
**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): December 17, 2015

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.)

6800 Broken Sound Parkway NW, Third Floor
Boca Raton, FL 33487

(Address of Principal Executive Office) (Zip Code)

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

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 (see General Instruction A.2. below):

- 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))
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Item 1.01. Entry into a Material Definitive Agreement.

On December 17, 2015, TherapeuticsMD, Inc., a Nevada corporation (the “Company”), entered into an employment agreement with Brian Bernick (the “Bernick Employment Agreement”), a director of the Company, pursuant to which Dr. Bernick will continue to serve as the Chief Clinical Officer of the Company.

The Bernick Employment Agreement has an initial term of one (1) year and will automatically extend for additional one (1) year periods on each anniversary of its effective date unless at least ninety (90) days prior to such anniversary, the Company or Dr. Bernick provides the other with notice that it or he does not wish to extend the term.

Pursuant to the Bernick Employment Agreement, Dr. Bernick will receive compensation for his services in the form of a base salary of \$425,000, an annual cash bonus targeted at 50% of Dr. Bernick’s base salary and a grant of options to purchase 325,000 shares of the Company’s common stock. In the event of termination of Dr. Bernick’s employment by the Company without good cause or termination by Dr. Bernick with good reason, subject to Dr. Bernick’s execution of a release of all claims against the Company and its affiliates, in form and substance reasonably acceptable to the Company, Dr. Bernick will receive severance payments from the Company in the form of: (i) his then current base salary for a period of twelve (12) months; (ii) all targeted bonus awards that would be due and payable during the twelve (12) month period following the effective date of such termination absent such termination of employment under the terms of the Company’s annual short-term incentive compensation program; (iii) a continuation of insurance benefits for the twelve (12) month period following the effective date of such termination; (iv) all unvested equity compensation granted after the effective date of the Bernick Employment Agreement and held by Dr. Bernick in his capacity as an employee of the Company on the effective date of the termination will vest as of the effective date of such termination; and (v) payment for accrued but unused paid time off.

The Bernick Employment Agreement also includes customary non-competition and non-solicitation provisions.

The foregoing description of the Bernick Employment Agreement does not purport to be complete and is qualified in its entirety by reference to the complete text of the Bernick Employment Agreement, a copy of which is attached to this Current Report on Form 8-K as Exhibit 10.1 and is incorporated by reference herein.

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

On December 17, 2015, the Company entered into employment agreements with Michael Donegan (the “Donegan Employment Agreement”) and Mitchel Krassan (the “Krassan Employment Agreement”, and together with the Donegan Employment Agreement, the “Officer Employment Agreements”), pursuant to which Mr. Donegan will continue to serve as the Vice President, Finance of the Company, and Mr. Krassan will continue to serve as the Chief Strategy and Performance Officer of the Company.

Each of the Officer Employment Agreements has an initial term of one (1) year and will automatically extend for additional one (1) year periods on each anniversary of its effective date unless at least ninety (90) days prior to such anniversary, the Company or the officer provides the other with notice that it or he does not wish to extend the term.

Pursuant to the Officer Employment Agreements, Mr. Donegan and Mr. Krassan will receive compensation for their services in the form of a base salary of \$290,000 and \$300,000, respectively, an annual cash bonus targeted at 25% and 50%, respectively, of such officer's base salary and a grant of options to purchase 100,000 and 150,000 shares, respectively, of the Company's common stock. In the event of termination of Mr. Donegan's or Mr. Krassan's employment by the Company without good cause or termination by Mr. Donegan or Mr. Krassan, respectively, with good reason, subject to the officer's execution of a release of all claims against the Company and its affiliates, in form and substance reasonably acceptable to the Company, the terminated officer will receive severance payments from the Company in the form of: (i) his then current base salary for a period of twelve (12) months; (ii) all targeted bonus awards that would be due and payable during the twelve (12) month period following the effective date of such termination absent such termination of employment under the terms of the Company's annual short-term incentive compensation program; (iii) a continuation of insurance benefits for the twelve (12) month period following the effective date of such termination; (iv) all unvested equity compensation granted after the effective date of the Officer Employment Agreements and held by the executive in his capacity as an employee of the Company on the effective date of the termination will vest as of the effective date of such termination; and (v) payment for accrued but unused paid time off.

The Officer Employment Agreements also include customary non-competition and non-solicitation provisions.

The foregoing descriptions of the Donegan Employment Agreement and the Krassan Employment Agreement do not purport to be complete and are qualified in their entirety by reference to the complete text of the Donegan Employment Agreement and the Krassan Employment Agreement, respectively, copies of which are attached to this Current Report on Form 8-K as Exhibits 10.2 and 10.3, respectively, and are incorporated by reference herein.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

The Nominating and Corporate Governance Committee (the "Committee") of the Company's Board of Directors (the "Board") reviews, from time to time, developments and improvements in prevailing corporate governance best practices among issuers comprising the Russell 3000 index and the Company's peers. Such review also takes into account the corporate governance policies, practices and procedures advocated by the Company's leading institutional investors and the voting policies recommended by the leading U.S. proxy advisory firms. In that context, the Committee recommended to the entire Board, and on December 17, 2015, the Board unanimously approved and adopted, the First Amendment (the "First Amendment") to the Bylaws of the Company (the "Bylaws") consistent with Committee's and the Board's view of best practices that are designed to protect the interests of all of the Company's stockholders. Certain changes, largely of a technical nature, also are intended to comport with provisions of the Nevada Revised Statutes that permit Nevada corporations to establish certain voting and notice procedures.

The First Amendment amends Article II, Section 8 of the Bylaws to create a process for the Board to establish a record date for determining those stockholders of the Company who are entitled to sign a written consent approving a stockholder action. The amendment provides that the record date set by the Board cannot be more than ten days after the date on which the resolution fixing the record date is adopted by the Board. The amendment also provides that if the Board fails to fix the record date within ten days after receipt of notice requesting it to do so, then the record date will be the first day on which a signed written consent is delivered to the Secretary or Assistant Secretary of the Company (if no prior action of the Board is required by law) or at the close of business on the day on which the Board adopts the resolution taking such prior action if so required.

The First Amendment adds Article II, Section 9 to the Bylaws to create an advance notice requirement for director nominations and certain other business proposals to be presented by stockholders at the Company's annual meetings of stockholders. The amendment requires that, subject to certain exceptions, a stockholder provide information regarding a business proposal or a director nomination to the Company no earlier than the 120th day and no later than the 90th day prior to the first anniversary of the preceding year's annual meeting of stockholders and update and supplement such information.

The First Amendment also adds Article II, Section 10 to the Bylaws to establish certain parliamentary procedures for the conduct of annual meetings of the Company's stockholders.

The Bylaws also provide that except in certain cases for directors elected by the holders of any series of preferred stock, a director may be removed from office with or without cause and only by the affirmative vote of two-thirds or more of the combined voting power of the then issued and outstanding shares of the Company's capital stock entitled to vote in the election of directors, voting together as a single class.

The foregoing description of the First Amendment does not purport to be complete and is qualified in its entirety by reference to the complete text of the First Amendment, a copy of which is attached to this Current Report on Form 8-K as Exhibit 3.1 and is incorporated by reference herein.

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits.*

Exhibit Number	Description
3.1	First Amendment to Bylaws of the Company
10.1	Employment Agreement between the Company and Brian Bernick dated December 17, 2015.
10.2	Employment Agreement between the Company and Michael Donegan dated December 17, 2015.
10.3	Employment Agreement between the Company and Mitchel Krassan dated December 17, 2015.

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.

Date: December 22, 2015

THERAPEUTICSMD, INC.

By: /s/ Daniel A. Cartwright

Name: Daniel A. Cartwright

Title: Chief Financial Officer

EXHIBIT INDEX

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FIRST AMENDMENT TO BYLAWS

TherapeuticsMD, Inc., a Nevada corporation, desires to amend its Bylaws.

Section 8 – Action Without a Meeting (Section 78.320)

Article II, Section 8 of the Bylaws shall be deleted in its entirety and replaced with the following:

Section 8 – Action Without a Meeting (Sections 78.320 and 78.350)

Unless otherwise restricted by the Articles of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of shareholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be (i) signed by the holders of record of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of shareholders at which all shares entitled to vote thereon were present and voted and (ii) delivered to the Corporation by delivery to the Secretary or Assistant Secretary of the Corporation having custody of the book in which minutes of proceedings of shareholders are recorded. The record date for determining shareholders of record entitled to express consent to corporate action in writing without a meeting of shareholders shall be as fixed by the Board of Directors or otherwise pursuant to this Section 8. Any person seeking to have the shareholders of the Corporation authorize, take or express consent to corporate action in writing without a meeting of shareholders shall, by written notice delivered to the Secretary of the Corporation, request that the Board of Directors fix a record date for such purpose. The Board of Directors may fix a record date for such purpose, which record date shall not precede the date on which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 10 days after the date on which the resolution fixing the record date is adopted by the Board of Directors. If the Board of Directors fails to fix a record date for such purpose within 10 days after the receipt of the aforesaid written notice to the Secretary of the Corporation, the record date for determining shareholders entitled to express consent to corporate action without a meeting of shareholders, when no prior action of the Board of Directors is required by law, shall be the first day on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Secretary or Assistant Secretary of the Corporation, or, if prior action by the Board of Directors is required by law, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 9 - Advance Notice by Shareholders of Business Proposals and of Director Nominations

Article II, Section 9 of the Bylaws shall be added as follows:

Section 9 - Advance Notice by Shareholders of Business Proposals and of Director Nominations

(a) Advance Notice of Business Proposals.

(1) At an annual meeting of the shareholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be brought: (A) pursuant to the Corporation's notice of meeting, given by or at the direction of the Board of Directors, as included in its definitive proxy materials (or any supplement thereto) with respect to such meeting, (B) by or at the direction of the Board of Directors or any duly authorized committee thereof, or (C) by any shareholder of the Corporation present in person who (1) is a shareholder of record (and with respect to any beneficial owner, if different, on whose behalf notice of proposed shareholder business is submitted, only if such beneficial owner was the beneficial owner of shares of the Corporation) at the time that the notice required by this Section 9(a) is delivered to the Secretary of the Corporation, on the record date for the determination of shareholders entitled to vote at the annual meeting and at the time of the annual meeting and (2) has timely complied in proper written form with the notice procedures set forth in this Section 9(a). In addition, for business to be properly brought before an annual meeting by a shareholder, such business must be a proper matter for shareholder action pursuant to these Bylaws and under Chapters 78 or 92A of the Nevada Revised Statutes ("NV Corporate Code"). Shareholders seeking to nominate persons for election to the Board of Directors must comply with Section 9(b), and this Section 9(a) shall not be applicable to shareholder nominations of persons for election to the Board of Directors except to the extent expressly provided in Section 9(b). For purposes of this Section 9(a), "present in person" means that the shareholder-proponent of the business to be brought before the annual meeting of the Corporation, or, if the shareholder-proponent is not an individual, a qualified representative of such shareholder-proponent, appears at and attends such annual meeting.

(2) To comply with clause (C) of Section 9(a)(1) above, a shareholder's notice with respect to any business (other than the nomination of persons for election as directors) that the shareholder proposes to bring before the annual meeting must be in writing and must set forth all information required under this Section 9(a), and must be timely received by the Secretary of the Corporation. With respect to an annual meeting of shareholders, to be timely, notice must be received by the Secretary of the Corporation not earlier than at the close of business on the 120th day and not later than the 90th day prior to the first anniversary of the preceding year's annual meeting of the Corporation; provided, however, that if the date of the Corporation's annual meeting (to which the shareholder's notice relates) is more than 30 days before or 60 days after such anniversary date, notice by the shareholder must be received by the Secretary of the Corporation not earlier than at the close of business on the 120th day prior to the annual meeting of the Corporation and not later than at the close of business on the later to occur of the 90th day prior to the annual meeting and the 10th day next following the date on which a public announcement of the date of the annual meeting is first made by the Corporation. For purposes of this Section 9(a) "public announcement" means disclosure (i) in a press release reported by a recognized national news service, (ii) in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to any of Section 13, 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), (iii) in a notice filed by the Corporation pursuant to the applicable rules of any stock exchange on which securities of the Corporation are listed, or (iv) in a notice published by the Corporation on its publicly available and unrestricted website.

(3) To be in proper written form, a shareholder's notice of proposed business (other than the nomination of persons for election as directors governed by Section 9(b)) must set forth as to each matter the shareholder proposes to bring before the meeting (i) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting (including, as applicable, the text of any binding or precatory resolution(s) proposed for consideration and, in the event that such business includes a proposal to amend the Bylaws of the Corporation, the complete text of such proposed amendment), (ii) the name and record address of the shareholder proposing such business, (iii) the class, series and number of shares of stock which are beneficially owned by the shareholder, including, without limitation, through any Derivative Securities Arrangement, and the dates upon which such shareholder acquired such shares, (iv) documentary evidence for any claim of beneficial ownership, (v) any material pecuniary or other interest of the shareholder in such business, including, without limitation, such information as would be required to satisfy the requirements of Rule 404 of Regulation S-K under the Exchange Act (or any successor rule) regardless of whether such business would be required to be disclosed under such Rule 404 and (vi) any other information relating to each such party that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the proposal in a contested election pursuant to Regulation 14A under the Exchange Act. The chairman of the meeting may refuse to acknowledge any shareholder who attempts to introduce business at a meeting without compliance with the foregoing procedure.

(b) *Advance Notice of Director Nominations.*

(1) Notwithstanding anything in these Bylaws to the contrary, only persons who are nominated in accordance with the procedures set forth in this Section 9(b) shall be eligible for election or re-election as directors at an annual meeting of shareholders. Nominations of persons for election or re-election to the Board of Directors of the Corporation shall be made at an annual meeting of shareholders only (A) by or at the direction of the Board of Directors or (B) by a shareholder of the Corporation present in person who (i) is entitled to vote for the election of directors at the annual meeting, and (ii) has timely complied in proper written form with the notice procedures set forth in this Section 9(b). The foregoing clause (B) shall be the exclusive means for a shareholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting of shareholders. For purposes of this Section 9(b), "present in person" shall mean that the shareholder nominating a person for election as a director at a meeting of the Corporation, or, if the nominating shareholder is not an individual, a qualified representative of such shareholder, appears at and attends such annual meeting.

(2) To comply with clause (B) of Section 9(b)(1), above, a shareholder's notice of nomination of persons for election as directors must set forth all the information required under this Section 9(b)(2), and under Sections 9(b)(3), and 9(b)(4) below and must be delivered to or mailed and received by the Secretary of the Corporation, either by personal delivery or by United States mail, postage prepaid, within the time periods set forth in this Section 9(b)(2). With respect to an annual meeting of shareholders, to be timely, notice must be received by the Secretary of the Corporation not earlier than the close of business on the 120th day and not later than the 90th day prior to the first anniversary of the preceding year's annual meeting of the Corporation; provided, however, if the date of the annual meeting is more than 30 days before or 60 days after such anniversary date, notice by the shareholder must be received by the Secretary of the Corporation not earlier than the 120th day prior to the annual meeting of the Corporation and not later than the close of business on the later to occur of the 90th day prior to the annual meeting and the 10th day next following the date on which public announcement of the date of the annual meeting is first made by the Corporation. For purposes of this Section 9(b), "public announcement" has the same meaning assigned to such term as set forth in the last sentence of Section 9(a)(2).

(3) To be in proper written form, a shareholder's notice of any nomination of persons for election as director must set forth (i) the name, date of birth, business and residence address of the person or persons to be nominated, (ii) the principal occupation or employment during the past five (5) years of such person or persons, (iii) the number of shares of each class and series of capital stock of the Corporation that are beneficially owned by such person or persons and the amount of any debt securities of the Corporation owned by such person or persons, (iv) whether such person or persons are or have been during the past five (5) years directors, officers or beneficial owners of five percent (5%) or more of any class or series of capital stock, partnership interests or other equity interest of any person and, if so, a description of that equity position or ownership, (v) any directorships or similar positions, and/or beneficial ownership of five percent (5%) or more of any class or series of capital stock, partnership interests or other equity interest held by such person or persons in any company with a class of securities registered pursuant to Section 12 of the Exchange Act, or subject to the requirements of Section 15(d) of the Exchange Act or any company registered as an investment company under the Investment Company Act of 1940, as amended, (vi) whether, in the last five (5) years, such person or persons are or have been convicted in a criminal proceeding or have been subject to a judgment, order, finding or decree of any federal, state or other government, regulatory or self-regulatory entity, concerning any violation of federal, state or other law, or any proceeding in bankruptcy, (vii) the consent of each such person to serve as a director, if elected and an acknowledgement and undertaking of each such person that if he or she is elected to serve as a director of the Corporation that such person understands that his or her fiduciary duties as a director are owed to the Corporation and all of its shareholders and not to any sub-category of shareholders or any persons or groups with special or other interests not shared by all of the shareholders generally, (viii) whether each such person or persons would be subject to a "bad actor disqualification" pursuant to Rule 506(d) under the Securities Act of 1933, as amended, (ix) whether the shareholder intends to solicit proxies from the Corporation's shareholders and to file with the SEC and deliver to shareholders a definitive proxy statement or to rely on any exemption from the public solicitation or proxy statement filing requirements of Regulation 14A under the Exchange Act; and (x) any other information relating to the nominee that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act. In addition, the shareholder's notice must set forth, (i) the name and business address and the record name and record address of the shareholder proposing such nomination, and (ii) the class, series and number of shares of stock which are beneficially owned by the shareholder (including, without limitation, any short interest in any security of the Corporation directly or indirectly beneficially owned by the shareholder or through any Derivative Security). The chairman of the meeting may refuse to acknowledge any shareholder who attempts to introduce business without compliance with the foregoing procedure.

(4) To be eligible to be a nominee for election as a director of the Corporation, the proposed nominee must deliver (in accordance with the time periods prescribed for delivery of notice under this [Section 9\(b\)](#)) to the Secretary of the Corporation at the principal office of the Corporation a written questionnaire with respect to the background, qualifications and such other criteria as shall be determined, from time to time, by the Board of Directors of such proposed nominee (which questionnaire shall be furnished to the nominee by the Secretary of the Corporation) and a written representation and agreement (in form provided by the Secretary of the Corporation upon written request) that such proposed nominee (i) shall promptly update the information in such questionnaire to the extent there has occurred any material change in any of the information previously disclosed by the nominee in the questionnaire, (ii) is not and will not directly or indirectly become a party to or have a material interest in (x) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a “Voting Commitment”) that has not been disclosed to the Corporation, (y) any Voting Commitment that could limit or interfere with such proposed nominee’s ability to comply, if elected as a director of the Corporation, with such proposed nominee’s fiduciary duties to the Corporation and all of its shareholders as a director of the Corporation under applicable law, or (z) any Derivative Securities Arrangement that has not theretofore been publicly disclosed or disclosed to the Corporation (in each case identifying the number of shares of the Corporation subject to such arrangement and the parties and counterparties thereto and the terms and conditions of such arrangement), (iii) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the Corporation and (iv) in such proposed nominee’s individual capacity and on behalf of the shareholder (or the beneficial owner, if different) on whose behalf the nomination is made, would be in compliance, if elected as a director of the Corporation, and will comply with all of the Corporation’s policies and guidelines applicable to directors of the Corporation, including, without limitation, policies and guidelines regarding corporate governance, conflicts of interest, code of conduct, confidentiality, director majority vote and stock ownership and trading (including, without limitation, restrictions on short sales, pledging and hedging of any securities of the Corporation).

(5) At the request of the Board of Directors, any person nominated by a shareholder for election or re-election as a director must furnish to the Secretary of the Corporation (a) that information required to be set forth in the shareholder’s notice of nomination of such person as a director as of a date subsequent to the date on which the notice of such person’s nomination was given and (b) such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an “independent director” or “audit committee financial expert” of the Corporation under applicable law, securities exchange rule or regulation, or any publicly-disclosed corporate governance guideline or committee charter of the Corporation and (c) that could be material to a reasonable shareholder’s understanding of the independence, or lack thereof, of such nominee; in the absence of the furnishing of such information if requested, such shareholder’s nomination shall not be considered in proper form pursuant to this [Section 9\(b\)](#).

(6) Without exception, no person shall be eligible for election or re-election as a director of the Corporation at a meeting of shareholders unless nominated in accordance with the provisions set forth in this Section 9(b).

(c) *General.*

(1) Only such business shall be conducted at a meeting of shareholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 9 and only such persons who are nominated in accordance with the procedures set forth in this Section 9 shall be eligible to be elected at an annual or special meeting of shareholders of the Corporation to serve as directors.

(2) A shareholder providing notice of any business proposed to be conducted at a meeting shall further update and supplement such notice, if necessary, from time to time, so that the information provided or required to be provided in such notice pursuant to this Section 9 shall be true and correct in all material respects, and such update and supplement shall be received by the Secretary of the Corporation not later than five (5) business days following the occurrence of any event, development or occurrence which would cause the information provided to be not true and correct in all material respects.

(3) If the information submitted pursuant to this Section 9 by any shareholder proposing business or the nomination of one or more candidates for election to the Board of Directors or consideration at a meeting shall be inaccurate to any material extent, such information may be deemed not to have been provided in accordance with this Section 9. Upon written request by the Secretary of the Corporation, the Board of Directors or any committee thereof, any shareholder proposing business for consideration at an annual meeting shall provide, within five (5) business days of delivery of such request (or such other period as may be specified in such request), written verification, satisfactory in the reasonable discretion of the Board, any committee thereof or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the shareholder pursuant to this Section 9. If a shareholder fails to provide such written verification within such period, the information as to which written verification was requested may be deemed not to have been provided in accordance with this Section 9.

(4) Notwithstanding the provisions of these Bylaws, a shareholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 9; provided, however, that any references in these Bylaws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the separate and additional requirements set forth in these Bylaws with respect to nominations or proposals as to any other business to be considered.

(5) Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (1) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 9 and (2) if any proposed nomination or business was not made or proposed in compliance with this Section 9, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted.

(6) Notwithstanding the foregoing provisions of this Section 9, unless otherwise required by the NV Corporate Code or other applicable law, if the shareholder (or a qualified representative of the shareholder) does not appear in person at the annual or special meeting of shareholders of the Corporation to present a nomination or proposed business, such nomination or proposed business shall be disregarded and such nomination or proposed business shall not be considered, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 9, to be considered a qualified representative of the shareholder, a person must be authorized by a writing executed by such shareholder or an electronic transmission delivered by such shareholder to act for such shareholder as proxy at the meeting of shareholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of shareholders. A qualified representative of such shareholder shall be, if such nominating shareholder is (x) a general or limited partnership, any general partner or person who functions as a general partner of the general or limited partnership or who controls the general or limited partnership, (y) a corporation or a limited liability company, any officer or person who functions as an officer of the corporation or limited liability company or any officer, director, general partner or person who functions as an officer, director or general partner of any entity ultimately in control of the corporation or limited liability company or (z) a trust, any trustee of such trust.

(7) For purposes of these Bylaws,

(a) “Derivative Securities Arrangement” means any direct or indirect:

(i) transaction or series of transactions, instrument, contract, agreement, arrangement, understanding, commitment or relationship with respect to any right, option, warrant, convertible or exchangeable security, swap agreement, stock appreciation right or right similar to any of the foregoing, whether or not presently exercisable, with an exercise, conversion or exchange privilege, or settlement payment or mechanism, related to any security of the Corporation, or similar instrument, including, without limitation, transactions, instruments, contracts, agreements, arrangements, understandings or relationships of the type contemplated Rule 16a-1(b) or (c)(6) of the General Rules and Regulations under the Exchange Act, which gives such person (or any of such person’s affiliates or associates) the economic equivalent of ownership of an amount of such securities due to the fact that the value of the derivative is explicitly determined in whole or in part by reference to the price or value of any security of the Corporation;

(i) transaction or series of transactions, agreement, arrangement, understanding, commitment, proxy or relationship that included or includes an opportunity for such person (or such person’s affiliates or associates), directly or indirectly, to profit or share in any profit derived from any increase or decrease in the value of any security of the Corporation, to receive or share in the receipt of dividends payable on any security of the Corporation separate or separable from the underlying shares, to mitigate any loss or manage any risk associated with any increase or decrease in the value of any security of the Corporation or to increase or decrease the number of securities of the Corporation which such person (or such person’s affiliates or associates) was, is or will be entitled to vote, in each case under clause (i) and this clause (ii) of this Section 7(a), including, without limitation, any put or call arrangement, short position, borrowed shares or swap or similar arrangement; and

(ii) transaction or series of transactions, plan, agreement, arrangement, understanding, commitment or relationship with respect to the borrowing or lending of securities of the Corporation or any interest therein,

in each case under clauses (i), (ii) and (iii) above, without regard to whether (A) such derivative conveys any voting rights in any securities of the Corporation to such person (or any of such person's affiliates or associates), (B) the derivative is required to be, or is capable of being, settled through delivery of any securities of the Corporation, or (C) such person (or any of such person's affiliates or associates) may have entered into other transactions that hedge the economic effect of such derivative; and

(b) (i) an "affiliate" of, or person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified, and (ii) an "associate" when used to indicate a relationship with any person, means (A) a corporation or other organization of which such person is an officer, partner, managing member or holds a position of analogous authority or capacity, or is, directly or indirectly, the beneficial owner of 10% or more of any class or series of equity securities, (B) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity, and (C) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the Corporation or any of its subsidiaries.

(8) Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at any meeting of shareholders except business brought before such meeting in accordance with the procedures set forth in this Section 9; provided, however, that, once business has been properly brought before such meeting in accordance with such procedures, nothing in this Section 9 shall be deemed to preclude discussion by any shareholder of any such business. If the chairman of such meeting determines that business was not properly brought before the meeting in accordance with the foregoing procedures, the chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be considered or transacted.

Section 10 – Conduct of Meetings

Article II, Section 10 of the Bylaws shall be added as follows:

Section 10 - Conduct of Meetings

(a) Officers of the Meeting. The Chairperson of the Board, or in the absence of the Chairperson, the Chief Executive Officer, or in his absence, the President, or in his absence, the Vice Chairperson, or if no such officer is present, a director designated by the Board of Directors, shall call all meetings of the shareholders to order and shall act as chairman of the meeting. The Secretary, or in the absence of the Secretary, an Assistant Secretary, shall act as secretary of the meeting of the shareholders, but in the absence of the Secretary and Assistant Secretary at a meeting of the shareholders the chairman of the meeting may appoint any person to act as secretary of the meeting.

(b) Order of Business. The chairman of the meeting shall have the right to determine the order of business at the meeting.

(c) Meeting Protocol. To the maximum extent permitted by applicable law, the Board of Directors shall be entitled to make such rules or regulations for the conduct of meetings of shareholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and take such action as, in the discretion of such chairman, are deemed necessary, appropriate or convenient for the proper conduct of the meeting. Such rules, regulations and procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) establishing an agenda for the meeting and the order for the consideration of the items of business on such agenda; (ii) restricting admission to the time set for the commencement of the meeting; (iii) limiting attendance at the meeting to shareholders of record of the Corporation entitled to vote at the meeting, their duly authorized proxies or other such persons as the chairman of the meeting may determine; (iv) limiting participation at the meeting on any matter to shareholders of record of the Corporation entitled to vote on such matter, their duly authorized proxies or other such persons as the chairman of the meeting may determine to recognize and, as a condition to recognizing any such participant, requiring such participant to provide the chairman of the meeting with evidence of his or her name and affiliation, whether he or she is a shareholder or a proxy for a shareholder, and the class and series and number of shares of each class and series of capital stock of the Corporation which are owned beneficially and/or of record by such shareholder; (v) limiting the time allotted to questions or comments by participants; (vi) taking such actions as are necessary or appropriate to maintain order, decorum, safety and security at the meeting; (viii) removing any shareholder who refuses to comply with meeting procedures, rules or guidelines as established by the chairman of the meeting; (viii) complying with any state and local laws and regulations concerning safety and security; and (ix) establishing the date and time for the opening and closing of the polls in respect of each matter as to which shareholders are entitled to cast a vote at a meeting. Unless otherwise determined by the chairman of the meeting, meetings of shareholders shall not be required to be held in accordance with the rules of parliamentary procedure.

(d) Inspectors and Judges. The Board of Directors in advance of any meeting may, but need not, appoint one or more inspectors of election or judges of the vote, as the case may be, to act at the meeting or any adjournment(s) thereof. If any inspector or inspectors, or judge or judges, are not appointed, the chairman of the meeting may, but need not, appoint one or more inspectors or judges. In case any person who may be appointed as an inspector or judge fails to appear or act, the vacancy may be filled by the Board of Directors in advance of the meeting, or at the meeting by the chairman of the meeting. The inspectors or judges, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots and consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate votes, ballots and consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all shareholders. On request of the chairman of the meeting, the inspector or inspectors or judge or judges, if any, shall make a report in writing of any challenge, question or matter determined by him or them, and execute a certificate of any fact found by him or them.

* * * * *

Except as expressly amended or modified by this First Amendment to Bylaws, all of the terms and conditions of the Bylaws shall remain unchanged and in full force and effect.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Company has caused this First Amendment to the Bylaws to be executed this 17th day of December, 2015.

TherapeuticsMD, Inc.

/s/ John C.K. Milligan, IV

By: John C.K. Milligan, IV

Its: Secretary

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this “Agreement”), by and between TherapeuticsMD, Inc., a Nevada corporation (the “Company”), and Brian Bernick, M.D. (“Executive”) is entered into and effective as of the 17th day of December, 2015 (the “Effective Date”).

WHEREAS, the Company desires to employ Executive, and Executive desires to accept such employment, 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 employ Executive, and Executive hereby agrees to serve the Company, in accordance with the terms and conditions set forth herein, for a period of one (1) year, commencing as of the Effective Date (such one (1) 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 first 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 7 that it or he does not wish to extend the Term.

(b) **Duties of Executive.** Executive shall serve as the Chief Clinical Officer of the Company, shall diligently perform all services as may be reasonably assigned to him by the Company’s Board of Directors (the “Board”), the Company’s Chief Executive Officer (the “CEO”), or their respective designees, and shall exercise such power and authority as may from time to time be delegated to him by the Board or the CEO. During his employment, Executive shall devote his time, energy, and ability 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, PTO and on appropriate business travel for the benefit of the Company or upon the prior approval of the CEO), 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 his capacity as the Chief Clinical 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 planning, implementing, managing and overseeing all clinical trial programs, including oversight and management of clinical research organizations and serving as primary contact and liaison with clinical sites and principal investigators; conducting and supervising medical affairs; developing and maintaining key opinion leader relationships; reviewing and authoring appropriate scientific presentations, publications, abstracts and posters in connection with the Company’s clinical trials and research and development initiatives or as may be requested by the Company; coordinate efforts with Company’s Chief Medical Officer (the “CMO”) and handle other related projects as requested from time to time by the Company. It shall not be a violation of this Agreement for Executive, and Executive shall be permitted, to (i) provide clinical obstetrical /gynecological services, (ii) serve on any one (1) civic or charitable board; (iii) deliver lectures, fulfill speaking engagements, or teach at public or not-for-profit educational institutions; (iv) 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 (v) serve, with the written approval of the Board, as a director of one or more public corporations, in each case so long as any such activities do not significantly interfere with the performance of Executive’s responsibilities under this Agreement.

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

(d) **Place of Performance.** In connection with his 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 twenty five thousand dollars (\$425,000) per year, payable on a regular basis in accordance with the Company's standard payroll procedures, but not less than monthly. After the completion of the second year of the Term, 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) **Cash Bonus.** 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. For calendar years beginning on or after January 1, 2016, the percentage of Base Salary targeted as annual, cash, short-term incentive compensation for each calendar year during the Term shall be fifty percent (50%) 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. Except as set forth in Section 3(b)(ii), 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) **Stock Options.** As soon as practicable following the Effective Date, the Company shall grant to Executive, pursuant to the Company's Amended and Restated 2012 Stock Incentive Plan, as the same may be amended from time to time (the "Plan"), stock options to purchase 325,000 shares of the Company's common stock. The stock options shall be subject to the terms and conditions set forth in the Plan and in the stock option agreement to be executed by the Company and Executive and will vest monthly in one-twelfth (1/12) increments for a period of twelve (12) months beginning on the one (1) month anniversary of the date of grant. Additional options or other equity compensation may be granted at the Board's discretion. All stock options or other equity compensation granted to Executive during the Term under the Plan shall vest upon a change in control as described and defined in Section 9 of the Plan.

(d) **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.

(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 a maximum of twenty (20) days of paid time off ("PTO") for each calendar year of the Term. Executive shall accrue this PTO at the rate of 6.154 hours per bi-weekly period. The maximum amount of accrued PTO during any year of the Term is one hundred sixty (160) hours. Upon reaching this maximum, Executive shall cease to accrue PTO until this limit is reduced below the one hundred sixty (160) hours threshold.

(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 his 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. Before such termination, the Company shall engage in an interactive process to determine if Executive can perform the essential functions of the job with accommodation.

(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, 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 illegal drug test result; or (F) a material sanction is imposed on Executive by any applicable professional organization or professional governing body (including, for the avoidance of doubt, a medical 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 his 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 his 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 Clinical 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 action taken following a change in control of the Company, including, but not limited to, a change in reporting requirements and/or responsibilities if the Company ceases to be a standalone public reporting company following 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)(i) (“Death”), 3(a)(ii) (“Disability”), 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.

(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, (i) Executive shall, for a period of twelve (12) months following the effective date of such termination, continue to receive his then current annual Base Salary, as provided in Section 2(a), (ii) Executive shall receive any and all Targeted Annual Bonus Awards that would be due and payable during the twelve (12) month period following the effective date of such termination absent such termination of employment, as provided in Section 2(b) under the terms of the Company’s annual short-term incentive program, which shall be paid to Executive when paid to other similarly situated executives of the Company, (iii) Executive shall receive a continuation of the insurance benefits for Executive and his immediate family as applicable, in effect at termination, for twelve (12) months after the effective date of such termination (or if continuation under the Company’s then current plans is not allowed, then provision at the Company’s expense for substantially similar welfare benefits from one or more third party providers) at the same premium cost to Executive which was paid by Executive at the time such benefits were provided during the Term or, if such premiums should change during such twelve (12) month period, at premium costs available and relevant to similarly situated executives of the Company, (iv) all unvested equity compensation granted after the date hereof and held by Executive in his 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 (v) Executive shall receive payment for accrued but unused PTO.

(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 Section 3(b)(ii) 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 form and substance reasonably acceptable to the Company (the “Release”). If Executive fails to execute and deliver the Release, or revokes the Release, within twenty-one (21) days following the date of termination, or 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 he 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 his legal representative in the case of legal incompetence or on behalf of Executive’s estate in the case of his death.

(d) **Section 409A.** Any payments made by the Company pursuant to Section 3(b)(ii) (except for Targeted Annual Bonus Awards, which shall be paid to Executive when paid to other similarly situated executives of the Company) shall be paid on a monthly basis beginning on the first payroll date following Executive’s “separation from service” within the meaning of Section 409A (“Section 409A”) of the Internal Revenue Code of 1986, as amended (the “Code”), and not in a lump sum and shall be treated as a series of separate payments for purposes of Section 409A. 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)(ii) 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)(ii) 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.

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 his 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, regardless of the reason therefor, Executive shall not (whether directly or indirectly, as owner, principal, agent, five percent (5%) or greater stockholder, director, officer, manager, employee, partner, participant, or in any other capacity) engage or become financially interested in any Competitive Business conducted within the Restricted Territory (as defined below). As used herein, the term "Competitive Business" shall mean any business that directly or indirectly is or may be competitive with the business of the Company, including, but not limited to, any business in the pharmaceutical industry, 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 and US, CA, Mexico, 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, governmental or other entity, solicit for employment, seek to hire, or hire any person who is employed by or was employed by the Company, or is or was a consultant or independent contractor of the Company, within twenty-four (24) months of the termination of Executive's employment for the purpose of having any such employee, consultant or independent contractor engage in services that are the same as or similar or related to the services that such employee, consultant or independent contractor provided 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 on its own or with any competitor of the Company.

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

(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 his possession or control, whether prepared by Executive or not.

6. 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.

7. 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.
6800 Broken Sound Parkway NW, 3rd Floor
Boca Raton, Florida 33487
Attention: Robert Finizio
Phone: (561) 961-1900
E-Mail: Rob.Finizio@TherapeuticsMD.com

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

TherapeuticsMD, Inc.
6800 Broken Sound Parkway NW, 3rd Floor
Boca Raton, Florida 33487
Attention: Chief Legal Office, Corporate and Compliance
Phone: (561) 961-1900
E-Mail: Andi.Drucker@TherapeuticsMD.com

To Executive:

Brian Bernick

Phone: _____
E-Mail: _____

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 7 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. 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.

[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/ Brian Bernick

Brian Bernick

[Signature Page to Employment Agreement]

EMPLOYMENT AGREEMENT

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 17th day of December, 2015 (the “Effective Date”).

WHEREAS, the Company desires to employ Executive, and Executive desires to accept such employment, 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 employ Executive, and Executive hereby agrees to serve the Company, in accordance with the terms and conditions set forth herein, for a period of one (1) year, commencing as of the Effective Date (such one (1) 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 first 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 7 that it or he does not wish to extend the Term.

(b) **Duties of Executive.** Executive shall serve as the Vice President, Finance of the Company, shall diligently perform all services as may be reasonably assigned to him by the Company’s Board of Directors (the “Board”), the Company’s Chief Executive Officer (the “CEO”), or the Company’s Chief Financial Officer (“CFO”), or their respective designees, and shall exercise such power and authority as may from time to time be delegated to him by the Board, the CEO or the CFO. During his employment, Executive shall devote his 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, PTO and on appropriate business travel for the benefit of the Company or upon the prior approval of the CEO or the CFO), 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 his capacity as the Vice President, Finance 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; and assisting the CFO in all projects and other areas of responsibility upon request. It shall not be a violation of this Agreement for Executive, and Executive shall be permitted, to (i) serve on any one (1) civic or charitable board; (ii) deliver lectures, fulfill speaking engagements, or teach at public or not-for-profit educational 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 public corporations, in each case so long as any such activities do not significantly interfere with the performance of Executive’s responsibilities under this Agreement.

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

(d) **Place of Performance.** In connection with his 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 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. After the completion of the second year of the Term, 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) **Cash Bonus.** 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. For the calendar year ending on December 31, 2015, Executive shall be eligible for a cash bonus under the Company's annual short-term incentive compensation program on terms previously approved by the Board. For calendar years beginning on or after January 1, 2016, the percentage of Base Salary targeted as annual, cash, short-term incentive compensation for each calendar year during the Term shall be twenty five percent (25%) 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. Except as set forth in Section 3(b)(ii), 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) **Stock Options.** As soon as practicable following the Effective Date, the Company shall grant to Executive, pursuant to the Company's Amended and Restated 2012 Stock Incentive Plan, as the same may be amended from time to time (the "Plan"), stock options to purchase 100,000 shares of the Company's common stock. The stock options shall be subject to the terms and conditions set forth in the Plan and in the stock option agreement to be executed by the Company and Executive and will vest monthly in one-twelfth (1/12) increments for a period of twelve (12) months beginning on the one (1) month anniversary of the date of grant. Additional options or other equity compensation may be granted at the Board's discretion. All stock options or other equity compensation granted to Executive during the Term under the Plan shall vest upon a change in control as described and defined in Section 9 of the Plan.

(d) **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.

(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 a maximum of twenty (20) days of paid time off ("PTO") each calendar year of the Term. Executive shall accrue this PTO at the rate of 6.154 hours per bi-weekly period. The maximum amount of accrued PTO during any year of the Term is one hundred sixty (160) hours. Upon reaching this maximum, Executive shall cease to accrue PTO until this limit is reduced below the one hundred sixty (160) hours threshold.

(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 his 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. Before such termination, the Company shall engage in an interactive process to determine if Executive can perform the essential functions of the job with accommodation.

(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, 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 illegal drug test result; 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 his 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 his 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, Finance (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 action taken following a change in control of the Company, including, but not limited to, a change in reporting requirements and/or responsibilities if the Company ceases to be a standalone public reporting company following 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)(i) (“Death”), 3(a)(ii) (“Disability”), 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.

(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, (i) Executive shall, for a period of twelve (12) months following the effective date of such termination, continue to receive his then current annual Base Salary, as provided in Section 2(a), (ii) Executive shall receive any and all Targeted Annual Bonus Awards that would be due and payable during the twelve (12) month period following the effective date of such termination absent such termination of employment, as provided in Section 2(b) under the terms of the Company’s annual short-term incentive program, which shall be paid to Executive when paid to other similarly situated executives of the Company, (iii) Executive shall receive a continuation of the insurance benefits for Executive and his immediate family as applicable, in effect at termination, for twelve (12) months after the effective date of such termination (or if continuation under the Company’s then current plans is not allowed, then provision at the Company’s expense for substantially similar welfare benefits from one or more third party providers) at the same premium cost to Executive which was paid by Executive at the time such benefits were provided during the Term or, if such premiums should change during such twelve (12) month period, at premium costs available and relevant to similarly situated executives of the Company, (iv) all unvested equity compensation granted after the date hereof and held by Executive in his 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 (v) Executive shall receive payment for accrued but unused PTO.

(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 Section 3(b)(ii) 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 form and substance reasonably acceptable to the Company (the “Release”). If Executive fails to execute and deliver the Release, or revokes the Release, within twenty-one (21) days following the date of termination, or 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 he 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 his legal representative in the case of legal incompetence or on behalf of Executive’s estate in the case of his death.

(d) **Section 409A.** Any payments made by the Company pursuant to Section 3(b)(ii) (except for Targeted Annual Bonus Awards, which shall be paid to Executive when paid to other similarly situated executives of the Company) shall be paid on a monthly basis beginning on the first payroll date following Executive’s “separation from service” within the meaning of Section 409A (“Section 409A”) of the Internal Revenue Code of 1986, as amended (the “Code”), and not in a lump sum and shall be treated as a series of separate payments for purposes of Section 409A. 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)(ii) 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)(ii) 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.

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 his 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, regardless of the reason therefor, Executive shall not (whether directly or indirectly, as owner, principal, agent, 5% or greater stockholder, director, officer, manager, employee, partner, participant, or in any other capacity) engage or become financially interested in any Competitive Business conducted within the Restricted Territory (as defined below). As used herein, the term "**Competitive Business**" shall mean any business that directly or indirectly is or may be competitive with the business of the Company, including, but not limited to, any business in the pharmaceutical industry, 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 and US, CA, Mexico, 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, governmental or other entity, solicit for employment, seek to hire, or hire any person who is employed by or was employed by the Company, or is or was a consultant or independent contractor of the Company, within twenty-four (24) months of the termination of Executive's employment for the purpose of having any such employee, consultant or independent contractor engage in services that are the same as or similar or related to the services that such employee, consultant or independent contractor provided 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 on its own or with any competitor of the Company.

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

(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 his possession or control, whether prepared by Executive or not.

6. 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.

7. 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.
6800 Broken Sound Parkway NW, 3rd Floor
Boca Raton, Florida 33487
Attention: Robert Finizio
Phone: (561) 961-1900
E-Mail: Rob.Finizio@TherapeuticsMD.com

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

TherapeuticsMD, Inc.
6800 Broken Sound Parkway NW, 3rd Floor
Boca Raton, Florida 33487
Attention: Chief Legal Office, Corporate and Compliance
Phone: (561) 961-1900
E-Mail: Andi.Drucker@TherapeuticsMD.com

To Executive:

Michael Donegan

Phone: _____

E-Mail: _____

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 7 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. 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.

[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]

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this “Agreement”), by and between TherapeuticsMD, Inc., a Nevada corporation (the “Company”), and Mitchell Krassan (“Executive”) is entered into and effective as of the 17th day of December, 2015 (the “Effective Date”).

WHEREAS, the Company desires to employ Executive, and Executive desires to accept such employment, 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 employ Executive, and Executive hereby agrees to serve the Company, in accordance with the terms and conditions set forth herein, for a period of one (1) year, commencing as of the Effective Date (such one (1) 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 7 that it or he does not wish to extend the Term.

(b) **Duties of Executive.** Executive shall serve as Chief Strategy and Performance Officer of the Company, shall diligently perform all services as may be reasonably assigned to him by the Company’s Board of Directors (the “Board”), the Company’s Chief Executive Officer (the “CEO”), or the Company’s President, the Company’s Chief Financial Officer (the “CFO”) or their respective designees, and shall exercise such power and authority as may from time to time be delegated to him by the Board, the CEO, the President, or the CFO. During his employment, Executive shall devote his time, energy, and ability 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, PTO and on appropriate business travel for the benefit of the Company or upon the prior approval of the CEO or the President), 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 his capacity as the Chief Strategy and Performance 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 developing and overseeing the operations and work flow of VitaCare Prescription Services, including supply chain, warehousing, and pick, pack and fill for all products; establishing, monitoring and maintaining relationships with pharmacy benefit managers and partner pharmacies; developing methodology and compliance for pharmacy related services; conducting and overseeing special business projects; overseeing the Company’s health and other benefit plans; managing the Company’s insurance coverage program. It shall not be a violation of this Section 1(b) for Executive, and Executive shall be permitted, to (i) perform the role of overseeing personal and familial investments pertaining to his responsibilities as manager/trustee of family limited partnerships, including serving on boards/steering committees of such limited partnerships, (ii) serve on any one (1) civic or charitable board; (iii) deliver lectures, fulfill speaking engagements, or teach at public or not-for-profit educational institutions; (iv) 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 (v) serve, with the written approval of the Board, as a director of one or more public corporations, in each case so long as any such activities do not significantly interfere with the performance of Executive’s responsibilities under this Agreement.

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

(d) **Place of Performance.** In connection with his 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 three hundred thousand dollars (\$300,000) per year, payable on a regular basis in accordance with the Company's standard payroll procedures, but not less than monthly. After the completion of the second year of the Term, 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) **Cash Bonus.** 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. For the calendar year ending on December 31, 2015, Executive shall be eligible for a cash bonus under the Company's annual short-term incentive compensation program on terms previously approved by the Board. For calendar years beginning on or after January 1, 2016, the percentage of Base Salary targeted as annual, cash, short-term incentive compensation for each calendar year during the Term shall be fifty percent (50%) 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. Except as set forth in Section 3(b)(ii), 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) **Stock Options.** As soon as practicable following the Effective Date, the Company shall grant to Executive, pursuant to the Company's Amended and Restated 2012 Stock Incentive Plan, as the same may be amended from time to time (the "Plan"), stock options to purchase 150,000 shares of the Company's common stock. The stock options shall be subject to the terms and conditions set forth in the Plan and in the stock option agreement to be executed by the Company and Executive and will vest monthly in one-twelfth (1/12) increments for a period of twelve (12) months beginning on the one (1) month anniversary of the date of grant. Additional options or other equity compensation may be granted at the Board's discretion. All stock options or other equity compensation granted to Executive during the Term under the Plan shall vest upon a change in control as described and defined in Section 9 of the Plan.

(d) **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.

(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 a maximum of twenty (20) days of paid time off ("PTO") each calendar year of the Term. Executive shall accrue this PTO at the rate of 6.154 hours per bi-weekly period. The maximum amount of accrued PTO during any year of the Term is one hundred sixty (160) hours. Upon reaching this maximum, Executive shall cease to accrue PTO until this limit is reduced below the one hundred sixty (160) hours threshold.

(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 his 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. Before such termination, the Company shall engage in an interactive process to determine if Executive can perform the essential functions of the job with accommodation.

(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, 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 illegal drug test result; 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 his 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 his 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 Strategy and Performance 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 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 (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)(i) (“Death”), 3(a)(ii) (“Disability”), 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.

(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, (i) Executive shall, for a period of twelve (12) months following the effective date of such termination, continue to receive his then current annual Base Salary, as provided in Section 2(a), (ii) Executive shall receive any and all Targeted Annual Bonus Awards that would be due and payable during the twelve (12) month period following the effective date of such termination absent such termination of employment, as provided in Section 2(b) under the terms of the Company’s annual short-term incentive program, which shall be paid to Executive when paid to other similarly situated executives of the Company, (iii) Executive shall receive a continuation of the insurance benefits for Executive and his immediate family as applicable, in effect at termination, for twelve (12) months after the effective date of such termination (or if continuation under the Company’s then current plans is not allowed, then provision at the Company’s expense for substantially similar welfare benefits from one or more third party providers) at the same premium cost to Executive which was paid by Executive at the time such benefits were provided during the Term or, if such premiums should change during such twelve (12) month period, at premium costs available and relevant to similarly situated executives of the Company, (iv) all unvested equity compensation granted after the date hereof and held by Executive in his 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 (v) Executive shall receive payment for accrued but unused PTO.

(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 Section 3(b)(ii) 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 form and substance reasonably acceptable to the Company (the “Release”). If Executive fails to execute and deliver the Release, or revokes the Release, within twenty-one (21) days following the date of termination, or 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 he 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 his legal representative in the case of legal incompetence or on behalf of Executive’s estate in the case of his death.

(d) **Section 409A.** Any payments made by the Company pursuant to Section 3(b)(ii) (except for Targeted Annual Bonus Awards, which shall be paid to Executive when paid to other similarly situated executives of the Company) shall be paid on a monthly basis beginning on the first payroll date following Executive’s “separation from service” within the meaning of Section 409A (“Section 409A”) of the Internal Revenue Code of 1986, as amended (the “Code”), and not in a lump sum and shall be treated as a series of separate payments for purposes of Section 409A. 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)(ii) 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)(ii) 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.

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 his 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, regardless of the reason therefor, Executive shall not (whether directly or indirectly, as owner, principal, agent, 5% or greater stockholder, director, officer, manager, employee, partner, participant, or in any other capacity) engage or become financially interested in any Competitive Business conducted within the Restricted Territory (as defined below). As used herein, the term "**Competitive Business**" shall mean any business that directly or indirectly is or may be competitive with the business of the Company, including, but not limited to, any business in the pharmaceutical industry, 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 and US, CA, Mexico, 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, governmental or other entity, solicit for employment, seek to hire, or hire any person who is employed by or was employed by the Company, or is or was a consultant or independent contractor of the Company, within twenty-four (24) months of the termination of Executive's employment for the purpose of having any such employee, consultant or independent contractor engage in services that are the same as or similar or related to the services that such employee, consultant or independent contractor provided 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 on its own or with any competitor of the Company.

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

(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 his possession or control, whether prepared by Executive or not.

6. 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.

7. 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.
6800 Broken Sound Parkway NW, 3rd Floor
Boca Raton, Florida 33487
Attention: Robert Finizio
Phone: (561) 961-1900
E-Mail: Rob.Finizio@TherapeuticsMD.com

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

TherapeuticsMD, Inc.
6800 Broken Sound Parkway NW, 3rd Floor
Boca Raton, Florida 33487
Attention: Chief Legal Office, Corporate and Compliance
Phone: (561) 961-1900
E-Mail: Andi.Drucker@TherapeuticsMD.com

To Executive:

Phone: _____
E-Mail: _____

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 7 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. 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.

[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/ Mitchell Krassan

Mitchell Krassan

[Signature Page to Employment Agreement]
