

Sheldon Zitman, M.D.

– PERSONALIZED CARE PROGRAM MEMBERSHIP AGREEMENT –

To be completed by the Member. Please print:

Member Name: _____ (“Member”) Date of Birth: _____

Mailing Address: _____ City: _____ State: _____ ZIP Code: _____

Phone Number: _____ Secondary Phone Number: _____ Email: _____

**Member agrees to pay the Program Fee as it comes due. Member signature required on last page.*

This Personalized Care Program Membership Agreement (“Agreement”) is made by and between Sheldon Zitman, M.D. (“Physician”) and the Member identified above, to be effective as of the date it is executed by both Physician and Member. Reference is made to the following facts:

A. Physician conducts and operates a Family Medicine practice, with offices located at 20555 Prospect Road, Cupertino, CA 95014.

B. Physician offers one personalized care program (“Personalized Care Program”) designed to give patients enhanced communication with Physician and a suite of other amenities and benefits (“Program Services”) that are not covered or otherwise reimbursable under the Member’s primary or secondary health insurance, including but not limited to commercial HMO, PPO, and POS plans, workers’ compensation insurance, and state or federally operated health care programs, such as Medicare, Medicare Advantage, Medicaid or Medi-Cal (“Member’s Insurance”).

C. Member desires to enroll and participate in the Personalized Care Program and receive Program Services, in accordance with terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, and intending to be legally bound, the parties hereby agree as follows:

1. PROGRAM SERVICES

Physician offers one level of Program Services, the Standard Membership Program.

The Standard Membership Program shall include the following Program Services:

- Panel Limit. Physician will limit the Standard Membership Program to approximately three hundred fifty (350) members.
- After-Hours Availability. Physician will be available to personally communicate with Member, even when not urgent or medically necessary, during the extended hours of 8 a.m. through 5 p.m., seven days per week, using various communication methods (*e.g.*, phone and email).
- Same/Next Day Appointment Scheduling. Member will be able to make same day or next day appointments to see Physician during Physician’s regular business hours, regardless of any urgency or medical necessity. Member must contact Physician’s office

before 2:30 p.m. with an appointment request for the same day or next day appointment; otherwise, the appointment may be scheduled for two business days after the request.

- Limited Wait Times. Physician will use his best efforts to be available without delay to see Member at the scheduled time of Member's appointment, unless Physician is attending to a medical emergency.

2. LIMITATIONS

2.1 In general. Physician may amend, reduce or otherwise modify the Program Services to the extent necessary or appropriate to comply with any change in terms of coverage with respect to Member's Insurance. Physician's Program Services are not exclusive to Member, and Member acknowledges that Physician renders similar services to other clients. Physician may limit visits, email and telephone communications to such frequencies and durations as Physician deems are reasonable and appropriate under the circumstances. Physician may limit the response time to email and telephone communications as Physician deems reasonable and appropriate under the circumstances. In the event Physician determines that Member is using an excessive amount of Program Services, Physician may notify Member of the limitations on frequency and duration of the Program Services. If, after being apprised of such limitations, Member continues to use an excessive amount of Program Services, Physician may, in its sole discretion, terminate this agreement, effective immediately.

2.2 No emergency services. In the event Member is experiencing a medical emergency, Member shall call 911. The Program Services provided by Physician shall not be used for purposes of accessing emergency or urgent care services.

2.3 Emails. Member hereby authorizes Physician and designees to communicate with Member via both encrypted and unencrypted email systems and Member expressly acknowledges and agrees that such communications may include Member's personal health information. All emails between Member and Physician may become part of Member's medical record. **Member acknowledges and agrees that emails are not a sufficient means of communicating an urgent or emergency medical need, and that Member will not email Physician as a substitute for calling 911 in the case of an emergency medical situation.** While Physician intends to fully comply with all applicable state and federal patient privacy and confidentiality laws, such as the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Physician makes no representations or warranties with respect to the adequacy of the security of emails exchanged between Member and Physician. In the event a representative of Physician does not respond within 24-hours of Member's email, or if an emergency develops, Member will use another means of communication to contact Physician.

2.4 No guarantees; Physician Availability. Physician may limit the number of members who can participate in the Personalized Care Program so that Physician can provide members who are receiving Program Services the benefits granted to them pursuant to this Agreement. Member acknowledges and agrees that any and all Program Services provided to Member pursuant to this Agreement may not be provided in the exact time or manner desired by Member; *provided, however*, that Physician shall be available at a minimum and maximum of 300 calendar days per calendar year (the "Provider Availability Period"); *provided, further*, that the Provider Availability Period shall be prorated based on the time of enrollment by Member in the Personalized Care Program.

2.5 Covering Physician. Member acknowledges and agrees that the Physician or physicians of Member's choice may not be available from time to time, and that Physician may designate an alternative covering physician or other licensed medical professional, including, without limitation, Nurse Practitioners and Physician's Assistants, to provide the Program Services to Member.

3. PROGRAM FEES

3.1 Annual Fee for Standard Membership Program: By initialing below, Member agrees to pay Physician the Annual Fee for each year during the term of this Agreement. Member agrees to prepay the entire Annual Fee or pay in four (4) equal quarterly installments, within 30 days of being invoiced by MDprime, Inc., the manager for Physician's Personalized Care Program.

3.2 Payment; Authorization. Physician has appointed MDprime, Inc. as its manager and billing agent for Physician's Program Services and Program. Member agrees to submit all payments of the Annual Fee made by check to the following address: **MDprime, Inc., PO Box 3508, Saratoga, CA 95070**. All checks are to be made payable to "**Sheldon Zitman, MD**".

Any recurring credit card payments or personal checks are to be processed by MDprime, Inc. and made payable to "Sheldon Zitman, MD". If you are submitting this Agreement by mail, please enclose a check for either the entire Annual Fee, or the applicable initial quarterly installment, along with your signed Agreement, using the address provided above.

Select a payment option:

Annual Fee- ☐ \$2,000

Quarterly Fee- ☐ \$550 (*The higher overall fees are due to increased administrative costs)

If Member chooses to pay the Annual Fee by credit card, Member hereby authorizes Physician and MDprime, Inc. to process a recurring charge to the following credit card held by Member as the applicable Annual Fee or Quarterly Fee come due:

Visa ☐ MasterCard ☐ American Express ☐ Discover ☐

Credit/Debit Card No. _____

Cardholder Name: _____

Expiration Date: _____ Card Security Code: _____

3.3 Cancellations. Member may cancel his/her participation in the Personalized Care Program and terminate this Agreement at any time by giving 30 days' prior written notice. Upon cancellation, Member will receive a prorated refund of his or her Annual Fee, if it was paid in advance.

4. PATIENT ACKNOWLEDGEMENTS AND CONDITIONS OF MEMBERSHIP

Member acknowledges and understands that Physician's Program Services are unique and are subject to the following limitations and conditions:

4.1 Member understands and agrees that the Program Fees are for enhanced communication and other services that are not covered and reimbursable under Member's Insurance. Accordingly, Member agrees that Program Services convey value and benefits to Member, which Member would not receive under Member's Insurance. To the extent any one or more Program Services are considered covered and reimbursable under Member's Insurance, the Annual Fee is consideration for the remaining Program Services.

4.2 Physician will bill Member's Insurance for all medical services that Physician renders to Member which are covered under Member's Insurance. Member understands and acknowledges that any such covered and reimbursable services are separate and distinct from and independent of the Program Services provided hereunder. To the extent any of the above Program Services is covered and reimbursable under Member's Insurance, Physician will bill Member's Insurance for that Program Service, which shall automatically be deemed excluded from the Program Services and the Program Fees hereunder.

4.3 For all Program Services provided hereunder, Member cannot, and will not, submit bills to or otherwise seek reimbursement from Member's Insurance.

4.4 Member agrees to assume sole financial responsibility for any and all Program Services rendered hereunder.

4.5 Member acknowledges and agrees that this Agreement and Physician's Program Services do **not** constitute a prepaid health care service plan or other form of insurance. Member further acknowledges and agrees that the Program Services do not include or consist of professional medical services of any kind.

4.6 Member represents and warrants that the information provided by Member above is accurate and agrees to promptly notify Physician and MDprime, Inc. of any changes in Member's contact information or status.

4.7 Member hereby consents and authorizes Physician to disclose all of his/her protected medical information to MDprime, Inc., in its capacity as Physician's Business Associate, as defined under HIPAA.

4.8 Member agrees, consents and authorizes the disclosure of all of his or her Health Records (as defined in the Authorization) to Physician and MDprime, Inc. (and Physician's subsequent disclosure to MDprime, Inc.) in accordance with the Privacy Authorization Agreement accompanying this Agreement as Exhibit A (the "Authorization"), in order to facilitate and administer the Personalized Care Program and the Program Services. Simultaneously with the execution of this Agreement, Member will sign and deliver the Authorization to Physician and MDprime, Inc.

5. PRESERVATION AND NON-DISCLOSURE OF MDPRIME, INC.'S TRADE SECRETS AND CONFIDENTIAL INFORMATION

5.1 MDprime, Inc.'s Confidential Information. Member expressly acknowledges and agrees, notwithstanding the termination provisions set forth in Section 6, that both during and after the term of this Agreement, (i) Member shall protect and preserve the confidential and proprietary nature of all Confidential Information (as defined below) pursuant to this Section 5.1 and/or any other Sections in this Agreement governing the preservation and non-disclosure of all Confidential Information; (ii) Member may have access to trade secrets, proprietary information and confidential information of MDprime, Inc. including, but not limited to, operations manuals, protocols, business plans, strategic plans, marketing plans, methods of doing business, and other materials or information regarding the operation and management of Program Services for medical practices, such as the Personalized Care Program, together with the information contained therein and derived therefrom (collectively, "Confidential Information") and Member expressly agrees that all such Confidential Information shall be and shall remain the property of MDprime, Inc.; and (iii) Member shall not:

5.1.1 Disclose such Confidential Information to any other person or entity, except to the extent required to carry out the duties and responsibilities set forth in this Agreement, or as may be otherwise required by law or medical ethics, provided that Member provides MDprime, Inc. with seven (7) days written notice prior to such disclosure and that such disclosure is limited to the portion of the Confidential Information required; or

5.1.2 Use such Confidential Information to the advantage of Member or any other person or entity, except to the extent necessary and consistent with Member's duties and obligations under this Agreement.

6. TERM AND TERMINATION

6.1 The "Term" of this Agreement shall be one (1) year commencing on the Effective Date written above, and shall thereafter automatically renew for successive one (1) year terms unless terminated as provided herein.

6.2 Physician may terminate this Agreement, without penalty or cause, by giving no less than thirty (30) days written notice to Member; however, Physician may terminate this Agreement immediately upon written notice to Member of the same, upon Member's repeated failure to use the Program Services within the usage limitations set forth above.

6.3 Upon the termination or expiration of this Agreement, Physician shall no longer have any obligation to continue providing Program Services and may immediately discontinue all Program Services. The termination of this Agreement shall not – in and of itself – end the physician-patient relationship between Member and Physician, or otherwise limit Physician's obligations as Member's treating physician.

7. INDEPENDENT CONTRACTOR.

In the performance of Physician's and Member's duties and obligations hereunder, Physician and Member shall, at all times, act and perform their duties and functions in the capacity of an Independent Contractor. Neither this Agreement nor the exercise of any of the duties of Physician or Member hereunder shall be deemed to create any employment, partnership, joint venture, association, physician-patient, or other relationship between the parties hereto other than independent contractors, each as to the other.

8. MODIFICATION IN THE EVENT OF GOVERNMENT ACTION

In the event of any Government Action (as defined below), Physician may amend this Agreement in order to comply with the Government Action, which amendment shall be effective following ten (10) days notification of the same to Member. For the purposes of this Section, "Government Action" shall mean any legislation, statute, law, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body or any private agency, or any decision, finding, interpretation or action by any governmental or private agency, court or other third party which, in the opinion of legal counsel to Physician, as a result or consequence, in whole or in part, of the arrangement between the parties set forth in this Agreement, if or when implemented, could reasonably be expected to result in or present a material risk of violating the applicable law(s) underlying such Government Action or subjecting Physician to disciplinary action.

9. ASSIGNMENTS PROHIBITED

This Agreement is not assignable, and any attempted assignments without the prior written consent of both parties hereto shall be void.

10. FORCE MAJEURE

If Physician is unable to perform its duties under this Agreement due to strikes, lock-outs, labor disputes, governmental restrictions, fire or other casualty, emergency, electricity or server outages, or any cause beyond the reasonable control of Physician, Physician's performance will be excused for the duration of such event.

11. SEVERABILITY

If any one or more of the provisions of this Agreement is for any reason held to be invalid, illegal or unenforceable by a state or federal regulatory agency or court of competent jurisdiction, the remaining provisions shall not be affected thereby, but shall remain in full force and effect.

12. CHOICE OF LAW/VENUE

This Agreement shall be governed by the Laws of the State of California. Any legal proceeding arising from or relating to this Agreement shall be venued in Santa Clara County, California.

13. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Personalized Care Program Membership Agreement effective as of the date first written above.

MEMBER:

Signature: _____

Print Name: _____

Date: _____

SHELDON ZITMAN, M.D. (PHYSICIAN):

By: _____
Sheldon Zitman, M.D.

Title: MD

Date: _____

EXHIBIT A

Sheldon Zitman, M.D.

– PRIVACY AUTHORIZATION AGREEMENT–

Authorization for Use or Disclosure of Protected Health Information
(Required by the Health Insurance Portability and Accountability Act – 45 CFR Parts 160 and 164 and
California Civ. Code § 56.11)

This Privacy Authorization Agreement (“Agreement”) is made by and between Sheldon Zitman, M.D. (“Physician”) and _____ (“Patient”), to be effective as of the date it is executed by both Physician and Patient. Reference is made to the following facts:

A. Physician conducts and operates a Family Medicine practice, with offices located at 20555 Prospect Road, Cupertino, CA 95014.

B. Physician is providing personalized care services referenced in that certain Personalized Care Program Membership Agreement by and between Physician and Patient dated _____ (the “Program Services”).

C. Physician uses the services of MDprime, Inc., a California corporation (the “Program Manager”), for assistance in maintaining and operating Physician’s Program Services.

D. In furtherance of the Program Services, Patient and Physician desire to (i) communicate using various methods of communication in accordance with the terms and conditions set forth herein and (ii) allow Physician, Program Manager, and all health care providers (collectively, “Healthcare Providers”) that provide products and services to Patient in connection with the products and services provided by Physician and Program Manager to use and/or disclose the protected health information described below in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, and intending to be legally bound, the parties hereby agree as follows:

1. CERTAIN ACKNOWLEDGEMENTS, AGREEMENTS AND AUTHORIZATIONS

1.1 By providing Patient’s email address to Physician, Patient authorizes Physician, in appropriate cases, to communicate with Patient by email regarding Patient’s “protected health information” (“PHI”) (as defined under HIPAA).

1.2 By receiving Physician’s email address, Patient authorizes Physician to receive and save email messages made by Patient regarding Patient’s PHI.

1.3 By receiving Physician’s phone number used for voicemail messaging, Patient authorizes Physician to receive and save email and text copies of voicemails made by Patient regarding Patient’s PHI.

1.4 Patient understands and agrees to the following:

1.4.1 Email and voicemail messaging are not necessarily secure mediums for sending, receiving or storing PHI and, accordingly, any third party may gain access to such PHI. Patient shall take into consideration the foregoing information when sending PHI to Physician.

1.4.2 Although Physician will make all reasonable efforts to keep email and voicemail messaging communications confidential and secure, Physician cannot assure or guarantee the absolute confidentiality of such communications.

1.4.3 Email and voicemail messaging are not appropriate means of communication regarding emergency or other time-sensitive issues or for inquiries regarding or concerning sensitive information, including sensitive levels of PHI. In the event of an emergency, or a situation in which Patient could reasonably expect to develop into an emergency, Patient shall call 911 or the nearest hospital or emergency room, and follow the directions of emergency room personnel.

1.5 Patient further understands, agrees and authorizes the following:

1.5.1 Patient **authorizes the release of his or her complete health information and record** (including without limitation all records relating to mental health care, communicable diseases, HIV or AIDS, and treatment of alcohol/drug abuse, Healthcare Providers notes and diagnoses), covering all past, present and future periods (collectively, the “Health Records”).

1.5.2 Such Health Records may be used by the Physician and Program Manager in order to provide the Physician’s and Program Manager’s products and services that Patient purchases and for such other ancillary and related uses, including those uses set forth in the applicable Physician’s membership agreement and the ancillary agreements contemplated thereby. Without limiting the foregoing, Patient authorizes the further disclosure by the Physician and Program Manager of Patient’s Health Records to the Physician’s and Program Manager’s employees, agents and business partners in order to accomplish the approved uses set forth above.

1.5.3 Patient’s authorization under Section 1.5 shall be in full force and effect until Patient revokes it in accordance with the terms set forth below.

1.5.4 Patient understands and acknowledges that Patient has the right to revoke this authorization at any time by providing written notice to Physician or Program Manager [contact@mdprime.com]. Patient understands and acknowledges that a revocation is not effective to the extent that any person or entity has already acted in reliance on this authorization or if this authorization was obtained as a condition of receiving products and services from the Physician and Program Manager. Patient further understands and acknowledges that, upon his or her revocation, Patient’s Healthcare Providers will no longer be able to disclose Patient’s Health Records to the Physician and Program Manager, and that the Physician’s and Program Manager’s products and services therefore may no longer be available to Patient.

1.5.5 Patient understands and acknowledges that Patient’s treatment, payment, enrollment or eligibility for benefits will not be conditioned on whether Patient signs this authorization. However, Patient understands that failure to provide this authorization will prevent Patient’s Healthcare Providers from disclosing Patient’s Health Records to the Physician and Program Manager, and that the Physician’s and Program Manager’s products and services therefore may not be available to Patient.

1.6 Patient understands, acknowledges and agrees that information used or disclosed pursuant to this authorization may be disclosed by the recipient and may no longer be protected by federal or state law.

2. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this PRIVACY AUTHORIZATION AGREEMENT effective as _____.

PATIENT:

Signature: _____

Print Name: _____

Date: _____

SHELDON ZITMAN, M.D. (PHYSICIAN):

By: _____
Sheldon Zitman, M.D.

Title: MD

Date: _____