

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into effective as of _____, (“Effective Date”), by and between FUNCTIONAL RECOVERY ASSOCIATES, PLLC, a Texas professional limited liability company (“FRA”), and _____, MD/DO, a Texas licensed physician (“Physician”). Physician and FRA may be referred to at times in the Agreement as a “Party” individually or as the “Parties.”

WHEREAS, FRA is a professional limited liability company that provides medical care services (“Professional Services”) through healthcare practitioners that it employs or contracts for such purpose, including physicians who are duly licensed to practice medicine in the State of Texas;

WHEREAS, Physician is qualified by appropriate education, training, and experience to perform the Professional Services; and

WHEREAS, The Parties desire to enter an arrangement whereby physician will provide the Professional Services to patients as reasonably requested by FRA.

NOW, THEREFORE, for and in consideration of the mutual promises of the Parties and the covenants and conditions hereinafter expressed, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree and covenant as follows:

1. ENGAGEMENT

FRA hereby engages Physician to provide the Professional Services to FRA, and Physician hereby accepts such engagement on the terms and conditions set forth herein.

2. PARTY RESPONSIBILITIES

2.1 Responsibilities of Physician.

- (a) Physician shall be available to provide Professional Services during the periods set forth in Exhibit A (“Professional Service Hours”). In the event that Physician performs Professional Services as requested by FRA at times not within the Professional Service Hours, such Professional Services shall remain subject to the terms and conditions of this Agreement.
- (b) To the extent required by any facility at which Physician provides the Professional Services, Physician shall be a member in good standing of the Medical Staff of such facility with appropriate clinical privileges to perform the Professional Services.
- (c) Physician shall provide Professional Services in accordance with applicable standards of care and all other applicable federal, state, and local standards, guidelines, and laws including, without limitation, those referenced in Section 3 of the Agreement.
- (d) The Parties expressly acknowledge and agree that the control and responsibility for the medical care and medical decision-making related to the Professional Services provided by Physician rests exclusively with the Physician.

2.2 Responsibilities of FRA.

- (a) FRA shall pay Physician for provision of the Professional Services as specified in Section 4 of this Agreement.

- (b) FRA shall furnish Physician with reasonable space, equipment, and support personnel for the provision of the Professional Services.
- (c) FRA shall furnish Physician with all patient-related information in FRA's possession that is necessary for the furnishing of the Professional Services to the patients of FRA.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Compliance with Applicable Laws and Standards. In the performance of Professional Services pursuant to this Agreement, Physician shall comply, at all times, with the following laws and standards:

- (a) All applicable federal, state, and local laws, together with any amendments, regulations, and binding interpretations thereof, including but not limited to HIPAA and HITECH (as those terms are defined in Section 8.3 below); the Social Security Act and the regulations promulgated thereunder; the rules and requirements of the Texas Medical Board, Texas laws and regulations; the rules, regulations and policies of the Office of Inspector General of the Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS"); the Internal Revenue Service; the Texas Health & Human Services Commission ("HHSC") and the Texas Department of State Health Services ("TDSHS"); and any new legislation or regulations, such as a new federal or state economic stabilization program or health insurance program (collectively, "Applicable Law");
- (b) All FRA policies and procedures (collectively, "FRA Standards");
- (c) All applicable policies, procedures, rules, regulations, and medical staff bylaws of hospitals and other healthcare facilities at which the Professional Services are performed (collectively, "Facility Standards");
- (d) All standards of The Joint Commission, medical board of specialization applicable to Physician, or other accrediting or certifying bodies designated by FRA or the facilities at which Professional Services are performed (collectively, "Accreditation Standards");
- (e) Limitation, attendance at continuing medical education seminars and conferences at Physician's sole expense; and
- (f) All policies, procedures, conditions of participation, and contract provisions governing any applicable third-party reimbursement for any healthcare services, including the Professional Services provided pursuant to this Agreement (collectively, "Payor Standards").

3.2 Records. Physician shall ensure that all material information related to Physician's provision of Professional Services is documented in the patient medical charts or otherwise in a manner consistent with Applicable Law, FRA Standards, Facility Standards, Accreditation Standards, and Payor Standards. Physician shall regularly provide reports and records reasonably required by FRA and pertaining to the Professional Services provided to FRA patients. Such reports and records and all medical records or any portions thereof created by Physician that relate to FRA patients shall be and remain the exclusive property of FRA.

3.3 No Exclusion/Adverse Action. As a continuing condition precedent under this Agreement, Physician represents and warrants to FRA that: (i) Physician is not excluded from participation in any state or federal health care program; and (ii) no final adverse action, as such term is defined under 42 U.S.C §1320a-7e(g) (or any successor provision of Applicable Law), has occurred or is pending or threatened against Physician (collectively, “Excluded/Adverse Actions”). Physician shall notify FRA of any Excluded/Adverse Actions or any basis therefor no later than two (2) days after learning of any such Excluded/Adverse Action or any basis therefor, as the case may be.

3.4 No restriction on Ability to Contract. Physician represents that he has and shall maintain all required authority and ability to enter into and fully perform his obligations pursuant to this Agreement. Physician further represents that he is not prohibited or otherwise limited in his right or ability to enter into and perform under the Agreement by reason of any other written or oral agreement, threatened or pending legal proceeding, or any other circumstance.

3.5 Compliance with Laws and Accreditation Standards. Physician shall work cooperatively with FRA and take all necessary steps required to assist FRA in complying with all Applicable Laws, FRA Standards, Accreditation Standards, and Payor Standards.

3.6 Professional Licensure and Credentials. Physician, as applicable, shall at all times maintain in good standing all professional licenses, permits, or other credentials that are required by Applicable Law, FRA Standards, Accreditation Standards, and Payor Standards in order to perform Professional Services as contemplated under this Agreement, including but not limited to, a valid and unrestricted license to practice medicine in the State of Texas.

3.7 Confidentiality. FRA shall provide Physician with certain specialized knowledge, confidential information, and trade secrets of FRA, including, but not limited to, information concerning FRA’s patients, relationships with third-party payors, prospective vendors, business strategies, protected health information, personnel, contracts, proposals, price/fee lists, all nonpublic information, marketing manual, notes, notebooks, specifications, records, drawings, writings, photographs, documents (no matter how created or stored) and any other unique, valuable, or confidential information or items and any derivations therefrom (collectively, “Confidential Information”). Physician acknowledges, and FRA agrees, that Physician will be provided access to such Confidential Information throughout the term of this Agreement so that Physician can perform his obligations to FRA under this Agreement and Applicable Law. Physician understands, acknowledges, and agrees that such Confidential Information gives FRA a competitive advantage over other persons and entities that do not have such information and that FRA would be harmed if the Confidential information were disclosed. Physician will hold all Confidential Information in trust and confidence for FRA and will not use the Confidential Information for any purpose (other than for the benefit of FRA) or disclose to any person or entity any such Confidential Information (except as necessary to carry out his duties under the Agreement and Applicable Law). Physician further agrees to take reasonable steps to safeguard such Confidential Information and prevent its disclosure to unauthorized Persons except for disclosures:

- (a) compelled by law (but Physician must notify FRA promptly of any request for that information, before disclosing it, if legal and practicable);
- (b) to advisers or representatives of Physician, when in the regular course of professional medical practice;
- (c) of information that has become otherwise publicly available (other than from wrongful disclosure by Physician in violation of this Agreement); or

- (e) of information that was rightfully in the possession of Physician prior to the date of this Agreement.

Physician acknowledges and understands that any breach of the provisions of this Section 3.7 may cause irreparable injury to FRA for which monetary damages are inadequate, difficult to compute, or both. Accordingly, Physician acknowledges and expressly agrees that the provisions of this Section 3.7 may be enforced by specific performance, and without limiting other possible remedies for the breach of this Section 3.7, the Parties agree that injunctive or other equitable relief shall be available to enforce its terms, without the necessity of posting a bond. Further and without limitation on any particular obligation of confidence recited herein, the Parties will not be permitted to justify disregarding the obligations of confidence herein by using the Confidential Information to guide a search for publications or other publicly available information and fitting together the information contained therein to contend Confidential Information is publicly available.

3.8. Assignment of Confidential Information; Works. Physician agrees to, and hereby does, assign to FRA all right, title, and interest in and to all Confidential Information or works conceived, developed, or obtained by Physician following the Effective Date that: (i) relates to the business of FRA, (ii) is developed using FRA's facilities, equipment, personnel, or resources, (iii) is derived from FRA's Confidential Information, or (iv) is developed using any of FRA's Confidential Information. With respect to those portions of such Confidential Information that are original works of authorship, Physician hereby agrees that such works are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C., Section 101, *et. seq.*). Physician shall, at FRA's request, promptly execute such other documents as FRA may reasonably request, including without limitation, a specific assignment of title to such Confidential Information to FRA, and do anything else reasonably necessary to enable FRA to secure a patent, copyright, or other form of protection therefor in the United States and in other countries.

3.9. Return of Confidential Information. Upon termination or expiration of this Agreement, Physician will return all Confidential Information which is in a tangible form to FRA and will destroy any Confidential Information located on any computer or other electronic storage device within the possession or control of Physician. In addition, Physician will provide FRA with an affidavit, on a form approved by FRA, that Physician has complied with this Section 3.9 within thirty (30) days of termination or expiration of this Agreement.

3.10. Non-Solicitation Covenant. Physician shall not, during the term of this Agreement, and for a period of eighteen (18) months following the termination or expiration of this Agreement, with or without cause, solicit, contact, or otherwise communicate with any person, company or business that was a patient, customer, supplier, vendor, or other contact of FRA, whom such Physician personally solicited, contacted, communicated with or accepted business from while Physician provided Professional Services to FRA at any time during the twelve (12) months preceding the termination or expiration of this Agreement without the prior consent of FRA.

3.11. Non-Interference Covenant. Physician covenants and agrees that for a period of eighteen (18) months following termination or expiration of this Agreement, with or without cause, Physician will not recruit, hire, or attempt to recruit or hire, directly or by assisting others, any employees or contractors of FRA, nor shall Physician contact or communicate with any employees or contractors of FRA for the purpose of inducing them to terminate their applicable employment or contractual relationship with FRA without the prior consent of FRA. For purposes of this covenant, "employees" means employees who are actively employed by FRA at the time of the attempted recruiting or hiring. For purposes of this covenant, "contractors" means contractors who are actively contracted with FRA at the time of the attempted recruiting or hiring.

3.12. Agreement Ancillary to Other Agreements. This section is ancillary to, and part of, other agreements between FRA and Physician, including FRA's agreement to provide its Confidential Information to Physician.

3.13. Remedies.

- (a) Physician and FRA agree that the limitations as to time and scope of activity to be restrained are reasonable and do not impose a greater restraint on Physician that is necessary to protect the property rights and other business interests of FRA. FRA and Physician further agree that if any restriction contained in this Section 3 is held by any appropriate tribunal to be unenforceable or unreasonable, such tribunal shall endeavor to enforce a lesser restriction in its place, and remaining restrictions contained herein will be enforced independently of each other.
- (b) If Physician fails to comply with, breaches, or threatens to breach any of the provisions in this Section 3, FRA, in addition to any other remedies available to it at law or in equity, shall be entitled to immediate injunctive relief to enforce the provisions of this Agreement and shall not be required to post a bond or other security (whether cash or otherwise). In addition, FRA shall be entitled to recover from Physician reasonable attorney's fees and other expenses incurred by FRA in connection with such proceedings.
- (c) If Physician violates any of the covenants of this Section 3, the one-year term of the restriction violated shall be extended by the amount of time that Physician was in violation.
- (d) Physician shall pay any attorney's fees and expenses incurred by FRA if FRA, in its sole discretion, chooses to enforce any provision hereunder because of a breach of this Section 3 by Physician.
- (e) The existence of any claim or cause of action of Physician against FRA, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by FRA of the covenants, and shall not prohibit FRA from obtaining any relief, whether in law or in equity, to which it is justly entitled.

3.14. Binding Effect. The provisions of this Section 3 shall be binding upon Physician and his agents and representatives, and Physician shall take all steps necessary or appropriate to assure that his agents and representatives comply herewith.

3.15. Outside Activities. In compliance with Applicable Law, during the term of this Agreement, Physician shall provide advance notice to FRA of any Professional Services that Physician anticipates he may provide for any third parties as a representative of FRA. Physician may not provide any Professional Services as a representative of FRA for any third parties without obtaining FRA's prior written consent; provided, however, FRA, in its sole discretion, may on a case-by-case basis waive the requirements of this Section 3.15. Any waiver by FRA with respect to this provision in any particular instance does not prevent FRA's ability to enforce this provision in any future instance.

3.16. Managed Care Contracting. Physician will participate in, and comply with the provisions of, any managed care and other third-party payor contracts entered into by FRA. Additionally, Physician acknowledges and agrees that FRA may enter into one or more contracts with third-party payors for discounted or special rates for services. Physician agrees to cooperate with FRA in the execution and performance of such agreements and, upon request by FRA, enter into such agreements as may be required by FRA for these purposes. Notwithstanding the foregoing, no participation by Physician in any managed

care or other third-party payor contract for FRA shall interfere with or otherwise supersede any existing payor contract to which Physician is a party, whether as an individual practitioner or through a different practice or organization, without written authorization by Physician.

3.17 Notification. During the term of this Agreement, Physician shall immediately notify FRA in the event of any change in the status of any of the representations, warranties, or covenants set forth in this Section 3.

4. COMPENSATION AND FINANCIAL MATTERS

4.1. Physician Compensation. In exchange for the performance of the Professional Services set forth in this Agreement and as sole compensation for Professional Services, FRA shall pay to Physician the fees set forth in Exhibit A.

4.2. Billing. FRA shall have the exclusive and sole right to bill for and collect all charges and fees payable by patients or third-party payors, and Physician hereby assigns all right to charges and fees related to Professional Services furnished by Physician pursuant to this Agreement. Physician shall not submit claims to or otherwise request payment from patients or third parties for Professional Services rendered pursuant to this Agreement.

4.3. Reimbursement of Disallowed Expenses. If any payment, medical reimbursement, expense, allowance payment, or other expense incurred and paid by FRA for the benefit of Physician is disallowed in whole or in part as a deductible expense of FRA for federal income tax purposes, Physician will reimburse FRA, upon written notice and demand, the full extent of the disallowance, including penalties and associated expenses.

4.4. Cooperation with Billing and Collection Activities. Physician shall fully cooperate with FRA and comply with all FRA requests in connection with FRA's efforts to bill for and collect professional fees. Specifically, and without limitation, Physician shall submit to FRA all change and billing-related documentation necessary for FRA to prepare and submit claims for professional fees within ten (10) business days after such Professional Services are rendered.

5. INSURANCE

At all times during the term of this Agreement and thereafter until no earlier than the end of the applicable statute of limitations period after the termination, nonrenewal, or expiration of this Agreement, Physician shall maintain professional liability insurance for any and all claims and demands concerning or otherwise arising from or related to the practice of medicine by Physician ("Malpractice Insurance"). The Malpractice Insurance shall be issued by an insurer reasonably acceptable to FRA and shall be in amounts of coverage not less than Two Hundred Thousand Dollars per occurrence and Six Hundred Thousand Dollars annual aggregate (\$200,000/\$600,000). To the extent permitted by the applicable carrier, the Malpractice Insurance policy or policies shall require the carrier to provide FRA with written notice of any cancellation, nonrenewal, or reduction of the Malpractice Insurance coverage at least twenty (20) days in advance. If the Malpractice Insurance coverage is on a claims-made basis and Physician ceases to be covered by the Malpractice Insurance from the applicable carrier, Physician shall obtain from an insurance carrier reasonably acceptable to FRA and in the amounts described above: (i) an unlimited reporting endorsement or extended coverage policy (Tail"); (ii) retroactive coverage ("Nose"); or (iii) "Prior Acts" coverage with a retroactive date on or prior to the Effective Date covering all acts or occurrences related to the practice of medicine by Physician until no earlier than the end of the applicable statute of limitations period after the termination, expiration, or nonrenewal of this Agreement (collectively, "Continuing Coverage"). Upon request by FRA, Physician shall promptly deliver to FRA certificates evidencing the Malpractice Insurance and, if applicable, the Continuing Coverage. Notwithstanding anything to the

contrary contained in this Agreement, FRA may terminate this Agreement immediately in the event of cancellation, nonrenewal, or reduction of the Malpractice Insurance or failure to obtain Continuing Coverage.

6. INDEMNIFICATION

TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, PHYSICIAN SHALL INDEMNIFY AND HOLD HARMLESS FRA, INCLUDING FRA'S MEMBERS, OFFICERS, OWNERS, AGENTS, EMPLOYEES, REPRESENTATIVES, AND AFFILIATES, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES RELATED TO THE DEFENSE OF ANY SUCH CLAIMS), WHICH MAY BE ASSERTED AGAINST FRA, OR FOR WHICH IT MAY NOW OR HEREAFTER BECOME SUBJECT, ARISING IN CONNECTION WITH ANY ACT OR OMISSION OF PHYSICIAN RELATED TO THIS AGREEMENT OR PHYSICIAN'S PERFORMANCE HEREUNDER. THIS INDEMNITY OBLIGATION SHALL SPECIFICALLY AND WITHOUT LIMITATION EXTEND TO LOSSES, CLAIMS, DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES RELATED TO THE DEFENSE OF ANY SUCH CLAIMS) RESULTING FROM PHYSICIAN'S BREACH OF THIS AGREEMENT OR FROM FRA'S RELIANCE UPON PHYSICIAN'S REPRESENTATIONS MADE HEREIN WHICH BECOME OR ARE FOUND TO HAVE BEEN UNTRUE OR INACCURATE.

7. INDEPENDENT CONTRACTOR

With respect to all work duties and obligations, it is mutually understood and agreed that Physician is performing services as an independent contractor and not as an employee, agent, borrowed servant, joint venture, or partner of FRA. Physician shall not represent to third parties that Physician is an employee, agent, borrowed servant, joint venture, or partner of FRA. As an independent contractor, Physician is solely responsible for precisely what medical procedures will be performed and how they will be performed in connection with providing the Professional Services. FRA has no control over Physician's performance of Professional Services nor is FRA responsible for providing any tools, equipment, software, or workspace for the performance of the Professional Services; provided, however, that Physician shall report periodically to FRA to keep FRA informed as to the Professional Services provided by Physician under this Agreement. Physician and FRA agree that Physician is not entitled to any employee benefits from FRA or to participate in any FRA employer-sponsored benefit plans, including but not limited to, vacation or paid time off, health insurance benefits, or 401(k) retirement plans. Any tax liability for compensation paid to Physician under this Agreement or payment of premiums for health insurance, retirement benefits, or any other benefit coverage shall be the sole responsibility of Physician. Neither Physician, nor any of his employees or representatives, shall have the right or authority to enter into any contract in the name of FRA or any affiliate or subsidiary of FRA, or otherwise bind any of these FRA entities in any way without the express permission of FRA.

8. CONFIDENTIALITY

8.1. Confidentiality of Agreement. Physician shall keep this Agreement and its contents confidential and shall not disclose this Agreement or its contents to any third party other than the Physician's legal and financial advisors, or as required by Applicable Law, without the prior written consent of FRA.

8.2. Confidential Information. Physician acknowledges that in connection with the provision of Professional Services under this Agreement, FRA may provide, and Physician may have access to,

FRA's Confidential Information. Accordingly, Physician shall protect and safeguard such Confidential Information as set forth in Section 3.7 of this Agreement.

8.3. HIPAA and HITECH Compliance. Physician acknowledges that in connection with the provision of Professional Services under this Agreement, Physician may be acquiring and making use of "Protected Health Information" as defined in 45 C.F.R. §164.501 (as such provision is currently drafted and subsequently updated, amended, or revised), the use and disclosure of which is subject to the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule") and the Standards for Security of Electronic Protected Health Information ("Security Rule") promulgated under HIPAA and the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH") (collectively, the "HIPAA Requirements"). The Parties shall comply with the applicable provisions of the HIPAA Requirements.

9. TERM; TERMINATION; DEFAULT

9.1. Term. The initial term of this Agreement shall be for one (1) year ("Initial Term") commencing on the Effective Date. This Agreement shall automatically renew for successive one (1) year terms (each, a "Renewal Term") unless either Party notifies the other in writing of its intent not to renew at least ninety (90) days prior to the expiration of the Initial Term, or unless this Agreement is otherwise earlier terminated as described herein; provided, however, that if this Agreement is terminated with or without cause during the Initial Term or during the First Renewal Term, the Parties may not enter into the same or a substantially similar arrangement during the timeframe that would have been the Initial Term of this Agreement.

9.2. Automatic Termination. The Agreement shall terminate automatically upon the occurrence of any of the following events:

- (a) Physician's death;
- (b) The restriction, suspension, revocation, or cancellation of the Physician's license to practice medicine in the State of Texas;
- (c) FRA's inability to procure professional liability coverage for Physician;
- (d) Suspension, revocation, or cancellation of Physician's DEA license;
- (e) Restriction, suspension, revocation, or cancellation of Physician's participation in governmental healthcare programs, including Medicare, Medicaid, Tricare, and workers' compensation;
- (f) The imposition of any suspension, restriction, or limitation by any hospital or governmental authority to such an extent that Physician cannot perform the Professional Services for FRA; or
- (g) Physician's conviction of a felony or misdemeanor involving healthcare-related fraud or abuse or involving a crime of moral turpitude.

9.3. Termination for Cause by Either Party. As applicable, either Party may immediately terminate this Agreement upon written notice to the other Party at any time for cause in the event that:

- (a) A Party fails to comply with any material requirement of this Agreement, and any such failure is not cured within thirty (30) calendar days of the receipt of written notice thereof, then the nonbreaching Party shall have the right, in addition to any other rights it may have, to terminate this Agreement immediately; or

- (b) A Party applies for or consents to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets, files a voluntary petition in bankruptcy or admits in writing its inability to pay its debts as they become due, makes a general assignment for the benefit of creditors, files a petition or an answer seeking reorganization or arrangement with creditors or takes advantage of any insolvency law, or if an order, judgment or decree shall be entered by a court of competent jurisdiction, or the application of a creditor, adjudicating a Party bankrupt or insolvent or approving a petition seeking reorganization of a Party or appointment of a receiver, trustee or liquidator of either Party of all or a substantial part of its assets.

9.4. Termination for Cause by FRA. In addition to the termination rights set forth in Section 9.2 above, FRA may immediately terminate this Agreement upon written notice to Physician upon the occurrence of any of the following:

- (a) Immediately upon a material breach of this Agreement by Physician (subject to an opportunity to cure as set forth below);
- (b) Immediately (unless FRA agrees otherwise in writing) upon Physician's inability or failure to perform fully his or her duties under this Agreement due to injury or illness (physical or mental) incapacitating Physician either for a continuous period exceeding ninety (90) calendar days or for a noncontinuous period exceeding 120 calendar days during any rolling 12-month period. In this connection, FRA shall have the right to have Physician examined at such reasonable time or times by such medical doctors as FRA and Physician may agree upon. If Physician and FRA cannot agree on a mutually acceptable medical doctor to conduct such examination, a medical doctor selected by FRA and a medical doctor selected by Physician shall designate a third Physician to conduct such examination. Employee shall be available for and shall submit to such examination as and when reasonably requested;
- (c) Immediately if, in FRA's sole discretion, patient health or safety is in imminent and serious danger from Physician's acts or omissions; or
- (d) Immediately if: (i) Physician engaged in conduct amounting to fraud, dishonesty, gross negligence, or willful misconduct; (ii) any board or professional organization that has the right or privilege to pass upon the professional conduct of Physician and to discipline Physician therefor determines or finds that Physician is or has been guilty of unprofessional or unethical conduct; (iii) Physician has conducted or is conducting himself or herself in an unprofessional and unethical manner such as to discredit FRA, its reputation, character, and standing or that of any other physician or employee of FRA; or (iv) Physician is convicted of a crime (other than as set forth in Section 9.2(g) above) that, in FRA's sole discretion, makes Physician unfit to perform the duties under this Agreement;
- (e) Immediately, if any of the representations made by Physician in Section 3 become or are found to have been inaccurate or untrue;
- (f) PROVIDED, HOWEVER, that prior to terminating this Agreement pursuant to the preceding subsections (a)-(e), if the basis for FRA's action is one capable of being cured by Physician (which determination shall be made by FRA in its reasonable

or to such other address and to the attention of such other person or officer as the Party may designate in writing.

10.2. Amendments. Any amendments to this Agreement must be in writing and executed by the Parties in a separate writing.

10.3. No Waiver. Failure of a Party to insist upon strict performance of any of the provisions of this Agreement, or to exercise any right or action herein conferred on one or more occasions, shall not be construed to be a waiver, relinquishment, or estoppel by silence of any such right to its assertion in the future and the same shall be and remain in full force and effect.

10.4. Choice of Law. The Agreement is formed in and is intended to be performed within the State of Texas and shall be governed in all respects by Texas law.

10.5. Final Agreement. This Agreement sets forth the final understanding of the Parties regarding the subject matter hereof and supersedes all prior understandings, negotiations and writings between the Parties relating thereto.

10.6. No Third-Party Beneficiaries. Nothing in this Agreement is intended, nor shall be deemed, to confer any benefits on any third party.

10.7. Access to Records. Each Party shall keep, and allow the other Party reasonable access to, full and accurate books and records of all services rendered hereunder. Further, to the extent required by Section 1395x(v)(1)(I) of Title 42 of the United States Code, until the expiration of four (4) years after the termination of this Agreement, each Party shall, upon written request, make available to the Secretary of the United States Department of Health and Human Professional Services, or to the Comptroller General of the United States, or to any of their duly authorized representatives, a copy of this Agreement and such books, documents, and records as are necessary to certify the nature and extent of the costs of the services provided under this Agreement. Each Party further agrees that in the event it carries out any of its duties under the agreement through a subcontract, having a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization, upon written request, make available to the Secretary of the United States Department of Health and Human Professional Services, or to the Comptroller General of the United States, or to any of their duly authorized representatives, a copy of such subcontract and such books, documents, and records of such organization as are necessary to verify the nature and extent of such costs.

10.8. Assignment. Subject to provisions herein to the contrary, this Agreement shall inure to the benefit of and be binding upon the Parties and their respective legal representatives and successors. Neither Party may assign this Agreement or any interest therein unless the other Party agrees in writing to such assignment.

10.9. Change in Law; Severability. The Parties recognize that this Agreement is at all times subject to Applicable Law and other changes in reimbursement for hospital or medical services. Any provision of Applicable Law that invalidates the Agreement or a portion of this Agreement or that would cause either Party to be in violation of Applicable Law shall be deemed to supersede such provision of this Agreement and shall require reformation of this Agreement. Moreover, if any term or provision of this Agreement is held illegal, invalid, or unenforceable to any extent pursuant to Applicable Law or otherwise, the remainder of this Agreement shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law. The Parties shall exercise their reasonable best efforts to accommodate the terms and intent of this Agreement to the greatest extent possible consistent with the Applicable Law. If the Parties are unable to mutually agree

regarding the reformation of this Agreement called for by Applicable Law, either Party may terminate this Agreement by giving the other Party ninety (90) days prior written notice.

10.10. Health Care Services Laws and Regulations. The Parties enter into this Agreement with the intent of conducting their relationship in full compliance with Applicable Law, including without limitation, the federal Anti-Fraud and Abuse statutes and regulations, the so-called “Stark Law” and its implementing regulations, and the Texas Prohibition on Solicitation of Patients. Notwithstanding any unanticipated effect of any of the provisions of this Agreement, neither Party shall intentionally conduct themselves under the Agreement in a manner that would constitute a violation of any provision of the federal Anti-Fraud and Abuse statutes and regulations, the Stark Law and its implementing regulations, or the Texas Prohibition on Solicitation of Patients. Moreover, nothing contained in this Agreement shall require (directly or indirectly, explicitly or implicitly) the Parties to refer or direct any patients to one another or to otherwise use one another’s services or facilities or those of any of their affiliates.

10.11. Fair Market Value. The Parties acknowledge and agree that the compensation described within Section 4 and Exhibit A of this Agreement is consistent with the fair market value of the Professional Services in an arms-length transaction, and that they are not determined in a manner that takes into account the value or volume of any referrals or business otherwise generated between the Parties for which payment may be made in whole or in part under Medicare, Medicaid, or any other state or federally funded healthcare program. The Professional Services performed under this Agreement do not involve the counseling or promotion of a business activity that violates any state or federal law.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement as of the Effective Date.

FRA:

FUNCTIONAL RECOVERY ASSOCIATES, PLLC
a Texas professional limited liability company

PHYSICIAN:

_____ MD/DO

By:

Title:

Date:

By:

Date:

EXHIBIT A

SERVICE HOURS & FEES

I. PHYSICIAN AVAILABILITY

Physician shall be available to provide Professional Services to FRA patients as determined in consultation with FRA. Physician's regular schedule will vary depending on patient needs as determined mutually by FRA and the Physician and will not necessarily correlate to the frequency or duration of other physicians providing services for FRA.

Physicians shall provide FRA with no less than thirty (30) calendar days' prior written notice for any change to Physician's established schedule, including any request for personal time off. This notification period is needed to ensure that FRA has sufficient time to coordinate coverage for FRA's patients or other business operations during Physician's absence. Emergent situations are an exception to this policy and all consideration will be made for patient coverage during such absences.

II. FEES

In consideration for Physician's performance of Professional Services under this Agreement, FRA shall pay Physician on the first working day of each succeeding month an amount equal to 54% of Collected Revenues for the preceding month. "Collected Revenues" shall represent all fees, charges and income invoiced, charged, or assessed by FRA for Professional Services rendered by Physician, for which payment is actually received by FRA. These charges shall also include payments by PRIDE for medical supervision or program participants and supervision of the Physician's assigned patients visiting a Nurse Practitioner. FRA reserves the right, upon 30 days' notice, of modifying the Overhead Expense and payment percentage, at the discretion of the Partner(s), on a semi-annual review of expenses.