

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

TherapeuticsMD, Inc.

(Exact name of registrant as specified in its charter)

Nevada

87-0233535

(State or other jurisdiction of
incorporation or organization)

(I.R.S. Employer Identification No.)

**951 Yamato Road, Suite 220
Boca Raton, Florida**

33431

(Address of Principal Executive Offices)

(Zip Code)

TherapeuticsMD, Inc. Inducement Grant Restricted Stock Unit Agreement

(Full title of the plan)

**Robert G. Finizio
Chief Executive Officer
TherapeuticsMD, Inc.
951 Yamato Road, Suite 220
Boca Raton, Florida 33431
(561) 961-1900**

(Name, address, telephone number, including area code, of agent for service)

Copies to:

**James C. D'Arecca
Chief Financial Officer
TherapeuticsMD, Inc.
951 Yamato Road, Suite 220
Boca Raton, Florida 33431
(561) 961-1900**

**Joshua M. Samek, Esq.
DLA Piper LLP (US)
200 South Biscayne Boulevard, Suite 2500
Miami, Florida
(305) 423-8500**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act:

Large accelerated filer
Non-accelerated filer
Emerging growth company

Accelerated filer
Smaller reporting company

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

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered ^{(1) (2)}	Proposed maximum offering price per share ⁽³⁾	Proposed maximum aggregate offering price ⁽³⁾	Amount of registration fee
Common Stock, \$0.001 par value per share	1,180,000	\$0.70	\$826,000	\$76.57

(1) The number of shares of common stock, \$0.001 par value per share (“Common Stock”), of TherapeuticsMD, Inc. (the “Registrant”) registered represents up to 660,000 shares of Common Stock issuable upon the vesting of 660,000 restricted stock units designated as “Time-Based Units” and up to 520,000 shares of Common Stock issuable upon the vesting of 260,000 restricted stock units designated as “Performance Units” issuable under the TherapeuticsMD, Inc. Inducement Grant Restricted Stock Unit Agreement, dated as of October 15, 2021, by and between the Registrant and Mr. Mark Glickman.

(2) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), this registration statement on Form S-8 also covers an indeterminate number of shares of Common Stock of the Registrant that may be offered or issued by reason of stock splits, stock dividends or similar transactions effected without the receipt of consideration which results in an increase in the number of outstanding shares of Common Stock of the Registrant.

(3) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c) and (h). The proposed maximum offering price per share, proposed maximum aggregate offering price and the amount of the registration fee are based on the average of the high and low prices of Registrant’s Common Stock as reported on The Nasdaq Stock Market LLC on October 11, 2021.

EXPLANATORY NOTE

On October 15, 2021, Mr. Mark Glickman was appointed Chief Business Officer of the Registrant. In connection with Mr. Glickman's appointment, the Registrant agreed to grant Mr. Glickman an award of 660,000 restricted stock units designated as "Time-Based Units" and 260,000 restricted stock units designated as "Performance Units". This Registration Statement on Form S-8 (this "Registration Statement") is being filed for the purpose of registering up to 660,000 shares of common stock, \$0.001 par value per share ("Common Stock") issuable upon the vesting of 660,000 Time-Based Units and up to 520,000 shares of Common Stock issuable upon the vesting of 260,000 Performance Units, which were granted to Mr. Glickman pursuant to that certain Inducement Grant Restricted Stock Unit Agreement, dated October 15, 2021, by and between the Registrant and Mr. Glickman (the "Inducement Award Agreement").

PART I

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

Item 1. Plan Information*

Item 2. Registrant Information and Employee Plan Annual Information*

* The documents containing the information specified in this Part I will be sent or given to the participant set forth in the Inducement Award Agreement as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the "Securities Act"). In accordance with the rules and regulations of the Commission and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents and the documents incorporated by reference in the Registration Statement pursuant to Item 3 of Part II of this Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant hereby incorporates by reference into the Registration Statement the following documents previously filed with the Commission:

- (1) The Registrant's Annual Report on Form 10-K for the year ended December 31, 2020, filed with the Commission on March 4, 2021;
- (2) The Registrant's Definitive Proxy Statement on Schedule 14A, filed with the Commission on April 14, 2021;
- (3) The Registrant's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2021 and June 30, 2021, filed with the Commission on May 6, 2021 and August 4, 2021, respectively;
- (4) The Registrant's Current Reports on Form 8-K filed with the Commission on January 13, 2021, February 16, 2021, April 12, 2021, May 28, 2021, August 9, 2021, September 7, 2021, September 17, 2021 and October 1, 2021 (provided that any portions of such reports that are deemed furnished and not filed pursuant to instructions to Form 8-K shall not be incorporated by reference into this Registration Statement); and
- (5) The description of the Registrant's Common Stock included under the heading "Description of Common Stock" in the prospectus forming a part of the Registration Statement on Form S-3 (File No. 333-207837), as filed with the SEC on November 5, 2015, which description has been incorporated by reference in Item 1 of the Registrant's Form 8-A (File No. 001-00100), as filed with the Commission on October 6, 2017, including any amendment or report filed with the Commission for the purpose of updating such description.

In addition, all documents that the Registrant files pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, subsequent to the effective date of this Registration Statement (except for any portions of the Registrant's Current Reports on Form 8-K furnished pursuant to Item 2.02 or Item 7.01 thereof and any corresponding exhibits thereto not filed with the Commission), but prior to the filing of a post-effective amendment to this Registration Statement indicating that all securities offered hereby have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing such documents.

For purposes of this Registration Statement, any document or statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such document or statement in such document. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

None.

Item 6. Indemnification of Directors and Officers.

The Registrant is a Nevada corporation and generally governed by the Nevada Private Corporations Code, Chapter 78 of the Nevada Revised Statutes (“NRS”).

Section 78.138 of the NRS provides that, unless the corporation’s articles of incorporation provide otherwise, a director or officer is not individually liable to the corporation or its stockholders or creditors for damages as a result of any action or omission to act as a director or officer unless the trier of fact determines that the presumption that the director or officer acted in good faith, on an informed basis and with a view to the interests of the corporation, is rebutted and it is proven that (i) the director’s or officer’s acts or omissions constituted a breach of his or her fiduciary duties, and (ii) such breach involved intentional misconduct, fraud, or a knowing violation of the law.

Section 78.7502 of the NRS permits a Nevada corporation to indemnify its directors and officers against expenses, judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with a threatened, pending, or completed action, suit, or proceeding, if the officer or director (i) is not liable pursuant to Section 78.138 of the NRS, or (ii) acted in good faith and in a manner the officer or director reasonably believed to be in or not opposed to the best interests of the corporation and, if a criminal action or proceeding, had no reasonable cause to believe the conduct of the officer or director was unlawful. Section 78.7502 of the NRS precludes indemnification by the corporation if the officer or director has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals, to be liable to the corporation or for amounts paid in settlement to the corporation, unless and only to the extent that the court determines that in view of all the circumstances, the person is fairly and reasonably entitled to indemnity for such expenses and Section 78.7502 requires a corporation to indemnify its officers and directors if they have been successful on the merits of the action or otherwise in defense of any claim, issue, or matter resulting from their service as a director or officer.

Section 78.751 of the NRS permits a Nevada corporation to indemnify its officers and directors against expenses incurred by them in defending a civil or criminal action, suit, or proceeding as they are incurred and in advance of final disposition thereof, upon determination by the stockholders, the disinterested board members, or by independent legal counsel. Section 78.751 of the NRS provides that the articles of incorporation, the bylaws or an agreement may require a corporation to advance expenses as incurred upon receipt of an undertaking by or on behalf of the officer or director to repay the amount if it is ultimately determined by a court of competent jurisdiction that such officer or director is not entitled to be indemnified by the corporation if so provided in the corporation’s articles of incorporation, bylaws, or other agreement. Section 78.751 of the NRS further permits the corporation to grant its directors and officers additional rights of indemnification under its articles of incorporation, bylaws, or other agreement.

Section 78.752 of the NRS provides that a Nevada corporation may purchase and maintain insurance or make other financial arrangements on behalf of any person who is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another company, partnership, joint venture, trust, or other enterprise, for any liability asserted against him and liability and expenses incurred by him in his capacity as a director, officer, employee, or agent, or arising out of his status as such, whether or not the corporation has the authority to indemnify him against such liability and expenses. The Registrant has obtained primary and excess insurance policies insuring its directors and officers and its subsidiaries against certain liabilities they may incur in their capacity as directors and officers. Under such policies, the insurer, on the Registrant’s behalf, may also pay amounts for which the Registrant has granted indemnification to the directors or officers.

The foregoing discussion of indemnification merely summarizes certain aspects of indemnification provisions and is limited by reference to the above discussed sections of the Nevada Private Corporations Code.

The Registrant’s amended and restated articles of incorporation, as amended, provide that the Registrant may indemnify to the full extent of its power to do so, all directors, officers, employees, and/or agents. Insofar as indemnification by the Registrant for liabilities arising under the Securities Act may be permitted to officers and directors of the Registrant pursuant to the foregoing provisions or otherwise, the Registrant is aware that in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8 Exhibits.

Reference is made to the attached Exhibit Index, which is incorporated by reference herein.

Item 9. Undertakings

(a) The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement;
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
 - (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

EXHIBIT INDEX

EXHIBIT NUMBER	DESCRIPTION
4.1	<u>Composite Amended and Restated Articles of Incorporation of the Registrant, as amended (incorporated by reference to Exhibit 3.1 of the Registrant's Quarterly Report on Form 10-Q for quarter ended June 30, 2020, filed with the Commission on August 7, 2020).</u>
4.2	<u>Bylaws of the Registrant (incorporated by reference to Exhibit C of the Registrant's Definitive 14C Information Statement, filed with the Commission on June 29, 2010).</u>
4.3	<u>First Amendment to Bylaws of the Registrant (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K, filed with the Commission on December 22, 2015).</u>
4.4	<u>Form of Certificate of Common Stock of the Registrant (incorporated by reference to Exhibit 4.2 of the Registrant's Registration Statement on Form S-3, filed with the Commission on January 25, 2013 (SEC File No. 333-186189)).</u>
5.1	<u>Opinion of Greenberg Traurig, LLP.</u>
10.1	<u>Executive Employment Agreement, dated October 15, 2021, by and between TherapeuticsMD, Inc. and Mark Glickman.</u>
10.2*	<u>TherapeuticsMD, Inc. Inducement Grant Restricted Stock Unit Agreement, dated October 15, 2021, by and between TherapeuticsMD, Inc. and Mark Glickman.</u>
23.1	<u>Consent of Grant Thornton LLP, Independent Registered Public Accounting Firm.</u>
23.2	<u>Consent of Greenberg Traurig, LLP (contained in Exhibit 5.1).</u>
24.1	<u>Power of Attorney (included on signature page).</u>

* Portions of this exhibit have been redacted in accordance with Regulation S-K Item 601(b)(10). The omitted information is not material and would likely cause competitive harm to the Registrant if publicly disclosed.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Boca Raton, State of Florida, on October 15, 2021.

THERAPEUTICSMD, INC.

By: /s/ Robert G. Finizio
Name: Robert G. Finizio
Title: Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Robert G. Finizio and James C. D'Arecca, and each one of them acting alone, as his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place, and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them acting alone, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Name</u>	<u>Position</u>	<u>Date</u>
<u>/s/ Robert G. Finizio</u> Robert G. Finizio	Chief Executive Officer, Director (Principal Executive Officer)	October 15, 2021
<u>/s/ James C. D'Arecca</u> James C. D'Arecca	Chief Financial Officer (Principal Financial Officer)	October 15, 2021
<u>/s/ Michael Donegan</u> Michael Donegan	Chief Accounting Officer (Principal Accounting Officer)	October 15, 2021
<u>/s/ Tommy G. Thompson</u> Tommy G. Thompson	Chairman of the Board of Directors	October 15, 2021
<u>/s/ Paul M. Bisaro</u> Paul M. Bisaro	Director	October 15, 2021
<u>/s/ J. Martin Carroll</u> J. Martin Carroll	Director	October 15, 2021
<u>/s/ Cooper C. Collins</u> Cooper C. Collins	Director	October 15, 2021
<u>/s/ Karen L. Ling</u> Karen L. Ling	Director	October 15, 2021
<u>/s/ Jules A. Musing</u> Jules A. Musing	Director	October 15, 2021
<u>/s/ Gail K. Naughton</u> Gail K. Naughton, Ph.D.	Director	October 15, 2021
<u>/s/ Angus C. Russell</u> Angus C. Russell	Director	October 15, 2021

October 15, 2021

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

Re: *Registration on Form S-8 for the TherapeuticsMD, Inc.
Inducement Grant Restricted Stock Unit Agreement*

Ladies and Gentlemen:

We have acted as special Nevada counsel to TherapeuticsMD, Inc., a Nevada corporation ("TXMD"), in connection with the filing with the Securities and Exchange Commission of a Registration Statement on Form S-8 (the "Registration Statement"), under the Securities Act of 1933, as amended (the "Securities Act"). Such Registration Statement relates to the registration by TXMD of 1,180,000 shares (the "Shares") of TXMD's common stock, \$0.001 par value per share, that may be issuable pursuant to the TXMD Inducement Grant Restricted Stock Unit Agreement, dated as of October 15, 2021, by and between TXMD and Mark Glickman (the "Inducement Grant Agreement"), upon the vesting, as provided therein, of 660,000 Time-Based Units and up to 520,000 Performance Units (as such terms are defined in the Inducement Grant Agreement).

This opinion letter is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

In rendering the opinions set forth herein, we have examined and relied on originals or copies of the following documents: (1) the Registration Statement; (2) the Inducement Grant Agreement; (3) the Amended and Restated Articles of Incorporation of TXMD, as amended, effective as of June 22, 2020; (4) the Bylaws of TXMD, as amended, effective as of December 17, 2015; (5) certain resolutions adopted by the Board of Directors of TXMD relating to the Inducement Grant Agreement, the registration of the Shares and related matters; and (6) such other documents and instruments as we have deemed necessary as a basis for the opinions expressed below.

As to various questions of fact material to this opinion letter, we have relied upon representations of officers or directors of TXMD and documents furnished to us by TXMD without independent verification of their accuracy. We have also assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to authentic original documents of all documents submitted to us as copies.

Based upon the foregoing examination, we are of the opinion that the Shares have been duly authorized and, when issued and delivered by TXMD in accordance with the Inducement Grant Agreement, will be validly issued, fully paid and non-assessable.

The opinions expressed herein are specifically limited to the corporate laws of the State of Nevada and are as of the date hereof. We assume no obligation to update or supplement such opinions to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

We hereby consent to the filing of this opinion letter as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are included within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations promulgated thereunder.

Very truly yours,

/s/ GREENBERG TRAURIG, LLP

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this “Agreement”), by and between TherapeuticsMD, Inc., a Nevada corporation (the “Company”), and Mark Glickman (“Executive”) is entered into and effective as of the 15th day of October 2021 (the “Effective Date”).

WHEREAS, the Company and Executive wish to provide for terms and conditions of Executive’s employment with the Company, pursuant to the terms and conditions set forth in this Agreement.

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

1. **Employment and Duties.**

(a) **Employment and Term**

. The Company hereby agrees to employ Executive, and Executive hereby agrees to serve the Company, in accordance with the terms and conditions set forth herein, for a period of three (3) years, commencing as of the Effective Date (such three (3) 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 third anniversary of the Effective Date, and each anniversary thereafter, the Term shall automatically be extended for one (1) additional year, unless at least ninety (90) days prior to such anniversary, the Company or Executive shall have given notice in accordance with Section 8 that it or Executive does not wish to extend the Term.

(b) **Duties of Executive.** Executive shall serve as the Chief Business Officer of the Company, shall diligently perform all services as may be reasonably assigned to Executive by the Company’s Board of Directors (the “Board”), the Company’s Chief Executive Officer, or their respective designees, and shall exercise such power and authority as may from time to time be delegated to Executive by the Board, the Chief Executive Officer of the Company, or the designee to whom Executive reports. During Executive’s employment, Executive shall devote Executive’s full business time, energy, and ability exclusively to the business and interests of the Company, shall be physically present at the Company’s offices in Boca Raton, Florida during normal business hours each week (other than permitted periods of working remotely, paid time off (“PTO”) and on appropriate business travel for the benefit of the Company and shall not, without the Company’s prior written consent, be engaged in any other business activity pursued for gain, profit, or other pecuniary advantage if such activity interferes in any material respect with Executive’s duties and responsibilities hereunder. In Executive’s capacity as the Chief Business 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 driving the profitable growth of the Company, consistent with the Company’s overall strategy; building a strong, motivated, and effective commercial department and leadership team; leading sales and marketing strategy implementation; creating and adhering to approved budgets; creating and delivering objectives for revenue generating teams; aligning market access and trade objectives consistent with the Company’s strategy; leading branded strategy; developing, executing, and generating evaluation tools and metrics to assess commercial performance; Analyzing marketing programs and adjusting strategy and tactics to increase

effectiveness; Identifying strategic channel partners through analysis of market intelligence; identifying strategic channel partners and soliciting, collecting, and reporting on the Company's channel partners, distributors, and end users. Except as otherwise agreed in writing by the Company, it shall not be a violation of this Agreement for Executive, and Executive shall be permitted, to (i) serve on any civic or charitable boards; (ii) deliver lectures, fulfill speaking engagements, or teach at educational institutions and other institutions; (iii) subject to any applicable Company policies, make personal investments in such form or manner as will neither require Executive's services in the operation or affairs of the companies or enterprises in which such investments are made nor subject Executive to any conflict of interest with respect to Executive's duties to the Company; and (iv) serve, with the written approval of the Board, as a director of one or more private or public companies, in each case so long as any such activities do not significantly interfere with the performance of Executive's responsibilities under this Agreement, create a conflict of interest, or create an adverse interest or position detrimental to Company.

(c) **Policies**

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

(d) **Place of Performance**

. In connection with Executive's employment by the Company, Executive shall be based at the Company's principal executive offices in Boca Raton, Florida.

2. **Compensation**

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

(a) **Base Salary**

. Effective on the Effective Date, the base salary ("Base Salary") payable to Executive shall be three hundred fifty thousand dollars (\$350,000) per year, payable on a regular basis in accordance with the Company's standard payroll procedures, but not less than monthly. The Board or a committee of the Board shall review Executive's performance on at least an annual basis and may make increases to such Base Salary if, in its sole discretion, any such increase is warranted. The Board may reduce the Base Salary without Executive's consent only if such reduction applies in the same or greater percentage to all other executives of the Company at the Vice President level and above.

(b) **Annual Short-Term Incentive**

. Executive shall be entitled to participate in the Company's annual short-term incentive compensation program, as such program may exist from time to time, at a level commensurate with that being offered to other executives of the Company at the Vice President level and above. The percentage of Base Salary targeted as annual cash short-term incentive compensation for each calendar year during the Term shall be 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. Any annual short-term incentive compensation earned for any calendar year shall be paid in the immediately following calendar

year, as soon as practicable. Except as set forth in Sections 3(b)(ii), 3(b)(iii), and 3(b)(iv), Executive must be employed by the Company on the date on which short-term incentive compensation is paid in order to receive such short-term incentive compensation.

(c) **Long-Term Incentive**

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

(d) **Restricted Stock Units.** As soon as practicable following the Effective Date, the Company will grant to Executive, as an inducement material to Executive's entering into employment with the Company, nine hundred and twenty thousand (920,000) restricted stock units each representing a contingent right to receive one (1) share of the Company's common stock ("RSUs"). The RSUs shall be granted subject to the terms of a standalone agreement between the Company and Executive ("Grant Agreement") pursuant to the NASDAQ inducement grant exception under NASDAQ Rule 5635(c)(4) in the form attached hereto as Exhibit A.

(e) **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. The Company will provide to Executive D&O insurance and other insurance coverage typically provided to in-house legal counsel, including legal liability coverage, as reasonably necessary.

(ii) **Reimbursement for Expenses**

. Reimbursement for business travel and other out-of-pocket expenses reasonably incurred by Executive in the performance of Executive's services under this Agreement, including, but not limited to, industry appropriate seminars and subscriptions and applicable licensing and continuing education expenses. All reimbursable expenses shall be appropriately documented in reasonable detail by Executive upon

submission of any request for reimbursement and shall be in a format and manner consistent with the Company's expense reporting policy.

(iii) **Paid Time Off**

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

(iv) **Other Executive Perquisites**

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

(v) **Working Facilities**

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

3. **Term of Employment.**

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

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

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

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

(E) a confirmed positive drug test result for an illegal drug; or (F) a material sanction is imposed on Executive by any applicable professional organization or professional governing body

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

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

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

(b) **Result of Termination.**

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

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

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

Executive's termination, which shall be paid to Executive when paid to other similarly situated executives of the Company in accordance with Section 2(b) hereof.

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

(c) **Release.** Notwithstanding any other provision in this Agreement to the contrary, as a condition precedent to receiving any post-termination payments or benefits identified in Sections 3(b)(ii), 3(b)(iii) and 3(b)(iv) of this Agreement, Executive agrees to execute (and not revoke) a full and complete release of all claims against the Company and its affiliates, in the form attached hereto as Exhibit B (subject to such modifications as the Company reasonably may request) (the "Release"). If Executive fails to execute and deliver to the Company the Release within twenty-one (21) days following the date of termination, or revokes the Release, within seven (7) days following the date Executive executes and delivers the Release, or materially breaches any term of this Agreement or any other agreement between Executive and the Company while receiving such post-termination payments or benefits, Executive agrees that Executive shall not be entitled to receive any such post-termination payments. For purposes of this Agreement, the Release shall be deemed to have been executed by Executive if it is signed by Executive's legal

representative in the case of legal incompetence or on behalf of Executive's estate in the case of Executive's death. Payment of any post-termination payments or benefits identified in Sections 3(b)(ii), 3(b)(iii) and 3(b)(iv) of this Agreement shall be delayed until the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement, and any payments that are so delayed shall be paid on the first payroll date occurring on or after the thirtieth (30th) day following the effective date of the termination of Executive's employment under this Agreement.

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

indemnify or hold harmless Executive or any beneficiary for any tax, additional tax, interest or penalties that Executive or any beneficiary may incur in the event that any provision of this Agreement, or any amendment or modification thereof, or any other action taken with respect thereto, is deemed to violate any of the requirements of Section 409A.

(e) **Section 280G.**

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

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

(iii) **Overpayments; Underpayments.** As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that amounts will have been paid or distributed by the Company to or for the benefit of Executive pursuant to this Agreement which should not have been so paid or distributed (an “Overpayment”) or that additional amounts which will have not

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

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

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

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

4. Competition and Non-Solicitation.

(a) Interests to be Protected

. The parties acknowledge that Executive will perform essential services for the Company, its employees, and its stockholders during the term of Executive’s employment with the Company. Executive will be exposed to, have access to, and work with, a considerable amount of confidential information. The parties also expressly recognize and acknowledge that the personnel of the Company have been trained by, and are valuable to, the Company and that the Company will incur substantial recruiting and training expenses if the Company must hire new personnel or retrain existing personnel to fill vacancies. The parties expressly recognize that it could seriously impair the goodwill and diminish the value of the Company’s business should Executive compete with the Company in any manner whatsoever. The parties acknowledge that this covenant has an extended duration; however, they agree that this covenant is reasonable and it is necessary for the protection of the Company, its stockholders, and employees. For these and other reasons, and the fact that there are many other employment opportunities available to Executive if Executive’s employment is terminated, the parties are in

full and complete agreement that the following restrictive covenants are fair and reasonable and are entered into freely, voluntarily, and knowingly. Furthermore, each party was given the opportunity to consult with independent legal counsel before entering into this Agreement.

(b) **Non-Competition**

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

(c) **Non-Solicitation of Employees**

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

(d) **Non-Solicitation of Customers**

. During the term of Executive's employment and for a period of twenty-four (24) months after the termination of Executive's employment with the Company, regardless of the reason therefor, Executive shall not directly or indirectly, for the Company, or on behalf of, or in conjunction with, any other person, company,

partnership, corporation, or governmental entity, call on, solicit, or engage in business with, any of the actual or targeted prospective customers or clients of the Company on behalf of any person or entity in connection with any Competitive Business, nor shall Executive make known the names and addresses of such actual or targeted prospective customers or clients, or any information relating in any manner to the trade or business relationships of the Company with such customers or clients, other than in connection with the performance of Executive's duties under this Agreement, and/or persuade or encourage or attempt to persuade or encourage any persons or entities with whom the Company does business or has some business relationship to cease doing business or to terminate its business relationship with the Company or to engage in any Competitive Business Activities on its own or with any competitor of the Company. As used herein, the term "Competitive Business" shall mean business that is directly competitive with the business of the Company, including but not limited to, business in the pharmaceutical industry related to products that directly compete with the Company's products.

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

(f) **Equitable Relief**

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

(g) **Restrictions Separable**

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

5. **Return of Company Property**

. At any time as requested by the Company, or upon the termination of Executive's employment with the Company for any reason, Executive shall deliver promptly to the Company all files, lists, books, records, manuals, memoranda, drawings, and specifications; all other written or printed materials and computers, cell phones, and other equipment that are the property of the Company (and any copies of them); and all other materials that may contain confidential information relating to the business of the Company, which

Executive may then have in Executive's possession or control, whether prepared by Executive or not.

6. Cooperation

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

7. No Prior Agreements

. Executive hereby represents and warrants to the Company that the execution of this Agreement by Executive and Executive's employment by the Company and the performance of Executive's duties hereunder will not violate or be a breach of any agreement with a former employer, client, or any other person or entity. Further, Executive agrees to indemnify the Company for any claim, including, but not limited to, attorneys' fees and expenses of investigation, by any such third party that such third party may now have or may hereafter come to have against the Company based upon or arising out of any non-competition, invention, or secrecy agreement between Executive and such third party that was in existence as of the date of this Agreement.

8. Miscellaneous

(a) Notice

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

To the Company: TherapeuticsMD, Inc.
6800 Broken Sound Parkway NW, 3rd Floor
Boca Raton, Florida 33487
Attention: Chief Executive Officer
Phone: (561) 961-1900
E-Mail: RFinizio@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: General Counsel
Phone: (561) 961-1900
E-Mail: Mwalker@TherapeuticsMD.com

To Executive: Mark Glickman
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 8 for the giving of notice.

(b) **Indulgences; Waivers**

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

(c) **Controlling Law**

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

(d) **Execution in Counterpart**

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

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

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

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

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

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

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

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

[Signature Page Follows]

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

THERAPEUTICSMD, INC.

/s/ Robert Finizio
Robert Finizio

EXECUTIVE:

/s/ Mark Glickman
Mark Glickman

[Signature Page to Employment Agreement]

EXHIBIT A

**FORM OF INDUCEMENT GRANT
RESTRICTED STOCK UNIT AGREEMENT**

A-1

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EXHIBIT B

FORM OF RELEASE

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

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

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

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

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

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

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

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

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

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

By signing this Agreement, Employee knowingly and voluntarily fully releases and forever discharges Releasees of and from all claims, demands and liability of any kind arising under any statute, law or ordinance, including, without limitation, Title VII of the Civil Rights Act of 1964, the Fair Labor Standards Act, the National Labor Relations Act, the Americans with Disabilities Act, any state Human Rights Act, Fla. Stat. 448, or any facts or claims arising under the Age Discrimination in Employment Act ("ADEA"). This release is intended to cover all actions, causes of action, claims and demands for damages, loss or injury arising from the beginning of time until

the date of this Agreement, whether presently known or unknown to Employee. However, Employee does not waive Employee's rights to claims which may arise after this Agreement becomes effective.

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

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

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

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

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

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

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

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

EMPLOYEE THERAPEUTICSMD, INC.

EMPLOYEE THERAPEUTICSMD, INC.

[Employee]

By: _____

Its: _____

Date: _____

Date: _____

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED. [***] INDICATES THAT INFORMATION HAS BEEN REDACTED.

TherapeuticsMD, Inc.

Inducement Grant

Restricted Stock Unit Agreement

This Inducement Grant Restricted Stock Unit Agreement (this “**Agreement**”) is made and entered into as of October 15, 2021 (the “**Grant Date**”), by and between **TherapeuticsMD, Inc.**, a Nevada corporation (the “**Company**”), and **Mark Glickman** (the “**Participant**”).

WHEREAS, as an inducement to the Participant to commence employment with the Company, the board of directors of the Company (the “**Board**”) has determined that it is in the best interests of the Company and its stockholders to grant the award of Units (as defined herein) provided for herein; and

WHEREAS, it is intended that the award of Units comply with the exemption from the stockholder approval requirement for “inducement grants” provided under Rule 5635(c)(4) of the NASDAQ Listing Rules.

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

1. **DEFINITIONS AND CONSTRUCTION.**

1.1 **Definitions.** The Units have not been granted pursuant to the Company’s 2019 Stock Incentive Plan, as amended (the “**Plan**”). However, as set forth below, unless otherwise defined herein, capitalized terms shall have the meaning set forth in the Plan (the “**Applicable Plan Provisions**”).

1.2 **Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term “or” is not intended to be exclusive, unless the context clearly requires otherwise.

2. **ADMINISTRATION.**

All questions of interpretation concerning this Agreement shall be determined by the Committee. All determinations by the Committee made reasonably and in good faith shall be final and binding upon all persons having an interest in the Award.

3. **THE AWARD.**

3.1 **Grant of Restricted Stock Units.** On the Grant Date, subject to the provisions of this Agreement, the Participant has been granted a right (“**Units**”) to receive Shares based on the terms and conditions set forth in this Agreement, which shall be earned and vested (or not) as set forth in Section 4, with **920,000 Units** representing the target number of Units that may become vested Units (with **1,180,000 Units** as the maximum number of Units that may become vested) as set forth in Section 4, all subject to adjustment as provided in Sections 4 and 7. 520,000 of such maximum Units are designated as “**Performance Units**” (with a target of 260,000 Performance Units) and 660,000 of such maximum Units are designated as “**Time-Based Units.**” Each Unit represents a right to receive one (1) Share on the Settlement Date (as defined below), subject to adjustments below.

3.2 **No Monetary Payment Required.** The Participant is not required to make any monetary payment (other than applicable tax withholding, if any) as a condition to receiving the Units or Shares issued upon settlement of the Units, the consideration for which shall be past services actually rendered and/or future services to be rendered to the Company and/or its Subsidiaries for its benefit.

4. **VESTING OF UNITS.**

4.1 **Performance Units.**

(a) **Earned Applicable Performance Units.** Subject to the Participant’s continued employment or other service with the Company or its Subsidiaries at the Vesting Date(s) as set forth below, the Performance Units shall become earned as and when provided in this Section 4.1(a) based upon the Company’s EBITDA or CAGR (both terms as defined below), in each case as determined by the Committee in its sole discretion, in accordance with the following:

130,000 Performance Units (“CAGR PSUs”): [*]**

130,000 Performance Units (“EBITDA PSUs”): [*]**

(b) **Definitions.**

“**CAGR**” is defined as cumulative average growth rate.

“**EBITDA**” is defined as GAAP net income (loss) from continuing operations before interest (income) expense, income taxes, depreciation, and amortization, with such adjustments as the Company may from time-to-time report in its public filings.

“**Vesting Date**” means each date on which any Performance Units or Time-Based Units become vested pursuant to Sections 4.1 and 4.2 hereof.

4.2 **Time-Based Units.**

(a) Subject to the Participant’s continued employment or other service with the Company or its Subsidiaries through the applicable Vesting Date, 260,000 Time-Based Units shall become vested and earned on the following Vesting Dates: one-third (1/3) of such

Time-Based Units shall vest and become earned on each of the one-year, two-year and three year anniversaries of the Grant Date.

(b) Subject to the Participant's continued employment or other service with the Company or its Subsidiaries through the third anniversary of the Grant Date, 400,000 Time-Based Units shall become vested and earned on the third anniversary of the Grant Date.

4.3 **Treatment of Units Upon Termination of Continued Employment or Other Service.** If the Participant's continued employment or other service with the Company or its Subsidiaries is terminated for any reason prior to a Vesting Date, then, subject to the occurrence of any other event specified in Section 3(b)(ii), (iii) or (iv) of the Employment Agreement by and between the Company and the Participant dated that date hereof (the "**Employment Agreement**"), any non-vested Units granted hereunder shall be immediately forfeited and revert back to the Company without any payment to the Participant. The Committee shall have the power and authority to enforce on behalf of the Company any rights the Company may have with respect to the Units under this Agreement in the event of the termination of the Participant's continued employment or other service with the Company or its Subsidiaries.

4.4 **Treatment of Units in Connection with a Change in Control.** Section 10(c) of the Plan regarding Adjustments in Case of Certain Transactions (Change in Control) is incorporated by reference in this Agreement, *mutatis mutandis*. In addition, with respect to any unvested Performance Units, the Committee may, in its discretion, deem such performance vesting and conditions as having been met as of the date of a Change in Control.

5. **SETTLEMENT OF THE AWARD.**

5.1 **Issuance of Shares of Stock.** Subject to the provisions of Section 6 below, as soon as practicable on or after the Vesting Date, but in no event later than the 15th day of the third month following the last day of the calendar year in which the Vesting Date occurs (the "**Settlement Date**"), the Company shall issue to the Participant in settlement of the Units vested on such Vesting Date, the number of Shares equal to such vested Units, and all such vested Units will cease to be outstanding as "Units" under this Agreement upon such issuance of such Shares.

5.2 **Beneficial Ownership of Shares; Certificate Registration.** The Participant hereby authorizes the Company, in its sole discretion, to deposit for the benefit of the Participant with any broker with which the Participant has an account relationship of which the Company has notice, any or all Shares acquired by the Participant pursuant to the settlement of the Award. Except as provided by the preceding sentence, a certificate or book entry for the Shares as to which the Award is settled shall be registered in the name of the Participant, or, if applicable, in the names of the heirs of the Participant.

5.3 **Restrictions on Grant of the Award and Issuance of Shares.** The grant of the Award and issuance of Shares upon settlement of the Award shall be subject to compliance with all applicable requirements of federal, state or foreign law with respect to such securities and issuance of the Shares may be delayed where the Company reasonably anticipates that the making of the payment will violate federal securities law or other applicable law; provided that the payment is made at the earliest date at which the Company reasonably anticipates that the making of the payment will not cause such violation.

6. **TAX IMPLICATIONS.**

6.1 **Withholding.** As a condition to the Company's obligations with respect to Shares settled under this Agreement (including, without limitation, any obligation to deliver any Shares) hereunder, the Participant shall make arrangements, either by requiring the Shares to be issued hereunder to be delivered to Participant's broker under sell to cover instructions, or other arrangement satisfactory to the Company, to pay to the Company any federal, state or local taxes of any kind required to be withheld with respect to the delivery of such Shares. If the Participant shall fail to make the tax payments as are required, the Company shall, to the extent permitted by law, have the right to deduct from any payment of any kind (including by the withholding out of any Shares that otherwise would be delivered to Participant under this Agreement) otherwise due to the Participant Shares with a Fair Market Value equal to any federal, state or local withholding amounts of any kind required by law to be withheld with respect to such Shares.

7. **ADJUSTMENTS FOR CHANGES IN CAPITAL STRUCTURE.**

Subject to any required action by the stockholders of the Company and the requirements of Section 409A, in the event of any change in the Shares effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Shares (excepting normal cash dividends) that has a material effect on the Fair Market Value of Shares, appropriate and proportionate adjustments shall be made in the number of Units subject to the Award and/or the number and kind of Shares to be issued in settlement of the Award, in order to prevent dilution or enlargement of the Participant's rights under the Award. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as "effected without receipt of consideration by the Company." Any fractional share resulting from an adjustment pursuant to this Section shall be rounded down to the nearest whole number. Such adjustments shall be determined by the Committee, and its determination shall be final, binding and conclusive.

8. **RIGHTS AS A STOCKHOLDER, DIRECTOR, EMPLOYEE OR CONSULTANT.** The Participant shall have no rights as a stockholder with respect to any Units until the date of the issuance of the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date the Shares are issued, except as provided in Section 7. If the Participant is an Employee, the Participant understands and acknowledges that, except as otherwise provided in a separate, written employment agreement between the Company and the Participant, the Participant's employment is "at will" and is for no specified term. Nothing in this Agreement shall confer upon the Participant any right to continue in the service of the Company or any Subsidiary or interfere in any way with any right of such entities to terminate the Participant's service at any time.

9. **MISCELLANEOUS PROVISIONS.**

9.1 **Termination or Amendment.** The Board may terminate or amend the Plan or this Agreement at any time; provided, however, that no such termination or amendment may adversely affect the Participant's rights under this Agreement without the consent of the Participant unless such termination or amendment is necessary to comply with applicable law or government regulation, including, but not limited to, Section 409A of the Code. No amendment or addition to this Agreement shall be effective unless in writing.

9.2 **Nontransferability of the Award.** Prior to the issuance of Shares on the applicable Settlement Date, neither this Award nor any Units subject to this Award shall be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. All rights with respect to the Award exercisable during the Participant's lifetime shall only be exercised by the Participant or the Participant's guardian or legal representative.

9.3 **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.

9.4 **Binding Effect.** This Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer set forth herein, be binding upon the Participant and the Participant's heirs, executors, administrators, successors and assigns.

9.5 **Delivery of Documents and Notices.** Any document relating to this Agreement or any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery, electronic delivery at the e-mail address, if any, provided for the Participant by the Company, or upon delivery or refusal of delivery by the U.S. Postal Service or foreign postal service, by registered or certified mail, or with a nationally recognized overnight courier service, with postage and fees prepaid, addressed to the other party at the address shown below that party's signature hereto or at such other address as such party may designate in writing from time to time to the other party.

(a) **Description of Electronic Delivery.** The grant documents, which may include but do not necessarily include: the Applicable Plan Provision, this Agreement, the Plan's prospectus, and any reports of the Company provided generally to the Company's stockholders, may be delivered to the Participant electronically. In addition, the Participant may deliver electronically the Agreement to the Company or to such third party involved in administering this Agreement as the Company may designate from time to time. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Company.

(b) **Consent to Electronic Delivery and Execution.** The Participant acknowledges that the Participant has read Section 9.5 of this Agreement and consents to the electronic delivery of the grant documents, as described in Section 9.5(a). The Participant acknowledges that the Participant may receive from the Company a paper copy of any documents delivered electronically at no cost to the Participant by contacting the Company by telephone or in writing. The Participant may revoke the Participant's consent to the electronic delivery of

documents described in Section 9.5(a) or may change the electronic mail address to which such documents are to be delivered (if Participant has provided an electronic mail address) at any time by notifying the Company of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. Finally, the Participant understands that the Participant is not required to consent to electronic delivery of documents described in Section 9.5(a). Electronic execution of this Agreement shall have the same binding effect as a written or hard copy signature and accordingly, shall bind the Participant and the Company to all of the terms and conditions set forth in the Applicable Plan Provisions and this Agreement.

9.6 **Integrated Agreement.** This Agreement and the Applicable Plan Provisions, together with the Employment Agreement governing this Award shall constitute the entire understanding and agreement of the Participant and the Company with respect to the subject matter contained herein or therein and supersedes any prior agreements, understandings, restrictions, representations, or warranties between the Participant and the Company with respect to such subject matter other than those as set forth or provided for herein or therein. To the extent contemplated herein or therein, the provisions of the Agreement shall survive any settlement of the Award and shall remain in full force and effect.

9.7 **Section 409A.** This Agreement and the Units granted hereunder are intended to fit within the “short-term deferral” exemption from Section 409A of the Code as set forth in Treasury Regulation Section 1.409A-1(b)(4). In administering this Agreement, the Company shall interpret this Agreement in a manner consistent with such exemption. Notwithstanding the foregoing, if it is determined that the Units fail to satisfy the requirements of the short-term deferral rule and are otherwise deferred compensation subject to Section 409A, and if Participant is a “Specified Employee” (within the meaning set forth Section 409A(a)(2)(B)(i) of the Code) as of the date of Participant’s separation from service (within the meaning of Treasury Regulation Section 1.409A-1(h)), then the issuance of any Shares that would otherwise be made upon the date of the separation from service or within the first six (6) months thereafter will not be made on the originally scheduled date(s) and will instead be issued in a lump sum on the date that is six (6) months and one day after the date of the separation from service, but if and only if such delay in the issuance of the Shares is necessary to avoid the imposition of additional taxation on Participant in respect of the Shares under Section 409A of the Code. Each installment of Shares that vests is intended to constitute a “separate payment” for purposes of Section 409A of the Code and Treasury Regulation Section 1.409A-2(b)(2).

9.8 **Clawback.** Participant agrees that in addition to being subject to any compensation recovery or clawback policy implemented by the Company before or after the Grant Date, including any policy adopted by the Company to comply with the requirements of applicable laws, if, in the opinion of the independent directors of the Board, the Company’s financial results are restated or materially misstated due in whole or in part to intentional fraud or misconduct by the Participant, the independent directors may, based upon the facts and circumstances surrounding the restatement, direct that the Company seek to recoup any gains realized with respect to this Agreement (including any proceeds, gains or other economic benefit received by the Participant from any subsequent sale of Shares issued upon payment of the Units), regardless of when issued.

9.9 **Applicable 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.

9.10 **Severability.** If any term or provision of this Agreement or the application thereof to any Participant or circumstance shall to any extent be invalid or unenforceable, such provision will be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable. If it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect and the remainder of this Agreement, or the application of such term or provision to Participants or circumstances other than those held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

9.11 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9.12 **Acceptance.** By signing the Agreement, the Participant: (a) acknowledges receipt of and represents that the Participant has read and is familiar with this Agreement and the Applicable Plan Provisions, (b) accepts the Award subject to all of the terms and conditions of this Agreement and the Applicable Plan Provisions and (c) agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under this Agreement except as otherwise provided in this Agreement. The Participant acknowledges that there may be adverse tax consequences upon the vesting or settlement of the Units or disposition of the underlying Shares and that the Participant has been advised to consult a tax advisor prior to such vesting, settlement or disposition.

[Remainder of page intentionally left blank]

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

Address: 951 Yamato Road, Suite 220
Boca Raton, Florida 33431

MARK GLICKMAN

/s/ Mark Glickman

Signature

October 15, 2021

Date

Address:

[Signature Page to Inducement Grant]

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our report dated March 3, 2021 with respect to the consolidated financial statements of TherapeuticsMD, Inc. included in the Annual Report on Form 10-K for the year ended December 31, 2020, which is incorporated by reference in this Registration Statement. We consent to the incorporation by reference of the aforementioned report in this Registration Statement.

/s/ GRANT THORNTON LLP

Miami, Florida

October 14, 2021