

# SUPERVISING PHYSICIAN / MEDICAL FACILITY AGREEMENT

This Agreement is entered into by and between PATIENT SELF TESTING, a division of Alternative Health Care Inc. ("AHC"), a California corporation and the party named below ("Supervising Physician"): IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written below.

<u>X</u>				
Supervising Physician / Medical Facility (Sign)			Date	
Name (Print)			Fed Tax ID	UPN#
Address		City,	State,	Zip Code
Phone		FAX	E-Mail Address	

## Recitals

- A. AHC provides equipment, supplies, communication and related disease management Web-based disease management applications services for patient administered medical home testing, and other services, for physicians, medical clinics, hospitals and other healthcare entities, hereafter referred to as "equipment services".
- B. AHC will provide equipment services including: electronic display, storage, transfer or exchange of data, without altering the function or parameters of any connected devices.
- C. The Supervising Physician is either the patient's treating physician and consultation or treats the patient for a specific medical problem and uses test results in the management of the patient's medical problem or an appropriately licensed organization duly authorized by the patient's treating physician to assume the role and responsibilities outlined herein.
- D. Supervising Physician wishes to retain AHC for the purpose of equipment services.
- E. Supervising Physician acknowledges that AHC is NOT a physician and Supervising Physician assumes the final responsibility for direct and ongoing oversight of the quality of the testing performed and all screening, interpretations, diagnosis and treatments.
- F. "Anti-markup" Payment Limitation - Both parties acknowledges Section 1842(n)(1) of the Social Security Act, (which may apply), requires CMS to impose a payment limitation on certain diagnostic tests where the physician performing or supervising the test does not share a practice with the billing physician or other supplier. Such a test was formerly referred to as a "purchased diagnostic test". This statutory provision was codified in 42 CFR § 414.50. This rule requires an "anti-markup" payment limitation for the technical component (EQUIPMENT) of a diagnostic test (other than a clinical diagnostic laboratory test payable under the Clinical Laboratory Fee Schedule) that is acquired by contractual arrangement from an outside supplier.  
In the CY 2008 PFS final rule (72 FR 66222, November 27, 2007) CMS amended the anti-markup provision in 42 CFR § 414.50. This amendment expands the coverage of the anti-markup payment limitation to include a situation when the EQUIPMENT is not performed in the "office of the billing physician or other supplier."
- E. The parties desire to enter into an Agreement upon the terms and conditions hereinafter set forth for the delivery of services from AHC to Supervising Physician.

## TERMS AND CONDITIONS

NOW THEREFORE, in consideration, of the mutual promises herein stated, AHC and Supervising Physician hereby agree as follows:

### Obligations

1. AHC requires a physician order request with patient information provided by the Supervising Physician prior to any equipment services. Supervising Physician is responsible for payment on all equipment services ordered. AHC shall make available the Patient Report via a secure WEB site upon completion of test.
  - (a) A representative or Supervising Physician of AHC will instruct personnel of Supervising Physician in the operation and use of the software application for ordering and retrieving Reports.
  - (b) AHC shall maintain a catalog of portable diagnostic equipment, including diagnostic testing equipment serial numbers.
  - (c) Supervising Physician shall be responsible for internet connections, telecommunications systems, and similar related transmission hardware at their premises and at their expense.
  - (d) Supervising Physician shall make available to AHC any and all information necessary for the set-up of the software and interfaces in a timely manner.
  - (e) Supervising Physician acknowledges, that due to the significant upfront cost of the equipment and software, Supervising Physician agree to keep all "medically necessary" patients on AHC's service for a period of not less than three (3) years.
  - (f) Supervising Physician shall maintain documentation that it's supervising physicians and technicians are licensed and certified in each of the States in which it operates.
  - (g) Supervising Physician shall operate in compliance with all applicable Federal, State, and local licensure and regulatory requirements with regard to the health and safety of patients.
  - (h) Supervising Physician assumes responsibility for the overall direction and control of the quality of testing performed, properly trained staff and proper maintenance and calibration of the equipment and supplies.

### Payment and Procedures

2. In consideration of the equipment services (which include electronic availability of Patient Report) rendered to Supervising Physician, Supervising Physician shall pay AHC the following fees:.

The equivalent of the total reimbursed payment rate for: **G0249 Provision of test material and equipment** less five percent (5%) for billing, coordination and other administrative costs, and an additional five percent (5%) if payment is received within 10 days of invoice.

AHC will electronically make available (24 hrs/7days/week) a four (4) week cycle Patient Utilization Report to the Supervising Physician. This electronic report will be available to Supervising Physician for a period of 365 days following service.

Supervising Physician shall maintain accurate and complete books and records with respect to its activities under this agreement. Upon thirty (30) days prior notice to Supervising Physician, not more that once per twelve month period, a firm of independent certified public accountants, or other representatives as selected by AHC, shall be provided access to the books and records of Supervising Physician (as they relate to AHC) to conduct an audit of same for the sole purpose of verifying the computations and payments as set forth in this Agreement. Audits shall be conducted during regular business hours and shall not unreasonably interfere with Supervising Physician normal business. Such audit shall be solely at the expense of Supervising Physician

3. Supervising Physician may make available a Credit Card account, and AHC will debit the appropriate amount after thirty (30) days of the completed test cycle. Should a Credit Card payment be denied for any reason, Supervising Physician agrees to pay for any additional Credit Card charges in addition to a thirty five (\$35.00) Credit Card Investigation Fee.
4. Any payment owing to AHC by Supervising Physician beyond thirty (30) days shall be deemed Delinquent and Supervising Physician agrees to pay a finance charge of 1.5% per month (or the maximum legally allowable interest rate) in addition to any collection and/or attorney fees. AHC shall have the right to refuse service or terminate this agreement should a Supervising Physician account be deemed delinquent.

### **Hold Harmless**

5. The final responsibility for all testing, diagnosis and treatments is with Supervising Physician and it is the Supervising Physician's responsibility to review all test reports for accuracy. In the event of any lawsuit, claim, or legal proceeding, Supervising Physician will indemnify and hold harmless AHC against any loss, damage, injury or other expense caused or claimed.

AHC is NOT an expert in the field of medical cost reimbursement and is NOT able to provide specific guidelines that guarantee reimbursement. The appropriateness of reimbursement under any CPT code or ICD-9CM code is subject to the rulings of the regional Medicare Part B carriers or the private third party payers. Supervising Physician must rely on the advice of their expert coders, legal advisor, and the Local Coverage or National Coverage Determinations of Medicare and other third party payers to see whether reimbursement is available and follow their direction regarding testing, file and time documentation.

### **Independent Contractor**

6. At all times relevant and pursuant to the terms and conditions of this Agreement, AHC is and shall be construed to be an independent contractor practicing AHC's profession and shall not be deemed to be or construed to be an agent, servant, or employee of Supervising Physician.

### **Confidentiality**

7. Supervising Physician agrees, during the term of this Agreement, to offer AHC any and all information which is processed, collected or input (hereafter "Data") by Supervising Physician, its employees, agents or authorized personnel. Supervising Physician hereby grants AHC the right to take the following actions:
  - a. Input in a searchable, machine readable database; download and store; copy in on-line and off-line form; reformat or manipulate; and distribute; publish; transmit and display through the electronic network the data;
  - b. Copy and distribute printouts or extracts of the Data, including for instructional, demonstration, marketing and testing purposes.

In the course of AHC's efforts. AHC will have access to confidential records and data, including patient medical files. AHC will not, directly or indirectly disclose to any third party any patient identifiable confidential information and will protect the confidentiality of patient records provided for testing under this Agreement, and shall indemnify and hold Supervising Physician harmless for any claims or damages resulting from the unauthorized release of patient information by AHC or any of AHC's agents or employees.

### **Avoidance of Conflicts of Interest**

8. (a) Supervising Physician has acknowledged that it knows of no reason or circumstance that would prevent Supervising Physician from entering into an Agreement with AHC, or from receiving Confidential Information from AHC in connection with this relationship, or would otherwise constitute an actual or potential conflict of interest.

(b) Supervising Physician agrees that it will not contract with or engage in any activities or communications in the future which could create a conflict of interest.

(c) Supervising Physician agrees and acknowledges that AHC is relying on the representations made above, in participating in the development of this Agreement and in disclosing Confidential Information to Supervising Physician and further agrees and acknowledges that AHC would not have participated in this Agreement with Supervising Physician or disclosed Confidential Information to Supervising Physician without having first received such representations from Supervising Physician.

### **Survival of Terms**

9. The confidentiality obligations of this Agreement shall not apply with respect to any particular portion of a party's Confidential Information:
  - (i) if either party can show that the Confidential Information received from the other is or has become generally available to the public through no violation of the terms of this Agreement;
  - (ii) if either party can show that such Confidential Information has been independently developed without reference to any information disclosed by the other party;
  - (iii) if either party at any time lawfully

obtains such Confidential Information in writing from a third party under circumstances permitting its disclosure;

- (iv) if such Confidential Information is disclosed with the prior written consent of the party to whom such Confidential Information belongs, provided that any disclosure complies in all respects with terms of such written consent; or
- (v) if such Confidential Information is disclosed pursuant to the lawful requirement of a governmental agency or required by operation of law; provided that the party to whom such Confidential Information belongs shall be given written notice prior to such disclosure and such disclosure shall be permitted only to the extent required by law.

Otherwise, the obligations of this Agreement with respect to either party's Confidential Information and avoidance of conflicts of interest shall terminate five (5) years after the signing of this agreement.

#### **Cancellation**

- 10 Either party may cancel this Agreement for cause upon thirty (30) days written notice which specifically states the reason (s) for the termination. However provision 1.(e) will remain in effect.

#### **Reservation of Rights**

- 11. Except as otherwise set forth herein, the failure of AHC to assert or enforce any of its rights under this Agreement shall not be construed as a waiver of AHC's rights to subsequently assert or enforce any of its rights under this Agreement.

#### **Construction**

- 12. If any provision of this Agreement is determined to be invalid or unenforceable, the court or arbitrator making such determination shall have the authority to modify the provision to the extent necessary to make it valid or enforceable. The provision (as so modified), and the remaining provisions of this Agreement shall be enforced in accordance with their terms.

#### **Governing Law**

- 13. This Agreement shall be construed according to the laws of the State of California.

#### **Entire Agreement**

- 14. This Agreement (including all schedules and attachments) constitutes the sole and entire agreement among the parties and supersedes all prior agreements, negotiations, and discussions between the parties to the Agreement and/or their representatives. Any amendment to this Agreement must be in writing specifically referring to this Agreement and signed by the parties. Parties acknowledge that no promises or commitments have been made other than those set forth in this Agreement.

#### **Arbitration**

- 15. Any controversy between Supervising Physician and AHC involving the construction or application of any of the terms, provisions, or conditions of this Agreement, shall be submitted to binding arbitration to be conducted pursuant to the laws of the State of California.

#### **Notices**

- 16. Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United States mail, postage prepaid, addressed as described below: