all amendments and supplements to the Registration Statement or Prospectus that are filed with the Commission during any period in which a Prospectus relating to the Placement Shares is required to be delivered under the Securities Act (including all documents filed with the Commission during such period that are deemed to be incorporated by reference therein), in each case as soon as reasonably practicable and in such quantities as the Agent may from time to time reasonably request and, at the Agent's request, will also furnish copies of the Prospectus to each exchange or market on which sales of the Placement Shares may be made; *provided, however*, that the Company shall not be required to furnish any document (other than the Prospectus) to the Agent to the extent such document is available on EDGAR.

(f) Earnings Statement. The Company will make generally available to its security holders as soon as practicable, but in any event not later than 15 months after the end of the Company's current fiscal quarter, an earnings statement covering a 12-month period that satisfies the provisions of Section 11(a) of and Rule 158 under the Securities Act.

(g) Use of Proceeds. The Company will use the Net Proceeds as described in the Prospectus in the section entitled "Use of Proceeds."

(h) Notice of Other Sales. Without the prior written consent of the Agent, the Company will not, directly or indirectly, offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Stock (other than the Placement Shares offered pursuant to this Agreement) or securities convertible into or exchangeable for Common Stock, warrants or any rights to purchase or acquire, Common Stock during the period beginning on the fifth (5th) Trading Day immediately prior to the date on which any Placement Notice is delivered to Agent hereunder and ending on the second (2nd) Trading Day immediately following the final Settlement Date with respect to Placement Shares sold pursuant to such Placement Notice (or, if the Placement Notice has been terminated or suspended prior to the sale of all Placement Shares covered by a Placement Notice, the date of such suspension or termination); and will not directly or indirectly in any other "at the market" or continuous equity transaction offer to sell, sell, contract to sell, grant any option to sell or otherwise dispose of any Common Stock (other than the Placement Shares offered pursuant to this Agreement) or securities convertible into or exchangeable for Common Stock, warrants or any rights to purchase or acquire, Common Stock prior to the sixtieth (60th) day immediately following the termination of this Agreement; *provided, however*, that such restrictions will not be required in connection with the Company's issuance or sale of (i) Common Stock, options to purchase Common Stock or other securities exercisable or convertible into shares of Common Stock pursuant to any employee or director stock option or benefits plan, stock ownership plan or dividend reinvestment plan (but not Common Stock subject to a waiver to exceed plan limits in its dividend reinvestment plan) of the Company whether now in effect or hereafter implemented, (ii) Common Stock issuable upon conversion of securities or the exercise of warrants, options or other rights in effect or outstanding, and disclosed in filings by the Company available on EDGAR or otherwise in writing to the Agent and (iii) Common Stock or securities convertible into or exchangeable for shares of Common Stock (A) as consideration for mergers, acquisitions, other business combinations or strategic alliances occurring after the date of this Agreement which are not issued for capital raising purposes, or (B) issuable to debt financing sources.

(i) Change of Circumstances. The Company will, at any time during the pendency of a Placement Notice advise the Agent promptly after it shall have received notice or obtained knowledge thereof, of any information or fact that would alter or affect in any material respect any opinion, certificate, letter or other document required to be provided to the Agent pursuant to this Agreement.

(j) Due Diligence Cooperation. The Company will cooperate with any reasonable due diligence review conducted by the Agent or its representatives in connection with the transactions contemplated hereby, including, without limitation, providing information and making available documents and senior corporate officers, during regular business hours and at the Company's principal offices, as the Agent may reasonably request.

(k) Required Filings Relating to Placement of Placement Shares. The Company agrees that on or prior to such dates as the Securities Act shall require, the Company will (i) file a prospectus supplement with the Commission under the applicable paragraph of Rule 424(b) under the Securities Act (each and every filing date under Rule 424(b), a "**Filing Date**"), which prospectus supplement will set forth, within the relevant period, the amount of Placement Shares sold through the Agent, the Net Proceeds to the Company and the compensation payable by the Company to the Agent with respect to such Placement Shares, and (ii) deliver such number of copies of each such prospectus supplement to each exchange or market on which such sales were effected as may be required by the rules or regulations of such exchange or market.

(l) Representation Dates; Certificate. (1) Prior to the date of the first Placement Notice and (2) each time the Company:

(i) files the Prospectus relating to the Placement Shares or amends or supplements (other than a prospectus supplement relating solely to an offering of securities other than the Placement Shares) the Registration Statement or the Prospectus relating to the Placement Shares by means of a post-effective amendment, sticker, or supplement but not by means of incorporation of documents by reference into the Registration Statement or the Prospectus relating to the Placement Shares;

(ii) files an annual report on Form 10-K under the Exchange Act (including any Form 10-K/A containing amended financial information or a material amendment to the previously filed Form 10-K);

(iii) files its quarterly reports on Form 10-Q under the Exchange Act; or

(iv) files a current report on Form 8-K containing amended financial information (other than information “furnished” pursuant to Items 2.02 or 7.01 of Form 8-K or to provide disclosure pursuant to Item 8.01 of Form 8-K relating to the reclassification of certain properties as discontinued operations in accordance with Statement of Financial Accounting Standards No. 144) under the Exchange Act (each date of filing of one or more of the documents referred to in clauses (i) through (iv) shall be a “**Representation Date**”);

the Company shall furnish the Agent (but in the case of clause (iv) above only if the Agent reasonably determines that the information contained in such Form 8-K is material) with a certificate dated the Representation Date, in the form attached hereto as Exhibit 7(l), modified, as necessary, to relate to the Registration Statement and the Prospectus as amended or supplemented. The requirement to provide a certificate under this Section 7(l) shall be waived for any Representation Date occurring at a time a Suspension is in effect, which waiver shall continue until the earlier to occur of the date the Company delivers instructions for the sale of Placement Shares hereunder (which for such calendar quarter shall be considered a Representation Date) and the next occurring Representation Date. Notwithstanding the foregoing, if the Company subsequently decides to sell Placement Shares following a Representation Date when a Suspension was in effect and did not provide the Agent with a certificate under this Section 7(l), then before the Company delivers the instructions for the sale of Placement Shares or the Agent sells any Placement Shares pursuant to such instructions, the Company shall provide the Agent with a certificate in conformity with this Section 7(l) dated as of the date that the instructions for the sale of Placement Shares are issued.

(m) Legal Opinion. (1) Prior to the date of the first Placement Notice and (2) within five (5) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 7(l) for which no waiver is applicable and excluding the date of this Agreement, the Company shall cause to be furnished to the Agent a written opinion of (i) DLA Piper LLP (US) (“**Company Counsel**”), (ii) Greenburg Traurig, LLP (“**Company Nevada Counsel**”), (iii) Kilpatrick Townsend & Stockton LLP (“**Company IP Counsel**”) or (iv) other counsel satisfactory to the Agent, in form and substance satisfactory to Agent and its counsel, substantially similar to the form previously provided to the Agent and its counsel, modified, as necessary, to relate to the Registration Statement and the Prospectus as then amended or supplemented; *provided, however*, the Company shall be required to furnish to Agent no more than one opinion from each of Company Counsel, Company Nevada Counsel and Company IP Counsel hereunder per calendar quarter; *provided, further*, that in lieu of such opinions for subsequent periodic filings under the Exchange Act, counsel may furnish the Agent with a letter (a “**Reliance Letter**”) to the effect that the Agent may rely on a prior opinion delivered under this Section 7(m) to the same extent as if it were dated the date of such letter (except that statements in such prior opinion shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented as of the date of the Reliance Letter).

(n) Comfort Letter. (1) Prior to the date of the first Placement Notice and (2) within five (5) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a certificate pursuant to Section 7(l) for which no waiver is applicable and excluding the date of this Agreement, the Company shall cause its independent registered public accounting firm to furnish the Agent letters (the “**Comfort Letters**”), dated the date the Comfort Letter is delivered, which shall meet the requirements set forth in this Section 7(n); *provided*, that if requested by the Agent, the Company shall cause a Comfort Letter to be furnished to the Agent within ten (10) Trading Days of the date of occurrence of any material transaction or event that necessitates the filing of additional, pro forma, amended or revised financial statements, including the restatement of the Company’s financial statements. The Comfort Letter from the Company’s independent registered public accounting firm shall be in a form and substance satisfactory to the Agent, (i) confirming that they are an independent registered public accounting firm within the meaning of the Securities Act and the PCAOB, (ii) stating, as of such date, the conclusions and findings of such firm with respect to the financial information and other matters ordinarily covered by accountants’ “comfort letters” to underwriters in connection with registered public offerings (the first such letter, the “**Initial Comfort Letter**”) and (iii) updating the Initial Comfort Letter with any information that would have been included in the Initial Comfort Letter had it been given on such date and modified as necessary to relate to the Registration Statement and the Prospectus, as amended and supplemented to the date of such letter.

(o) Market Activities. The Company will not, directly or indirectly, (i) take any action designed to cause or result in, or that constitutes or might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of Common Stock or (ii) sell, bid for, or purchase Common Stock in violation of Regulation M, or pay anyone any compensation for soliciting purchases of the Placement Shares other than the Agent.

(p) Investment Company Act. The Company will conduct its affairs in such a manner so as to reasonably ensure that neither it nor any of its Subsidiaries will be or become, at any time prior to the termination of this Agreement, required to register as an “investment company,” as such term is defined in the Investment Company Act.

(q) No Offer to Sell. Other than an Issuer Free Writing Prospectus approved in advance by the Company and the Agent in its capacity as agent hereunder, neither the Agent nor the Company (including its agents and representatives, other than the Agent in its capacity as such) will make, use, prepare, authorize, approve or refer to any written communication (as defined in Rule 405 under the Securities Act), required to be filed with the Commission, that constitutes an offer to sell or solicitation of an offer to buy Placement Shares hereunder.

(r) Blue Sky and Other Qualifications. The Company will use its commercially reasonable efforts, in cooperation with the Agent, to qualify the Placement Shares for offering and sale, or to obtain an exemption for the Placement Shares to be offered and sold, under the applicable securities laws of such states and other domestic jurisdictions as the Agent may designate and to maintain such qualifications and exemptions in effect for so long as required for the distribution of the Placement Shares (but in no event for less than one year from the date of this Agreement); *provided, however*, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject. In each jurisdiction in which the Placement Shares have been so qualified or exempt, the Company will file such statements and reports as may be required by the laws of such jurisdiction to continue such qualification or exemption, as the case may be, in effect for so long as required for the distribution of the Placement Shares (but in no event for less than one year from the date of this Agreement).

(s) Sarbanes-Oxley Act. The Company and the Subsidiaries will maintain and keep accurate books and records reflecting their assets and maintain internal accounting controls in a manner designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and including those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company, (ii) provide reasonable assurance that transactions are recorded as necessary to permit the preparation of the Company's consolidated financial statements in accordance with generally accepted accounting principles, (iii) that receipts and expenditures of the Company are being made only in accordance with management's and the Company's directors' authorization, and (iv) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on its financial statements. The Company and the Subsidiaries will maintain such controls and other procedures, including, without limitation, those required by Sections 302 and 906 of the Sarbanes-Oxley Act, and the applicable regulations thereunder that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive officer and principal financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure and to ensure that material information relating to the Company or the Subsidiaries is made known to them by others within those entities, particularly during the period in which such periodic reports are being prepared.

(t) Secretary's Certificate; Further Documentation. Prior to the date of the first Placement Notice, the Company shall deliver to the Agent a certificate of the Secretary of the Company and attested to by an executive officer of the Company, dated as of such date, certifying as to (i) the Certificate of Incorporation of the Company, (ii) the By-laws of the Company, (iii) the resolutions of the Board of Directors of the Company authorizing the execution, delivery and performance of this Agreement and the issuance of the Placement Shares and (iv) the incumbency of the officers duly authorized to execute this Agreement and the other documents contemplated by this Agreement. Within five (5) Trading Days of each Representation Date, the Company shall have furnished to the Agent such further information, certificates and documents as the Agent may reasonably request.

8. Payment of Expenses. The Company will pay all expenses incident to the performance of its obligations under this Agreement, including (i) the preparation and filing of the Registration Statement, including any fees required by the Commission, and the printing or electronic delivery of the Prospectus as originally filed and of each amendment and supplement thereto, in such number as the Agent shall deem necessary, (ii) the printing and delivery to the Agent of this Agreement and such other documents as may be required in connection with the offering, purchase, sale, issuance or delivery of the Placement Shares, (iii) the preparation, issuance and delivery of the certificates, if any, for the Placement Shares to the Agent, including any stock or other transfer taxes and any capital duties, stamp duties or other duties or taxes payable upon the sale, issuance or delivery of the Placement Shares to the Agent, (iv) the fees and disbursements of the counsel, accountants and other advisors to the Company, (v) the fees and expenses of Agent including but not limited to the fees and expenses of the counsel to the Agent, payable upon the execution of this Agreement, in an amount not to exceed \$50,000, (vi) the qualification or exemption of the Placement Shares under state securities laws in accordance with the provisions of Section 7(r) hereof, including filing fees, but excluding fees of the Agent's counsel, (vii) the printing and delivery to the Agent of copies of any Issuer Free Writing Prospectus and the Prospectus and any amendments or supplements thereto in such number as the Agent shall deem necessary, (viii) the preparation, printing and delivery to the Agent of copies of the blue sky survey, in an amount not to exceed \$15,000, (ix) the fees and expenses of the transfer agent and registrar for the Common Stock, (x) the filing and other fees incident to any review by FINRA of the terms of the sale of the Placement Shares including the fees of the Agent's counsel (subject to the cap, set forth in clause (v) above), and (xi) the fees and expenses incurred in connection with the listing of the Placement Shares on the Exchange.

9. Conditions to Agent's Obligations. The obligations of the Agent hereunder with respect to a Placement will be subject to the continuing accuracy and completeness of the representations and warranties made by the Company herein, to the due performance by the Company of its obligations hereunder, to the completion by the Agent of a due diligence review satisfactory to it in its reasonable judgment, and to the continuing satisfaction (or waiver by the Agent in its sole discretion) of the following additional conditions:

(a) Registration Statement Effective. The Registration Statement shall have become effective and shall be available for the (i) resale of all Placement Shares issued to the Agent and not yet sold by the Agent and (ii) sale of all Placement Shares contemplated to be issued by any Placement Notice.

(b) No Material Notices. None of the following events shall have occurred and be continuing: (i) receipt by the Company of any request for additional information from the Commission or any other federal or state Governmental Authority during the period of effectiveness of the Registration Statement, the response to which would require any post-effective amendments or supplements to the Registration Statement or the Prospectus; (ii) the issuance by the Commission or any other federal or state Governmental Authority of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (iii) receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Placement Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; or (iv) the occurrence of any event that makes any material statement made in the Registration Statement or the Prospectus or any material document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in the Registration Statement, the Prospectus or documents so that, in the case of the Registration Statement, it will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and, that in the case of the Prospectus, it will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(c) No Misstatement or Material Omission. Agent shall not have advised the Company that the Registration Statement or Prospectus, or any amendment or supplement thereto, contains an untrue statement of fact that in the Agent's reasonable opinion is material, or omits to state a fact that in the Agent's reasonable opinion is material and is required to be stated therein or is necessary to make the statements therein not misleading.

(d) Material Changes. Except as contemplated in the Prospectus, or disclosed in the Company's reports filed with the Commission, there shall not have been any material adverse change in the authorized capital stock of the Company or any Material Adverse Effect or any development that would cause a Material Adverse Effect, or a downgrading in or withdrawal of the rating assigned to any of the Company's securities (other than asset backed securities) by any rating organization or a public announcement by any rating organization that it has under surveillance or review its rating of any of the Company's securities (other than asset backed securities), the effect of which, in the case of any such action by a rating organization described above, in the reasonable judgment of the Agent (without relieving the Company of any obligation or liability it may otherwise have), is so material as to make it impracticable or inadvisable to proceed with the offering of the Placement Shares on the terms and in the manner contemplated in the Prospectus.

(e) Legal Opinions. The Agent shall have received the opinions of Company Counsel required to be delivered pursuant to Section 7(m), on or before the date on which such delivery of such opinions is required pursuant to Section 7(m).

(f) Comfort Letter. The Agent shall have received the Comfort Letter required to be delivered pursuant to Section 7(n), on or before the date on which such delivery of such Comfort Letter is required pursuant to Section 7(n).

(g) Representation Certificate. The Agent shall have received the certificate required to be delivered pursuant to Section 7(l), on or before the date on which delivery of such certificate is required pursuant to Section 7(l).

(h) Secretary's Certificate. The Agent shall have received the certificate required to be delivered pursuant to Section 7(t), on or before the date on which delivery of such certificate is required pursuant to Section 7(t).

(i) No Suspension. Trading in the Common Stock shall not have been suspended on the Exchange and the Common Stock shall not have been delisted from the Exchange.

(j) Other Materials. On each date on which the Company is required to deliver a certificate pursuant to Section 7(l), the Company shall have furnished to the Agent such appropriate further information, opinions, certificates, letters and other documents as the Agent may reasonably request. All such opinions, certificates, letters and other documents will be in compliance with the provisions hereof.

(k) Securities Act Filings Made. All filings with the Commission required by Rule 424 under the Securities Act to have been filed prior to the issuance of any Placement Notice hereunder shall have been made within the applicable time period prescribed for such filing by Rule 424.

(l) Approval for Listing. The Placement Shares shall either have been (i) approved for listing on the Exchange, subject only to notice of issuance, or (ii) the Company shall have filed an application for listing of the Placement Shares on the Exchange at, or prior to, the issuance of any Placement Notice and the Exchange shall have reviewed such application and not provided any objections thereto.

(m) FINRA. If applicable, FINRA shall have raised no objection to the terms of this offering and the amount of compensation allowable or payable to the Agent as described in the Prospectus.

(n) No Termination Event. There shall not have occurred any event that would permit the Agent to terminate this Agreement pursuant to Section 12(a).

10. Indemnification and Contribution.

(a) Company Indemnification. The Company agrees to indemnify and hold harmless the Agent, its affiliates and their respective partners, members, directors, officers, employees and agents and each person, if any, who controls the Agent or any affiliate within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, joint or several, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of any untrue statement or alleged untrue statement of a material fact included in any related Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, joint or several, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any Governmental Authority, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; *provided* that (subject to Section 10(d) below) any such settlement is effected with the written consent of the Company, which consent shall not unreasonably be delayed or withheld; and

(iii) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any Governmental Authority, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission (whether or not a party), to the extent that any such expense is not paid under (i) or (ii) above,

provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made solely in reliance upon and in conformity with the Agent Information (as defined below).

(b) **Agent Indemnification.** Agent agrees to indemnify and hold harmless the Company and its directors and each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in Section 10(a), as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendments thereto), the Prospectus (or any amendment or supplement thereto) or any Issuer Free Writing Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with information relating to the Agent and furnished to the Company in writing by the Agent expressly for use therein. The Company hereby acknowledges that the only information that the Agent has furnished to the Company expressly for use in the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus (or any amendment or supplement thereto) are the statements set forth in the seventh and eight paragraphs under the caption “Plan of Distribution” in the Prospectus (the “**Agent Information**”).

(c) **Procedure.** Any party that proposes to assert the right to be indemnified under this Section 10 will, promptly after receipt of notice of commencement of any action against such party in respect of which a claim is to be made against an indemnifying party or parties under this Section 10, notify each such indemnifying party of the commencement of such action, enclosing a copy of all papers served, but the omission so to notify such indemnifying party will not relieve the indemnifying party from (i) any liability that it might have to any indemnified party otherwise than under this Section 10 and (ii) any liability that it may have to any indemnified party under the foregoing provision of this Section 10 unless, and only to the extent that, such omission results in the forfeiture of substantive rights or defenses by the indemnifying party. If any such action is brought against any indemnified party and it notifies the indemnifying party of its commencement, the indemnifying party will be entitled to participate in and, to the extent that it elects by delivering written notice to the indemnified party promptly after receiving notice of the commencement of the action from the indemnified party, jointly with any other indemnifying party similarly notified, to assume the defense of the action, with counsel reasonably satisfactory to the indemnified party, and after notice from the indemnifying party to the indemnified party of its election to assume the defense, the indemnifying party will not be liable to the indemnified party for any other legal expenses except as provided below and except for the reasonable costs of investigation subsequently incurred by the indemnified party in connection with the defense. The indemnified party will have the right to employ its own counsel in any such action, but the fees, expenses and other charges of such counsel will be at the expense of such indemnified party unless (1) the employment of counsel by the indemnified party has been authorized in writing by the indemnifying party, (2) the indemnified party has reasonably concluded (based on advice of counsel) that there are legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (3) a conflict or potential conflict exists (based on advice of counsel to the indemnified party) between the indemnified party and the indemnifying party (in which case the indemnifying party will not have the right to direct the defense of such action on behalf of the indemnified party) or (4) the indemnifying party has not in fact employed counsel to assume the defense of such action or counsel reasonably satisfactory to the indemnified party, in each case, within a reasonable time after receiving notice of the commencement of the action; in each of which cases the reasonable fees, disbursements and other charges of counsel will be at the expense of the indemnifying party or parties. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm (plus local counsel) admitted to practice in such jurisdiction at any one time for all such indemnified party or parties. All such fees, disbursements and other charges will be reimbursed by the indemnifying party promptly as they are incurred. An indemnifying party will not, in any event, be liable for any settlement of any action or claim effected without its written consent. No indemnifying party shall, without the prior written consent of each indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated by this Section 10 (whether or not any indemnified party is a party thereto), unless such settlement, compromise or consent (1) includes an express and unconditional release of each indemnified party, in form and substance reasonably satisfactory to such indemnified party, from all liability arising out of such litigation, investigation, proceeding or claim and (2) does not include a statement as to an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) Settlement Without Consent if Failure to Reimburse. If an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for reasonable fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 10(a)(ii) effected without its written consent if (1) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (2) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (3) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

(e) Contribution. In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in the foregoing paragraphs of this Section 10 is applicable in accordance with its terms but for any reason is held to be unavailable or insufficient from the Company or the Agent, the Company and the Agent will contribute to the total losses, claims, liabilities, expenses and damages (including any investigative, legal and other expenses reasonably incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claim asserted) to which the Company and the Agent may be subject in such proportion as shall be appropriate to reflect the relative benefits received by the Company on the one hand and the Agent on the other hand. The relative benefits received by the Company on the one hand and the Agent on the other hand shall be deemed to be in the same proportion as the total net proceeds from the sale of the Placement Shares (before deducting expenses) received by the Company bear to the total compensation received by the Agent from the sale of Placement Shares on behalf of the Company. If, but only if, the allocation provided by the foregoing sentence is not permitted by applicable law, the allocation of contribution shall be made in such proportion as is appropriate to reflect not only the relative benefits referred to in the foregoing sentence but also the relative fault of the Company, on the one hand, and the Agent, on the other hand, with respect to the statements or omission that resulted in such loss, claim, liability, expense or damage, or action in respect thereof, as well as any other relevant equitable considerations with respect to such offering. Such relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or the Agent, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Agent agree that it would not be just and equitable if contributions pursuant to this Section 10(e) were to be determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, liability, expense, or damage, or action in respect thereof, referred to above in this Section 10(e) shall be deemed to include, for the purpose of this Section 10(e), any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim to the extent consistent with Section 10(c) hereof. Notwithstanding the foregoing provisions of this Section 10(e), the Agent shall not be required to contribute any amount in excess of the commissions received by it under this Agreement and no person found guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 10(e), any person who controls a party to this Agreement within the meaning of the Securities Act, any affiliates of the Agent and any officers, directors, partners, employees or agents of the Agent or any of its affiliates, will have the same rights to contribution as that party, and each director of the Company and each officer of the Company who signed the Registration Statement will have the same rights to contribution as the Company, subject in each case to the provisions hereof. Any party entitled to contribution, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made under this Section 10(e), will notify any such party or parties from whom contribution may be sought, but the omission to so notify will not relieve that party or parties from whom contribution may be sought from any other obligation it or they may have under this Section 10(e) except to the extent that the failure to so notify such other party materially prejudiced the substantive rights or defenses of the party from whom contribution is sought. Except for a settlement entered into pursuant to the last sentence of Section 10(c) hereof, no party will be liable for contribution with respect to any action or claim settled without its written consent if such consent is required pursuant to Section 10(c) hereof.

11. Representations and Agreements to Survive Delivery. The indemnity and contribution agreements contained in Section 10 of this Agreement and all representations and warranties of the Company herein or in certificates delivered pursuant hereto shall survive, as of their respective dates, regardless of (i) any investigation made by or on behalf of the Agent, any controlling persons, or the Company (or any of their respective officers, directors, employees or controlling persons), (ii) delivery and acceptance of the Placement Shares and payment therefor or (iii) any termination of this Agreement.

12. Termination.

(a) The Agent may terminate this Agreement, by notice to the Company, as hereinafter specified at any time (1) if there has been, since the time of execution of this Agreement or since the date as of which information is given in the Prospectus, any change, or any development or event involving a prospective change, in the condition, financial or otherwise, or in the business, properties, earnings, results of operations or prospects of the Company and its Subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, which individually or in the aggregate, in the sole judgment of the Agent is material and adverse and makes it impractical or inadvisable to market the Placement Shares or to enforce contracts for the sale of the Placement Shares, (2) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Agent, impracticable or inadvisable to market the Placement Shares or to enforce contracts for the sale of the Placement Shares, (3) if trading in the Common Stock has been suspended or limited by the Commission or the Exchange, or if trading generally on the Exchange has been suspended or limited, or minimum prices for trading have been fixed on the Exchange, (4) if any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market shall have occurred and be continuing, (5) if a major disruption of securities settlements or clearance services in the United States shall have occurred and be continuing, or (6) if a banking moratorium has been declared by either U.S. Federal or New York authorities. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8 (Payment of Expenses), Section 10 (Indemnification and Contribution), Section 11 (Representations and Agreements to Survive Delivery), Section 17 (Governing Law and Time; Waiver of Jury Trial) and Section 18 (Consent to Jurisdiction) hereof shall remain in full force and effect notwithstanding such termination. If the Agent elects to terminate this Agreement as provided in this Section 12(a), the Agent shall provide the required notice as specified in Section 13 (Notices).

(b) The Company shall have the right, by giving five (5) days notice as hereinafter specified to terminate this Agreement in its sole discretion at any time after the date of this Agreement. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8, Section 10, Section 11, Section 17 and Section 18 hereof shall remain in full force and effect notwithstanding such termination.

(c) The Agent shall have the right, by giving five (5) days notice as hereinafter specified to terminate this Agreement in its sole discretion at any time after the date of this Agreement. Any such termination shall be without liability of any party to any other party except that the provisions of Section 8, Section 10, Section 11, Section 17 and Section 18 hereof shall remain in full force and effect notwithstanding such termination.

(d) Unless earlier terminated pursuant to this Section 12, this Agreement shall automatically terminate upon the issuance and sale of all of the Placement Shares through the Agent on the terms and subject to the conditions set forth herein; *provided*, that the provisions of Section 8, Section 10, Section 11, Section 17 and Section 18 hereof shall remain in full force and effect notwithstanding such termination.

(e) This Agreement shall remain in full force and effect unless terminated pursuant to Sections 12(a), (b), (c) or (d) above or otherwise by mutual agreement of the parties; *provided, however*, that any such termination by mutual agreement shall in all cases be deemed to provide that Section 8, Section 10, Section 11, Section 17 and Section 18 shall remain in full force and effect.

(f) Any termination of this Agreement shall be effective on the date specified in such notice of termination; *provided, however*, that such termination shall not be effective until the close of business on the date of receipt of such notice by the Agent or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of Placement Shares, such Placement Shares shall settle in accordance with the provisions of this Agreement. Upon termination of this Agreement, the Company shall not be required to pay to the Agent any discount or commission with respect to any Placement Shares not otherwise sold by the Agent under this Agreement.

13. Notices. All notices or other communications required or permitted to be given by any party to any other party pursuant to the terms of this Agreement shall be in writing, unless otherwise specified, and if sent to the Agent, shall be delivered to:

Cantor Fitzgerald & Co.
499 Park Avenue
New York, NY 10022
Attention: Capital Markets
Facsimile: (212) 307-3730

and:

Cantor Fitzgerald & Co.
499 Park Avenue
New York, NY 10022
Attention: General Counsel
Facsimile: (212) 829-4708

with a copy to:

Ropes & Gray LLP
1211 Sixth Avenue
New York, NY 10119
Attention: Patrick O'Brien
Email: Patrick.O'Brien@ropesgray.com

and if to the Company, shall be delivered to:

TherapeuticsMD, Inc.
951 Yamato Road, Suite 220
Boca Raton, FL 33431
Attention: General Counsel

with a copy to:

DLA Piper LLP (US)
200 South Biscayne Boulevard
Suite 2500
Miami, FL 33131
Attention: Joshua M. Samek, Esq.

Each party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose. Each such notice or other communication shall be deemed given (i) when delivered personally or by verifiable facsimile transmission (in the case of notice to the Agent) (with an original to follow) on or before 4:30 p.m., New York City time, on a Business Day or, if such day is not a Business Day, on the next succeeding Business Day, (ii) on the next Business Day after the Business Day on which such communication is timely delivered to a nationally-recognized overnight courier (prepaid) and (iii) on the Business Day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid). For purposes of this Agreement, "**Business Day**" shall mean any day on which the Exchange and commercial banks in the City of New York are open for business.

An electronic communication ("**Electronic Notice**") shall be deemed written notice for purposes of this Section 13 if sent to the electronic mail address specified by the receiving party under separate cover. Electronic Notice shall be deemed received at the time the party sending Electronic Notice receives non-automated verification of receipt by the receiving party. Any party receiving Electronic Notice may request and shall be entitled to receive the notice on paper, in a nonelectronic form ("**Nonelectronic Notice**") which shall be sent to the requesting party within ten (10) days of receipt of the written request for Nonelectronic Notice.

14. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Company and the Agent and their respective successors and the parties referred to in Section 10 hereof. References to any of the parties contained in this Agreement shall be deemed to include the successors and permitted assigns of such party. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party; *provided, however*, that the Agent may assign its rights and obligations hereunder to an affiliate thereof without obtaining the Company's consent.

15. Adjustments for Stock Splits. The parties acknowledge and agree that all share-related numbers contained in this Agreement shall be adjusted to take into account any stock split, stock dividend or similar event effected with respect to the Placement Shares.

16. Entire Agreement; Amendment; Severability; Waiver. This Agreement (including all schedules and exhibits attached hereto and Placement Notices issued pursuant hereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. Neither this Agreement nor any term hereof may be amended except pursuant to a written instrument executed by the Company and the Agent. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable as written by a court of competent jurisdiction, then such provision shall be given full force and effect to the fullest possible extent that it is valid, legal and enforceable, and the remainder of the terms and provisions herein shall be construed as if such invalid, illegal or unenforceable term or provision was not contained herein, but only to the extent that giving effect to such provision and the remainder of the terms and provisions hereof shall be in accordance with the intent of the parties as reflected in this Agreement. No implied waiver by a party shall arise in the absence of a waiver in writing signed by such party. No failure or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege hereunder.

17. **GOVERNING LAW AND TIME; WAIVER OF JURY TRIAL.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS. SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

18. **CONSENT TO JURISDICTION.** EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH ANY TRANSACTION CONTEMPLATED HEREBY, AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, THAT SUCH SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM OR THAT THE VENUE OF SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF (CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW.

19. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed Agreement by one party to the other may be made by electronic transmission.

20. Construction. The section and exhibit headings herein are for convenience only and shall not affect the construction hereof. References herein to any law, statute, ordinance, code, regulation, rule or other requirement of any Governmental Authority shall be deemed to refer to such law, statute, ordinance, code, regulation, rule or other requirement of any Governmental Authority as amended, reenacted, supplemented or superseded in whole or in part and in effect from time to time and also to all rules and regulations promulgated thereunder.

21. Permitted Free Writing Prospectuses. The Company represents, warrants and agrees that, unless it obtains the prior written consent of the Agent, and the Agent represents, warrants and agrees that, unless it obtains the prior written consent of the Company, it has not made and will not make any offer relating to the Placement Shares that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by the Agent or by the Company, as the case may be, is hereinafter referred to as a “Permitted Free Writing Prospectus.” The Company represents and warrants that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus,” as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely filing with the Commission where required, legending and record keeping. For the purposes of clarity, the parties hereto agree that all free writing prospectuses, if any, listed in Exhibit 21 hereto are Permitted Free Writing Prospectuses.

22. Absence of Fiduciary Relationship. The Company acknowledges and agrees that:

(a) the Agent is acting solely as agent in connection with the public offering of the Placement Shares and in connection with each transaction contemplated by this Agreement and the process leading to such transactions, and no fiduciary or advisory relationship between the Company or any of its respective affiliates, stockholders (or other equity holders), creditors or employees or any other party, on the one hand, and the Agent, on the other hand, has been or will be created in respect of any of the transactions contemplated by this Agreement, irrespective of whether or not the Agent has advised or is advising the Company on other matters, and the Agent has no obligation to the Company with respect to the transactions contemplated by this Agreement except the obligations expressly set forth in this Agreement;

(b) it is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement;

(c) neither the Agent nor its affiliates have provided any legal, accounting, regulatory or tax advice with respect to the transactions contemplated by this Agreement and it has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate;

(d) it is aware that the Agent and its affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and the Agent and its affiliates have no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship or otherwise; and

(e) it waives, to the fullest extent permitted by law, any claims it may have against the Agent or its affiliates for breach of fiduciary duty or alleged breach of fiduciary duty in connection with the sale of Placement Shares under this Agreement and agrees that the Agent and its affiliates shall not have any liability (whether direct or indirect, in contract, tort or otherwise) to it in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on its behalf or in right of it or the Company, employees or creditors of Company.

23. Definitions. As used in this Agreement, the following terms have the respective meanings set forth below:

“Applicable Time” means (i) each Representation Date, (ii) the time of each sale of any Placement Shares pursuant to this Agreement and (iii) each Settlement Date.

“Governmental Authority” means (i) any federal, provincial, state, local, municipal, national or international government or governmental authority, regulatory or administrative agency, governmental commission, department, board, bureau, agency or instrumentality, court, tribunal, arbitrator or arbitral body (public or private); (ii) any self-regulatory organization; or (iii) any political subdivision of any of the foregoing.

“Issuer Free Writing Prospectus” means any “issuer free writing prospectus,” as defined in Rule 433, relating to the Placement Shares that (1) is required to be filed with the Commission by the Company, (2) is a “road show” that is a “written communication” within the meaning of Rule 433(d)(8)(i) whether or not required to be filed with the Commission, or (3) is exempt from filing pursuant to Rule 433(d)(5)(i) because it contains a description of the Placement Shares or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g) under the Securities Act Regulations.

“Rule 164,” “Rule 172,” “Rule 405,” “Rule 415,” “Rule 424,” “Rule 424(b),” “Rule 430B,” and **“Rule 433”** refer to such rules under the Securities Act Regulations.

All references in this Agreement to financial statements and schedules and other information that is “contained,” “included” or “stated” in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information that is incorporated by reference in the Registration Statement or the Prospectus, as the case may be.

All references in this Agreement to the Registration Statement, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to EDGAR; all references in this Agreement to any Issuer Free Writing Prospectus (other than any Issuer Free Writing Prospectuses that, pursuant to Rule 433, are not required to be filed with the Commission) shall be deemed to include the copy thereof filed with the Commission pursuant to EDGAR; and all references in this Agreement to “supplements” to the Prospectus shall include, without limitation, any supplements, “wrappers” or similar materials prepared in connection with any offering, sale or private placement of any Placement Shares by the Agent outside of the United States.

[Signature Page Follows]

If the foregoing correctly sets forth the understanding between the Company and the Agent, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between the Company and the Agent.

Very truly yours,

THERAPEUTICSMD, INC.

By: /s/ James C. D'Arecca
Name: James C. D'Arecca
Title: Chief Financial Officer

ACCEPTED as of the date first-above written:

CANTOR FITZGERALD & CO.

By: /s/ Sage Kelly
Name: Sage Kelly
Title: Global Head of Investment Banking

SCHEDULE 1

Form of Placement Notice

From: TherapeuticsMD, Inc.
To: Cantor Fitzgerald & Co.
Attention: [•]
Subject: Placement Notice
Date: [•], 202[•]

Ladies and Gentlemen:

Pursuant to the terms and subject to the conditions contained in the Sales Agreement between TherapeuticsMD, Inc., a Nevada corporation (the "**Company**"), and Cantor Fitzgerald & Co. ("**Agent**"), dated November 27, 2020, the Company hereby requests that the Agent sell up to [•] of the Company's common stock, par value \$0.001 per share, at a minimum market price of \$[•] per share, during the time period beginning [month, day, time] and ending [month, day, time].

SCHEDULE 2

Compensation

The Company shall pay to the Agent in cash, upon each sale of Placement Shares pursuant to this Agreement, an amount equal to 3.0% of the aggregate gross proceeds from each sale of Placement Shares.

SCHEDULE 4

Subsidiaries

Incorporated by reference to Exhibit 21.1 of the Company's most recently filed Form 10-K.

Form of Representation Date Certificate Pursuant to Section 7(l)

The undersigned, the duly qualified and elected [•], of TherapeuticsMD, Inc., a Nevada corporation (the "Company"), does hereby certify in such capacity, and not individually, and on behalf of the Company, pursuant to Section 7(l) of the Sales Agreement, dated November 27, 2020 (the "Sales Agreement"), between the Company and Cantor Fitzgerald & Co., that to the best of the knowledge of the undersigned:

(i) The representations and warranties of the Company in Section 6 of the Sales Agreement are true and correct on and as of the date hereof with the same force and effect as if expressly made on and as of the date hereof, except for those representations and warranties that speak solely as of a specific date and which were true and correct as of such date; *provided, however*, that such representations and warranties also shall be qualified by the disclosure included or incorporated by reference in the Registration Statement and Prospectus; and

(ii) The Company has complied with all agreements and satisfied all conditions on its part to be performed or satisfied pursuant to the Sales Agreement at or prior to the date hereof.

Capitalized terms used herein without definition shall have the meanings given to such terms in the Sales Agreement.

THERAPEUTICSMD, INC.

By: _____

Name: _____

Title: _____

Date: [•]

Exhibit 21

Permitted Free Writing Prospectus

None.



November 27, 2020

TherapeuticsMD, Inc.
951 Yamato Road, Suite 220
Boca Raton, FL 33431

Re: Shelf Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as special Nevada counsel to TherapeuticsMD, Inc., a Nevada corporation (the "Company"), in connection with that certain Controlled Equity Offering Sales Agreement, dated the date hereof (the "Sales Agreement") by and between the Company and Cantor Fitzgerald & Co. (the "Agent"), pursuant to which the Company may, from time to time, issue and sell through the Agent, acting as agent and/or principal, shares of the Company's common stock, par value \$0.001 per share (the "Placement Shares"), in a public offering having an maximum aggregate offering price of up to \$50,000,000, pursuant to (i) the Registration Statement on Form S-3 (File No. 333-226452) (the "Shelf Registration Statement") filed by the Company with the Securities and Exchange Commission (the "Commission") on July 31, 2018 under the Securities Act of 1933, as amended (the "Securities Act"), which became effective upon filing, and (ii) the Company's prospectus supplement relating to the Placement Shares filed by the Company with the Commission on November 27, 2020 pursuant to Rule 424(b)(5) under the Securities Act (the "Prospectus"). All of the Placement Shares are to be issued and sold by the Company as described in the Shelf Registration Statement and the Prospectus.

With respect to the opinion set forth below, we have examined originals, certified copies, or copies otherwise identified to our satisfaction as being true copies, of the following:

- A. The Amended and Restated Articles of Incorporation of the Company, as amended to date;
- B. The Bylaws of the Company, as amended to date;
- C. The Shelf Registration Statement;
- D. The Prospectus;
- E. The Sales Agreement;
- F. The resolutions of the board of directors of the Company (the "Board") relating to the filing of the Prospectus and the transactions in connection therewith and authorizing the issuance and sale of the Placement Shares (the "Resolutions"); and
- G. Such other documents, records and other instruments as we have deemed appropriate for purposes of the opinion set forth herein.

In rendering the opinion set forth below, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as duplicates or certified or conformed copies and the authenticity of originals or such latter documents. As to various questions of fact material to this opinion, we have relied, to the extent we deemed reasonably appropriate, upon representations of officers or directors of the Company and upon documents, records and instruments furnished to us by the Company, without independently checking or verifying the accuracy of such documents, records and instruments.

Based solely upon and subject to the foregoing and subject to the assumptions, limitations and qualifications stated herein, and further assuming that (i) the Company delivers placement notices under the Sales Agreement in accordance with the Resolutions and the pricing terms duly approved by the Board or a pricing committee duly authorized thereunto, and (ii) the Company receives the proceeds for the Placement Shares sold pursuant to such terms and such applicable placement notice, the Placement Shares will be validly issued, fully paid and nonassessable.

This opinion letter is limited to the matters stated herein and no opinions may be implied or inferred beyond the matters expressly stated herein. We do not express any opinion herein concerning any law other than the laws of the State of Nevada. Further, our opinion is based solely upon existing laws, rules and regulations and we undertake no obligation to advise you of any changes that may be brought to our attention after the date hereof.

We hereby consent to the filing of this opinion letter as an exhibit to the Current Report on Form 8-K relating to the issuance of the Placement Shares, which is incorporated by reference in the Shelf Registration Statement and to the reference to this firm under the caption "Legal Matters" in the Prospectus constituting a part of the Shelf Registration Statement. In giving such consent, we do not admit that we come within the category of persons whose consent is required by Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Greenberg Traurig, LLP

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "Agreement"), by and between TherapeuticsMD, Inc., a Nevada corporation (the "Company"), and Robert Finizio ("Executive") is entered into and effective as of the 24th day of November, 2020 (the "Effective Date").

WHEREAS, the Company and Executive previously entered into an employment agreement effective as of November 9, 2012 (the "Prior Agreement"); and

WHEREAS, the Company and Executive now wish to amend and restate the Prior Agreement in its entirety to provide for amended terms and conditions of Executive's continued employment with the Company, pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants set forth in this Agreement, the parties hereto agree as follows:

1. **Employment and Duties.**

(a) **Employment and Term.** The Company hereby agrees to continue to employ Executive, and Executive hereby agrees to continue to serve the Company, in accordance with the terms and conditions set forth herein, for a period of two (2) years, commencing as of the Effective Date (such two (2) year period, as it may be extended pursuant to this Section 1(a), the "Term"), unless sooner terminated pursuant to Section 3 hereof. Commencing on the second anniversary of the Effective Date, and each anniversary thereafter, the Term shall automatically be extended for one (1) additional year, unless at least ninety (90) days prior to such anniversary, the Company or Executive shall have given notice in accordance with Section 8 that it or Executive does not wish to extend the Term.

(b) **Duties of Executive.** Executive shall serve as the Chief Executive Officer of the Company, shall diligently perform all services as may be reasonably assigned to Executive by the Company's Board of Directors (the "Board"), or the Board's respective designees, and shall exercise such power and authority as may from time to time be delegated to Executive by the Board. During Executive's employment, Executive shall devote Executive's full business time, energy, and ability exclusively to the business and interests of the Company, shall be physically present at the Company's offices in Boca Raton, Florida during normal business hours each week (other than permitted periods of working remotely, paid time off ("PTO") and on appropriate business travel for the benefit of the Company and shall not, without the Company's prior written consent, be engaged in any other business activity pursued for gain, profit, or other pecuniary advantage if such activity interferes in any material respect with Executive's duties and responsibilities hereunder. In Executive's capacity as the Chief Executive Officer of the Company, Executive shall do and perform all services, acts, or things necessary or advisable to manage and conduct the business of the Company, subject to the policies and procedures set by the Company. Except as otherwise agreed in writing by the Company, it shall not be a violation of this Agreement for Executive, and Executive shall be permitted, to (i) serve on any civic or charitable boards; (ii) deliver lectures, fulfill speaking engagements, or teach at educational institutions and other institutions; (iii) subject to any applicable Company policies, make personal investments in such form or manner as will neither require Executive's services in the operation or affairs of the companies or enterprises in which such investments are made nor subject Executive to any conflict of interest with respect to Executive's duties to the Company; and (iv) serve, with the written approval of the Board, as a director of one public or one or more private companies, in each case so long as any such activities do not significantly interfere with the performance of Executive's responsibilities under this Agreement, create a conflict of interest, or create an adverse interest or position detrimental to Company.

(c) **Policies.** Executive shall faithfully adhere to, execute, and fulfill all lawful policies established by the Company as are communicated to Executive by the Company.

(d) **Place of Performance.** In connection with Executive's employment by the Company, Executive shall be based at the Company's principal executive offices in Boca Raton, Florida.

2. **Compensation.** For all services rendered by Executive, the Company shall compensate Executive as follows:

(a) **Base Salary.** Effective on the Effective Date, the base salary ("Base Salary") payable to Executive shall be six hundred thousand dollars (\$600,000) per year, payable on a regular basis in accordance with the Company's standard payroll procedures, but not less than monthly. The Board or a committee of the Board shall review Executive's performance on at least an annual basis and may make increases to such Base Salary if, in its sole discretion, any such increase is warranted. The Board may reduce the Base Salary without Executive's consent only if such reduction applies in the same or greater percentage to all other executive officers of the Company. Notwithstanding the foregoing, for purposes of the severance provisions set forth in Sections 3(b) and 4(b), any reference to "Base Salary" shall mean the amount of such base salary prior to giving effect to any such reduction.

(b) **Annual Short-Term Incentive.** Executive shall be entitled to participate in the Company's annual short-term incentive compensation program, as such program may exist from time to time. For calendar years beginning on or after January 1, 2021, the percentage of Base Salary targeted as annual cash short-term incentive compensation for each calendar year during the Term shall be one hundred percent (100%) of Base Salary (the "Targeted Annual Bonus Award"). Executive acknowledges that the amount of annual short-term incentive compensation, if any, to be awarded shall be at the sole, good faith discretion of the Board or a committee of the Board, may be less or more than the Targeted Annual Bonus Award, and will be based on a number of factors determined by the Board or a committee of the Board for each calendar year, including the Company's performance and Executive's individual performance. Any annual short-term incentive compensation earned for any calendar year shall be paid in the immediately following calendar year, as soon as practicable. Except as set forth in Sections 3(b)(ii), 3(b)(iii), and 3(b)(iv), Executive must be employed by the Company on the date on which short-term incentive compensation is paid in order to receive such short-term incentive compensation.

(c) **Long-Term Incentive.** Executive shall be entitled to participate in the Company's long-term incentive compensation program, as such program may exist from time to time. Executive acknowledges that the amount of long-term incentive compensation, if any, to be awarded shall be at the sole, good faith discretion of the Board or a committee of the Board, and will be based on a number of factors determined by the Board or a committee of the Board for the applicable performance period, including the Company's performance and Executive's individual performance. Any long-term incentive compensation earned for the applicable performance period shall be paid within the first 2 ½ months of the calendar year immediately following the calendar year in which the applicable performance period ends. Except as otherwise set forth herein, Executive must be employed by the Company on the date on which long-term incentive compensation is paid to receive such long-term incentive compensation.

(d) **Stock Options.** The Company previously granted to Executive, pursuant to the Company's 2009 Amended and Restated Stock Incentive Plan, as the same may be amended from time to time (the "2009 Plan"), the Company's 2012 Amended and Restated Stock Incentive Plan, as the same may be amended from time to time (the "2012 Plan"), and the Company's 2019 Stock Incentive Plan, as the same may be amended from time to time (the "2019 Plan" and, together with the 2009 Plan and the 2012 Plan, collectively, the "Plans"), stock options to purchase shares of the Company's common stock (the "Previously Granted Stock Options"). The Previously Granted Stock Options are subject to the terms and conditions set forth in the applicable Plans and in the stock option agreement(s) previously executed by the Company and Executive. Additional options or other equity compensation may be granted at the Board's discretion.

(e) **Restricted Stock Units.** The Company previously granted to Executive, pursuant to the 2019 Plan, restricted stock units ("RSUs") or performance share units ("PSUs") for shares of the Company's common stock (the "Previously Granted Units"). The Previously Granted Units are subject to the terms and conditions set forth in the 2019 Plan and in the agreements previously executed by the Company and Executive.

As soon as practicable following the Effective Date, the Company will grant to Executive one (1) RSU under the 2019 Plan as consideration for Executive entering into this Agreement, which RSU will not vest in whole or in part until the second anniversary of the Effective Date, at which time the RSU will fully and completely vest, subject to Executive's continued employment with the Company and the terms and conditions in the 2019 Plan and an award agreement to be entered into between the Company and Executive.

(f) **Executive Perquisites, Benefits, and Other Compensation.** Executive shall be entitled to receive additional benefits and compensation from the Company in such form and to such extent as specified below:

(i) **Insurance Coverage.** During the Term, and as otherwise provided within the provisions of each of the respective plans, the Company shall make available to Executive all employee benefits to which other executives of the Company are entitled to receive, subject to the eligibility requirements and other provisions of such arrangements as applicable to executives of the Company generally. Such benefits shall include, but shall not be limited to, comprehensive health and major medical insurance, dental and life insurance, and short-term and long-term disability. During the Term, the Company will maintain customary director and officer insurance.

(ii) **Reimbursement for Expenses.** Reimbursement for business travel and other out-of-pocket expenses reasonably incurred by Executive in the performance of Executive's services under this Agreement. All reimbursable expenses shall be appropriately documented in reasonable detail by Executive upon submission of any request for reimbursement and shall be in a format and manner consistent with the Company's expense reporting policy for the Chief Executive Officer.

(iii) **Paid Time Off.** Executive shall be eligible to accrue PTO and utilize and carryover from year to year such PTO, consistent with the Company's policies and procedures in effect from time to time for officers of Executive's level.

(iv) **Other Executive Perquisites.** The Company shall provide Executive with other executive perquisites as may be made available to or deemed appropriate for Executive by the Board or a committee of the Board and participation in all other Company-wide employee benefits as are available to the Company's executives from time to time, including any plans, programs, or arrangements relating to retirement, deferred compensation, profit sharing, 401(k), and employee stock ownership.

(v) **Working Facilities.** During the Term, the Company shall furnish Executive with an office, staffing and administrative support and such other facilities and services suitable to Executive's position with the Company and adequate for the performance of Executive's duties hereunder, which will be reviewed and provided based on the Company's needs.

(vi) **Indemnification Agreement.** In connection with Executive's entrance into this Agreement, Executive and the Company will enter into the Company's standard form of indemnification agreement for directors and executive officers of the Company (the "Indemnification Agreement").

3. **Term of Employment.**

(a) **Termination Under Certain Circumstances.**

(i) **Death.** Executive's employment and the Term shall be automatically terminated, without notice, effective upon the date of Executive's death.

(ii) **Disability.** If, as a result of incapacity due to physical or mental illness or injury, Executive shall have been absent from Executive's full-time duties hereunder for six (6) consecutive months, then Executive's employment and the Term shall be automatically terminated, without notice, at the end of such six (6) consecutive month period unless the Company provides Executive with written notice that Executive's employment and the Term will nonetheless continue.

(iii) **Termination by the Company for Cause.** The Company may terminate Executive's employment and the Term upon ten (10) days prior written notice to Executive for "Cause," which shall mean any one or more of the following: (A) Executive's material breach of this Agreement (continuing for thirty (30) days after receipt of written notice of need to cure, if, in the Board's determination, such breach is curable); (B) Executive's intentional nonperformance of lawful instructions of the Board (continuing for thirty (30) days after receipt of written notice of need to cure, if, in the Board's determination, such breach is curable); (C) Executive's willful dishonesty, fraud, or material personal and individual misconduct with respect to the business or affairs of the Company, including, but not limited to, the Company's sexual harassment, other unlawful harassment, workplace discrimination, or substance abuse policies, in each case that would reasonably be expected to bring material harm to the reputation of the Company; (D) Executive's indictment for, conviction of, or guilty or *nolo contendere* plea to a felony crime involving dishonesty or moral turpitude, whether or not relating to the Company, that would reasonably be expected to bring material harm to the reputation of the Company; or (E) a confirmed positive drug test result for an illegal drug.

(iv) **Termination by the Company Without Cause.** The Company may terminate Executive's employment and the Term at any time without Cause.

(v) **Termination by Executive Without Good Reason.** Executive, at Executive's option and upon written notice to the Company, may terminate Executive's employment and the Term without Good Reason (as defined below) at any time, effective on the date of that notice.

(vi) **Termination by Executive With Good Reason.** At any time during the Term, Executive may terminate Executive's employment and the Term for Good Reason. For purposes of this Agreement, "Good Reason" shall mean (A) the assignment to Executive of material duties inconsistent with Executive's position as the Chief Executive Officer (including status, office, titles and reporting requirements), or any other action by the Company that results in a material diminution in such position, excluding for this purpose (i) any action not taken in bad faith and that is remedied by the Company promptly after receipt of a Notice of Termination for Good Reason (as defined below) thereof given by Executive and (ii) any change in status, office, titles and reporting requirements following a Change in Control (as defined in the 2019 Plan) of the Company in which the Company ceases to be a standalone public reporting company, provided that the material duties of Executive following such Change in Control are not inconsistent with those of Executive immediately prior to such Change in Control; (B) the Company requiring Executive to be based at any office or location other than in Palm Beach County, Florida, or within thirty-five (35) miles of such location, or such other location as mutually agreed to by the Company and Executive; or (C) any material failure by the Company to comply with any of the provisions of this Agreement, other than a failure not occurring in bad faith and that is remedied by the Company promptly after receipt of a Notice of Termination for Good Reason given thereof by Executive. A termination of employment by Executive for Good Reason shall be effected by Executive's giving the Board written notice ("Notice of Termination for Good Reason") of the termination, setting forth in reasonable detail the specific conduct of the Company that constitutes Good Reason and the specific provision(s) of this Agreement on which Executive relies, within ninety (90) days of the initial existence of one of the conditions constituting Good Reason. A termination of employment by Executive for Good Reason shall be effective on the thirty-first (31st) day following the date when the Notice of Termination for Good Reason is given to the Company; provided that such a termination of employment shall not become effective if the Company shall have substantially corrected the circumstance giving rise to the Notice of Termination for Good Reason within thirty (30) days after the Company's receipt of such Notice of Termination for Good Reason.

(b) **Result of Termination.**

(i) Except as otherwise set forth in this Agreement, in the event of the termination of Executive's employment and the Term pursuant to Sections 3(a)(iii) ("Termination by the Company for Cause") or 3(a)(v) ("Termination by Executive Without Good Reason") above, Executive shall receive no further compensation under this Agreement other than the payment of Base Salary as shall have accrued and remained unpaid as of the date of termination and accrued but unused PTO consistent with the Company's policies and procedures therefor in effect at the time of such termination for officers of Executive's level.

(ii) In the event of the termination of Executive's employment and the Term pursuant to Sections 3(a)(iv) ("Termination by the Company Without Cause") or 3(a)(vi) ("Termination by Executive With Good Reason") above, (a) Executive shall, for a period of twenty-four (24) months following the effective date of such termination, continue to receive Executive's then current annual Base Salary, as provided in Section 2(a), (b) Executive shall receive an amount equal to Executive's Targeted Annual Bonus Award for the calendar year in which the termination of Executive's employment occurs, which amount shall be paid to Executive in a single lump sum, which is unpaid on the effective date of Executive's termination, and which shall be paid to Executive when paid to other executive officers of the Company in accordance with Section 2(b) hereof, (c) Executive shall receive, beginning on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement and for a period of twenty-four (24) months thereafter for a total of twenty-four (24) monthly payments, a monthly cash payment equal to the one (1) month cost of COBRA continuation of the health insurance benefits for Executive and Executive's immediate family as applicable, as the effective date of such termination, less, the one (1) month cost for the same health insurance benefits for Executive and Executive's immediate family as applicable that would have been incurred by Executive immediately prior to the effective date of such termination if Executive remained employed with the Company, (d) all unvested equity compensation of any kind (including, without limitation, stock options, warrants, restricted stock, or restricted stock units) held by Executive in Executive's capacity as an employee of the Company on the effective date of the termination shall vest as of the effective date of such termination and Executive shall have three (3) years from the date of termination to exercise any such unvested equity compensation, but in no event longer than the term of such equity compensation, (e) Executive shall receive payment for accrued but unused PTO consistent with the Company's policies and procedures therefor in effect at the time of such termination for executive officers of the Company, and (f) Executive shall receive payment for any annual short-term incentive compensation earned pursuant to Section 2(b) hereof for the calendar year immediately preceding the calendar year in which the termination of Executive's employment occurs which is unpaid on the effective date of Executive's termination, which shall be paid to Executive when paid to other executive officers of the Company in accordance with Section 2(b) hereof.

(iii) In the event of the termination of Executive's employment and the Term pursuant to Sections 3(a)(i) ("Death") or 3(a)(ii) ("Disability") above, (a) Executive shall receive an amount equal to Executive's Targeted Annual Bonus Award for the calendar year in which the termination of Executive's employment occurs, multiplied by a fraction, the numerator of which is the number of full months of such calendar year during which Executive was employed with the Company, and the denominator of which is twelve (12), which amount shall be paid to Executive in a single lump sum on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement, (b) all unvested equity compensation of any kind (including, without limitation, stock options, warrants, restricted stock, or restricted stock units) held by Executive in Executive's capacity as an employee of the Company on the effective date of the termination shall vest as of the effective date of such termination, (c) Executive shall receive payment for accrued but unused PTO consistent with the Company's policies and procedures therefor in effect at the time of such termination for officers of Executive's level, and (d) Executive shall receive payment for any annual short-term incentive compensation earned pursuant to Section 2(b) hereof for the calendar year immediately preceding the calendar year in which the termination of Executive's employment occurs which is unpaid on the effective date of Executive's termination, which shall be paid to Executive when paid to other executive officers of the Company in accordance with Section 2(b) hereof.

(iv) In the event of the termination of Executive's employment and the Term pursuant to Sections 3(a)(iv) ("Termination by the Company Without Cause") or 3(a)(vi) ("Termination by Executive With Good Reason") during the twelve (12) month period immediately following a Change in Control, then in lieu of any benefits or amounts otherwise payable under Section 3(b)(ii) hereof, (a) Executive shall, for a period of twenty-four (24) months following the effective date of such termination, continue to receive Executive's then current annual Base Salary, as provided in Section 2(a), (b) Executive shall receive an amount equal to one and one half times (1.5x) Executive's Targeted Annual Bonus Award for the calendar year in which the termination of Executive's employment occurs, which amount shall be paid to Executive in a single lump sum on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement, (c) Executive shall receive, beginning on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement and for a period of twenty-four (24) months thereafter for a total of twenty-four (24) monthly payments, a monthly cash payment equal to the one (1) month cost of COBRA continuation of the health insurance benefits for Executive and Executive's immediate family as applicable, as the effective date of such termination, less, the one (1) month cost for the same health insurance benefits for Executive and Executive's immediate family as applicable that would have been incurred by Executive immediately prior to the effective date of such termination if Executive remained employed with the Company, (d) all unvested equity compensation of any kind (including, without limitation, stock options, warrants, restricted stock, or restricted stock units) held by Executive in Executive's capacity as an employee of the Company on the effective date of the termination shall vest as of the effective date of such termination and Executive shall have three (3) years from the date of termination to exercise any such unvested equity compensation, but in no event longer than the term of such equity compensation, (e) Executive shall receive payment for accrued but unused PTO consistent with the Company's policies and procedures therefor in effect at the time of such termination for officers of Executive's level, and (f) Executive shall receive payment for any annual short-term incentive compensation earned pursuant to Section 2(b) hereof for the calendar year immediately preceding the calendar year in which the termination of Executive's employment occurs which is unpaid on the effective date of Executive's termination, which shall be paid to Executive when paid to other executive officers of the Company in accordance with Section 2(b) hereof.

(v) Executive shall receive no additional compensation following any termination except as provided in this Agreement. In the event of any termination, Executive shall resign all positions with the Company and its subsidiaries.

(c) **Release.** Notwithstanding any other provision in this Agreement to the contrary, as a condition precedent to receiving any post-termination payments or benefits identified in Sections 3(b)(ii), 3(b)(iii) and 3(b)(iv) of this Agreement, Executive agrees to execute (and not revoke) a full and complete release of all claims against the Company and its affiliates, in the form attached hereto as Exhibit A (subject to such modifications as the Company or Executive reasonably may request) (the “Release”). If Executive fails to execute and deliver to the Company the Release within twenty-one (21) days following the date of termination, or revokes the Release, within seven (7) days following the date Executive executes and delivers the Release, or materially breaches any term of this Agreement or any other agreement between Executive and the Company while receiving such post-termination payments or benefits, Executive agrees that Executive shall not be entitled to receive any such post-termination payments. For purposes of this Agreement, the Release shall be deemed to have been executed by Executive if it is signed by Executive’s legal representative in the case of legal incompetence or on behalf of Executive’s estate in the case of Executive’s death. Payment of any post-termination payments or benefits identified in Sections 3(b)(ii), 3(b)(iii) and 3(b)(iv) of this Agreement shall be delayed until the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive’s employment under this Agreement, and any payments that are so delayed shall be paid on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive’s employment under this Agreement.

(d) **Section 409A.** This Agreement is intended to satisfy the requirements of Section 409A with respect to amounts subject thereto, and will be interpreted and construed consistent with such intent. Notwithstanding the foregoing, the Company does not make any representation to Executive that the payments or benefits provided under this Agreement are exempt from, or satisfy, the requirements of Section 409A, and the Company shall have no liability or other obligation to indemnify or hold harmless Executive or any beneficiary for any tax, additional tax, interest, or penalties that Executive or any beneficiary may incur in the event that any provision of this Agreement, or any amendment or modification thereof, or any other action taken with respect thereto, is deemed to violate any of the requirements of Section 409A.

Any payments made by the Company pursuant to Sections 3(b)(ii), 3(b)(iii) and 3(b)(iv) of this Agreement (except for unpaid annual short-term incentive compensation earned in the calendar year immediately preceding the calendar year in which the termination of Executive’s employment occurs, which shall be paid to Executive when paid to other executive officers of the Company) shall be paid or commence on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of Executive’s “separation from service” within the meaning of Section 409A (“Section 409A”) of the Internal Revenue Code of 1986, as amended (the “Code”). For purposes of applying the provisions of Section 409A to this Agreement, each separately identified amount to which Executive is entitled under this Agreement shall be treated as a separate payment. In addition, to the extent permissible under Section 409A with respect to additional payments amounts only under Section 3 on or after the Effective Date (i.e., payments that Executive would not have received had Executive terminated employment prior to the Effective Date under such triggering event), any series of installment payments under this Agreement shall be treated as a right to a series of separate payments.

Notwithstanding any other provision in this Agreement, if Executive is a “specified employee” within the meaning of Section 409A, then payments identified in Section 3(b) of this Agreement that are “deferred compensation” (as defined under Section 409A) that are scheduled to be paid within six (6) months after such “separation from service” within the meaning of Section 409A shall not commence until the later of six (6) months following “separation from service” or eighteen (18) months following the Effective Date (the “Delayed Payment Period”) to the extent necessary to avoid the imposition of the additional twenty percent (20%) tax under Section 409A and consistent with applicable (including proposed) regulations and IRS correction guidance (and in the case of installment payments, the first payment shall include all installment payments required by this subsection that otherwise would have been made during such Delayed Payment Period). If the payments described in Section 3(b) must be delayed for the Delayed Payment Period pursuant to the preceding sentence, Executive shall not be entitled to additional compensation to compensate for such delay. Upon the date such payment would otherwise commence, the Company shall reimburse Executive for such payments, to the extent that such payments otherwise would have been paid by the Company had such payments commenced upon Executive’s “separation from service” within the meaning of Section 409A. Any remaining payments shall be provided by the Company in accordance with the schedule and procedures specified herein.

(e) Any reimbursements by the Company to Executive of any eligible expenses under this Agreement that are not excludable from Executive’s income for Federal income tax purposes (the “Taxable Reimbursements”) shall be made by no later than the last day of the taxable year of Executive following the year in which the expense was incurred. The amount of any Taxable Reimbursements, and the value of any in-kind benefits to be provided to Executive, during any taxable year of Executive shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year of Executive. The right to Taxable Reimbursement, or in-kind benefits, shall not be subject to liquidation or exchange for another benefit.

(f) **Section 280G.**

(i) **Certain Reductions in Agreement Payments.** Anything in this Agreement to the contrary notwithstanding, in the event a nationally recognized independent accounting firm designated by the Company and reasonably acceptable to Executive (the “Accounting Firm”) shall determine that receipt of all payments or distributions by the Company and its affiliates in the nature of compensation to or for Executive’s benefit, whether paid or payable pursuant to this Agreement or otherwise (a “Payment”), would subject Executive to the excise tax under Section 4999 of the Code, the Accounting Firm shall determine as required below in this Section 3(f) whether to reduce any of the Payments paid or payable pursuant to this Agreement (the “Agreement Payments”) to the Reduced Amount (as defined below). The Agreement Payments shall be reduced to the Reduced Amount only if the Accounting Firm determines that Executive would have a greater Net After-Tax Receipt (as defined below) of aggregate Payments if Executive’s Agreement Payments were so reduced. If the Accounting Firm determines that Executive would not have a greater Net After-Tax Receipt of aggregate Payments if Executive’s Agreement Payments were so reduced, then Executive shall receive all Agreement Payments to which Executive is entitled.

(ii) Accounting Firm Determinations. If the Accounting Firm determines that aggregate Agreement Payments should be reduced to the Reduced Amount, then the Company shall promptly give Executive notice to that effect and a copy of the detailed calculation thereof. All determinations made by the Accounting Firm under this Section 3(f) shall be binding upon the Company and Executive and shall be made as soon as reasonably practicable and in no event later than twenty (20) days following the effective date of the termination of Executive's employment with the Company. For purposes of reducing the Agreement Payments to the Reduced Amount, only amounts payable under this Agreement (and no other Payments) shall be reduced. The reduction of the amounts payable hereunder, if applicable, shall be made (A) only from Payments that the Accounting Firm determines reasonably may be characterized as "parachute payments" under Section 280G of the Code; (B) only from Payments that are required to be made in cash, (C) only with respect to any amounts that are not payable pursuant to a "nonqualified deferred compensation plan" subject to Section 409A of the Code, until those payments have been reduced to zero, and (D) in reverse chronological order, to the extent that any Payments subject to reduction are made over time (e.g., in installments). In no event, however, shall any Payments be reduced if and to the extent such reduction would cause a violation of Section 409A of the Code or other applicable law. All fees and expenses of the Accounting Firm shall be borne solely by the Company.

(iii) Overpayments; Underpayments. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that amounts will have been paid or distributed by the Company to or for the benefit of Executive pursuant to this Agreement which should not have been so paid or distributed (an "Overpayment") or that additional amounts which will have not been paid or distributed by the Company to or for the benefit of Executive pursuant to this Agreement which should have been so paid or distributed (an "Underpayment"), in each case consistent with the calculation of the Reduced Amount hereunder. In the event that the Accounting Firm, based upon the assertion of a deficiency by the Internal Revenue Service against either the Company or Executive which the Accounting Firm believes has a high probability of success determines that an Overpayment has been made, Executive shall pay any such Overpayment to the Company together with interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code; provided, however, that no amount shall be payable by Executive to the Company if and to the extent such payment would not either reduce the amount on which Executive is subject to tax under Section 1 and Section 4999 of the Code or generate a refund of such taxes. In the event that the Accounting Firm, based upon controlling precedent or other substantial authority, determines that an Underpayment has occurred, any such Underpayment shall be paid promptly (and in no event later than 60 days following the date on which the Underpayment is determined) by the Company to or for the benefit of Executive together with interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code.

(iv) Definitions. The following terms shall have the following meanings for purposes of this Section 3:

(A) “Net After-Tax Receipt” shall mean the present value (as determined in accordance with Sections 280G(b)(2)(A)(ii) and 280G(d)(4) of the Code) of a Payment net of all taxes imposed on Executive with respect thereto under Sections 1 and 4999 of the Code and under applicable state and local laws, determined by applying the highest marginal rate under Section 1 of the Code and under state and local laws which applied to Executive’s taxable income for the immediately preceding taxable year, or such other rate(s) as the Accounting Firm determined to be likely to apply to Executive in the relevant taxable year(s).

(B) “Reduced Amount” shall mean the greatest amount of Agreement Payments that can be paid that would not result in the imposition of the excise tax under Section 4999 of the Code if the Accounting Firm determines to reduce Agreement Payments pursuant to Section 3(f)(i).

4. **Competition and Non-Solicitation.**

(a) **Interests to be Protected.** The parties acknowledge that Executive will perform essential services for the Company, its employees, and its stockholders during the term of Executive’s employment with the Company. Executive will be exposed to, have access to, and work with, a considerable amount of confidential information. The parties also expressly recognize and acknowledge that the personnel of the Company have been trained by, and are valuable to, the Company and that the Company will incur substantial recruiting and training expenses if the Company must hire new personnel or retrain existing personnel to fill vacancies. The parties expressly recognize that it could seriously impair the goodwill and diminish the value of the Company’s business should Executive compete with the Company in any manner whatsoever. The parties acknowledge that this covenant has an extended duration; however, they agree that this covenant is reasonable and it is necessary for the protection of the Company, its stockholders, and employees. For these and other reasons, and the fact that there are many other employment opportunities available to Executive if Executive’s employment is terminated, the parties are in full and complete agreement that the following restrictive covenants are fair and reasonable and are entered into freely, voluntarily, and knowingly. Furthermore, each party was given the opportunity to consult with independent legal counsel before entering into this Agreement.

(b) **Non-Competition.** During the term of Executive’s employment with the Company and for twenty-four (24) months after the termination of Executive’s employment with the Company, which may be extended an additional twelve (12) months in the sole and absolute discretion of the Company for a total of thirty-six (36) months after termination of Executive’s employment with the Company, regardless of the reason therefor, Executive shall not (whether directly or indirectly, as owner, principal, agent, stockholder, director, officer, manager, employee, partner, participant, or in any other capacity) engage or become substantially and directly financially interested in any Competitive Business Activities conducted within the Restricted Territory (as defined below). In the event of the termination of Executive’s employment and the Term pursuant to Sections 3(a)(iv) (“Termination by the Company Without Cause”) or 3(a)(vi) (“Termination by Executive With Good Reason”), if the Company exercises its right to extend this non-competition clause by the additional twelve (12) months, then Executive will, (a) for a period of twelve (12) additional months, continue to receive Executive’s then current annual Base Salary, as provided in Section 2(a), and (b) Executive will receive for a period of an additional twelve (12) months, a monthly cash payment equal to the one (1) month cost of COBRA continuation of the health insurance benefits for Executive and Executive’s immediate family as applicable. As used herein, the term “Competitive Business Activities” shall mean business activities that are competitive with the business of the Company, including but not limited to, business activities in the pharmaceutical industry related to then-existing products marketed for menopause, contraception or pre-natal use which are FDA approved or under clinical development that compete with the Company’s products, and the term “Restricted Territory” shall mean any state or other geographical area in which the Company has demonstrated an intent to develop, commercialize, and/or distribute products during Executive’s employment with the Company. Executive hereby agrees that, as of the date hereof, during Executive’s employment with the Company, the Company has demonstrated an intent to develop, commercialize, and/or distribute products throughout the United States of America, Canada, Mexico, Brazil, Argentina, Europe, Australia, South Africa, Russia, Israel, Japan, and South Korea.

(c) **Non-Solicitation of Employees.** During the term of Executive's employment and for a period of twenty-four (24) months after the termination of Executive's employment with the Company, regardless of the reason therefor, Executive shall not directly or indirectly, for the Company, or on behalf of or in conjunction with any other person, company, partnership, corporation, or governmental or other entity, solicit for employment, seek to hire, or hire any person who is employed by the Company, is a consultant of the Company, or is an independent contractor of the Company, within twenty-four (24) months of the termination of Executive's employment, and, as related solely to consultants, for the purpose of having any such consultant engage in services that are the same as, similar to, or related to the services that such consultant provided for the Company and that are competitive with the services provided by the consultant for the Company.

(d) **Non-Solicitation of Customers.** During the term of Executive's employment and for a period of twenty-four (24) months after the termination of Executive's employment with the Company, regardless of the reason therefor, Executive shall not directly or indirectly, for the Company, or on behalf of, or in conjunction with, any other person, company, partnership, corporation, or governmental entity, call on, solicit, or engage in business with, any of the actual or targeted prospective customers or clients of the Company on behalf of any person or entity in connection with any Competitive Business, nor shall Executive make known the names and addresses of such actual or targeted prospective customers or clients, or any information relating in any manner to the trade or business relationships of the Company with such customers or clients, other than in connection with the performance of Executive's duties under this Agreement, and/or persuade or encourage or attempt to persuade or encourage any persons or entities with whom the Company does business or has some business relationship to cease doing business or to terminate its business relationship with the Company or to engage in any Competitive Business Activities on its own or with any competitor of the Company. As used herein, the term "Competitive Business" shall mean business that is directly competitive with the business of the Company, including but not limited to, business in the pharmaceutical industry related to products that directly compete with the Company's then-existing products marketed for menopause, contraception or pre-natal use which are FDA approved or under clinical development.

(e) **Employee Assignment, Invention and Confidentiality Agreement.** Executive hereby reaffirms, acknowledges, and agrees that Executive is subject to the terms and conditions set forth in that certain Employee Assignment, Invention, and Confidentiality Agreement (the “EAICA”) previously entered into by and between the Company and Executive and that this Agreement does not modify or amend the EAICA.

(f) **Equitable Relief.** In the event a violation of any of the restrictions contained in this Section 4 occurs, the Company, upon proper pleading and proof, shall be entitled to preliminary and permanent injunctive relief, reasonable attorneys’ fees, and damages and an equitable accounting of all earnings, profits, and other benefits arising from such violation, which right shall be cumulative and in addition to any other rights or remedies to which the Company may be entitled. In the event of a violation of any provision of Section 4(b), Section 4(c), or Section 4(d), the period for which those provisions would remain in effect shall be extended for a period of time equal to that period beginning when such violation commenced and ending when the activities constituting such violation shall have been finally terminated in good faith. In the event Executive is the prevailing party in any such proceeding(s), Executive will be entitled to the recovery of all reasonable attorneys’ fees, costs and forms of recoverable damages arising from such proceeding(s).

(g) **Restrictions Separable.** If the scope of any provision of this Agreement (whether in this Section 4 or otherwise) is found by a court to be too broad to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law. The parties agree that the scope of any provision of this Agreement may be modified by a judge in any proceeding to enforce this Agreement, so that such provision can be enforced to the maximum extent permitted by law. Each and every restriction set forth in this Section 4 is independent and severable from the others, and no such restriction shall be rendered unenforceable by virtue of the fact that, for any reason, any other or others of them may be unenforceable in whole or in part.

5. **Return of Company Property.** At any time as requested by the Company, or upon the termination of Executive’s employment with the Company for any reason, Executive shall deliver promptly to the Company all files, lists, books, records, manuals, memoranda, drawings, and specifications; all other written or printed materials and computers, cell phones, and other equipment that are the property of the Company (and any copies of them); and all other materials that may contain confidential information relating to the business of the Company, which Executive may then have in Executive’s possession or control, whether prepared by Executive or not.

6. **Cooperation.** Following the Term, Executive shall give assistance and cooperation willingly, upon reasonable advance notice with due consideration for Executive’s other business or personal commitments, in any matter relating to Executive’s position with the Company, or Executive’s expertise or experience as the Company may reasonably request, including Executive’s attendance and truthful testimony where deemed appropriate by the Company, with respect to any investigation or the Company’s defense or prosecution of any existing or future claims or litigations or other proceedings relating to matters in which Executive was involved or potentially had knowledge by virtue of Executive’s employment with the Company. The Company agrees that (a) it shall promptly reimburse Executive for Executive’s reasonable and documented expenses in connection with rendering assistance and/or cooperation under this Section 6 upon Executive’s presentation of documentation for such expenses and (b) Executive shall be reasonably compensated for any continued material services as required under this Section 6.

7. **No Prior Agreements.** Executive hereby represents and warrants to the Company that the execution of this Agreement by Executive and Executive's employment by the Company and the performance of Executive's duties hereunder will not violate or be a breach of any agreement with a former employer, client, or any other person or entity. Further, Executive agrees to indemnify the Company for any claim, including, but not limited to, attorneys' fees and expenses of investigation, by any such third party that such third party may now have or may hereafter come to have against the Company based upon or arising out of any non-competition, invention, or secrecy agreement between Executive and such third party that was in existence as of the date of this Agreement.

8. **Miscellaneous.**

(a) **Notice.** All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made, and received (i) if personally delivered, on the date of delivery, (ii) if by e-mail transmission, upon non-automated confirmation of delivery, (iii) if mailed United States mail, registered or certified, return receipt requested, postage prepaid, and addressed as provided below, upon receipt or refusal of delivery, or (iv) if by a courier delivery service providing overnight or "next-day" delivery, upon receipt or refusal of delivery, in each case addressed as follows:

To the Company: TherapeuticsMD, Inc.
 951 Yamato Road, Suite 220
 Boca Raton, Florida 33431
 Attention: Chief Financial Officer
 Phone: (561) 961-1900

With a copy, which shall not constitute notice, to:

TherapeuticsMD, Inc.
951 Yamato Road, Suite 220
Boca Raton, Florida 33431
Attention: General Counsel
Phone: (561) 961-1900

To Executive: Robert Finizio

Either party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this [Section 8](#) for the giving of notice.

(b) **Indulgences; Waivers.** Neither any failure nor any delay on the part of either party to exercise any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise of the same or of any other right, remedy, power, or privilege, nor shall any waiver of any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be binding unless executed in writing by the party making the waiver.

(c) **Controlling Law.** This Agreement and all questions relating to its validity, interpretation, performance and enforcement, shall be governed by and construed in accordance with the laws of the State of Florida, notwithstanding any Florida or other conflict-of-interest provisions to the contrary. Venue for any action arising out of this Agreement or the employment relationship shall be brought only in courts of competent jurisdiction in or for Palm Beach County, Florida and each party hereby irrevocably waives, to the fullest extent permitted by law, any objection which they may now or hereafter have to the laying of venue in such courts and submits to the jurisdiction of such courts. THE PARTIES (BY THEIR ACCEPTANCE HEREOF) HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTES BASED UPON OR ARISING OUT OF THIS AGREEMENT.

(d) **Execution in Counterpart.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of the parties reflected hereon as the signatories.

(e) **Entire Agreement.** Except as herein contained, this Agreement and the Indemnification Agreement contain the entire understanding between the parties hereto with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous agreements and understandings, inducements, and conditions, express or implied, oral or written, which shall no longer have any force or effect, expressly including the Prior Agreement. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing signed by Executive and a duly authorized representative of the Company.

(f) **Paragraph Headings.** The paragraph headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect its interpretation.

(g) **Number of Days.** In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays, and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday, or holiday, then the final day shall be deemed to be the next day that is not a Saturday, Sunday, or holiday.

(h) **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided that because the obligations of Executive hereunder involve the performance of personal services, such obligations shall not be delegated by Executive. For purposes of this Agreement, successors and assigns shall include, but not be limited to, any individual, corporation, trust, partnership, or other entity that acquires a majority of the stock or assets of the Company by sale, merger, consolidation, liquidation, or other form of transfer. The Company will require (and is obligated to disclose the existence of this Agreement to) any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place.

(i) **Tax Withholding.** The Company may withhold from any benefits payable under this Agreement all federal, state, city, or other taxes as may be required pursuant to any law or governmental regulation or ruling.

(j) **Survival.** The respective rights and obligations of the parties hereunder shall survive any termination of Executive's employment hereunder, including without limitation, the Company's obligations under Section 3 and Executive's obligations under Section 4 above, and the expiration of the Term, to the extent necessary to the intended preservation of such rights and obligations.

(k) **Right to Consult with Counsel; No Drafting Party.** Executive acknowledges having read and considered all of the provisions of this Agreement carefully, and having had the opportunity to consult with counsel of Executive's own choosing, and, given this, Executive agrees that the obligations created hereby are not unreasonable. Executive acknowledges that Executive has had an opportunity to negotiate any and all of these provisions and no rule of construction shall be used that would interpret any provision in favor of or against a party on the basis of who drafted the Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

THERAPEUTICSMD, INC.

/s/ Tommy Thompson

Tommy Thompson
Chairman of the Board

EXECUTIVE:

/s/ Robert Finizio

Robert Finizio

[Signature Page to Employment Agreement]

EXHIBIT A
FORM OF RELEASE

This Separation Agreement (“Agreement”) is made between TherapeuticsMD, Inc. (“Company”) and Robert Finizio (“Employee”), intending to be legally bound, and in consideration of the mutual covenants contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Separation and Severance. Employee’s final day of employment with Company was [●]. Although the parties agree that Company does not owe Employee any further consideration, as severance, Company agrees to pay Employee as set forth in Employee’s Employment Agreement dated [●] (the “Employment Agreement”), provided Employee executes this Agreement, complies with its terms and the terms of Employee’s Employment Agreement, and does not revoke this Agreement during the Revocation Period as defined in Section 7 below. Employee acknowledges that no other compensation of any kind remains outstanding, that the consideration provided herein is more than Employee would otherwise be entitled to receive, that Employee shall not be entitled to any other payments or benefits from Company, and that no other amounts are due or owing or shall become due or owing relating to any obligation, agreement, or otherwise. Should employee wish to accept this Agreement, it must be signed and returned to [●] by [●].

2. EAICA. Employee acknowledges and agrees that Employee’s obligations contained in the paragraphs 2, 3, 4, 6, 8, 9, 10 and 11 of the Employee Assignment, Invention, and Confidentiality Agreement (“EAICA”) that Employee signed on [●], a copy of which is attached as Exhibit A, remain in full force and effect. The terms of this Agreement are in addition to and do not supersede the surviving terms of the EAICA.

3. Confidentiality of Agreement. Employee understands and agrees that the existence of this Agreement and the terms and conditions thereof, shall be considered confidential, and shall not be disclosed by Employee to any third party or entity except with the prior written approval of Company, to Employee’s attorney, or upon the order of a court of competent jurisdiction. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement or any other agreement between the Company and Employee shall prevent Employee from sharing information and communicating in good faith, without prior notice to the Company, with any federal government agency having jurisdiction over the Company or its operations, and cooperating in any investigation by any such federal government agency; provided that Employee receives no monies for compensatory or other damages as a result of participating in any such communication or cooperation with the EEOC.

4. Non-Disparagement. At all time Employee will refrain from and will not directly or indirectly engage in any conversation that would tend to negatively impact Company or any of the Releasees as defined in Section 7 below.

5. Return of Company Property. Employee agrees to immediately return to Company any and all property of Company in Employee’s possession, custody, or control. No severance shall be paid pursuant to this Agreement until all Company property is returned.

6. Confidential Information. Employee acknowledges that Employee has had access to Company confidential and proprietary information and agrees that all such Confidential Information is and shall remain the exclusive property of Company. Employee further agrees that Employee shall not publish, disclose, or otherwise make available to any third party any such Confidential Information. Employee acknowledges and agrees that Employee has continuing confidentiality obligations under the EAICA. Employee warrants that Employee has no materials containing Confidential Information, but if Employee does, Employee shall return immediately to Company any and all materials containing any Confidential Information in Employee's possession, custody, or control. The terms of this Separation Agreement comprise confidential information of the Company.

7. Release. That the undersigned, Robert Finizio, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, and Employee's past, present and future agents, representatives, attorneys, affiliates, heirs, executors, assigns and successors, and all other persons connected therewith, and on behalf of all successors and assigns, hereby releases and forever discharges TherapeuticsMD, Inc., vitaMedMD, LLC, BocaGreenMD, Inc., vitaCare Prescription Services and all of their past, present and future agents, representatives, principals, attorneys, affiliates, owners, parent corporations, subsidiaries, officers, directors, employees, assigns and successors, and all other persons, firms or corporations connected or affiliated therewith (collectively "Releasees"), of and from any and all legal, equitable or other claims, demands, setoffs, defenses, contracts, accounts, suits, debts, agreements, actions, causes of action, sums of money, judgments, findings, controversies, disputes, or past, present and future duties, responsibilities, obligations, or suits at law and/or equity of whatsoever kind, from the beginning of the world to the date hereof, in addition, without limitation, any and all actions, causes of action, claims, counterclaims, third party claims, and any and all other federal, state, local and/or municipality statutes, laws and/or regulations and any ordinance and/or common law pertaining to employment or otherwise and any and all other claims which have been or which could have been asserted against any party in any forum.

By signing this Agreement, Employee knowingly and voluntarily fully releases and forever discharges Releasees of and from all claims, demands and liability of any kind arising under any statute, law or ordinance, including, without limitation, Title VII of the Civil Rights Act of 1964, the Fair Labor Standards Act, the National Labor Relations Act, the Americans with Disabilities Act, any state Human Rights Act, Fla. Stat. 448, or any facts or claims arising under the Age Discrimination in Employment Act ("ADEA"). This release is intended to cover all actions, causes of action, claims and demands for damages, loss or injury arising from the beginning of time until the date of this Agreement, whether presently known or unknown to Employee. However, Employee does not waive Employee's rights to claims which may arise after this Agreement becomes effective.

In addition, Employee is hereby advised to consult with an attorney prior to executing this Agreement. Employee agrees that Employee has been given a reasonable time in which to consider the Agreement and seek such consultation. Employee further warrants that Employee has consulted with knowledgeable persons concerning the effect of this Agreement and all rights which Employee might have under any and all state and federal laws relating to employment and employment discrimination and otherwise. Employee fully understands these rights and that by signing this Agreement Employee forfeits all rights to sue Releasees for matters relating to or arising out of employment, separation, or otherwise.

In accordance with provisions of the ADEA, as amended, 29 U.S.C. §601-634, Employee is hereby provided a period of twenty-one (21) days from the date Employee receives this Agreement to review the waiver of rights under the ADEA and sign this Agreement. Furthermore, Employee has seven (7) days after the date Employee signs the Agreement (“Revocation Period”) to revoke Employee’s consent. This Agreement shall not become effective or enforceable until the Revocation Period has expired. If Employee does not deliver a written revocation to [●] before the Revocation Period expires, this Agreement will become effective.

Notwithstanding anything in this Section 7 to the contrary, releases contained in this Agreement shall not apply to (i) any rights to receive any payments or benefits pursuant to Sections 3(b)(ii), 3(b)(iii) or 3(b)(iv) of the Employment Agreement, (ii) any rights or claims that may arise as a result of events occurring after the date this Agreement is executed, (iii) any indemnification rights Employee may have as a former officer or director of the Company or its subsidiaries or affiliated companies, (iv) any claims for benefits under any directors’ and officers’ liability policy maintained by the Company or its subsidiaries or affiliated companies in accordance with the terms of such policy, and (v) any rights as a holder of equity securities of the Company.

8. Opportunity to Seek Counsel. The parties represent that they have had an opportunity to retain legal counsel to represent them in connection with this matter, that they have been advised of the legal effect and consequences of this Agreement, that they have entered into this Agreement knowingly, freely and voluntarily of their own volition, and that they have not been coerced, forced, harassed, threatened or otherwise unduly pressured to enter into this Agreement.

9. Reporting of Known Issues. As a further condition to your receipt of the benefits described in this Agreement, you hereby represent and warrant that you have reported in writing to [●] any unethical conduct or violations of laws, regulations, Company policies and procedures by the Company, a Company employee, or a Company officer of which you are aware.

10. No Admissions. This Agreement is not and shall not in any way be construed as an admission by either party of any wrongful act or omission, or any liability due and owing, or any violation of any federal, state or local law or regulation.

11. Miscellaneous. This Agreement may not be amended or modified except in writing signed by Employee and an authorized representative with actual authority to bind Company, specifically stating that it is an amendment to this Agreement. This Agreement shall be governed by and construed in accordance with Sections 4(g) (Restrictions Separable), 8(a) (Notice), 8(b) (Indulgences; Waivers), 8(c) (Controlling Law), 8(d) (Execution in Counterpart), 8(f) (Paragraph Headings), and 8(k) (Right to Consult with Counsel; No Drafting Party) of the Employment Agreement. This Agreement and the Employment Agreement constitute the entire Agreement between the parties hereto with respect to the subject matter hereof; provided, however, that Employee’s continuing obligations to the Company under the terms of the EAICA are incorporated herein and shall remain in full force and effect as set forth herein.

[Remainder of page intentionally left blank; signatures follow on next page]

IN WITNESS THEREOF, the parties hereto acknowledge, understand and agree to this Agreement and intend to be bound by all of the clauses contained in this document.

EMPLOYEE

THERAPEUTICSMD, INC.

Robert Finizio

By: _____

Its: _____

Date: _____

Date: _____

[Signature Page to Release]

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "Agreement"), by and between TherapeuticsMD, Inc., a Nevada corporation (the "Company"), and John Milligan ("Executive") is entered into and effective as of the 24th day of November 2020 (the "Effective Date").

WHEREAS, the Company and Executive previously entered into an employment agreement effective as of November 9, 2012 (the "Prior Agreement"); and

WHEREAS, the Company and Executive now wish to amend and restate the Prior Agreement in its entirety to provide for amended terms and conditions of Executive's continued employment with the Company, pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants set forth in this Agreement, the parties hereto agree as follows:

1. **Employment and Duties.**

(a) **Employment and Term.** The Company hereby agrees to continue to employ Executive, and Executive hereby agrees to continue to serve the Company, in accordance with the terms and conditions set forth herein, for a period of two (2) years, commencing as of the Effective Date (such two (2) year period, including as it may be extended pursuant to this Section 1(a), the "Term"), unless sooner terminated pursuant to Section 3 hereof. Commencing on the second anniversary of the Effective Date, and each anniversary thereafter, the Term shall automatically be extended for one (1) additional year, unless at least ninety (90) days prior to such anniversary, the Company or Executive shall have given notice in accordance with Section 8 that it or Executive does not wish to extend the Term.

(b) **Duties of Executive.** Executive shall serve as the President of the Company, shall diligently perform all services as may be reasonably assigned to Executive by the Company's Board of Directors (the "Board") or the Company's Chief Executive Officer, and shall exercise such power and authority as may from time to time be delegated to Executive by the Board or the Chief Executive Officer of the Company. During Executive's employment, Executive shall devote Executive's full business time, energy, and ability exclusively to the business and interests of the Company, shall be physically present at the Company's offices in Boca Raton, Florida during normal business hours each week (other than permitted periods of working remotely, paid time off ("PTO") and on appropriate business travel for the benefit of the Company and shall not, without the Company's prior written consent, be engaged in any other business activity pursued for gain, profit, or other pecuniary advantage if such activity interferes in any material respect with Executive's duties and responsibilities hereunder. In Executive's capacity as the President of the Company, Executive shall do and perform all services, acts, or things necessary or advisable to manage and conduct the business of the Company, subject to the policies and procedures set by the Company, including, but not limited to designing and implementing business strategies, plans, and procedures; under the direction of the Board, implementing business strategies and plans aligned with short-term and long-term goals and objectives; establishing policies that promote company culture and vision; overseeing all operations and business activities to ensure they produce the desired results and are consistent with the overall strategy and mission of the Company; participating in business development activities (investments, acquisitions, corporate alliances, etc.); providing or supporting solutions to problematic situations to ensure company survival and growth; building alliances and partnerships with third-party organizations; and managing key relationships with partners and vendors. Except as otherwise agreed in writing by the Company, it shall not be a violation of this Agreement for Executive, and Executive shall be permitted, to (i) serve on any civic or charitable boards; (ii) deliver lectures, fulfill speaking engagements, or teach at educational institutions and other institutions; (iii) subject to any applicable Company policies, make personal investments in such form or manner as will neither require Executive's services in the operation or affairs of the companies or enterprises in which such investments are made nor subject Executive to any conflict of interest with respect to Executive's duties to the Company; and (iv) serve, with the written approval of the Board, as a director of one public or one or more private companies, in each case so long as any such activities do not significantly interfere with the performance of Executive's responsibilities under this Agreement, create a conflict of interest, or create an adverse interest or position detrimental to Company.

(c) **Policies.** Executive shall faithfully adhere to, execute, and fulfill all lawful policies established by the Company as are communicated to Executive by the Company.

(d) **Place of Performance.** In connection with Executive's employment by the Company, Executive shall be based at the Company's principal executive offices in Boca Raton, Florida.

2. **Compensation.** For all services rendered by Executive, the Company shall compensate Executive as follows:

(a) **Base Salary.** Effective on the Effective Date, the base salary ("Base Salary") payable to Executive shall be four hundred fifty thousand dollars (\$450,000) per year, payable on a regular basis in accordance with the Company's standard payroll procedures, but not less than monthly. The Board or a committee of the Board shall review Executive's performance on at least an annual basis and may make increases to such Base Salary if, in its sole discretion, any such increase is warranted. The Board may reduce the Base Salary without Executive's consent only if such reduction applies in the same or greater percentage to all other executives of the Company at the Vice President level and above.

(b) **Annual Short-Term Incentive.** Executive shall be entitled to participate in the Company's annual short-term incentive compensation program, as such program may exist from time to time, at a level commensurate with that being offered to other executives of the Company at the Vice President level and above. The percentage of Base Salary targeted as annual cash short-term incentive compensation for each calendar year during the Term shall be seventy percent (70%) of Base Salary (the "Targeted Annual Bonus Award"). Executive acknowledges that the amount of annual short-term incentive compensation, if any, to be awarded shall be at the sole, good faith discretion of the Board or a committee of the Board, may be less or more than the Targeted Annual Bonus Award, and will be based on a number of factors determined by the Board or a committee of the Board for each calendar year, including the Company's performance in connection with, among other factors, the clinical program, regulatory filings, commercialization and/or sales, and Executive's individual performance. Any annual short-term incentive compensation earned for any calendar year shall be paid in the immediately following calendar year, as soon as practicable. Except as set forth in Sections 3(b)(ii), 3(b)(iii), and 3(b)(iv), Executive must be employed by the Company on the date on which short-term incentive compensation is paid in order to receive such short-term incentive compensation.

(c) **Long-Term Incentive.** Executive shall be entitled to participate in the Company's long-term incentive compensation program, as such program may exist from time to time, at a level commensurate with that being offered to other executives of the Company at the Vice President level and above. Executive acknowledges that the amount of long-term incentive compensation, if any, to be awarded shall be at the sole, good faith discretion of the Board or a committee of the Board, and will be based on a number of factors determined by the Board or a committee of the Board for the applicable performance period, including the Company's performance in connection with, among other factors, the clinical program, regulatory filings, commercialization and/or sales, and Executive's individual performance. Any long-term incentive compensation earned for the applicable performance period shall be paid within the first 2 ½ months of the calendar year immediately following the calendar year in which the applicable performance period ends. Except as otherwise set forth herein, Executive must be employed by the Company on the date on which long-term incentive compensation is paid to receive such long-term incentive compensation.

(d) **Stock Options.** The Company previously granted to Executive, pursuant to the Company's 2009 Amended and Restated Stock Incentive Plan, as the same may be amended from time to time (the "2009 Plan"), the Company's 2012 Amended and Restated Stock Incentive Plan, as the same may be amended from time to time (the "2012 Plan"), and the Company's 2019 Stock Incentive Plan, as the same may be amended from time to time (the "2019 Plan" and, together with the 2009 Plan and the 2012 Plan, collectively, the "Plans"), stock options to purchase four million seven hundred fifty-two thousand two hundred fifty-five (4,752,255) shares of the Company's common stock (the "Previously Granted Stock Options"). The Previously Granted Stock Options are subject to the terms and conditions set forth in the applicable Plans and in the stock option agreement(s) previously executed by the Company and Executive. Additional options or other equity compensation may be granted at the Board's discretion.

(e) **Restricted Stock Units.** The Company previously granted to Executive, pursuant to the 2019 Plan, restricted stock units ("RSUs") or performance share units ("PSUs") for six hundred twenty-one thousand (621,000) shares of the Company's common stock (the "Previously Granted Units"). The Previously Granted Units are subject to the terms and conditions set forth in the 2019 Plan and in the agreements previously executed by the Company and Executive.

As soon as practicable following the Effective Date, the Company will grant to Executive three hundred sixty thousand (360,000) RSUs under the 2019 Plan as consideration for Executive entering into this Agreement, which RSUs will vest 50% in the first anniversary and the remaining 50% on the second anniversary of the Effective Date, at which time the RSUs will fully and completely vest, subject to Executive's continued employment with the Company and the terms and conditions in the 2019 Plan and an award agreement to be entered into between the Company and Executive.

(f) **Executive Perquisites, Benefits, and Other Compensation.** Executive shall be entitled to receive additional benefits and compensation from the Company in such form and to such extent as specified below:

(i) **Insurance Coverage.** During the Term, and as otherwise provided within the provisions of each of the respective plans, the Company shall make available to Executive all employee benefits to which other executives of the Company are entitled to receive, subject to the eligibility requirements and other provisions of such arrangements as applicable to executives of the Company generally. Such benefits shall include, but shall not be limited to, comprehensive health and major medical insurance, dental and life insurance, and short-term and long-term disability. During the Term, the Company will maintain customary director and officer insurance.

(ii) **Reimbursement for Expenses.** Reimbursement for business travel and other out-of-pocket expenses reasonably incurred by Executive in the performance of Executive's services under this Agreement, including, but not limited to, industry appropriate seminars and subscriptions and applicable licensing and continuing education expenses. All reimbursable expenses shall be appropriately documented in reasonable detail by Executive upon submission of any request for reimbursement and shall be in a format and manner consistent with the Company's expense reporting policy.

(iii) **Paid Time Off.** Executive shall be eligible to accrue PTO and utilize and carryover from year to year such PTO, consistent with the Company's policies and procedures in effect from time to time for officers of Executive's level.

(iv) **Other Executive Perquisites.** The Company shall provide Executive with other executive perquisites as may be made available to or deemed appropriate for Executive by the Board or a committee of the Board and participation in all other Company-wide employee benefits as are available to the Company's executives from time to time, including any plans, programs, or arrangements relating to retirement, deferred compensation, profit sharing, 401(k), and employee stock ownership.

(v) **Working Facilities.** During the Term, the Company shall furnish Executive with an office, staffing and administrative support and such other facilities and services suitable to Executive's position with the Company and adequate for the performance of Executive's duties hereunder, which will be reviewed and provided based on the Company's needs.

(vi) **Indemnification Agreement.** In connection with Executive's entrance into this Agreement, Executive and Company will enter into the Company's standard form of Indemnification Agreement for directors and executive officers of the Company (the "Indemnification Agreement").

3. Term of Employment.

(a) Termination Under Certain Circumstances.

(i) **Death.** Executive's employment and the Term shall be automatically terminated, without notice, effective upon the date of Executive's death.

(ii) **Disability.** If, as a result of incapacity due to physical or mental illness or injury, Executive shall have been absent from Executive's full-time duties hereunder for six (6) consecutive months, then thirty (30) days after giving written notice to Executive (which notice may occur before or after the end of such six (6) month period, but which shall not be effective earlier than the last day of such six (6) month period), the Company may terminate Executive's employment and the Term, provided Executive is unable to resume Executive's full-time duties at the conclusion of such notice period.

(iii) **Termination by the Company for Good Cause.** The Company may terminate Executive's employment and the Term upon ten (10) days prior written notice to Executive for "Good Cause," which shall mean any one or more of the following: (A) Executive's material breach of this Agreement (continuing for thirty (30) days after receipt of written notice of need to cure, if, in the Company's determination, such breach is curable); (B) Executive's intentional nonperformance of lawful instructions of either the Chief Executive Officer of the Company or of the Board (continuing for thirty (30) days after receipt of written notice of need to cure, if, in the Company's determination, such breach is curable) of any of Executive's material duties and responsibilities; (C) Executive's willful dishonesty, fraud, or misconduct with respect to the business or affairs of the Company; (D) Executive's indictment for, charge of, conviction of, or guilty or *nolo contendere* plea to a felony crime involving dishonesty or moral turpitude whether or not relating to the Company; (E) a confirmed positive drug test result for an illegal drug; or (F) a material sanction is imposed on Executive by any applicable professional organization or professional governing body.

(iv) **Termination by the Company Without Good Cause.** The Company may terminate Executive's employment and the Term at any time without Good Cause.

(v) **Termination by Executive Without Good Reason.** Executive, at Executive's option and upon written notice to the Company, may terminate Executive's employment and the Term without Good Reason (as defined below) at any time, effective on the date of that notice.

(vi) **Termination by Executive With Good Reason.** At any time during the Term, Executive may terminate Executive's employment and the Term for Good Reason. For purposes of this Agreement, "Good Reason" shall mean (A) the assignment to Executive of material duties inconsistent with Executive's position as the President (including status, office, titles and reporting requirements), or any other action by the Company that results in a material diminution in such position, excluding for this purpose (i) any action not taken in bad faith and that is remedied by the Company promptly after receipt of a Notice of Termination for Good Reason (as defined below) thereof given by Executive and (ii) any change in status, office, titles and reporting requirements following a Change in Control (as defined in the 2019 Plan) of the Company in which the Company ceases to be a standalone public reporting company, provided that the material duties of Executive following such Change in Control are not inconsistent with those of Executive immediately prior to such Change in Control; (B) the Company requiring Executive to be based at any office or location other than in Palm Beach County, Florida, or within thirty-five (35) miles of such location, or such other location as mutually agreed to by the Company and Executive, except for travel reasonably required in the performance of Executive's responsibilities; or (C) any material failure by the Company to comply with any of the provisions of this Agreement, other than a failure not occurring in bad faith and that is remedied by the Company promptly after receipt of a Notice of Termination for Good Reason given thereof by Executive. A termination of employment by Executive for Good Reason shall be effected by Executive's giving the Board written notice ("Notice of Termination for Good Reason") of the termination, setting forth in reasonable detail the specific conduct of the Company that constitutes Good Reason and the specific provision(s) of this Agreement on which Executive relies, within ninety (90) days of the initial existence of one of the conditions constituting Good Reason. A termination of employment by Executive for Good Reason shall be effective on the thirty-first (31st) day following the date when the Notice of Termination for Good Reason is given to the Company; provided that such a termination of employment shall not become effective if the Company shall have substantially corrected the circumstance giving rise to the Notice of Termination for Good Reason within thirty (30) days after the Company's receipt of such Notice of Termination for Good Reason.

(b) **Result of Termination.**

(i) Except as otherwise set forth in this Agreement, in the event of the termination of Executive's employment and the Term pursuant to Sections 3(a)(iii) ("Termination by the Company for Good Cause") or 3(a)(v) ("Termination by Executive Without Good Reason") above, Executive shall receive no further compensation under this Agreement other than the payment of Base Salary as shall have accrued and remained unpaid as of the date of termination and accrued but unused PTO consistent with the Company's policies and procedures therefor in effect at the time of such termination for officers of Executive's level.

(ii) In the event of the termination of Executive's employment and the Term pursuant to Sections 3(a)(iv) ("Termination by the Company Without Good Cause") or 3(a)(vi) ("Termination by Executive With Good Reason") above, (a) Executive shall, for a period of twelve (12) months following the effective date of such termination, continue to receive Executive's then current annual Base Salary, as provided in Section 2(a), (b) Executive shall receive an amount equal to Executive's Targeted Annual Bonus Award for the calendar year in which the termination of Executive's employment occurs, which amount shall be paid to Executive in a single lump sum, which is unpaid on the effective date of Executive's termination, and which shall be paid to Executive when paid to other similarly situated executives of the Company in accordance with Section 2(b) hereof, (c) Executive shall receive, beginning on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement and for a period of twenty-four (24) months thereafter for a total of twenty-four (24) monthly payments, a monthly cash payment equal to the one (1) month cost of COBRA continuation of the health insurance benefits for Executive and Executive's immediate family as applicable, as the effective date of such termination, less, the one (1) month cost for the same health insurance benefits for Executive and Executive's immediate family as applicable that would have been incurred by Executive immediately prior to the effective date of such termination if Executive remained employed with the Company, (d) all unvested equity compensation of any kind (including, without limitation, stock options, restricted stock, or restricted stock units) held by Executive in Executive's capacity as an employee of the Company on the effective date of the termination shall vest as of the effective date of such termination, (e) Executive shall receive payment for accrued but unused PTO consistent with the Company's policies and procedures therefor in effect at the time of such termination for officers of Executive's level, and (f) Executive shall receive payment for any annual short-term incentive compensation earned pursuant to Section 2(b) hereof for the calendar year immediately preceding the calendar year in which the termination of Executive's employment occurs which is unpaid on the effective date of Executive's termination, which shall be paid to Executive when paid to other similarly situated executives of the Company in accordance with Section 2(b) hereof.

(iii) In the event of the termination of Executive's employment and the Term pursuant to Sections 3(a)(i) ("Death") or 3(a)(ii) ("Disability") above, (a) Executive shall receive an amount equal to Executive's Targeted Annual Bonus Award for the calendar year in which the termination of Executive's employment occurs, multiplied by a fraction, the numerator of which is the number of full months of such calendar year during which Executive was employed with the Company, and the denominator of which is twelve (12), which amount shall be paid to Executive in a single lump sum on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement, (b) all unvested equity compensation of any kind (including, without limitation, stock options, restricted stock, or restricted stock units) held by Executive in Executive's capacity as an employee of the Company on the effective date of the termination shall vest as of the effective date of such termination, (c) Executive shall receive payment for accrued but unused PTO consistent with the Company's policies and procedures therefor in effect at the time of such termination for officers of Executive's level, and (d) Executive shall receive payment for any annual short-term incentive compensation earned pursuant to Section 2(b) hereof for the calendar year immediately preceding the calendar year in which the termination of Executive's employment occurs which is unpaid on the effective date of Executive's termination, which shall be paid to Executive when paid to other similarly situated executives of the Company in accordance with Section 2(b) hereof.

(iv) In the event of the termination of Executive's employment and the Term pursuant to Sections 3(a)(iv) ("Termination by the Company Without Good Cause") or 3(a)(vi) ("Termination by Executive With Good Reason") during the twelve (12) month period immediately following a Change in Control, then in lieu of any benefits or amounts otherwise payable under Section 3(b)(ii) hereof, (a) Executive shall, for a period of eighteen (18) months following the effective date of such termination, continue to receive Executive's then current annual Base Salary, as provided in Section 2(a), (b) Executive shall receive an amount equal to one and one half times (1.5x) Executive's Targeted Annual Bonus Award for the calendar year in which the termination of Executive's employment occurs, which amount shall be paid to Executive in a single lump sum on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement, (c) Executive shall receive, beginning on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement and for a period of eighteen (18) months thereafter for a total of eighteen (18) monthly payments, a monthly cash payment equal to the one (1) month cost of COBRA continuation of the health insurance benefits for Executive and Executive's immediate family as applicable, as the effective date of such termination, less, the one (1) month cost for the same health insurance benefits for Executive and Executive's immediate family as applicable that would have been incurred by Executive immediately prior to the effective date of such termination if Executive remained employed with the Company, (d) all unvested equity compensation of any kind (including, without limitation, stock options, restricted stock, or restricted stock units) held by Executive in Executive's capacity as an employee of the Company on the effective date of the termination shall vest as of the effective date of such termination, (e) Executive shall receive payment for accrued but unused PTO consistent with the Company's policies and procedures therefor in effect at the time of such termination for officers of Executive's level, and (f) Executive shall receive payment for any annual short-term incentive compensation earned pursuant to Section 2(b) hereof for the calendar year immediately preceding the calendar year in which the termination of Executive's employment occurs which is unpaid on the effective date of Executive's termination, which shall be paid to Executive when paid to other similarly situated executives of the Company in accordance with Section 2(b) hereof.

Executive shall receive no additional compensation following any termination except as provided herein. In the event of any termination, Executive shall resign all positions with the Company and its subsidiaries.

(c) **Release.** Notwithstanding any other provision in this Agreement to the contrary, as a condition precedent to receiving any post-termination payments or benefits identified in Sections 3(b)(ii), 3(b)(iii) and 3(b)(iv) of this Agreement, Executive agrees to execute (and not revoke) a full and complete release of all claims against the Company and its affiliates, in the form attached hereto as Exhibit A (subject to such modifications as the Company reasonably may request) (the “Release”). If Executive fails to execute and deliver to the Company the Release within twenty-one (21) days following the date of termination, or revokes the Release, within seven (7) days following the date Executive executes and delivers the Release, or materially breaches any term of this Agreement or any other agreement between Executive and the Company while receiving such post-termination payments or benefits, Executive agrees that Executive shall not be entitled to receive any such post-termination payments. For purposes of this Agreement, the Release shall be deemed to have been executed by Executive if it is signed by Executive’s legal representative in the case of legal incompetence or on behalf of Executive’s estate in the case of Executive’s death. Payment of any post-termination payments or benefits identified in Sections 3(b)(ii), 3(b)(iii) and 3(b)(iv) of this Agreement shall be delayed until the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive’s employment under this Agreement, and any payments that are so delayed shall be paid on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive’s employment under this Agreement.

(d) **Section 409A.** This Agreement is intended to satisfy the requirements of Section 409A with respect to amounts subject thereto, and will be interpreted and construed consistent with such intent. Notwithstanding the foregoing, the Company does not make any representation to Executive that the payments or benefits provided under this Agreement are exempt from, or satisfy, the requirements of Section 409A, and the Company shall have no liability or other obligation to indemnify or hold harmless Executive or any beneficiary for any tax, additional tax, interest or penalties that Executive or any beneficiary may incur in the event that any provision of this Agreement, or any amendment or modification thereof, or any other action taken with respect thereto, is deemed to violate any of the requirements of Section 409A.

Any payments made by the Company pursuant to Sections 3(b)(ii), 3(b)(iii) and 3(b)(iv) of this Agreement (except for unpaid annual short-term incentive compensation earned in the calendar year immediately preceding the calendar year in which the termination of Executive's employment occurs, which shall be paid to Executive when paid to other similarly situated executives of the Company) shall be paid or commence on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of Executive's "separation from service" within the meaning of Section 409A ("Section 409A") of the Internal Revenue Code of 1986, as amended (the "Code"). For purposes of applying the provisions of Section 409A to this Agreement, each separately identified amount to which Executive is entitled under this Agreement shall be treated as a separate payment. In addition, to the extent permissible under Section 409A, with respect to additional payments amounts only under Section 3 on or after the Effective Date (i.e., payments that Executive would not have received had Executive terminated employment prior to the Effective Date under such triggering event), any series of installment payments under this Agreement shall be treated as a right to a series of separate payments.

If Executive is a "specified employee" within the meaning of Section 409A, then payments identified in Section 3(b) of this Agreement shall not commence until six (6) months following "separation from service" within the meaning of Section 409A to the extent necessary to avoid the imposition of the additional twenty percent (20%) tax under Section 409A (and in the case of installment payments, the first payment shall include all installment payments required by this subsection that otherwise would have been made during such six-month period). If the payments described in Section 3(b) must be delayed for six (6) months pursuant to the preceding sentence, Executive shall not be entitled to additional compensation to compensate for such delay period. Upon the date such payment would otherwise commence, the Company shall reimburse Executive for such payments, to the extent that such payments otherwise would have been paid by the Company had such payments commenced upon Executive's "separation from service" within the meaning of Section 409A. Any remaining payments shall be provided by the Company in accordance with the schedule and procedures specified herein.

Any reimbursements by the Company to Executive of any eligible expenses under this Agreement that are not excludable from Executive's income for Federal income tax purposes (the "Taxable Reimbursements") shall be made by no later than the last day of the taxable year of Executive following the year in which the expense was incurred. The amount of any Taxable Reimbursements, and the value of any in-kind benefits to be provided to Executive, during any taxable year of Executive shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year of Executive. The right to Taxable Reimbursement, or in-kind benefits, shall not be subject to liquidation or exchange for another benefit.

(e) **Section 280G.**

(i) **Certain Reductions in Agreement Payments.** Anything in this Agreement to the contrary notwithstanding, in the event a nationally recognized independent accounting firm designated by the Company and reasonably acceptable to Executive (the “Accounting Firm”) shall determine that receipt of all payments or distributions by the Company and its affiliates in the nature of compensation to or for Executive’s benefit, whether paid or payable pursuant to this Agreement or otherwise (a “Payment”), would subject Executive to the excise tax under Section 4999 of the Code, the Accounting Firm shall determine as required below in this Section 3(e) whether to reduce any of the Payments paid or payable pursuant to this Agreement (the “Agreement Payments”) to the Reduced Amount (as defined below). The Agreement Payments shall be reduced to the Reduced Amount only if the Accounting Firm determines that Executive would have a greater Net After-Tax Receipt (as defined below) of aggregate Payments if Executive’s Agreement Payments were so reduced. If the Accounting Firm determines that Executive would not have a greater Net After-Tax Receipt of aggregate Payments if Executive’s Agreement Payments were so reduced, then Executive shall receive all Agreement Payments to which Executive is entitled.

(ii) **Accounting Firm Determinations.** If the Accounting Firm determines that aggregate Agreement Payments should be reduced to the Reduced Amount, then the Company shall promptly give Executive notice to that effect and a copy of the detailed calculation thereof. All determinations made by the Accounting Firm under this Section 3(e) shall be binding upon the Company and Executive and shall be made as soon as reasonably practicable and in no event later than twenty (20) days following the effective date of the termination of Executive’s employment with the Company. For purposes of reducing the Agreement Payments to the Reduced Amount, only amounts payable under this Agreement (and no other Payments) shall be reduced. The reduction of the amounts payable hereunder, if applicable, shall be made (A) only from Payments that the Accounting Firm determines reasonably may be characterized as “parachute payments” under Section 280G of the Code; (B) only from Payments that are required to be made in cash, (C) only with respect to any amounts that are not payable pursuant to a “nonqualified deferred compensation plan” subject to Section 409A of the Code, until those payments have been reduced to zero, and (D) in reverse chronological order, to the extent that any Payments subject to reduction are made over time (e.g., in installments). In no event, however, shall any Payments be reduced if and to the extent such reduction would cause a violation of Section 409A of the Code or other applicable law. All fees and expenses of the Accounting Firm shall be borne solely by the Company.

(iii) **Overpayments; Underpayments.** As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that amounts will have been paid or distributed by the Company to or for the benefit of Executive pursuant to this Agreement which should not have been so paid or distributed (an “Overpayment”) or that additional amounts which will have not been paid or distributed by the Company to or for the benefit of Executive pursuant to this Agreement which should have been so paid or distributed (an “Underpayment”), in each case consistent with the calculation of the Reduced Amount hereunder. In the event that the Accounting Firm, based upon the assertion of a deficiency by the Internal Revenue Service against either the Company or Executive which the Accounting Firm believes has a high probability of success determines that an Overpayment has been made, Executive shall pay any such Overpayment to the Company together with interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code; provided, however, that no amount shall be payable by Executive to the Company if and to the extent such payment would not either reduce the amount on which Executive is subject to tax under Section 1 and Section 4999 of the Code or generate a refund of such taxes. In the event that the Accounting Firm, based upon controlling precedent or other substantial authority, determines that an Underpayment has occurred, any such Underpayment shall be paid promptly (and in no event later than 60 days following the date on which the Underpayment is determined) by the Company to or for the benefit of Executive together with interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code.

(iv) Definitions. The following terms shall have the following meanings for purposes of this Section 3:

(A) “Net After-Tax Receipt” shall mean the present value (as determined in accordance with Sections 280G(b)(2)(A)(ii) and 280G(d)(4) of the Code) of a Payment net of all taxes imposed on Executive with respect thereto under Sections 1 and 4999 of the Code and under applicable state and local laws, determined by applying the highest marginal rate under Section 1 of the Code and under state and local laws which applied to Executive’s taxable income for the immediately preceding taxable year, or such other rate(s) as the Accounting Firm determined to be likely to apply to Executive in the relevant taxable year(s).

(B) “Reduced Amount” shall mean the greatest amount of Agreement Payments that can be paid that would not result in the imposition of the excise tax under Section 4999 of the Code if the Accounting Firm determines to reduce Agreement Payments pursuant to Section 3(f)(i).

4. **Competition and Non-Solicitation.**

(a) **Interests to be Protected.** The parties acknowledge that Executive will perform essential services for the Company, its employees, and its stockholders during the term of Executive’s employment with the Company. Executive will be exposed to, have access to, and work with, a considerable amount of confidential information. The parties also expressly recognize and acknowledge that the personnel of the Company have been trained by, and are valuable to, the Company and that the Company will incur substantial recruiting and training expenses if the Company must hire new personnel or retrain existing personnel to fill vacancies. The parties expressly recognize that it could seriously impair the goodwill and diminish the value of the Company’s business should Executive compete with the Company in any manner whatsoever. The parties acknowledge that this covenant has an extended duration; however, they agree that this covenant is reasonable and it is necessary for the protection of the Company, its stockholders, and employees. For these and other reasons, and the fact that there are many other employment opportunities available to Executive if Executive’s employment is terminated, the parties are in full and complete agreement that the following restrictive covenants are fair and reasonable and are entered into freely, voluntarily, and knowingly. Furthermore, each party was given the opportunity to consult with independent legal counsel before entering into this Agreement.

(b) **Non-Competition.** During the term of Executive's employment with the Company and for eighteen (18) months after the termination of Executive's employment with the Company, which may be extended an additional twelve (12) months in the sole and absolute discretion of the Company for a total of thirty (30) months after termination of Executive's employment with the Company, regardless of the reason therefor, Executive shall not (whether directly or indirectly, as owner, principal, agent, stockholder, director, officer, manager, employee, partner, participant, or in any other capacity) engage or become substantially and directly financially interested in any Competitive Business Activities conducted within the Restricted Territory (as defined below). In the event of the termination of Executive's employment and the Term pursuant to Sections 3(a)(iv) ("Termination by the Company Without Good Cause") or 3(a)(vi) ("Termination by Executive With Good Reason"), if the Company exercises its right to extend this non-competition clause by the additional twelve (12) months, then Executive will, (a) for a period of twelve (12) additional months, continue to receive Executive's then current annual Base Salary, as provided in Section 2(a), and (b) Executive will receive for a period of an additional six (6), a monthly cash payment equal to the one (1) month cost of COBRA continuation of the health insurance benefits for Executive and Executive's immediate family as applicable. As used herein, the term "Competitive Business Activities" shall mean business activities that are competitive with the business of the Company, including but not limited to, business activities in the pharmaceutical industry related to products that compete with the Company's products, and the term "Restricted Territory" shall mean any state or other geographical area in which the Company has demonstrated an intent to develop, commercialize, and/or distribute products during Executive's employment with the Company. Executive hereby agrees that, as of the date hereof, during Executive's employment with the Company, the Company has demonstrated an intent to develop, commercialize, and/or distribute products throughout the United States of America, Canada, Mexico, Brazil, Argentina, Europe, Australia, South Africa, Russia, Israel, Japan, and South Korea.

(c) **Non-Solicitation of Employees.** During the term of Executive's employment and for a period of twenty-four (24) months after the termination of Executive's employment with the Company, regardless of the reason therefor, Executive shall not directly or indirectly, for the Company, or on behalf of or in conjunction with any other person, company, partnership, corporation, or governmental or other entity, solicit for employment, seek to hire, or hire any person who is employed by the Company, is a consultant of the Company, or is an independent contractor of the Company, within twenty-four (24) months of the termination of Executive's employment, and, as related solely to consultants, for the purpose of having any such consultant engage in services that are the same as, similar to, or related to the services that such consultant provided for the Company and that are competitive with the services provided by the consultant for the Company.

(d) **Non-Solicitation of Customers.** During the term of Executive's employment and for a period of twenty-four (24) months after the termination of Executive's employment with the Company, regardless of the reason therefor, Executive shall not directly or indirectly, for the Company, or on behalf of, or in conjunction with, any other person, company, partnership, corporation, or governmental entity, call on, solicit, or engage in business with, any of the actual or targeted prospective customers or clients of the Company on behalf of any person or entity in connection with any Competitive Business, nor shall Executive make known the names and addresses of such actual or targeted prospective customers or clients, or any information relating in any manner to the trade or business relationships of the Company with such customers or clients, other than in connection with the performance of Executive's duties under this Agreement, and/or persuade or encourage or attempt to persuade or encourage any persons or entities with whom the Company does business or has some business relationship to cease doing business or to terminate its business relationship with the Company or to engage in any Competitive Business Activities on its own or with any competitor of the Company. As used herein, the term "Competitive Business" shall mean business that is directly competitive with the business of the Company, including but not limited to, business in the pharmaceutical industry related to products that directly compete with the Company's products.

(e) **Employee Assignment, Invention and Confidentiality Agreement.** Executive hereby reaffirms, acknowledges, and agrees that Executive is subject to the terms and conditions set forth in that certain Employee Assignment, Invention, and Confidentiality Agreement (the “EAICA”) previously entered into by and between the Company and Executive and that this Agreement does not modify or amend the EAICA.

(f) **Equitable Relief.** In the event a violation of any of the restrictions contained in this Section 4 occurs, the Company shall be entitled to preliminary and permanent injunctive relief (without being required to post bond), reasonable attorneys’ fees, and damages and an equitable accounting of all earnings, profits, and other benefits arising from such violation, which right shall be cumulative and in addition to any other rights or remedies to which the Company may be entitled. In the event of a violation of any provision of Section 4(b), Section 4(c), or Section 4(d), the period for which those provisions would remain in effect shall be extended for a period of time equal to that period beginning when such violation commenced and ending when the activities constituting such violation shall have been finally terminated in good faith.

(g) **Restrictions Separable.** If the scope of any provision of this Agreement (whether in this Section 4 or otherwise) is found by a court to be too broad to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law. The parties agree that the scope of any provision of this Agreement may be modified by a judge in any proceeding to enforce this Agreement, so that such provision can be enforced to the maximum extent permitted by law. Each and every restriction set forth in this Section 4 is independent and severable from the others, and no such restriction shall be rendered unenforceable by virtue of the fact that, for any reason, any other or others of them may be unenforceable in whole or in part.

5. **Return of Company Property.** At any time as requested by the Company, or upon the termination of Executive’s employment with the Company for any reason, Executive shall deliver promptly to the Company all files, lists, books, records, manuals, memoranda, drawings, and specifications; all other written or printed materials and computers, cell phones, and other equipment that are the property of the Company (and any copies of them); and all other materials that may contain confidential information relating to the business of the Company, which Executive may then have in Executive’s possession or control, whether prepared by Executive or not.

6. **Cooperation.** Following the Term, Executive shall give assistance and cooperation willingly, upon reasonable advance notice with due consideration for Executive's other business or personal commitments, in any matter relating to Executive's position with the Company, or Executive's expertise or experience as the Company may reasonably request, including Executive's attendance and truthful testimony where deemed appropriate by the Company, with respect to any investigation or the Company's defense or prosecution of any existing or future claims or litigations or other proceedings relating to matters in which Executive was involved or potentially had knowledge by virtue of Executive's employment with the Company. The Company agrees that (a) it shall promptly reimburse Executive for Executive's reasonable and documented expenses in connection with rendering assistance and/or cooperation under this Section 6 upon Executive's presentation of documentation for such expenses and (b) Executive shall be reasonably compensated for any continued material services as required under this Section 6.

7. **No Prior Agreements.** Executive hereby represents and warrants to the Company that the execution of this Agreement by Executive and Executive's employment by the Company and the performance of Executive's duties hereunder will not violate or be a breach of any agreement with a former employer, client, or any other person or entity. Further, Executive agrees to indemnify the Company for any claim, including, but not limited to, attorneys' fees and expenses of investigation, by any such third party that such third party may now have or may hereafter come to have against the Company based upon or arising out of any non-competition, invention, or secrecy agreement between Executive and such third party that was in existence as of the date of this Agreement.

8. **Miscellaneous.**

(a) **Notice.** All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made, and received (i) if personally delivered, on the date of delivery, (ii) if by e-mail transmission, upon receipt, (iii) if mailed United States mail, registered or certified, return receipt requested, postage prepaid, and addressed as provided below, upon receipt or refusal of delivery, or (iv) if by a courier delivery service providing overnight or "next-day" delivery, upon receipt or refusal of delivery, in each case addressed as follows:

To the Company: TherapeuticsMD, Inc.
 951 Yamato Road, Suite 220
 Boca Raton, Florida 33431
 Attention: Chief Executive Officer
 Phone: (561) 961-1900

With a copy, which shall not constitute notice, to:

TherapeuticsMD, Inc.
951 Yamato Road, Suite 220
Boca Raton, Florida 33431
Attention: General Counsel
Phone: (561) 961-1900

To Executive: John Milligan

Either party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 8 for the giving of notice.

(b) **Indulgences; Waivers.** Neither any failure nor any delay on the part of either party to exercise any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise of the same or of any other right, remedy, power, or privilege, nor shall any waiver of any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be binding unless executed in writing by the party making the waiver.

(c) **Controlling Law.** This Agreement and all questions relating to its validity, interpretation, performance and enforcement, shall be governed by and construed in accordance with the laws of the State of Florida, notwithstanding any Florida or other conflict-of-interest provisions to the contrary. Venue for any action arising out of this Agreement or the employment relationship shall be brought only in courts of competent jurisdiction in or for Palm Beach County, Florida and each party hereby irrevocably waives, to the fullest extent permitted by law, any objection which they may now or hereafter have to the laying of venue in such courts and submits to the jurisdiction of such courts. THE PARTIES (BY THEIR ACCEPTANCE HEREOF) HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTES BASED UPON OR ARISING OUT OF THIS AGREEMENT.

(d) **Execution in Counterpart.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of the parties reflected hereon as the signatories.

(e) **Entire Agreement.** Except as herein contained, this Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, inducements, and conditions, express or implied, oral or written, which shall no longer have any force or effect, expressly including the Prior Agreement. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing.

(f) **Paragraph Headings.** The paragraph headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect its interpretation.

(g) **Number of Days.** In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays, and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday, or holiday, then the final day shall be deemed to be the next day that is not a Saturday, Sunday, or holiday.

(h) **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided that because the obligations of Executive hereunder involve the performance of personal services, such obligations shall not be delegated by Executive. For purposes of this Agreement, successors and assigns shall include, but not be limited to, any individual, corporation, trust, partnership, or other entity that acquires a majority of the stock or assets of the Company by sale, merger, consolidation, liquidation, or other form of transfer. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

(i) **Tax Withholding.** The Company may withhold from any benefits payable under this Agreement all federal, state, city, or other taxes as may be required pursuant to any law or governmental regulation or ruling.

(j) **Survival.** The respective rights and obligations of the parties hereunder shall survive any termination of Executive's employment hereunder, including without limitation, the Company's obligations under Section 3 and Executive's obligations under Section 4 above, and the expiration of the Term, to the extent necessary to the intended preservation of such rights and obligations.

(k) **Right to Consult with Counsel; No Drafting Party.** Executive acknowledges having read and considered all of the provisions of this Agreement carefully, and having had the opportunity to consult with counsel of Executive's own choosing, and, given this, Executive agrees that the obligations created hereby are not unreasonable. Executive acknowledges that Executive has had an opportunity to negotiate any and all of these provisions and no rule of construction shall be used that would interpret any provision in favor of or against a party on the basis of who drafted the Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THERAPEUTICSMD, INC.

By: /s/ Robert Finizio

Name: Robert Finizio

Title: Chief Executive Officer

EXECUTIVE:

/s/ John C.K. Milligan, IV

John C.K. Milligan, IV

[Signature Page to Employment Agreement]

EXHIBIT A
FORM OF RELEASE

This Separation Agreement (“Agreement”) is made between TherapeuticsMD, Inc. (“Company”) and _____ (“Employee”), intending to be legally bound, and in consideration of the mutual covenants contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Separation and Severance. Employee’s final day of employment with Company was _____. Although the parties agree that Company does not owe Employee any further consideration, as severance, Company agrees to pay Employee as set forth in Employee’s Employment Agreement dated _____ (the “Employment Agreement”), provided Employee executes this Agreement, complies with its terms and the terms of Employee’s Employment Agreement[, and does not revoke this Agreement during the Revocation Period as defined in Section 8 below.]]¹ Employee acknowledges that no other compensation of any kind remains outstanding, that the consideration provided herein is more than Employee would otherwise be entitled to receive, that Employee shall not be entitled to any other payments or benefits from Company, and that no other amounts are due or owing or shall become due or owing relating to any obligation, agreement, or otherwise.

2. Execution of Separation Agreement. Should employee wish to accept this Agreement, it must be signed and returned to _____ by _____.

3. EAICA. Employee acknowledges and agrees that Employee’s obligations contained in the paragraphs 2, 3, 4, 6, 8, 9, 10 and 11 of the Employee Assignment, Invention, and Confidentiality Agreement (“EAICA”) that Employee signed on _____, a copy of which is attached as Exhibit A, remain in full force and effect. The terms of this Agreement are in addition to and do not supersede the surviving terms of the EAICA.

4. Confidentiality of Agreement. Employee understands and agrees that the existence of this Agreement and the terms and conditions thereof, shall be considered confidential, and shall not be disclosed by Employee to any third party or entity except with the prior written approval of Company, to Employee’s attorney, or upon the order of a court of competent jurisdiction. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement or any other agreement between the Company and Employee shall prevent Employee from sharing information and communicating in good faith, without prior notice to the Company, with any federal government agency having jurisdiction over the Company or its operations, and cooperating in any investigation by any such federal government agency; provided that Employee receives no monies for compensatory or other damages as a result of participating in any such communication or cooperation with the EEOC.

5. Non-Disparagement. At all time Employee will refrain from and will not directly or indirectly engage in any conversation that would tend to negatively impact Company or any of the Releasees as defined in Section 8 below.

¹ Employee will be entitled to a revocation period only if over the age of 40 at the date of termination.

6. Return of Company Property. Employee agrees to immediately return to Company any and all property of Company in Employee's possession, custody, or control. No severance shall be paid pursuant to this Agreement until all Company property is returned.

7. Confidential Information. Employee acknowledges that Employee has had access to Company confidential and proprietary information and agrees that all such Confidential Information is and shall remain the exclusive property of Company. Employee further agrees that Employee shall not publish, disclose, or otherwise make available to any third party any such Confidential Information. Employee acknowledges and agrees that Employee has continuing confidentiality obligations under the EAICA. Employee warrants that Employee has no materials containing Confidential Information, but if Employee does, Employee shall return immediately to Company any and all materials containing any Confidential Information in Employee's possession, custody, or control. The terms of this Separation Agreement comprise confidential information of the Company.

8. Release. That the undersigned, _____, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, and Employee's past, present and future agents, representatives, attorneys, affiliates, heirs, executors, assigns and successors, and all other persons connected therewith, and on behalf of all successors and assigns, hereby releases and forever discharges TherapeuticsMD, Inc., vitaMedMD, LLC, BocaGreenMD, Inc., vitaCare Prescription Services and all of their past, present and future agents, representatives, principals, attorneys, affiliates, owners, parent corporations, subsidiaries, officers, directors, employees, assigns and successors, and all other persons, firms or corporations connected or affiliated therewith (collectively "Releasees"), of and from any and all legal, equitable or other claims, demands, setoffs, defenses, contracts, accounts, suits, debts, agreements, actions, causes of action, sums of money, judgments, findings, controversies, disputes, or past, present and future duties, responsibilities, obligations, or suits at law and/or equity of whatsoever kind, from the beginning of the world to the date hereof, in addition, without limitation, any and all actions, causes of action, claims, counterclaims, third party claims, and any and all other federal, state, local and/or municipality statutes, laws and/or regulations and any ordinance and/or common law pertaining to employment or otherwise and any and all other claims which have been or which could have been asserted against any party in any forum.

By signing this Agreement, Employee knowingly and voluntarily fully releases and forever discharges Releasees of and from all claims, demands and liability of any kind arising under any statute, law or ordinance, including, without limitation, Title VII of the Civil Rights Act of 1964, the Fair Labor Standards Act, the National Labor Relations Act, the Americans with Disabilities Act, any state Human Rights Act, Fla. Stat. 448, or any facts or claims arising under the Age Discrimination in Employment Act ("ADEA"). This release is intended to cover all actions, causes of action, claims and demands for damages, loss or injury arising from the beginning of time until the date of this Agreement, whether presently known or unknown to Employee. However, Employee does not waive Employee's rights to claims which may arise after this Agreement becomes effective.

In addition, Employee is hereby advised to consult with an attorney prior to executing this Agreement. Employee agrees that Employee has been given a reasonable time in which to consider the Agreement and seek such consultation. Employee further warrants that Employee has consulted with knowledgeable persons concerning the effect of this Agreement and all rights which Employee might have under any and all state and federal laws relating to employment and employment discrimination and otherwise. Employee fully understands these rights and that by signing this Agreement Employee forfeits all rights to sue Releasees for matters relating to or arising out of employment, separation, or otherwise.

In accordance with provisions of the ADEA, as amended, 29 U.S.C. §601-634, Employee is hereby provided a period of twenty-one (21) days from the date Employee receives this Agreement to review the waiver of rights under the ADEA and sign this Agreement. Furthermore, Employee has seven (7) days after the date Employee signs the Agreement (“Revocation Period”) to revoke Employee’s consent. This Agreement shall not become effective or enforceable until the Revocation Period has expired. If Employee does not deliver a written revocation to _____ before the Revocation Period expires, this Agreement will become effective.

Notwithstanding anything in this Section 8 to the contrary, releases contained in this Agreement shall not apply to (i) any rights to receive any payments or benefits pursuant to Sections 3(b)(ii), 3(b)(iii) or 3(b)(iv) of the Employment Agreement, (ii) any rights or claims that may arise as a result of events occurring after the date this Agreement is executed, (iii) any indemnification rights Employee may have as a former officer or director of the Company or its subsidiaries or affiliated companies, (iv) any claims for benefits under any directors’ and officers’ liability policy maintained by the Company or its subsidiaries or affiliated companies in accordance with the terms of such policy, and (v) any rights as a holder of equity securities of the Company.

9. Opportunity to Seek Counsel. The parties represent that they have had an opportunity to retain legal counsel to represent them in connection with this matter, that they have been advised of the legal effect and consequences of this Agreement, that they have entered into this Agreement knowingly, freely and voluntarily of their own volition, and that they have not been coerced, forced, harassed, threatened or otherwise unduly pressured to enter into this Agreement.

10. Reporting of Known Issues. As a further condition to your receipt of the benefits described in this Agreement, you hereby represent and warrant that you have reported in writing to _____ any unethical conduct or violations of laws, regulations, Company policies and procedures by the Company, a Company employee, or a Company officer of which you are aware.

11. No Admissions. This Agreement is not and shall not in any way be construed as an admission by either party of any wrongful act or omission, or any liability due and owing, or any violation of any federal, state or local law or regulation.

12. Miscellaneous. This Agreement may not be amended or modified except in writing signed by Employee and an authorized representative with actual authority to bind Company, specifically stating that it is an amendment to this Agreement. This Agreement shall be governed by and construed in accordance with Sections 4(g) (Restrictions Separable), 8(a) (Notice), 8(b) (Indulgences; Waivers), 8(c) (Controlling Law), 8(d) (Execution in Counterpart), 8(f) (Paragraph Headings), and 8(k) (Right to Consult with Counsel; No Drafting Party) of the Employment Agreement. This Agreement and the Employment Agreement constitute the entire Agreement between the parties hereto with respect to the subject matter hereof; provided, however, that Employee's continuing obligations to the Company under the terms of the EAICA are incorporated herein and shall remain in full force and effect as set forth herein.

IN WITNESS THEREOF, the parties hereto acknowledge, understand and agree to this Agreement and intend to be bound by all of the clauses contained in this document.

EMPLOYEE

THERAPEUTICSMD, INC.

[Employee]

By: _____

Its: _____

Date: _____

Date: _____

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "Agreement"), by and between TherapeuticsMD, Inc., a Nevada corporation (the "Company"), and Michael Donegan ("Executive") is entered into and effective as of the 24th day of November 2020 (the "Effective Date").

WHEREAS, the Company and Executive previously entered into an employment agreement effective as of December 17, 2015 (the "Prior Agreement"); and

WHEREAS, the Company and Executive now wish to amend and restate the Prior Agreement in its entirety to provide for amended terms and conditions of Executive's continued employment with the Company, pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants set forth in this Agreement, the parties hereto agree as follows:

1. **Employment and Duties.**

(a) **Employment and Term.** The Company hereby agrees to continue to employ Executive, and Executive hereby agrees to continue to serve the Company, in accordance with the terms and conditions set forth herein, for a period of two (2) years, commencing as of the Effective Date (such two (2) year period, including as it may be extended pursuant to this Section 1(a), the "Term"), unless sooner terminated pursuant to Section 3 hereof. Commencing on the second anniversary of the Effective Date, and each anniversary thereafter, the Term shall automatically be extended for one (1) additional year, unless at least ninety (90) days prior to such anniversary, the Company or Executive shall have given notice in accordance with Section 8 that it or Executive does not wish to extend the Term.

(b) **Duties of Executive.** Executive shall serve as the Vice President of Finance and Chief Accounting Officer of the Company, shall diligently perform all services as may be reasonably assigned to Executive by the Company's Board of Directors (the "Board"), the Company's Chief Executive Officer, or the Company's Chief Financial Officer, and shall exercise such power and authority as may from time to time be delegated to Executive by the Board, the Chief Executive Officer, or the Chief Financial Officer of the Company. During Executive's employment, Executive shall devote Executive's full business time, energy, and ability exclusively to the business and interests of the Company, shall be physically present at the Company's offices in Boca Raton, Florida during normal business hours each week (other than permitted periods of working remotely, paid time off ("PTO") and on appropriate business travel for the benefit of the Company and shall not, without the Company's prior written consent, be engaged in any other business activity pursued for gain, profit, or other pecuniary advantage if such activity interferes in any material respect with Executive's duties and responsibilities hereunder. In Executive's capacity as the Vice President of Finance and Chief Accounting Officer of the Company, Executive shall do and perform all services, acts, or things necessary or advisable to manage and conduct the business of the Company, subject to the policies and procedures set by the Company, including, but not limited to managing designated financial employees of the Company; managing the Company's financial reporting, including, without limitation, compliance with the Sarbanes-Oxley Act; implementing and overseeing an enterprise risk assessment program; assisting with capital markets activities; serving as the principal accounting officer; and assisting the CFO in all projects and other areas of responsibility upon request. Except as otherwise agreed in writing by the Company, it shall not be a violation of this Agreement for Executive, and Executive shall be permitted, to (i) serve on any civic or charitable boards; (ii) deliver lectures, fulfill speaking engagements, or teach at educational institutions and other institutions; (iii) subject to any applicable Company policies, make personal investments in such form or manner as will neither require Executive's services in the operation or affairs of the companies or enterprises in which such investments are made nor subject Executive to any conflict of interest with respect to Executive's duties to the Company; and (iv) serve, with the written approval of the Board, as a director of one or more private or public companies, in each case so long as any such activities do not significantly interfere with the performance of Executive's responsibilities under this Agreement, create a conflict of interest, or create an adverse interest or position detrimental to Company.

(c) **Policies.** Executive shall faithfully adhere to, execute, and fulfill all lawful policies established by the Company as are communicated to Executive by the Company.

(d) **Place of Performance.** In connection with Executive's employment by the Company, Executive shall be based at the Company's principal executive offices in Boca Raton, Florida.

2. **Compensation.** For all services rendered by Executive, the Company shall compensate Executive as follows:

(a) **Base Salary.** Effective on the Effective Date, the base salary ("Base Salary") payable to Executive shall be two hundred and ninety thousand dollars (\$290,000) per year, payable on a regular basis in accordance with the Company's standard payroll procedures, but not less than monthly. The Board or a committee of the Board shall review Executive's performance on at least an annual basis and may make increases to such Base Salary if, in its sole discretion, any such increase is warranted. The Board may reduce the Base Salary without Executive's consent only if such reduction applies in the same or greater percentage to all other executives of the Company at the Vice President level and above.

(b) **Annual Short-Term Incentive.** Executive shall be entitled to participate in the Company's annual short-term incentive compensation program, as such program may exist from time to time, at a level commensurate with that being offered to other executives of the Company at the Vice President level and above. The percentage of Base Salary targeted as annual cash short-term incentive compensation for each calendar year during the Term shall be thirty percent (30%) of Base Salary (the "Targeted Annual Bonus Award"). Executive acknowledges that the amount of annual short-term incentive compensation, if any, to be awarded shall be at the sole, good faith discretion of the Board or a committee of the Board, may be less or more than the Targeted Annual Bonus Award, and will be based on a number of factors determined by the Board or a committee of the Board for each calendar year, including the Company's performance in connection with, among other factors, the clinical program, regulatory filings, commercialization and/or sales, and Executive's individual performance. Any annual short-term incentive compensation earned for any calendar year shall be paid in the immediately following calendar year, as soon as practicable. Except as set forth in Sections 3(b)(ii), 3(b)(iii), and 3(b)(iv), Executive must be employed by the Company on the date on which short-term incentive compensation is paid in order to receive such short-term incentive compensation.

(c) **Long-Term Incentive.** Executive shall be entitled to participate in the Company's long-term incentive compensation program, as such program may exist from time to time, at a level commensurate with that being offered to other executives of the Company at the Vice President level and above. Executive acknowledges that the amount of long-term incentive compensation, if any, to be awarded shall be at the sole, good faith discretion of the Board or a committee of the Board, and will be based on a number of factors determined by the Board or a committee of the Board for the applicable performance period, including the Company's performance in connection with, among other factors, the clinical program, regulatory filings, commercialization and/or sales, and Executive's individual performance. Any long-term incentive compensation earned for the applicable performance period shall be paid within the first 2 ½ months of the calendar year immediately following the calendar year in which the applicable performance period ends. Except as otherwise set forth herein, Executive must be employed by the Company on the date on which long-term incentive compensation is paid to receive such long-term incentive compensation.

(d) **Stock Options.** The Company previously granted to Executive, pursuant to the Company's 2009 Amended and Restated Stock Incentive Plan, as the same may be amended from time to time (the "2009 Plan"), and the Company's 2012 Amended and Restated Stock Incentive Plan, as the same may be amended from time to time (the "2012 Plan"), and the Company's 2019 Amended and Restated Stock Incentive Plan, as the same may be amended from time to time (the "2019 Plan" and, together with the 2009 Plan and the 2012 Plan, collectively, the "Plans"), stock options to purchase four hundred eighty-five thousand (485,000) shares of the Company's common stock (the "Previously Granted Stock Options"). The Previously Granted Stock Options are subject to the terms and conditions set forth in the applicable Plans and in the stock option agreement(s) previously executed by the Company and Executive. Additional options or other equity compensation may be granted at the Board's discretion.

(e) **Restricted Stock Units.** The Company previously granted to Executive, pursuant to the Plans restricted stock units ("RSUs") or performance share units ("PSUs") for one hundred fourteen thousand (114,000) shares of the Company's common stock (the "Previously Granted Shares"). The Previously Granted Shares are subject to the terms and conditions set forth in the applicable Plans and in the agreement(s) previously executed by the Company and Executive.

As soon as practicable following the Effective Date, the Company will grant to Executive two hundred thirty thousand (230,000) RSUs under the 2019 Plan as consideration for Executive entering into this Agreement, which RSUs will vest 50% in the first anniversary and the remaining 50% on the second anniversary of the Effective Date, at which time the RSUs will fully and completely vest, subject to Executive's continued employment with the Company and the terms and conditions in the 2019 Plan and an award agreement to be entered into between the Company and Executive.

(f) **Executive Perquisites, Benefits, and Other Compensation.** Executive shall be entitled to receive additional benefits and compensation from the Company in such form and to such extent as specified below:

(i) **Insurance Coverage.** During the Term, and as otherwise provided within the provisions of each of the respective plans, the Company shall make available to Executive all employee benefits to which other executives of the Company are entitled to receive, subject to the eligibility requirements and other provisions of such arrangements as applicable to executives of the Company generally. Such benefits shall include, but shall not be limited to, comprehensive health and major medical insurance, dental and life insurance, and short-term and long-term disability. During the Term, the Company will maintain customary director and officer insurance.

(ii) **Reimbursement for Expenses.** Reimbursement for business travel and other out-of-pocket expenses reasonably incurred by Executive in the performance of Executive's services under this Agreement, including, but not limited to, industry appropriate seminars and subscriptions and applicable licensing and continuing education expenses. All reimbursable expenses shall be appropriately documented in reasonable detail by Executive upon submission of any request for reimbursement and shall be in a format and manner consistent with the Company's expense reporting policy.

(iii) **Paid Time Off.** Executive shall be eligible to accrue PTO and utilize and carryover from year to year such PTO, consistent with the Company's policies and procedures in effect from time to time for officers of Executive's level.

(iv) **Other Executive Perquisites.** The Company shall provide Executive with other executive perquisites as may be made available to or deemed appropriate for Executive by the Board or a committee of the Board and participation in all other Company-wide employee benefits as are available to the Company's executives from time to time, including any plans, programs, or arrangements relating to retirement, deferred compensation, profit sharing, 401(k), and employee stock ownership.

(v) **Working Facilities.** During the Term, the Company shall furnish Executive with an office, staffing and administrative support and such other facilities and services suitable to Executive's position with the Company and adequate for the performance of Executive's duties hereunder, which will be reviewed and provided based on the Company's needs.

3. **Term of Employment.**

(a) **Termination Under Certain Circumstances.**

(i) **Death.** Executive's employment and the Term shall be automatically terminated, without notice, effective upon the date of Executive's death.

(ii) **Disability.** If, as a result of incapacity due to physical or mental illness or injury, Executive shall have been absent from Executive's full-time duties hereunder for six (6) consecutive months, then thirty (30) days after giving written notice to Executive (which notice may occur before or after the end of such six (6) month period, but which shall not be effective earlier than the last day of such six (6) month period), the Company may terminate Executive's employment and the Term, provided Executive is unable to resume Executive's full-time duties at the conclusion of such notice period.

(iii) **Termination by the Company for Good Cause.** The Company may terminate Executive's employment and the Term upon ten (10) days prior written notice to Executive for "Good Cause," which shall mean any one or more of the following: (A) Executive's material breach of this Agreement (continuing for thirty (30) days after receipt of written notice of need to cure, if, in the Company's determination, such breach is curable); (B) Executive's negligence in the performance or intentional nonperformance (continuing for thirty (30) days after receipt of written notice of need to cure, if, in the Company's determination, such breach is curable) of any of Executive's material duties and responsibilities; (C) Executive's willful dishonesty, fraud, or misconduct with respect to the business or affairs of the Company; (D) Executive's indictment for, charge of, conviction of, or guilty or *nolo contendere* plea to a felony crime involving dishonesty or moral turpitude whether or not relating to the Company; (E) a confirmed positive drug test result for an illegal drug; or (F) a material sanction is imposed on Executive by any applicable professional organization or professional governing body including, for the avoidance of doubt, an accounting regulatory board.

(iv) **Termination by the Company Without Good Cause.** The Company may terminate Executive's employment and the Term at any time without Good Cause.

(v) **Termination by Executive Without Good Reason.** Executive, at Executive's option and upon written notice to the Company, may terminate Executive's employment and the Term without Good Reason (as defined below) at any time, effective on the date of that notice.

(vi) **Termination by Executive With Good Reason.** At any time during the Term, Executive may terminate Executive's employment and the Term for Good Reason. For purposes of this Agreement, "Good Reason" shall mean (A) the assignment to Executive of material duties inconsistent with Executive's position as the Vice President of Finance and Chief Accounting Officer (including status, office, titles and reporting requirements), or any other action by the Company that results in a material diminution in such position, excluding for this purpose (i) any action not taken in bad faith and that is remedied by the Company promptly after receipt of a Notice of Termination for Good Reason (as defined below) thereof given by Executive and (ii) any change in status, office, titles and reporting requirements following a Change in Control (as defined in the 2019 Plan) of the Company in which the Company ceases to be a standalone public reporting company, provided that the material duties of Executive following such Change in Control are not inconsistent with those of Executive immediately prior to such Change in Control; (B) the Company requiring Executive to be based at any office or location other than in Palm Beach County, Florida, or within thirty-five (35) miles of such location, or such other location as mutually agreed to by the Company and Executive, except for travel reasonably required in the performance of Executive's responsibilities; or (C) any material failure by the Company to comply with any of the provisions of this Agreement, other than a failure not occurring in bad faith and that is remedied by the Company promptly after receipt of a Notice of Termination for Good Reason given thereof by Executive. A termination of employment by Executive for Good Reason shall be effected by Executive's giving the Board written notice ("Notice of Termination for Good Reason") of the termination, setting forth in reasonable detail the specific conduct of the Company that constitutes Good Reason and the specific provision(s) of this Agreement on which Executive relies, within ninety (90) days of the initial existence of one of the conditions constituting Good Reason. A termination of employment by Executive for Good Reason shall be effective on the thirty-first (31st) day following the date when the Notice of Termination for Good Reason is given to the Company; provided that such a termination of employment shall not become effective if the Company shall have substantially corrected the circumstance giving rise to the Notice of Termination for Good Reason within thirty (30) days after the Company's receipt of such Notice of Termination for Good Reason.

(b) **Result of Termination.**

(i) Except as otherwise set forth in this Agreement, in the event of the termination of Executive's employment and the Term pursuant to Sections 3(a)(iii) ("Termination by the Company for Good Cause") or 3(a)(v) ("Termination by Executive Without Good Reason") above, Executive shall receive no further compensation under this Agreement other than the payment of Base Salary as shall have accrued and remained unpaid as of the date of termination and accrued but unused PTO consistent with the Company's policies and procedures therefor in effect at the time of such termination for officers of Executive's level.

(ii) In the event of the termination of Executive's employment and the Term pursuant to Sections 3(a)(iv) ("Termination by the Company Without Good Cause") or 3(a)(vi) ("Termination by Executive With Good Reason") above, (a) Executive shall, for a period of twelve (12) months following the effective date of such termination, continue to receive Executive's then current annual Base Salary, as provided in Section 2(a), (b) Executive shall receive an amount equal to Executive's Targeted Annual Bonus Award for the calendar year in which the termination of Executive's employment occurs, which amount shall be paid to Executive in a single lump sum, which is unpaid on the effective date of Executive's termination, and which shall be paid to Executive when paid to other similarly situated executives of the Company in accordance with Section 2(b) hereof, (c) Executive shall receive, beginning on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement and for a period of twenty-four (24) months thereafter for a total of twenty-four (24) monthly payments, a monthly cash payment equal to the one (1) month cost of COBRA continuation of the health insurance benefits for Executive and Executive's immediate family as applicable, as the effective date of such termination, less, the one (1) month cost for the same health insurance benefits for Executive and Executive's immediate family as applicable that would have been incurred by Executive immediately prior to the effective date of such termination if Executive remained employed with the Company, (d) all unvested equity compensation of any kind (including, without limitation, stock options, restricted stock, or restricted stock units) held by Executive in Executive's capacity as an employee of the Company on the effective date of the termination shall vest as of the effective date of such termination, (e) Executive shall receive payment for accrued but unused PTO consistent with the Company's policies and procedures therefor in effect at the time of such termination for officers of Executive's level, and (f) Executive shall receive payment for any annual short-term incentive compensation earned pursuant to Section 2(b) hereof for the calendar year immediately preceding the calendar year in which the termination of Executive's employment occurs which is unpaid on the effective date of Executive's termination, which shall be paid to Executive when paid to other similarly situated executives of the Company in accordance with Section 2(b) hereof.

(iii) In the event of the termination of Executive's employment and the Term pursuant to Sections 3(a)(i) ("Death") or 3(a)(ii) ("Disability") above, (a) Executive shall receive an amount equal to Executive's Targeted Annual Bonus Award for the calendar year in which the termination of Executive's employment occurs, multiplied by a fraction, the numerator of which is the number of full months of such calendar year during which Executive was employed with the Company, and the denominator of which is twelve (12), which amount shall be paid to Executive in a single lump sum on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement, (b) all unvested equity compensation of any kind (including, without limitation, stock options, restricted stock, or restricted stock units) held by Executive in Executive's capacity as an employee of the Company on the effective date of the termination shall vest as of the effective date of such termination, (c) Executive shall receive payment for accrued but unused PTO consistent with the Company's policies and procedures therefor in effect at the time of such termination for officers of Executive's level, and (d) Executive shall receive payment for any annual short-term incentive compensation earned pursuant to Section 2(b) hereof for the calendar year immediately preceding the calendar year in which the termination of Executive's employment occurs which is unpaid on the effective date of Executive's termination, which shall be paid to Executive when paid to other similarly situated executives of the Company in accordance with Section 2(b) hereof.

(iv) In the event of the termination of Executive's employment and the Term pursuant to Sections 3(a)(iv) ("Termination by the Company Without Good Cause") or 3(a)(vi) ("Termination by Executive With Good Reason") during the twelve (12) month period immediately following a Change in Control, then in lieu of any benefits or amounts otherwise payable under Section 3(b)(ii) hereof, (a) Executive shall, for a period of eighteen (18) months following the effective date of such termination, continue to receive Executive's then current annual Base Salary, as provided in Section 2(a), (b) Executive shall receive an amount equal to one and one half times (1.5x) Executive's Targeted Annual Bonus Award for the calendar year in which the termination of Executive's employment occurs, which amount shall be paid to Executive in a single lump sum on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement, (c) Executive shall receive, beginning on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement and for a period of eighteen (18) months thereafter for a total of eighteen (18) monthly payments, a monthly cash payment equal to the one (1) month cost of COBRA continuation of the health insurance benefits for Executive and Executive's immediate family as applicable, as the effective date of such termination, less, the one (1) month cost for the same health insurance benefits for Executive and Executive's immediate family as applicable that would have been incurred by Executive immediately prior to the effective date of such termination if Executive remained employed with the Company, (d) all unvested equity compensation of any kind (including, without limitation, stock options, restricted stock, or restricted stock units) held by Executive in Executive's capacity as an employee of the Company on the effective date of the termination shall vest as of the effective date of such termination, (e) Executive shall receive payment for accrued but unused PTO consistent with the Company's policies and procedures therefor in effect at the time of such termination for officers of Executive's level, and (f) Executive shall receive payment for any annual short-term incentive compensation earned pursuant to Section 2(b) hereof for the calendar year immediately preceding the calendar year in which the termination of Executive's employment occurs which is unpaid on the effective date of Executive's termination, which shall be paid to Executive when paid to other similarly situated executives of the Company in accordance with Section 2(b) hereof.

(c) **Release.** Notwithstanding any other provision in this Agreement to the contrary, as a condition precedent to receiving any post-termination payments or benefits identified in Sections 3(b)(ii), 3(b)(iii) and 3(b)(iv) of this Agreement, Executive agrees to execute (and not revoke) a full and complete release of all claims against the Company and its affiliates, in the form attached hereto as Exhibit A (subject to such modifications as the Company reasonably may request) (the "Release"). If Executive fails to execute and deliver to the Company the Release within twenty-one (21) days following the date of termination, or revokes the Release, within seven (7) days following the date Executive executes and delivers the Release, or materially breaches any term of this Agreement or any other agreement between Executive and the Company while receiving such post-termination payments or benefits, Executive agrees that Executive shall not be entitled to receive any such post-termination payments. For purposes of this Agreement, the Release shall be deemed to have been executed by Executive if it is signed by Executive's legal representative in the case of legal incompetence or on behalf of Executive's estate in the case of Executive's death. Payment of any post-termination payments or benefits identified in Sections 3(b)(ii), 3(b)(iii) and 3(b)(iv) of this Agreement shall be delayed until the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement, and any payments that are so delayed shall be paid on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement.

(d) **Section 409A.** Any payments made by the Company pursuant to Sections 3(b)(ii), 3(b)(iii) and 3(b)(iv) of this Agreement (except for unpaid annual short-term incentive compensation earned in the calendar year immediately preceding the calendar year in which the termination of Executive's employment occurs, which shall be paid to Executive when paid to other similarly situated executives of the Company) shall be paid or commence on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of Executive's "separation from service" within the meaning of Section 409A ("Section 409A") of the Internal Revenue Code of 1986, as amended (the "Code"). For purposes of applying the provisions of Section 409A to this Agreement, each separately identified amount to which Executive is entitled under this Agreement shall be treated as a separate payment. In addition, to the extent permissible under Section 409A, any series of installment payments under this Agreement shall be treated as a right to a series of separate payments. Executive shall receive no additional compensation following any termination except as provided herein. In the event of any termination, Executive shall resign all positions with the Company and its subsidiaries. If Executive is a "specified employee" within the meaning of Section 409A, then payments identified in Section 3(b) of this Agreement shall not commence until six (6) months following "separation from service" within the meaning of Section 409A to the extent necessary to avoid the imposition of the additional twenty percent (20%) tax under Section 409A (and in the case of installment payments, the first payment shall include all installment payments required by this subsection that otherwise would have been made during such six-month period). If the payments described in Section 3(b) must be delayed for six (6) months pursuant to the preceding sentence, Executive shall not be entitled to additional compensation to compensate for such delay period. Upon the date such payment would otherwise commence, the Company shall reimburse Executive for such payments, to the extent that such payments otherwise would have been paid by the Company had such payments commenced upon Executive's "separation from service" within the meaning of Section 409A. Any remaining payments shall be provided by the Company in accordance with the schedule and procedures specified herein. This Agreement is intended to satisfy the requirements of Section 409A with respect to amounts subject thereto, and shall be interpreted and construed consistent with such intent. Any reimbursements by the Company to Executive of any eligible expenses under this Agreement that are not excludable from Executive's income for Federal income tax purposes (the "Taxable Reimbursements") shall be made by no later than the last day of the taxable year of Executive following the year in which the expense was incurred. The amount of any Taxable Reimbursements, and the value of any in-kind benefits to be provided to Executive, during any taxable year of Executive shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year of Executive. The right to Taxable Reimbursement, or in-kind benefits, shall not be subject to liquidation or exchange for another benefit. Notwithstanding the foregoing, the Company does not make any representation to Executive that the payments or benefits provided under this Agreement are exempt from, or satisfy, the requirements of Section 409A, and the Company shall have no liability or other obligation to indemnify or hold harmless Executive or any beneficiary for any tax, additional tax, interest or penalties that Executive or any beneficiary may incur in the event that any provision of this Agreement, or any amendment or modification thereof, or any other action taken with respect thereto, is deemed to violate any of the requirements of Section 409A.

(e) **Section 280G.**

(i) **Certain Reductions in Agreement Payments.** Anything in this Agreement to the contrary notwithstanding, in the event a nationally recognized independent accounting firm designated by the Company and reasonably acceptable to Executive (the "Accounting Firm") shall determine that receipt of all payments or distributions by the Company and its affiliates in the nature of compensation to or for Executive's benefit, whether paid or payable pursuant to this Agreement or otherwise (a "Payment"), would subject Executive to the excise tax under Section 4999 of the Code, the Accounting Firm shall determine as required below in this Section 3(e) whether to reduce any of the Payments paid or payable pursuant to this Agreement (the "Agreement Payments") to the Reduced Amount (as defined below). The Agreement Payments shall be reduced to the Reduced Amount only if the Accounting Firm determines that Executive would have a greater Net After-Tax Receipt (as defined below) of aggregate Payments if Executive's Agreement Payments were so reduced. If the Accounting Firm determines that Executive would not have a greater Net After-Tax Receipt of aggregate Payments if Executive's Agreement Payments were so reduced, then Executive shall receive all Agreement Payments to which Executive is entitled.

(ii) Accounting Firm Determinations. If the Accounting Firm determines that aggregate Agreement Payments should be reduced to the Reduced Amount, then the Company shall promptly give Executive notice to that effect and a copy of the detailed calculation thereof. All determinations made by the Accounting Firm under this Section 3(e) shall be binding upon the Company and Executive and shall be made as soon as reasonably practicable and in no event later than twenty (20) days following the effective date of the termination of Executive's employment with the Company. For purposes of reducing the Agreement Payments to the Reduced Amount, only amounts payable under this Agreement (and no other Payments) shall be reduced. The reduction of the amounts payable hereunder, if applicable, shall be made (A) only from Payments that the Accounting Firm determines reasonably may be characterized as "parachute payments" under Section 280G of the Code; (B) only from Payments that are required to be made in cash, (C) only with respect to any amounts that are not payable pursuant to a "nonqualified deferred compensation plan" subject to Section 409A of the Code, until those payments have been reduced to zero, and (D) in reverse chronological order, to the extent that any Payments subject to reduction are made over time (e.g., in installments). In no event, however, shall any Payments be reduced if and to the extent such reduction would cause a violation of Section 409A of the Code or other applicable law. All fees and expenses of the Accounting Firm shall be borne solely by the Company.

(iii) Overpayments; Underpayments. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that amounts will have been paid or distributed by the Company to or for the benefit of Executive pursuant to this Agreement which should not have been so paid or distributed (an "Overpayment") or that additional amounts which will have not been paid or distributed by the Company to or for the benefit of Executive pursuant to this Agreement which should have been so paid or distributed (an "Underpayment"), in each case consistent with the calculation of the Reduced Amount hereunder. In the event that the Accounting Firm, based upon the assertion of a deficiency by the Internal Revenue Service against either the Company or Executive which the Accounting Firm believes has a high probability of success determines that an Overpayment has been made, Executive shall pay any such Overpayment to the Company together with interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code; provided, however, that no amount shall be payable by Executive to the Company if and to the extent such payment would not either reduce the amount on which Executive is subject to tax under Section 1 and Section 4999 of the Code or generate a refund of such taxes. In the event that the Accounting Firm, based upon controlling precedent or other substantial authority, determines that an Underpayment has occurred, any such Underpayment shall be paid promptly (and in no event later than 60 days following the date on which the Underpayment is determined) by the Company to or for the benefit of Executive together with interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code.

(iv) Definitions. The following terms shall have the following meanings for purposes of this Section 3:

(A) "Net After-Tax Receipt" shall mean the present value (as determined in accordance with Sections 280G(b)(2)(A)(ii) and 280G(d)(4) of the Code) of a Payment net of all taxes imposed on Executive with respect thereto under Sections 1 and 4999 of the Code and under applicable state and local laws, determined by applying the highest marginal rate under Section 1 of the Code and under state and local laws which applied to Executive's taxable income for the immediately preceding taxable year, or such other rate(s) as the Accounting Firm determined to be likely to apply to Executive in the relevant taxable year(s).

(B) “Reduced Amount” shall mean the greatest amount of Agreement Payments that can be paid that would not result in the imposition of the excise tax under Section 4999 of the Code if the Accounting Firm determines to reduce Agreement Payments pursuant to Section 3(e)(i).

4. **Competition and Non-Solicitation.**

(a) **Interests to be Protected.** The parties acknowledge that Executive will perform essential services for the Company, its employees, and its stockholders during the term of Executive’s employment with the Company. Executive will be exposed to, have access to, and work with, a considerable amount of confidential information. The parties also expressly recognize and acknowledge that the personnel of the Company have been trained by, and are valuable to, the Company and that the Company will incur substantial recruiting and training expenses if the Company must hire new personnel or retrain existing personnel to fill vacancies. The parties expressly recognize that it could seriously impair the goodwill and diminish the value of the Company’s business should Executive compete with the Company in any manner whatsoever. The parties acknowledge that this covenant has an extended duration; however, they agree that this covenant is reasonable and it is necessary for the protection of the Company, its stockholders, and employees. For these and other reasons, and the fact that there are many other employment opportunities available to Executive if Executive’s employment is terminated, the parties are in full and complete agreement that the following restrictive covenants are fair and reasonable and are entered into freely, voluntarily, and knowingly. Furthermore, each party was given the opportunity to consult with independent legal counsel before entering into this Agreement.

(b) **Non-Competition.** During the term of Executive’s employment with the Company and for eighteen (18) months after the termination of Executive’s employment with the Company, which may be extended an additional twelve (12) months in the sole and absolute discretion of the Company for a total of thirty (30) months after termination of Executive’s employment with the Company, regardless of the reason therefor, Executive shall not (whether directly or indirectly, as owner, principal, agent, stockholder, director, officer, manager, employee, partner, participant, or in any other capacity) engage or become substantially and directly financially interested in any Competitive Business Activities conducted within the Restricted Territory (as defined below). In the event of the termination of Executive’s employment and the Term pursuant to Sections 3(a)(iv) (“Termination by the Company Without Good Cause”) or 3(a)(vi) (“Termination by Executive With Good Reason”), if the Company exercises its right to extend this non-competition clause by the additional twelve (12) months, then Executive will, (a) for a period of twelve (12) additional months, continue to receive Executive’s then current annual Base Salary, as provided in Section 2(a), and (b) Executive will receive for a period of an additional six (6), a monthly cash payment equal to the one (1) month cost of COBRA continuation of the health insurance benefits for Executive and Executive’s immediate family as applicable. As used herein, the term “Competitive Business Activities” shall mean business activities that are competitive with the business of the Company, including but not limited to, business activities in the pharmaceutical industry related to products that compete with the Company’s products, and the term “Restricted Territory” shall mean any state or other geographical area in which the Company has demonstrated an intent to develop, commercialize, and/or distribute products during Executive’s employment with the Company. Executive hereby agrees that, as of the date hereof, during Executive’s employment with the Company, the Company has demonstrated an intent to develop, commercialize, and/or distribute products throughout the United States of America, Canada, Mexico, Brazil, Argentina, Europe, Australia, South Africa, Russia, Israel, Japan, and South Korea.

(c) **Non-Solicitation of Employees.** During the term of Executive's employment and for a period of twenty-four (24) months after the termination of Executive's employment with the Company, regardless of the reason therefor, Executive shall not directly or indirectly, for the Company, or on behalf of or in conjunction with any other person, company, partnership, corporation, or governmental or other entity, solicit for employment, seek to hire, or hire any person who is employed by the Company, is a consultant of the Company, or is an independent contractor of the Company, within twenty-four (24) months of the termination of Executive's employment, and, as related solely to consultants, for the purpose of having any such consultant engage in services that are the same as, similar to, or related to the services that such consultant provided for the Company and that are competitive with the services provided by the consultant for the Company.

(d) **Non-Solicitation of Customers.** During the term of Executive's employment and for a period of twenty-four (24) months after the termination of Executive's employment with the Company, regardless of the reason therefor, Executive shall not directly or indirectly, for the Company, or on behalf of, or in conjunction with, any other person, company, partnership, corporation, or governmental entity, call on, solicit, or engage in business with, any of the actual or targeted prospective customers or clients of the Company on behalf of any person or entity in connection with any Competitive Business, nor shall Executive make known the names and addresses of such actual or targeted prospective customers or clients, or any information relating in any manner to the trade or business relationships of the Company with such customers or clients, other than in connection with the performance of Executive's duties under this Agreement, and/or persuade or encourage or attempt to persuade or encourage any persons or entities with whom the Company does business or has some business relationship to cease doing business or to terminate its business relationship with the Company or to engage in any Competitive Business Activities on its own or with any competitor of the Company. As used herein, the term "Competitive Business" shall mean business that is directly competitive with the business of the Company, including but not limited to, business in the pharmaceutical industry related to products that directly compete with the Company's products.

(e) **Employee Assignment, Invention and Confidentiality Agreement.** Executive hereby reaffirms, acknowledges, and agrees that Executive is subject to the terms and conditions set forth in that certain Employee Assignment, Invention, and Confidentiality Agreement (the "EAICA") previously entered into by and between the Company and Executive and that this Agreement does not modify or amend the EAICA.

(f) **Equitable Relief.** In the event a violation of any of the restrictions contained in this Section 4 occurs, the Company shall be entitled to preliminary and permanent injunctive relief (without being required to post bond), reasonable attorneys' fees, and damages and an equitable accounting of all earnings, profits, and other benefits arising from such violation, which right shall be cumulative and in addition to any other rights or remedies to which the Company may be entitled. In the event of a violation of any provision of Section 4(b), Section 4(c), or Section 4(d), the period for which those provisions would remain in effect shall be extended for a period of time equal to that period beginning when such violation commenced and ending when the activities constituting such violation shall have been finally terminated in good faith.

(g) **Restrictions Separable.** If the scope of any provision of this Agreement (whether in this Section 4 or otherwise) is found by a court to be too broad to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law. The parties agree that the scope of any provision of this Agreement may be modified by a judge in any proceeding to enforce this Agreement, so that such provision can be enforced to the maximum extent permitted by law. Each and every restriction set forth in this Section 4 is independent and severable from the others, and no such restriction shall be rendered unenforceable by virtue of the fact that, for any reason, any other or others of them may be unenforceable in whole or in part.

5. **Return of Company Property.** At any time as requested by the Company, or upon the termination of Executive's employment with the Company for any reason, Executive shall deliver promptly to the Company all files, lists, books, records, manuals, memoranda, drawings, and specifications; all other written or printed materials and computers, cell phones, and other equipment that are the property of the Company (and any copies of them); and all other materials that may contain confidential information relating to the business of the Company, which Executive may then have in Executive's possession or control, whether prepared by Executive or not.

6. **Cooperation.** Following the Term, Executive shall give assistance and cooperation willingly, upon reasonable advance notice with due consideration for Executive's other business or personal commitments, in any matter relating to Executive's position with the Company, or Executive's expertise or experience as the Company may reasonably request, including Executive's attendance and truthful testimony where deemed appropriate by the Company, with respect to any investigation or the Company's defense or prosecution of any existing or future claims or litigations or other proceedings relating to matters in which Executive was involved or potentially had knowledge by virtue of Executive's employment with the Company. The Company agrees that (a) it shall promptly reimburse Executive for Executive's reasonable and documented expenses in connection with rendering assistance and/or cooperation under this Section 6 upon Executive's presentation of documentation for such expenses and (b) Executive shall be reasonably compensated for any continued material services as required under this Section 6.

7. **No Prior Agreements.** Executive hereby represents and warrants to the Company that the execution of this Agreement by Executive and Executive's employment by the Company and the performance of Executive's duties hereunder will not violate or be a breach of any agreement with a former employer, client, or any other person or entity. Further, Executive agrees to indemnify the Company for any claim, including, but not limited to, attorneys' fees and expenses of investigation, by any such third party that such third party may now have or may hereafter come to have against the Company based upon or arising out of any non-competition, invention, or secrecy agreement between Executive and such third party that was in existence as of the date of this Agreement.

8. **Miscellaneous.**

(a) **Notice.** All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made, and received (i) if personally delivered, on the date of delivery, (ii) if by e-mail transmission, upon receipt, (iii) if mailed United States mail, registered or certified, return receipt requested, postage prepaid, and addressed as provided below, upon receipt or refusal of delivery, or (iv) if by a courier delivery service providing overnight or “next-day” delivery, upon receipt or refusal of delivery, in each case addressed as follows:

To the Company: TherapeuticsMD, Inc.
 951 Yamato Road, Suite 220
 Boca Raton, Florida 33431
 Attention: Chief Executive Officer
 Phone: (561) 961-1900

With a copy, which shall not constitute notice, to:

 TherapeuticsMD, Inc.
 951 Yamato Road Suite 220
 Boca Raton, Florida 33431
 Attention: General Counsel
 Phone: (561) 961-1900

To Executive: Michael Donegan

Either party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 8 for the giving of notice.

(b) **Indulgences; Waivers.** Neither any failure nor any delay on the part of either party to exercise any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise of the same or of any other right, remedy, power, or privilege, nor shall any waiver of any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be binding unless executed in writing by the party making the waiver.

(c) **Controlling Law.** This Agreement and all questions relating to its validity, interpretation, performance and enforcement, shall be governed by and construed in accordance with the laws of the State of Florida, notwithstanding any Florida or other conflict-of-interest provisions to the contrary. Venue for any action arising out of this Agreement or the employment relationship shall be brought only in courts of competent jurisdiction in or for Palm Beach County, Florida and each party hereby irrevocably waives, to the fullest extent permitted by law, any objection which they may now or hereafter have to the laying of venue in such courts and submits to the jurisdiction of such courts. THE PARTIES (BY THEIR ACCEPTANCE HEREOF) HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTES BASED UPON OR ARISING OUT OF THIS AGREEMENT.

(d) **Execution in Counterpart.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of the parties reflected hereon as the signatories.

(e) **Entire Agreement.** Except as herein contained, this Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, inducements, and conditions, express or implied, oral or written, which shall no longer have any force or effect, expressly including the Prior Agreement. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing.

(f) **Paragraph Headings.** The paragraph headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect its interpretation.

(g) **Number of Days.** In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays, and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday, or holiday, then the final day shall be deemed to be the next day that is not a Saturday, Sunday, or holiday.

(h) **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided that because the obligations of Executive hereunder involve the performance of personal services, such obligations shall not be delegated by Executive. For purposes of this Agreement, successors and assigns shall include, but not be limited to, any individual, corporation, trust, partnership, or other entity that acquires a majority of the stock or assets of the Company by sale, merger, consolidation, liquidation, or other form of transfer. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place.

(i) **Tax Withholding.** The Company may withhold from any benefits payable under this Agreement all federal, state, city, or other taxes as may be required pursuant to any law or governmental regulation or ruling.

(j) **Survival.** The respective rights and obligations of the parties hereunder shall survive any termination of Executive's employment hereunder, including without limitation, the Company's obligations under Section 3 and Executive's obligations under Section 4 above, and the expiration of the Term, to the extent necessary to the intended preservation of such rights and obligations.

(k) **Right to Consult with Counsel; No Drafting Party.** Executive acknowledges having read and considered all of the provisions of this Agreement carefully, and having had the opportunity to consult with counsel of Executive's own choosing, and, given this, Executive agrees that the obligations created hereby are not unreasonable. Executive acknowledges that Executive has had an opportunity to negotiate any and all of these provisions and no rule of construction shall be used that would interpret any provision in favor of or against a party on the basis of who drafted the Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THERAPEUTICSMD, INC.

By: /s/ Robert Finizio

Name: Robert Finizio

Title: Chief Executive Officer

EXECUTIVE:

/s/ Michael Donegan

Michael Donegan

[Signature Page to Employment Agreement]

EXHIBIT A
FORM OF RELEASE

This Separation Agreement (“Agreement”) is made between TherapeuticsMD, Inc. (“Company”) and _____ (“Employee”), intending to be legally bound, and in consideration of the mutual covenants contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Separation and Severance.** Employee’s final day of employment with Company was _____. Although the parties agree that Company does not owe Employee any further consideration, as severance, Company agrees to pay Employee as set forth in Employee’s Employment Agreement dated _____ (the “Employment Agreement”), provided Employee executes this Agreement, complies with its terms and the terms of Employee’s Employment Agreement[, and does not revoke this Agreement during the Revocation Period as defined in Section 8 below.]]¹ Employee acknowledges that no other compensation of any kind remains outstanding, that the consideration provided herein is more than Employee would otherwise be entitled to receive, that Employee shall not be entitled to any other payments or benefits from Company, and that no other amounts are due or owing or shall become due or owing relating to any obligation, agreement, or otherwise.

2. **Execution of Separation Agreement.** Should employee wish to accept this Agreement, it must be signed and returned to _____ by _____.

3. **EAICA.** Employee acknowledges and agrees that Employee’s obligations contained in the paragraphs 2, 3, 4, 6, 8, 9, 10 and 11 of the Employee Assignment, Invention, and Confidentiality Agreement (“EAICA”) that Employee signed on _____, a copy of which is attached as Exhibit A, remain in full force and effect. The terms of this Agreement are in addition to and do not supersede the surviving terms of the EAICA.

4. **Confidentiality of Agreement.** Employee understands and agrees that the existence of this Agreement and the terms and conditions thereof, shall be considered confidential, and shall not be disclosed by Employee to any third party or entity except with the prior written approval of Company, to Employee’s attorney, or upon the order of a court of competent jurisdiction. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement or any other agreement between the Company and Employee shall prevent Employee from sharing information and communicating in good faith, without prior notice to the Company, with any federal government agency having jurisdiction over the Company or its operations, and cooperating in any investigation by any such federal government agency; provided that Employee receives no monies for compensatory or other damages as a result of participating in any such communication or cooperation with the EEOC.

5. **Non-Disparagement.** At all time Employee will refrain from and will not directly or indirectly engage in any conversation that would tend to negatively impact Company or any of the Releasees as defined in Section 8 below.

¹ Employee will be entitled to a revocation period only if over the age of 40 at the date of termination.

6. Return of Company Property. Employee agrees to immediately return to Company any and all property of Company in Employee's possession, custody, or control. No severance shall be paid pursuant to this Agreement until all Company property is returned.

7. Confidential Information. Employee acknowledges that Employee has had access to Company confidential and proprietary information and agrees that all such Confidential Information is and shall remain the exclusive property of Company. Employee further agrees that Employee shall not publish, disclose, or otherwise make available to any third party any such Confidential Information. Employee acknowledges and agrees that Employee has continuing confidentiality obligations under the EAICA. Employee warrants that Employee has no materials containing Confidential Information, but if Employee does, Employee shall return immediately to Company any and all materials containing any Confidential Information in Employee's possession, custody, or control. The terms of this Separation Agreement comprise confidential information of the Company.

8. Release. That the undersigned, _____, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, and Employee's past, present and future agents, representatives, attorneys, affiliates, heirs, executors, assigns and successors, and all other persons connected therewith, and on behalf of all successors and assigns, hereby releases and forever discharges TherapeuticsMD, Inc., vitaMedMD, LLC, BocaGreenMD, Inc., vitaCare Prescription Services and all of their past, present and future agents, representatives, principals, attorneys, affiliates, owners, parent corporations, subsidiaries, officers, directors, employees, assigns and successors, and all other persons, firms or corporations connected or affiliated therewith (collectively "Releasees"), of and from any and all legal, equitable or other claims, demands, setoffs, defenses, contracts, accounts, suits, debts, agreements, actions, causes of action, sums of money, judgments, findings, controversies, disputes, or past, present and future duties, responsibilities, obligations, or suits at law and/or equity of whatsoever kind, from the beginning of the world to the date hereof, in addition, without limitation, any and all actions, causes of action, claims, counterclaims, third party claims, and any and all other federal, state, local and/or municipality statutes, laws and/or regulations and any ordinance and/or common law pertaining to employment or otherwise and any and all other claims which have been or which could have been asserted against any party in any forum.

By signing this Agreement, Employee knowingly and voluntarily fully releases and forever discharges Releasees of and from all claims, demands and liability of any kind arising under any statute, law or ordinance, including, without limitation, Title VII of the Civil Rights Act of 1964, the Fair Labor Standards Act, the National Labor Relations Act, the Americans with Disabilities Act, any state Human Rights Act, Fla. Stat. 448, or any facts or claims arising under the Age Discrimination in Employment Act ("ADEA"). This release is intended to cover all actions, causes of action, claims and demands for damages, loss or injury arising from the beginning of time until the date of this Agreement, whether presently known or unknown to Employee. However, Employee does not waive Employee's rights to claims which may arise after this Agreement becomes effective.

In addition, Employee is hereby advised to consult with an attorney prior to executing this Agreement. Employee agrees that Employee has been given a reasonable time in which to consider the Agreement and seek such consultation. Employee further warrants that Employee has consulted with knowledgeable persons concerning the effect of this Agreement and all rights which Employee might have under any and all state and federal laws relating to employment and employment discrimination and otherwise. Employee fully understands these rights and that by signing this Agreement Employee forfeits all rights to sue Releasees for matters relating to or arising out of employment, separation, or otherwise.

In accordance with provisions of the ADEA, as amended, 29 U.S.C. §601-634, Employee is hereby provided a period of twenty-one (21) days from the date Employee receives this Agreement to review the waiver of rights under the ADEA and sign this Agreement. Furthermore, Employee has seven (7) days after the date Employee signs the Agreement (“Revocation Period”) to revoke Employee’s consent. This Agreement shall not become effective or enforceable until the Revocation Period has expired. If Employee does not deliver a written revocation to _____ before the Revocation Period expires, this Agreement will become effective.

Notwithstanding anything in this Section 8 to the contrary, releases contained in this Agreement shall not apply to (i) any rights to receive any payments or benefits pursuant to Sections 3(b)(ii), 3(b)(iii) or 3(b)(iv) of the Employment Agreement, (ii) any rights or claims that may arise as a result of events occurring after the date this Agreement is executed, (iii) any indemnification rights Employee may have as a former officer or director of the Company or its subsidiaries or affiliated companies, (iv) any claims for benefits under any directors’ and officers’ liability policy maintained by the Company or its subsidiaries or affiliated companies in accordance with the terms of such policy, and (v) any rights as a holder of equity securities of the Company.

9. Opportunity to Seek Counsel. The parties represent that they have had an opportunity to retain legal counsel to represent them in connection with this matter, that they have been advised of the legal effect and consequences of this Agreement, that they have entered into this Agreement knowingly, freely and voluntarily of their own volition, and that they have not been coerced, forced, harassed, threatened or otherwise unduly pressured to enter into this Agreement.

10. Reporting of Known Issues. As a further condition to your receipt of the benefits described in this Agreement, you hereby represent and warrant that you have reported in writing to _____ any unethical conduct or violations of laws, regulations, Company policies and procedures by the Company, a Company employee, or a Company officer of which you are aware.

11. No Admissions. This Agreement is not and shall not in any way be construed as an admission by either party of any wrongful act or omission, or any liability due and owing, or any violation of any federal, state or local law or regulation.

12. Miscellaneous. This Agreement may not be amended or modified except in writing signed by Employee and an authorized representative with actual authority to bind Company, specifically stating that it is an amendment to this Agreement. This Agreement shall be governed by and construed in accordance with Sections 4(g) (Restrictions Separable), 8(a) (Notice), 8(b) (Indulgences; Waivers), 8(c) (Controlling Law), 8(d) (Execution in Counterpart), 8(f) (Paragraph Headings), and 8(k) (Right to Consult with Counsel; No Drafting Party) of the Employment Agreement. This Agreement and the Employment Agreement constitute the entire Agreement between the parties hereto with respect to the subject matter hereof; provided, however, that Employee's continuing obligations to the Company under the terms of the EAICA are incorporated herein and shall remain in full force and effect as set forth herein.

IN WITNESS THEREOF, the parties hereto acknowledge, understand and agree to this Agreement and intend to be bound by all of the clauses contained in this document.

EMPLOYEE

THERAPEUTICSMD, INC.

[Employee]

By: _____

Its: _____

Date: _____

Date: _____