

## CONCIERGE PRACTICE PATIENT AGREEMENT

This Concierge Practice Patient Agreement (the “Agreement”) is entered into the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (the “Effective Date”) by and between Kevin B. Horton, M.D., FACP (“Physician”), in his capacity as Director of Kevin B. Horton, M.D., P.A. (“Practice”) and \_\_\_\_\_ (“Patient”). In consideration of the mutual promises and undertakings set forth below, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Practice, through its Physician, agrees to provide Patient with the Program Services described in the Agreement on the terms and conditions set forth below.

**1. Patient Information.** Patient represents and warrants that his/her information set forth below is accurate and complete and agrees to promptly notify the Practice of any changes.

Patient Name: \_\_\_\_\_ Date of Birth \_\_\_\_\_  
Email Address: \_\_\_\_\_ Day-time Phone \_\_\_\_\_  
Mobile Phone (required): \_\_\_\_\_ Home Phone \_\_\_\_\_  
Mailing Address: \_\_\_\_\_

By providing an email address above, Patient authorizes the Practice and Physician to communicate with Patient by email regarding Patient’s “protected health information”, as further set forth in Section 8.

**2. Services.** In consideration of the Membership Fee, the Practice agrees to provide Patient with the following service amenities (the “Program Services”):

- (a) same day or next day appointments;
- (b) virtual visits utilizing FaceTime or other similar media;
- (c) 24/7 after hours direct communication with Physician via Physician’s cell phone through voice calls, text messaging, and email access and during Practice hours when Physician is not providing services to other patients;
- (d) ability of Physician to provide visits at patient homes that are located within fifteen (15) miles of the Practice, when appropriate and at Physician’s discretion;
- (e) coordination of specialist referrals; and
- (f) courtesy hospital visits at Methodist Stone Oak Hospital, however Patient acknowledges that Physician will not become the attending physician of record.

Patient specifically acknowledges that the Physician will not provide and the Program Services do not include hospital services, emergency services, surgery and/or related surgical services, radiology services, third-party services and/or laboratory services.

### 3. Membership Fees and Payments.

- (a) Membership Fee. The Membership Fee for the Program Services is Two Thousand Dollars (\$2000) per year which is due and payable in full upon enrollment unless a periodic, automated payment by one of the following payment methods is elected (please indicate your preference with an X):
- \_\_\_\_\_ Annually (\$2000)  
\_\_\_\_\_ Semiannually (\$1000 initially and every 6 months thereafter) automatically by credit card  
\_\_\_\_\_ Quarterly (\$500 initially and every 3 months thereafter) automatically by credit card  
\_\_\_\_\_ Monthly (\$167 initially and monthly thereafter) automatically by credit card or ACH bank account withdrawal.

Unless the Agreement is not renewed, the Patient will be billed for the Membership Fee for each Renewal Year prior to the beginning of each Renewal Year and the Patient agrees to pay the full invoiced Membership Fee or authorize one of the automated payment methods as indicated within 30 days after the date of the invoice.

Patient authorizes Practice and/or Practice's designee to bill the Membership Fee to Patient's:

**Credit/Debit Card:** \_\_\_\_\_ Visa \_\_\_\_\_ MC \_\_\_\_\_ Discover \_\_\_\_\_ AMEX

**Card No.:** \_\_\_\_\_

**Cardholder Name:** \_\_\_\_\_ **Expires:** \_\_\_\_\_ **Verification #** \_\_\_\_\_

No Credit Card Data will be saved or available anywhere on our computers or in our office.

In the event Patient prefers to pay by check, Patient shall leave the above credit card information blank and shall make such check payable to "Kevin B. Horton, MD, PA". In the event patient prefers to pay by monthly ACH bank account withdrawal, Patient shall complete attached ACH Authorization Form.

- (b) Visit Fee. Patients will be charged an office visit fee of Twenty Dollars (\$20) per visit (the "Visit Fee")

(c) Refunds. If this Agreement is held to be invalid for any reason and if the Practice is therefore required to refund all or any portion of the Membership Fee paid by Patient, Patient agrees to pay to Practice an amount equal to the reasonable value of the Program Services actually rendered to Patient during the period of time prior to when the refund is made.

**4. Health Care Services Excluded from Membership Fee.** The Membership Fee and Visit Fee cover the cost of the Program Services, however, Membership Fee does not cover the cost of any health care services covered by health insurance. Neither Physician nor Practice make any representations whatsoever that any fees paid under this Agreement are covered by Patient's health insurance or other third-party payment plans applicable to the Patient. Nothing in this Agreement supersedes or modifies the terms or conditions of any agreements related to your

health insurance. Patient acknowledges that he/she is financially responsible for any health care services received that are not covered by the Patient's insurance.

**5. Insurance or other Medical Coverage.** Patient acknowledges and understands that this Agreement is not an insurance plan and is not a substitute for health insurance or other health plan coverage. Patient acknowledges that the Practice has advised patient to obtain or keep in full force such health insurance policies or plans that will cover Patient for general healthcare costs. Further, Patient acknowledges that (i) the Program Services provided pursuant to this Agreement are not covered by insurance, Medicare, Medicaid and/or other third-party payor, and (ii) neither the Practice nor Physician participate in any health insurance or HMO plans or panels and has opted out of Medicare. If Patient is eligible for Medicare, or during the term of this Agreement becomes eligible for Medicare, then Patient, by signing the Agreement, acknowledges the Patient's understanding that Physician has opted out of Medicare, and as a result, Medicare cannot be billed for any services performed for the Patient by Physician. Patient agrees not to bill Medicare or attempt reimbursement for any such services.

**6. Designated Physician.** Program Services will be personally provided by the Physician in accordance with the Agreement. Patient understands and acknowledges that Physician may not be available from time to time and may designate, on a temporary basis during his unavailability, an equally qualified covering physician or other licensed medical professional who will be allowed access to Patient's medical history and course of care to attend to Patient's medical care needs. Additionally, Patient acknowledges that the Practice will provide Program Services to patients and schedule appointments on a first-come, first-serve basis unless, in the Physician's sole discretion, a patient presents with a medical condition that dictates otherwise.

**7. Term and Termination.** Unless earlier terminated as set forth below, the initial term of the Agreement shall be for one year, commencing on the Effective Date and terminating on the day following the first anniversary of the Effective Date (the "Initial Year"). Thereafter, the Agreement will be automatically renewed for successive one-year periods (each, a "Renewal Year"). Either party may decline to renew the agreement upon the written notification to the other party not less than 30 days prior to the expiration of the Initial Year or the Renewal Year, as applicable. The Agreement may be terminated as follows:

(a) Patient may terminate this Agreement at any time upon thirty (30) days prior written notice to the Practice. Patient will not be entitled to a refund of Membership Fee or a portion thereof, except as provided in Section 7(c)(iii) below and Section 11.

(b) Patient may terminate this Agreement immediately upon their inability to travel to the Practice for health reasons and/or the Patient moves to a new locality outside the practice area of the Practice and Physician.

(c) Practice may terminate this Agreement, at any time, upon:

(i) the occurrence of Patient's breach of this Agreement if such breach is not cured within 10 days; or

(ii) Patient having an outstanding balance of \$100 or greater on their Practice account if not paid within 10 days after requested to do so; or

(iii) 30 days prior written notice to Patient, with or without cause, related to the patient-physician relationship or any other non-contract related issue; in such a case Patient will be entitled to a refund of a prorated portion of the Membership Fee paid by the Patient for the year in which termination becomes effective.

(d) This Agreement automatically terminates upon the death or dissolution of the other Party.

**8. Communications.** Unless advised otherwise in writing, Patient authorizes the Physician and Practice staff and designees to communicate with Patient by Electronic Communication via the Practice's patient portal regarding Patient's personal health information ("PHI", as defined in the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations) via Patient's cell phone and/or e-mail address shown on this Agreement. Additionally, Patients will be able to communicate with the Practice via email regarding test results or any other non-urgent medical issues. Email response will typically be within 24 hours and no later than within 2 business days. Electronic Communication includes but is not limited to email, text (SMS, MMS, Instant Messaging), and audio or video conference or chat. Patient acknowledges and agrees that:

(a) Electronic Communication may not be a secure medium for sending or receiving PHI;

(b) Although Physician and Practice staff will make reasonable efforts to keep Electronic Communication with Patient confidential and secure, Patient understands that they cannot assure or guarantee the confidentiality of Electronic Communication;

(c) At the discretion of Physician, Electronic Communication may be made a part of Patient's permanent medical record.

(d) Patient will not use Electronic Communication for communications regarding emergency and/or urgent medical problems, or other time-sensitive issues. In the event of an emergency, or a situation in which the Patient could reasonably expect to develop into an emergency, Patient shall call 911 or proceed to the nearest emergency facility and follow the directions of emergency personnel.

(e) Patient will not use Electronic Communication for communications regarding sensitive personal information. In such cases Patient will call the designated phone number to communicate with Physician or his designee(s).

(f) If Patient does not receive a response to Patient's Electronic Communication message within the time frame specified in the Agreement (typically one business day, unless Patient indicates in

the Electronic Communication that longer or shorter time frame is desired), Patient will use another means of communication to contact Physician or appropriate representative; and

(g) Neither Physician nor any of Practice's agents, consultants or representatives will be liable to Patient for any loss, damage, cost, injury or expense caused by, or resulting from: (1) a delay in response to Patient 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 Practice's agents, consultants or representatives to properly address Electronic Communication messages, failure of computers or computer network, or faulty telephone or cable data transmission; (2) any interception of Electronic Communication by a third party; or (3) Patient's failure to comply with the guidelines regarding use of Electronic Communication set forth in this Section.

**9. Independent Medical Judgment.** Notwithstanding anything to the contrary contained in this Agreement, Physician retains full and free discretion to, and he shall exercise his best professional medical judgment on behalf of Patient with respect to medical services rendered to Patient. Nothing in this Agreement shall be deemed or construed to influence, limit or affect a physician's independent medical judgment with respect to provision of medical services to Patient by Physician or Practice.

**10. Terms of Usage.** Practice may designate, from time to time, certain Terms of Usage for Patients as a supplement to this Agreement by providing written notice to patients of such terms. In the event Practice designates any Terms of Usage, such Terms of Usage shall control over any conflicting terms in this Agreement.

**11. Change of Law.** If there is a change in any state or federal law, regulation, 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; in such a case Patient will be entitled to a refund of a prorated portion of the Membership Fee paid by the Patient for the year in which termination becomes effective.

**12. 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.

**13. Notice.** Any communication required or permitted to be sent under this Agreement (other than communications referenced in Section 8 relating to Patient's PHI) will be in writing and sent via facsimile, recognized overnight courier or certified mail, return receipt requested, to the addresses set forth below:

**If to Patient:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**If to Practice:**

Kevin B. Horton, M.D., P.A.

1202 E. Sonterra Blvd., Suite 401  
San Antonio, Texas 78258

Facsimile: 210.469.3794

Any change in address will be communicated to the Parties in accordance with the provisions of this Section 13.

**14. 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 only be amended by a written agreement signed by the Parties. Notwithstanding the foregoing, the Practice may amend this Agreement to the extent required by federal, state or local law, rule or regulation by sending Patient thirty (30) days advanced written notice of any such change. Any such changes are incorporated by reference into this Agreement without the need for signature by the parties and are effective as of the date established by the Practice except that the Patient shall initial any such change at the Practice's request.

**15. Assignment.** Patient may not assign the Agreement to another individual.

**16. Legal Significance.** Patient acknowledges that this Agreement is a legal document and creates certain rights and responsibilities. Patient also acknowledges having had a reasonable time to seek legal advice regarding the Agreement and has either chosen not to do so or has done so and is satisfied with the terms and conditions of this Agreement.

**17. 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 Texas, 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 Patient and Physician and/or Practice or their respective affiliates and agents arising under or relating to this Agreement shall be resolved exclusively by arbitration in Bexar County, Texas, before a neutral arbitrator, under the auspices of the American Arbitration Association, in accordance with the Expedited Rules and Procedures for Commercial Arbitration in effect at the time of 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.

**18. 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.

**19. Miscellaneous.** This Agreement shall be construed without regard to any presumptions or rules requiring construction against the party causing the instrument to be drafted. Captions in this Agreement are used for convenience only and shall not limit, broaden, or qualify the text.

**20. Entire Agreement.** This Agreement contains the entire agreement between the parties and supersedes all prior oral and/or written understandings and agreements regarding the subject matter of this Agreement subject to any Terms of Usage designated by Practice as set forth in Section 10.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Concierge Practice Patient Agreement, to be effective as the Effective Date set forth in the first paragraph of this Agreement:

**PRACTICE:**

By: \_\_\_\_\_ Kevin B. Horton, M.D., FACP, Director, Kevin B. Horton, M.D., P.A.

Date: \_\_\_\_\_

**PATIENT:**

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

Date: \_\_\_\_\_