

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

**FORM 8-K**

**CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934  
DATE OF REPORT (DATE OF EARLIEST EVENT REPORTED): August 3, 2021**

**TherapeuticsMD, Inc.**

(Exact Name of Registrant as Specified in its Charter)

**Nevada**

(State or Other  
Jurisdiction of Incorporation)

**001-00100**

(Commission File Number)

**87-0233535**

(IRS Employer  
Identification No.)

951 Yamato Road, Suite 220  
Boca Raton, FL 33431

(Address of Principal Executive Office) (Zip Code)

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

Not Applicable

(Former name or former address, if changed since last report)

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

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

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

Title of Each Class	Trading Symbol	Name of Each Exchange on Which Registered
Common Stock, par value \$0.001 per share	TXMD	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230-405) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2).

Emerging growth company

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

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

On August 3, 2021 (the “Effective Date”), TherapeuticsMD, Inc., a Nevada corporation (the “Company”), entered into an Employment Agreement with Mr. Hugh O’Dowd (the “Employment Agreement”), pursuant to which Mr. O’Dowd was appointed the President of the Company on the Effective Date.

Prior to joining the Company, Mr. O’Dowd, age 56, served as President, Chief Executive Officer, and a member of the Board of Directors of Neon Therapeutics, Inc., a clinical-state immuno-oncology company that developed neoantigen-based therapeutics, from September 2016 until its acquisition by BioNTech SE in May 2020. Prior to Neon Therapeutics, Mr. O’Dowd spent more than 20 years in a variety of senior leadership roles at Novartis Pharmaceuticals Corporation, where he served as Country President and General Manager of the United Kingdom and Ireland from 2015 to 2016, Senior Vice President and Chief Commercial Officer of Novartis Oncology from 2011 to 2015, and Vice President, Latin America Region Head for the Oncology business unit from 2009 to 2011. Mr. O’Dowd currently serves as Director and Non-executive Chairman of ONK Therapeutics Ltd, an innovative natural killer cell therapy company, and as a Director of Polyphor AG, a clinical-stage biopharmaceutical company focused on the discovery and development of antibiotics and immuno-oncology compounds. Mr. O’Dowd received an MBA from the Kellstadt Graduate School of Business at DePaul University in Chicago and a B.A. from Loyola University Chicago.

Pursuant to the Employment Agreement, Mr. O’Dowd will receive an annual base salary of \$725,000, subject to annual review by the Compensation Committee of the Company’s Board of Directors (the “Compensation Committee”). In addition, Mr. O’Dowd will receive a lump sum cash sign-on bonus in the amount of \$250,000 and will be eligible to receive an annual performance bonus in accordance with the Company’s annual short-term incentive compensation program, with a target bonus payment equal to 70% of his base salary; any 2021 bonus paid to Mr. O’Dowd will be prorated based on the Effective Date. The Employment Agreement also provides for Mr. O’Dowd’s participation in customary Company benefit plans and incentive compensation plans and for Mr. O’Dowd’s entitlement to certain perquisites, benefits, and other compensation provided to Company executives.

As a material inducement to Mr. O’Dowd’s acceptance of the appointment, the Company agreed to grant Mr. O’Dowd, no later than August 31, 2021, an award of 2,750,000 restricted stock units (“RSUs”) and 2,750,000 performance stock units (“PSUs”) corresponding to shares of common stock of the Company outside of the Company’s 2019 Stock Incentive Plan (the “2019 Plan”). The inducement award was approved by a majority of the independent directors the Company’s Board of Directors in reliance on the employment inducement exception to shareholder approval provided under NASDAQ Stock Market Listing Rule 5635(c)(4). The RSUs will vest in equal annual installments over three years beginning August 31, 2022 and are subject to Mr. O’Dowd’s continuous service with the Company. The PSUs will vest on August 31, 2024 based on the Company’s market capitalization, which will be tested annually over three years beginning August 31, 2022 and are subject to Mr. O’Dowd’s continuous service with the Company.

Upon the termination of Mr. O’Dowd’s employment for certain specified reasons, the Employment Agreement provides for severance payments of (i) a continuation of Mr. O’Dowd’s salary, or lump sum payment thereof, for up to 18 months in an amount ranging from his base salary up to one and one-half times his base salary, depending on the basis and timing of his termination, (ii) a bonus for the year in which his employment terminates in an amount ranging from a pro rata portion of his targeted annual bonus up to one and one-half times his targeted annual bonus, depending on the basis and timing of his termination, and (iii) the continuation of certain fringe benefits for specified periods. In addition, depending on the basis for Mr. O’Dowd’s termination, all equity awards granted to Mr. O’Dowd by the Company prior to such termination will become fully vested and, if applicable, exercisable, as of the effective date of such termination. Notwithstanding the foregoing, as condition precedent to receiving any such post-termination payments or benefits, Mr. O’Dowd must execute, and not revoke, a full and complete release of all claims against the Company and its affiliates in the form attached to the Employment Agreement.

The Employment Agreement provides for customary protections of the Company’s confidential information and intellectual property and that Mr. O’Dowd will not, during the term of his employment and for a specified period, compete with the Company and, for a specified period thereafter, hire away from or solicit to leave the Company its employees and independent contractors, or solicit actual or targeted prospective customers or clients of the Company. The Employment Agreement has a three-year term and is subject to automatic renewals for successive one-year terms.

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

There are no arrangements or understandings between Mr. O’Dowd and any other person pursuant to which he was appointed as an officer of the Company and no family relationship between Mr. O’Dowd and any director or executive officer of the Company. Other than as described in this Current Report on Form 8-K, since the beginning of the Company’s last fiscal year, the Company has not engaged in any transactions, and there are no proposed transactions, or series of similar transactions, in which the Company was or is to

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be a participant and in which Mr. O'Dowd had a direct or indirect material interest in which the amount involved exceeds or exceeded \$120,000.

**Item 7.01 Regulation FD Disclosure.**

On August 9, 2021, the Company issued a press release announcing the appointment of Mr. O'Dowd as President. A copy of the press release is furnished as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference. The information furnished in this Item 7.01 of this Current Report on Form 8-K, including Exhibit 99.1 hereto, shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section, nor shall such information be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference in such a filing.

**Item 9.01 Financial Statements and Exhibits.**

(d) *Exhibits*

<u>Exhibit No.</u>	<u>Description</u>	<u>Exhibit Index</u>
10.1*	<a href="#">Executive Employment Agreement, dated as of August 3, 2021, by and between TherapeuticsMD, Inc. and Hugh O'Dowd.</a>	
99.1	<a href="#">Press Release from TherapeuticsMD, Inc., dated August 9, 2021, entitled "TherapeuticsMD Announces Appointment of Hugh O'Dowd as President".</a>	
104	Cover Page Interactive Data File (the cover page tags are embedded within the Inline XBRL document).	

\* 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 Company if publicly disclosed.

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SIGNATURES

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

Date: August 9, 2021

THERAPEUTICSMD, INC.

/s/ James C. D'Arecca

James C. D'Arecca  
Chief Financial Officer

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.

**EMPLOYMENT AGREEMENT**

**THIS EMPLOYMENT AGREEMENT** (this “Agreement”), by and between TherapeuticsMD, Inc., a Nevada corporation (the “Company”), and Hugh O’Dowd (“Executive”) is entered into and effective as of the 3<sup>rd</sup> day of August, 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 on August 3, 2021 (the “Start Date”) (such three (3) year period, including as it may be extended pursuant to this Section 1(a), the “Term”), unless sooner terminated pursuant to Section 3 hereof. Commencing on the 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 hereof that it or Executive does not wish to extend the Term.

(b) **Duties of Executive.** Executive shall serve as the President of the Company, shall diligently perform all services as may be reasonably assigned to Executive by the Company’s Board of Directors (the “Board”) or the Company’s Chief Executive Officer (the “CEO”), and shall exercise such power and authority, as may from time to time be delegated to Executive by the Board or the CEO provided same are consistent with Executive’s position or other position Executive may hold from time to time. During Executive’s employment, Executive shall devote Executive’s full business time, energy, and ability to the business and interests of the Company, shall generally 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 significant respect with Executive’s duties and responsibilities hereunder. In Executive’s capacity as the President of the Company, Executive shall do and perform all services, acts, or things necessary or advisable to manage and conduct the business of the Company, subject to the policies and procedures set by the Company, including, but not limited to, managing or directing the design and implementation of business strategies, plans, and procedures; the implementation of business strategies and plans

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aligned with short-term and long-term goals and objectives; establishment of policies that promote company culture and vision; overseeing all operations and business activities consistent with the overall strategy and mission of the Company; business development activities (investments, acquisitions, corporate alliances, etc.); including, as applicable building alliances and partnerships with third-party organizations; and management of key relationships with partners and vendors. Except as otherwise agreed in writing by the Company, it shall not be a violation of this Agreement for Executive, and Executive shall be permitted, to (i) serve on any civic or charitable boards and engage in religious, charitable or community activities; (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 (it being agreed that passive investments in mutual funds, public companies and private investment funds that may invest in other companies that are in the same business as the Company is not a violation of this Agreement); (iv) participate in trade associations; and (v) serve on the Board of Directors of the companies identified on Schedule A (and provide associated consulting services to such companies) and, with the written approval of the Board, serve as a director of one other public or one or more other private companies, in each case so long as any such activities do not significantly interfere with the performance of Executive's responsibilities under this Agreement, create a conflict of interest, or create an adverse interest or position detrimental to Company.

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

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

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

(a) **Base Salary.** Effective on the Effective Date, the base salary ("Base Salary") payable to Executive shall be seven hundred twenty-five thousand dollars (\$725,000) 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.

(b) **Sign-On Bonus.** Within 30 days after the Effective Date, the Executive will receive a lump sum cash sign-on bonus in the amount of two hundred fifty thousand dollars (\$250,000). The Executive will be required to repay the entire gross amount of such sign-on bonus to the Company within 10 days following an involuntary termination of the Executive's employment by the Company for Cause or due to the Executive's voluntary resignation without Good Reason (each such term as defined below), in either case occurring prior to the first anniversary of the Effective Date. Executive agrees that the Company may deduct, in accordance with applicable law, said amount from any payments the Company owes Executive, including but

not limited to Executive's final paycheck, bonus or other compensation, and any expense reimbursements.

(c) **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. The percentage of Base Salary targeted as annual cash short-term incentive compensation for each calendar year during the Term shall be seventy percent (70%) of Base Salary (the "Targeted Annual Bonus Award"). Executive acknowledges that the amount of annual short-term incentive compensation to be awarded shall be at the sole good faith discretion of the Board or a committee of the Board, and as such 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 as soon as possible and in all events within the first two and one-half months of the immediately following calendar year. Except as set forth in Sections 3(b)(ii), 3(b)(iii), and 3(b)(iv) hereof, 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. The Targeted Annual Bonus Award for calendar year 2021 shall be prorated based on the Effective Date.

(d) **Long-Term Incentive.** Executive shall be entitled to participate in the Company's long-term incentive compensation program, as such program may exist from time to time, at a level commensurate with that being offered to other executives of the Company at the level appropriate for his position. 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 two-and-a-half (2½) months of the calendar year immediately following the calendar year in which the applicable performance period ends. Except as otherwise in Sections 3(b)(ii), 3(b)(iii), and 3(b)(iv), Executive must be employed by the Company on the last date on which any portion of the long-term incentive compensation is due or vested to receive such long-term incentive compensation.

(e) **Restricted Stock Units.** Not later than August 31, 2021, the Company will grant to the Executive five million five hundred thousand (5,500,000) restricted stock units each representing a contingent right to receive one (1) share of common stock of the Company ("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 B. The Company shall take all required action to register the shares issued thereunder not later than 30 days from the date of grant.

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

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

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

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

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

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

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

(vii) **Commuting Expenses, Relocation, and Legal Fees.** The Company will reimburse Executive for Executive's reasonable expenses with respect to Executive's temporary housing or hotel, rental vehicle, and airfare to commute from Executive's home to Boca Raton, Florida for a reasonable, mutually agreed upon period of time not to exceed two (2) months



from the Effective Date. In addition, the Company shall reimburse or pay Executive, within thirty (30) days of submissions of receipts or other supporting documentation, for (A) Executive's reasonable expenses and fees with respect to relocating Executive's home to the Boca Raton, Florida area, including moving/packing/storage fees, and brokerage and legal fees incurred in connection with the sale of Executive's current residence; provided, however, that the aggregate reimbursement amount with respect to this Section 2(f)(vii)(A) shall not exceed \$150,000, plus (B) plus the amount required to gross up the reimbursement amount under Section 2(f)(vii)(A) for federal and state taxes payable on such reimbursement amount and such gross up payment.

### **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 reasonable determination, such breach is curable); (B) Executive's intentional nonperformance of lawful instructions of either the CEO or of the Board (continuing for thirty (30) days after receipt of written notice of need to cure, if, in the Company's reasonable 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; or (E) a confirmed positive drug test result for an illegal drug.

(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 specified in the notice.

(vi) Termination by Executive With Good Reason. At any time during the Term, Executive may terminate Executive's employment and the Term for Good Reason. For purposes of this Agreement, "Good Reason" shall mean (A) the assignment to Executive of

material duties inconsistent with Executive's position as the President or more senior position (including status, office, titles and reporting requirements), or any other action by the Company that results in a material diminution in such position, excluding for this purpose any action not taken in bad faith and that is remedied by the Company promptly after receipt of a Notice of Termination for Good Reason (as defined below) thereof given by Executive; (B) the Company requiring Executive to be based at any office or location other than in Palm Beach County, Florida, or within thirty-five (35) miles of such location, or such other location as mutually agreed to by the Company and Executive, except for travel reasonably required in the performance of Executive's responsibilities, provided, however, that this clause 3(iv)(B) will not have any force or effect until such time that, and only for the period of time that, Executive has permanently relocated Executive's home and permanently resides within thirty-five (35) miles of the Company's Boca Raton headquarters; (C) a Change in Control (as defined in the Grant Agreement) of the Company; (D) 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; or (E) the Executive not directly reporting to the Board on or before December 31, 2021. 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") hereof, 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, any 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") hereof, (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, on the first payroll date commencing on or after the thirtieth (30<sup>th</sup>) day following the effective date of the termination of Executive's employment under this Agreement

or if earlier when paid to other similarly situated executives of the Company in accordance with Section 2(b) hereof, (c) Executive shall receive for a period of twenty-four (24) months thereafter for a total of twenty-four (24) monthly payments, beginning on the first payroll date commencing on or after the thirtieth (30<sup>th</sup>) day following the effective date of the termination of Executive's employment under this Agreement, 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, RSUs, performance shares or PSUs) held by Executive in Executive's capacity as an employee of the Company on the effective date of the termination shall fully vest as of the effective date of such termination, and (e) Executive shall receive payment for (1) Base Salary as shall have accrued and remained unpaid as of the date of termination, (2) 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 (3) 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 and which is unpaid on the effective date of Executive's termination, shall be paid to Executive when paid to other similarly situated executives of the Company in accordance with Section 2(b) hereof (the preceding clauses (e)(1), (e)(2), and (e)(3) collectively, the "Accrued Compensation").

(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") hereof, (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 (30<sup>th</sup>) day following the effective date of the termination of Executive's employment under this Agreement, or if earlier when paid to other similarly situated executives of the Company in accordance with Section 2(b) hereof, (b) all unvested equity compensation of any kind (including, without limitation, stock options, restricted stock, RSUs, performance shares or PSUs) held by Executive in Executive's capacity as an employee of the Company on the effective date of the termination shall fully vest as of the effective date of such termination, (c) Executive shall receive payment for the Accrued Compensation.

(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") or at the time of a Change in Control or 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 be paid one and one-half times (1.5X) his then current annual Base Salary, as provided in Section 2(a), which amount shall be paid to Executive in a single lump sum on the first payroll date occurring on or after the thirtieth (30<sup>th</sup>) day following the effective date of the termination of Executive's employment under this Agreement, (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 (30<sup>th</sup>) 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 (30<sup>th</sup>) 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, RSUs, performance shares or PSUs) held by Executive in Executive's capacity as an employee of the Company on the effective date of the termination shall fully vest as of the effective date of such termination, and (e) Executive shall receive payment for the Accrued Compensation.

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

(c) **Release.** Notwithstanding any other provision in this Agreement to the contrary, as a condition precedent to receiving any post-termination payments or benefits identified in Sections 3(b)(ii), 3(b)(iii) and 3(b)(iv) hereof, other than the Accrued Compensation, Executive agrees to execute (and not revoke) a full and complete release of all claims against the Company and its affiliates, in the form attached hereto as Exhibit A (subject to such modifications as the Company reasonably may request) (the "**Release**"). If Executive fails to execute and deliver to the Company the Release within twenty-one (21) days following the date of termination, or revokes the Release, within seven (7) days following the date Executive executes and delivers the Release, or materially breaches any term of this Agreement or any other agreement between Executive and the Company while receiving such post-termination payments or benefits, Executive agrees that Executive shall not be entitled to receive any such post-termination payments. For purposes of this Agreement, the Release shall be deemed to have been executed by Executive if it is signed by Executive's legal representative in the case of legal incompetence or on behalf of Executive's estate in the case of Executive's death. Payment of any post-termination payments or benefits identified in Sections 3(b)(ii), 3(b)(iii) and 3(b)(iv) hereof shall be delayed until the first payroll date occurring on or after the thirtieth (30<sup>th</sup>) 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 (30<sup>th</sup>) 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) hereof (except for unpaid annual short-term incentive compensation and long-term incentive compensation earned or vested 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 (30<sup>th</sup>) 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. 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 the earlier of six (6) months following "separation from service" within the meaning of Section 409A or Executive's death, 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) are "deferred compensation" within the meaning of Section 409A and 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, and provide Executive with a reasonable opportunity to comment on and request changes to such calculations to correct and errors or other matters not taken into account in such calculations. All final determinations made by the Accounting Firm under this Section 3(e) shall be binding upon the Company and Executive, in the absence of manifest error, 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) hereof.

#### 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 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") hereof, 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) hereof, and (b) Executive will receive for a period of an additional six (6) months, a monthly cash payment equal to the one (1) month cost of COBRA continuation of the health insurance benefits for Executive and Executive's immediate family as applicable. As used in this Agreement, the term "Competitive Business" shall mean business activities that are directly 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, the Company has demonstrated an intent to develop, commercialize, and/or distribute products, at a minimum, throughout the United States of America, Canada, Mexico, Brazil, Argentina, Europe, Australia, South Africa, Russia, Israel, Japan, and South Korea. Notwithstanding the foregoing, the restrictions in this Section 4(b) shall not apply to the ownership of less than 5% of the equity securities of any publicly traded company or any passive investments in any mutual funds or private investment funds that may invest in companies engaged in any such Competitive Businesses, provided that Executive is not otherwise in breach of this Agreement with respect thereto.

(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 on its own or with any competitor of the Company.

(e) **Employee Assignment, Invention and Confidentiality Agreement.** Executive hereby affirms, acknowledges, and agrees that Executive will be subject to the terms and conditions set forth in that certain Employee Assignment, Invention, and Confidentiality Agreement (the “EAICA”), dated as of the Effective Date, 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), 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) hereof, 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 of competent jurisdiction 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 and without material interference with 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 Executive's continued material services as required under this Section 6. The parties agree to negotiate the reasonable compensation reference in 6(b) in good faith.

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.

8. **Miscellaneous.**

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

To the Company:	TherapeuticsMD, Inc. 951 Yamato Road, Suite 220 Boca Raton, Florida 33431 Attention: Chief Executive Officer Phone: (561) 961-1900
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With a copy, which shall not constitute notice, to:

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

To Executive:	Hugh O'Dowd
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The address of Executive's principal residence most recently on file with the Company.

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 signed by Executive and an authorized representative with actual authority to bind Company.

(f) **Controlling Document.** If any provision of any agreement, plan, program, policy, arrangement or other written document between or relating to the Company and Executive conflicts with any provision of this Agreement, the provision of this Agreement shall control and prevail.

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

(h) **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.

(i) **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.

(j) **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.

(k) **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 hereof and Executive's obligations under Section 4 hereof, and the expiration of the Term, to the extent necessary to the intended preservation of such rights and obligations.

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

*[Signature Page Follows]*

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

**THERAPEUTICSMD, INC.**

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

**EXECUTIVE:**

/s/ Hugh O'Dowd  
Hugh O'Dowd

[Signature Page to Employment Agreement]

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**EXHIBIT A**  
**FORM OF SEPARATION AGREEMENT AND RELEASE**

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

1. Separation and Severance. Employee's final day of employment with Company was \_\_\_\_\_. Although the parties agree that, except for Accrued Compensation (as defined in the Employment Agreement), the Company does not owe Employee any further consideration, as severance, if this release is not executed by Employee, the Company agrees to pay and provide to the Employee the amounts and benefits set forth in Section 3(b)[insert herein (ii), (iii) or (iv), as applicable] of the 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. Employee acknowledges that no other compensation of any kind remains outstanding, that the consideration provided herein is more than Employee would otherwise be entitled to receive, that Employee shall not be entitled to any other payments or benefits from Company, and that no other amounts are due or owing or shall become due or owing relating to any obligation, agreement, or otherwise.

2. Execution of Separation Agreement. Should Employee wish to accept this Agreement, it must be signed and returned to \_\_\_\_\_ by \_\_\_\_\_.

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

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

5. Non-Disparagement.

(a) At all times, Employee will refrain from and will not directly or indirectly engage in any conversation that knowingly would tend to negatively impact Company or any of the Releasees, as defined in Section 8 below.

(b) At all times, the Company will refrain from and will not directly or indirectly engage in any conversation that knowingly would tend to negatively impact the Employee.

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, (v) any rights or claims for vested benefits under any Company pension benefit plan or welfare benefit plan in which Employee and Employee’s dependents participate, and/or (vi) 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 on or prior to the date hereof 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 had actual knowledge.

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) (Section 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.

[Signatures Follow on Next Page]

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

**COMPANY:**  
**THERAPEUTICSMD, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EMPLOYEE:**

\_\_\_\_\_  
Hugh O'Dowd  
Date: \_\_\_\_\_

[Signature Page to Separation Agreement]

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**EXHIBIT B**  
***AWARD AGREEMENT***

[See below]

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TherapeuticsMD, Inc.

**Inducement Grant**

**Restricted Stock Unit Agreement**

This Inducement Grant Restricted Stock Unit Agreement (this “**Agreement**”) is made and entered into as of August [●], 2021 (the “**Grant Date**”), by and between **TherapeuticsMD, Inc.**, a Nevada corporation (the “**Company**”), and **HUGH O’DOWD** (the “**Participant**”).

**WHEREAS**, as an inducement to the Participant to commence employment with the Company, the Committee 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 **5,500,000 Units** representing the maximum number of Units that may become vested Units as set forth in Section 4, all subject to adjustment as provided in Section 7. 2,750,000 of such Units are designated as “**Performance Units**” and 2,750,000 of such

Units are designated as “**Time-Based Units**”. Each Unit represents a right to receive one (1) Share on the Settlement Date (as defined 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 each Date of Determination set forth below, the Performance Units shall become earned as and when provided in this Section 4.1(a) based upon the Company’s Market Capitalization (as defined below) at each Date of Determination (“**Earned Applicable Performance Units**”) in accordance with the following tables:

<u>Date of Determination</u>	<u>Maximum Number of Performance Units that may become Earned Applicable Performance Units on such Date of Determination (the percent earned on each such date will be determined per the Market Capitalization table below)</u> <b>(“Applicable Units”)</b>
First Anniversary of Vesting Commencement Date	916,666 Performance Units (“ <b>First Tranche Units</b> ”)
Second Anniversary of Vesting Commencement Date	916,666 Performance Units plus any First Tranche Units that did not become earned on the First Anniversary of the Grant Date (“ <b>Second Tranche Units</b> ”)
Third Anniversary of Vesting Commencement Date	916,667 Performance Units plus any Second Tranche Units that did not become earned on the First Anniversary or Second Anniversary of the Grant Date

<u>Market Capitalization as of each Date of Determination</u>	<u>Percent of Applicable Units that will become earned on each Date of Determination</u>
***]	25%
***]	50%

[***]	75%
[***]	100%

For purposes of this Agreement,

“**Market Capitalization**” shall be equal to the VWAP multiplied by the number of Shares outstanding on each Date of Determination, as determined in good faith by the Committee:

“**Vesting Commencement Date**” means August 31, 2021.

“**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.

“**VWAP**” shall mean the average of the daily volume weighted average price of the Shares on the Listed Market for the ten (10) trading days ending immediately prior to the applicable Date of Determination.

Within thirty (30) days after each Date of Determination the Company will notify the Participant of the number of Applicable Units that have become Earned Applicable Performance Units as of such Date of Determination.

Notwithstanding the foregoing, subject to the Participant’s continued employment or other service with the Company or its Subsidiaries through such Change in Control, upon a Change in Control 100% of the Performance Units (whether or not previously earned) will be deemed Earned Applicable Performance Units.

(b) **Vesting Dates for Earned Applicable Performance Units.** Subject to the Participant’s continued employment or other service with the Company or its Subsidiaries on the Applicable Performance Units Vesting Date (as defined herein), all Earned Applicable Performance Units will become Vested Units on the first to occur of the following (each the “**Applicable Performance Units Vesting Date**”) (i) the third anniversary of the Vesting Commencement Date, (ii) a Change in Control, or (iii) 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 August 3, 2021 (the “**Employment Agreement**”).

4.2 **Time-Based Units.** Subject to the Participant’s continued employment or other service with the Company or its Subsidiaries through the Applicable Time-Based Vesting Date (as defined herein), the Time-Based Units shall become vested and earned on the following vesting dates: one-third (1/3) of the Time-Based Units shall vest and become earned on each of the one-year, two-year and three year anniversaries of the Vesting Commencement Date; provided that any remaining unvested Time-Based Units shall become fully vested and earned upon any earlier Change in Control or the occurrence of any other event specified in Section 3(b)(ii), (iii) or (iv) of the Employment Agreement (each an “**Applicable Time-Based Vesting Date**”).

5. **SETTLEMENT OF THE AWARD.**

5.1 **Issuance of Shares of Stock.** Subject to the provisions of Section 6 below, not later than ten (10) days following each Vesting Date for Time-Based Units and thirty (30) days

following any Vesting Date for Performance Units (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 Recipient 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:

Name: \_\_\_\_\_

Title:

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

HUGH O' DOWD

Signature \_\_\_\_\_

Date \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature Page to Inducement Grant]

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**Schedule A**

ONK Therapeutics  
Polyphor AG

[Signature Page to Inducement Grant]

**FOR IMMEDIATE RELEASE**

**TherapeuticsMD Announces Appointment of Hugh O’Dowd as President**

– O’Dowd brings 25+ years of experience in senior leadership roles with leading pharmaceutical companies –

**BOCA RATON, Fla. – August 8, 2021** – TherapeuticsMD, Inc. (NASDAQ: TXMD), an innovative, leading women’s healthcare company, today announced the appointment of Hugh O’Dowd as President. Mr. O’Dowd succeeds John C.K. Milligan, IV, who the Company recently appointed as Chief Executive Officer of its vitaCare Prescription Services business.

“I am delighted to welcome Hugh as President of TherapeuticsMD. Hugh has a significant operating and strategic history with both large and small pharmaceutical companies including over 20 years at Novartis, where he navigated some of the most challenging payor and commercial environments, and consistently delivered superior performance. I believe Hugh will be instrumental in helping TherapeuticsMD build value for our stockholders,” stated Robert G. Finizio, Chief Executive Officer of TherapeuticsMD.

“I view TherapeuticsMD as an emerging leader in the women’s health segment, and I am confident we can unlock the value of the Company’s novel and well differentiated portfolio to drive superior performance. I deeply believe this Company is about empowering and enabling women to have control throughout their life cycles from reproductive health through menopause. I look forward to working with the TherapeuticsMD leadership team and its dedicated employees to advance our commercialization plan and further define the Company’s future,” stated Hugh O’Dowd.

Mr. O’Dowd previously served as President, Chief Executive Officer, and a member of the Board of Directors of Neon Therapeutics, Inc., a clinical-stage immuno-oncology company that developed neoantigen-based therapeutics, from September 2016 until its acquisition by BioNTech SE in May 2020. Prior to Neon Therapeutics, Mr. O’Dowd spent more than 20 years in a variety of senior leadership roles at Novartis Pharmaceuticals Corporation, where he served as Country President and General Manager of the United Kingdom and Ireland from 2015 to 2016, Senior Vice President and Chief Commercial Officer of Novartis Oncology from 2011 to 2015, and Vice President, Latin America Region Head for the Oncology business unit from 2009 to 2011. During his time as Chief Commercial Officer Oncology, Mr. O’Dowd was responsible for the oncology portfolio strategy for the world’s then second-largest oncology/hematology organization, including global brand leadership, business development/licensing, and commercialization. Mr. O’Dowd currently serves as Director and Non-executive Chairman of ONK Therapeutics Ltd, an innovative natural killer cell therapy company, and as a Director of Polyphor AG, a clinical-stage biopharmaceutical company focused on the discovery and development of antibiotics and immuno-oncology compounds. Mr. O’Dowd received an MBA from the Kellstadt Graduate School of Business at DePaul University in Chicago and a B.A. from Loyola University Chicago.

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## *Inducement Grant Under Nasdaq Listing Rule 5635(c)(4)*

As a material inducement to Mr. O'Dowd's acceptance of the appointment, the Company agreed to grant Mr. O'Dowd, no later than August 31, 2021, an award of 2,750,000 restricted stock units ("RSUs") and 2,750,000 performance stock units ("PSUs") corresponding to shares of common stock of the Company outside of the Company's 2019 Stock Incentive Plan (the "2019 Plan"). The inducement award was approved by a majority of the independent directors the Company's Board of Directors in reliance on the employment inducement exception to shareholder approval provided under NASDAQ Stock Market Listing Rule 5635(c)(4). The RSUs will vest in equal annual installments over three years beginning August 31, 2022 and are subject to Mr. O'Dowd's continuous service with the Company. The PSUs will vest on August 31, 2024 based on the Company's market capitalization, which will be tested annually over three years beginning August 31, 2022 and are subject to Mr. O'Dowd's continuous service with the Company.

### **About TherapeuticsMD, Inc.**

TherapeuticsMD, Inc. is an innovative, leading healthcare company, focused on developing and commercializing novel products exclusively for women. Our products are designed to address the unique changes and challenges women experience through the various stages of their lives with a therapeutic focus in family planning, reproductive health, and menopause management. The company is committed to advancing the health of women and championing awareness of their healthcare issues. To learn more about TherapeuticsMD, please visit [therapeuticsmd.com](http://therapeuticsmd.com) or follow us on Twitter: [@TherapeuticsMD](https://twitter.com/TherapeuticsMD) and on Facebook: [TherapeuticsMD](https://www.facebook.com/TherapeuticsMD).

### **Forward-Looking Statements**

This press release by TherapeuticsMD, Inc. may contain forward-looking statements. Forward-looking statements may include, but are not limited to, statements relating to TherapeuticsMD's objectives, plans and strategies as well as statements, other than historical facts, that address activities, events or developments that the company intends, expects, projects, believes or anticipates will or may occur in the future. These statements are often characterized by terminology such as "believes," "hopes," "may," "anticipates," "should," "intends," "plans," "will," "expects," "estimates," "projects," "positioned," "strategy" and similar expressions and are based on assumptions and assessments made in light of management's experience and perception of historical trends, current conditions, expected future developments and other factors believed to be appropriate. Forward-looking statements in this press release are made as of the date of this press release, and the company undertakes no duty to update or revise any such statements, whether as a result of new information, future events or otherwise. Forward-looking statements are not guarantees of future performance and are subject to risks and uncertainties, many of which are outside of the company's control. Important factors that could cause actual results, developments and business decisions to differ materially from forward-looking statements are described in the sections titled "Risk Factors" in the company's filings with the Securities and Exchange Commission, including its most recent Annual Report on Form 10-K and Quarterly Reports on Form 10-Q, as well as reports on Form 8-K, and include the following: the effects of the COVID-19 pandemic; the company's ability to maintain or increase sales of its products; the company's ability to develop and commercialize IMVEXXY®, ANNOVERA®, and BIJUVA® and obtain additional financing necessary therefor; whether the company will be able to comply with the covenants and conditions under its term loan facility; whether the company will be able to successfully divest, or obtain an investment in, its vitaCare business and how the proceeds that may be generated by any such divestiture or investment will be utilized; the potential of adverse side effects

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or other safety risks that could adversely affect the commercialization of the company's current or future approved products or preclude the approval of the company's future drug candidates; whether the FDA will approve the lower dose of BIJUVA; the company's ability to protect its intellectual property, including with respect to the Paragraph IV notice letters the company received regarding IMVEXXY and BIJUVA; the length, cost and uncertain results of future clinical trials; the company's reliance on third parties to conduct its manufacturing, research and development and clinical trials; the ability of the company's licensees to commercialize and distribute the company's products; the ability of the company's marketing contractors to market ANNOVERA; the availability of reimbursement from government authorities and health insurance companies for the company's products; the impact of product liability lawsuits; the influence of extensive and costly government regulation; the volatility of the trading price of the company's common stock and the concentration of power in its stock ownership.

CONTACT:

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