

# TERMS AND CONDITIONS OF SERVICE

## TO CONCIERGE SERVICES MEMBERSHIP AGREEMENT



Version Dated as of December 1, 2012

### BACKGROUND

Physician operates a Concierge Services Medical Practice known as SignatureMD Concierge Practice ("**Concierge Practice**") providing certain professional medical services as well as certain additional services, enhancements and amenities to the Program Members and other persons who have subscribed to and enrolled in the Physician's Concierge Practice, and in connection therewith has entered into that certain Concierge Services Physician Participation Agreement ("**SignatureMD Agreement**"), with Signature MD, Inc., a company that facilitates certain non-medical aspects of the Concierge Practice.

Program Members desire to subscribe to and enroll in the Physician's Concierge Practice on the terms and conditions set forth below in this Terms of Service and the accompanying Concierge Services Membership Agreement (the "**Membership Agreement**"). These Terms and Conditions of Service (these "**Terms**") accompany and supplement the Membership Agreement and constitute the Terms referenced therein (these Terms, the Membership Agreement and all Schedules and Exhibits, collectively, the "**Agreement**"). Any capitalized term used but not defined herein shall have the meaning given to it in the Membership Agreement.

In order to induce each other to enter into the Agreement, in consideration of the mutual promises and undertakings set forth in the Membership Agreement and these Terms and for other valuable consideration, receipt and sufficiency of which are hereby acknowledged by the Parties, and intending to be legally bound, the Parties hereby mutually agree as follows:

#### 1. Program Services.

- (a) Physician agrees to provide to Program Member certain enhancements and amenities to professional medical services to be rendered by Physician to Program Member, as further described in Section 1 to these Terms. Upon prior written notice to Program Member, Physician may add or modify the Program Services set forth in Section 1, as reasonably necessary, and subject to such additional fees and/or terms and conditions as may be reasonably necessary.
- (b) Program Member acknowledges that the Program Services are services that are not covered services under any insurance contract to which Program Member may be a party, including, without limitation, Medicare, and are not reimbursable by Program Member's insurer, health plan or any governmental entity, including Medicare. Program Member agrees to bear sole financial responsibility for the Membership Fee and agrees not to submit to Program Member's insurer, health plan or governmental entity any bill, invoice or claim for payment or reimbursement of such Membership Fee.
- (c) Physician will separately charge Program Member or Program Member's insurer, health plan or governmental entity for medical, clinical, diagnostic or therapeutic services rendered by Physician to Program Member, and Program Member may seek payment or reimbursement from Program Member's insurer or health plan for any such service to the extent covered by Program Member's insurer, health plan or governmental entity.
- (d) Program Member understands, agrees and covenants that this Agreement is a service contract, and not a contract for insurance.

**2. Designated Physician.** Program Member understands and acknowledges that Physician may not be available from time to time and may designate a covering physician or other licensed medical professional familiar with Program Member's medical history and course of care to attend to Program Member's medical care needs from time to time. The term "Physician," as used throughout these Terms and in the Membership Agreement, covers the licensed individual designated as the Physician herein and such other practitioner as may be designated parties in Physician's absence.

**3. Term.** Unless earlier terminated as set forth in Section 6 (below), the initial term of the Agreement shall be for one year, commencing on the effective date of the Membership Agreement (the "Effective Date") and terminating on the day following the first anniversary of the Effective Date (the "Initial Year"). Thereafter, the Agreement shall automatically renew for successive one-year periods (each, a "Renewal Year"), unless either party notifies the other party in writing, not less than 30 days prior to the expiration of the Initial Year or the Renewal Year, as applicable, of such party's decision not to renew the Agreement.

**4. Membership Fee.** Program Member agrees to and shall pay the Membership Fee as provided in the Membership Agreement. Unless this Agreement is not renewed, as provided in Section 3 (above), subsequently, the Program Member will be billed for the Membership Fee for each Renewal Year prior to the beginning of each Renewal Year, and the Program Member agrees to pay the invoiced Membership Fee within 30 days after the date of the invoice. In order to facilitate the administration of the Concierge Practice and the Program Services, Physician hereby appoints Signature MD, Inc. to perform all billing and collections functions associated with the Membership Fee (but not for medical services covered under any insurance contract, including Medicare). Accordingly, Program Member agrees to submit all payments of Membership Fees to Signature MD, Inc., as follows:

Signature MD, Inc.  
2633 Lincoln Blvd., Suite 838  
Santa Monica, CA 90405  
Tel: 1 (866) 883-8859  
www.signatureMD.com

Any checks for payment of the Membership Fees shall be made payable to, and any credit card payments shall be processed by, SignatureMD, Inc.

#### 5. E-mail Communications.

- (a) Unless advised otherwise in writing, Program Member authorizes the Physician and Physician's staff and designees to communicate with Program Member by e-mail regarding Program Member's personal health information (as such term is defined in the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations; "PHI") at Program Member's e-mail address shown on the signature page of this Agreement.
- (b) Program Member acknowledges and agrees that:
  - (i) e-mail may not be a secure medium for sending or receiving PHI;
  - (ii) although the Physician and Physician's staff and designees will make reasonable efforts to keep e-mail communications among Program Member, the Physician and Physician's designee(s) (and their employees, agents and representatives) confidential and secure, Program Member understands that they cannot assure or guaranty the confidentiality of e-mail communications;
  - (iii) in the discretion of Physician, e-mail communications may be made a part of Program Member's permanent medical record; and
  - (iv) e-mail is not an appropriate means of communication regarding emergency or other time-sensitive issues or for inquiries regarding sensitive information.
- (c) Program Member further acknowledges and agrees that:
  - (i) Program Member will not use e-mail for communications regarding emergencies or other time-sensitive issues, or for communication regarding sensitive information;
  - (ii) If Program Member does not receive a response to Program Member's e-mail message within one (1) business day (or such longer time as Program Member indicates in the e-mail), Program Member will use another means of communication to contact the Physician or appropriate representative;
  - (iii) Program Member will include Program Member's full name and a short description of the subject matter of the e-mail (e.g., "prescription refill", "medical advice", "billing question") in the "Re" or "Subject" line of the e-mail;
  - (iv) When responding to an e-mail from the Physician or Physician's staff or representative, Program Member will use "Reply with History" to ensure that the recipient is aware of the previous communication; and
  - (v) Neither Physician nor any of Physician's agents, consultants or representatives will be liable to Program Member for any loss, damage, cost, injury or expense caused by, or resulting from: (i) a delay in response to Program Member due to technical failures, including, but not limited to, technical failures attributable to internet service provider, power outages, failure of electronic messaging software, failure by Physician, or any of Physician's agents, consultants or representatives to properly address e-mail messages, failure of computers or computer network, or faulty telephone or cable data transmission; (ii) any interception of e-mail communications by a third party; or (iii) Program Member's failure to comply with the guidelines regarding use of e-mail communications set forth in this Section 5.

## 6. Termination.

- (a) Program Member may terminate this Agreement at any time upon thirty (30) days prior written notice to Physician and SignatureMD; provided, however, Program Member will not be entitled to a refund of any portion of the Membership Fee previously paid by Program Member.
- (b) Physician may terminate this Agreement, at any time, upon: (i) occurrence of Program Member's breach or default under this Agreement and failure to cure same within ten (10) days, or (ii) thirty (30) days prior written notice to Program Member, with or without cause; provided, however, that Program Member will be entitled to a refund of a prorated portion of the Membership Fee paid by Program Member for the year in which termination becomes effective

**7. Notices.** Any communication required or permitted to be sent under this Agreement (other than communications referenced in Section 5 relating to Program Member's PHI) will be in writing and sent via facsimile, recognized overnight courier or certified mail, return receipt requested, to the addresses set forth on the signature page. Any change in address will be communicated to the Parties and SignatureMD in accordance with the provisions of this Section 7.

**8. Independent Medical Judgment.** Notwithstanding anything to the contrary contained in this Agreement or in the SignatureMD Agreement, Physician retains full and free discretion to, and shall, exercise his/her professional medical judgment on behalf of Program Member with respect to medical services rendered to Program Member, and nothing in this Agreement shall be deemed or construed to influence, limit or affect the Physician's independent medical judgment with respect to Physician's provision of medical services to Program Member and Program Member's medical treatment.

**9. Change of Law.** If there is a change in any state or federal law, regulation or rule or interpretation thereof, which affects this Agreement or the activities of either party under this Agreement, and either party reasonably believes in good faith that the change will have a substantial adverse effect on that party's rights or obligations under this Agreement, then that party may, upon written notice, require the other party to enter into good faith negotiations to renegotiate the terms of this Agreement. If the parties are unable to reach an agreement concerning the modification of this Agreement within thirty (30) days after the date of the notice seeking renegotiation, then either party may terminate this Agreement by written notice to the other party.

**10. Governing Law; Arbitration.** This Agreement shall be governed and interpreted in accordance with, and the rights of the parties shall be determined by, the laws of the State of Virginia, without regard to conflicts of laws principles. THE PARTIES INTENTIONALLY AND VOLUNTARILY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY MATTER ARISING OUT OF THIS AGREEMENT.

ANY DISPUTE BETWEEN PROGRAM MEMBER AND PHYSICIAN OR THEIR RESPECTIVE AFFILIATES AND AGENTS ARISING UNDER OR RELATING TO THIS AGREEMENT SHALL BE RESOLVED EXCLUSIVELY BY ARBITRATION IN MIDLOTHIAN, VIRGINIA, BEFORE A NEUTRAL ARBITRATOR, under the auspices of the American Arbitration Association, in accordance with its then current Expedited Rules and Procedures for Commercial Arbitration. Any award rendered pursuant to such arbitration shall be final and binding upon the parties, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction over parties. Each party shall bear its own costs and attorneys' fees in connection with any such arbitration.

**11. No Liability.** Except as required by applicable law, neither Physician nor any of Physician's agents, consultants or representatives shall be liable to Program Member for any damages or liability arising out of or related to the Agreement. In any event, each parties' liability under the Agreement, shall be limited to amount that is equal to the aggregate Membership Fees paid by the Program Member during the twelve-month period preceding the date on which the claim arises. In no event any party will be liable for any indirect, consequential, special or punitive damages of any kind, whether arising in contract, tort, strict liability or otherwise, to the full extent permitted by the applicable law.

**12. Waiver.** The failure of a party to insist upon strict adherence to or performance of any term of the Agreement on any occasion will not be considered a waiver of the right to require adherence on any other occasion or regarding any other matter.

**13. Severability.** If any provision of the Agreement is declared invalid or illegal for any reason whatsoever, then notwithstanding such invalidity or illegality, the remaining terms and provisions of the Agreement will remain in full force and effect in the same manner as if the invalid or illegal provision had not been contained herein.

**14. Assignment.** Program Member may not assign the Agreement. Physician shall have the right to assign this Agreement in accordance with the terms and conditions set forth in the Agreement.

**15. Entire Agreement; Amendment.** The Agreement contains the entire agreement of the parties and supersedes all prior agreements and understandings between the Parties regarding the subject matter hereof. The Agreement may not be changed and may only be amended by a written agreement signed by the Parties.

## SCHEDULE 1 to SignatureMD Terms of Service Program Services: Enhancements & Amenities <sup>1</sup>

- 1. Panel Limits.** Physician agrees to limit the size of his or her panel of patients to approximately 600 patients.
- 2. Same Day/Next Day Appointments.** Program Member will be provided with Physician's and/or his/her assistant's cellular phone number, facsimile and e-mail addresses, and will provide Program Member with detailed instructions on how to contact Physician through those means (collectively, the "Communications Enhancements"). Program Member will be provided an ability to be able to use the Communications Enhancements to make same day (or, where appropriate, next business day) appointments to see Physician, including appointments for non-urgent care, regardless of any medical necessity.
- 3. 24/7 Availability.** Arrangements will be made for Physician or, in Physician's absence, Physician's designee, generally to be available to personally communicate with Program Member (or Program Member's authorized designee), even when not medically necessary, 24 hours per day, seven days a week through one or more of the Communications Enhancements.
- 4. Extended Patient Appointments.** At Program Member's election, each appointment with Physician will be at least 30 minutes, regardless of medical necessity.
- 5. Personal Administrative Assistant.** A representative of Physician's Concierge Practice will be dedicated to Program Member to assist addressing and coordinating the administrative aspects of the Concierge Practice and Program Services.
- 6. Comprehensive Health Planning.** Arrangements will be made for Physician to provide an annual health assessment to set Program Member's annual health goals and to evaluate Program Member's progress in achieving those goals. Program Member's annual health assessment will include a screening physical exam and history, regardless of medical necessity, and related counseling and follow-up services. The parameters of this annual health assessment will include only items that are not covered by Program Member's insurance, health plan or any governmental entity, including Medicare. Arrangements will also be made for Physician to be available to coach Program Member to address obstacles to health improvement.
- 7. Office Amenities.** Program Member will have access to a comfortable, well-appointed and semi-private waiting area.
- 8. Wait Time.** Physician will use his or her best efforts to be promptly available to see the Program Member at the time of Program Member's scheduled appointment, with no waiting time, unless Physician is attending to a medical emergency.
- 9. Arrangement of Transportation for Testing and Consultation.** At Program Member's option, Arrangements may be made to assist Program Member by making transportation arrangements for medical testing, evaluations and consultations. *Program Member, however, will be responsible for transportation fees if he or she chooses this enhancement.*
- 10. Comprehensive Care Planning.** Physician will continually work with Program Member to set Program Member's health goals, create a plan to achieve those goals and to monitor progress in achieving those goals. Physician will also provide health coaching to address obstacles to health improvement.
- 11. Health Information.** Arrangements will be made to provide Program Member with regular personalized health information on topics pertinent to Program Member's health, including bulletins, health articles and website postings. Any such information will be conveyed via web posting or e-mail. Arrangements may also be made to arrange for Program Member to attend education, lecture, support group and discussion sessions, at Program Member's choice. *Program Member may be required to pay registration fees, if any, for such sessions.*

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<sup>1</sup> Membership Fees are solely for the Enhancements listed in this Schedule that are furnished, or arranged to be furnished. Physician will seek reimbursement from the Program Member's health plan only for covered medical services.