



P.O. Box 1368

LILBURN, GA 30048

ACTIVHEALTHCARE, INC.

*PROVIDER AGREEMENT*

This Agreement is made by and between ActivHealthCare, Inc. (herein “Activ”), a Georgia for profit corporation, and \_\_\_\_\_ (herein “Provider”), a doctor of chiropractic holding a license to practice chiropractic care in the State of Georgia and whose primary office address is \_\_\_\_\_.

The effective date of this Agreement is \_\_\_\_\_, which is the date the credentialing and membership fees, completed application and this executed Provider Agreement are hereby received and approved by Activ’s Credentialing Committee and Board of Directors (“Effective Date”).

**WHEREAS**, Activ contracts with certain doctors of chiropractic, medical physicians, diagnostic and rehabilitation centers and other health care professionals to provide access, at a reasonable cost, to comprehensive, integrated chiropractic services to persons covered by health care plans, workers' compensation insurance plans, auto liability plans or programs which are offered or administered by clients with which Activ contracts; and

**WHEREAS**, Provider desires to participate in Activ’s program and become a member of the panel of participating chiropractors, medical physicians, and other health care providers providing health care services to the beneficiaries of the health care, workers’ compensation or auto liability plans offered or administered by clients under contract with Activ;

**NOW, THEREFORE**, in consideration of the promises and mutual covenants herein contained, the parties hereby agree as follows:

**1. DEFINITIONS.** For purposes of this Agreement the following terms shall be defined as follows:

**1A. “Beneficiary”** means an employee, dependent or individual covered under or entitled to benefits from or through a Payor.

**1B. “Activ Provider”** means a duly licensed doctor of chiropractic or other health care services provider who has entered into a provider agreement (a “Provider Agreement”) with Activ to provide chiropractic care or other health care services to Beneficiaries and whose Provider Agreement is then current.

**1C. “Non-Activ Provider”** means chiropractors and other health care providers not participating with or contracted by Activ under a Provider Agreement.

**1D. “Medical Necessity” or “Medically Necessary”** means services or supplies which, under the provisions of this Agreement, are (1) provided for the diagnosis, treatment, cure, or relief of a health condition, illness, injury, or disease and not for experimental, investigational, or cosmetic purposes; (2) necessary for and appropriate to the diagnosis, treatment, cure, or relief of a health condition, illness, injury, disease, or its symptoms; (3) within generally accepted standards of chiropractic care in the community; and (4) not solely for the convenience of the insured, the insured's family, or the Provider.

**1E. “Payor”** means a workers’ compensation, liability, group health, self-insured employer, union trust, self-insured workers’ compensation trust or fund, employer, preferred provider organization, health maintenance organization or other managed care plan, or a party acting on such an entity’s behalf which has entered into a contract with Activ with respect to the provision of chiropractic or other health care services by Activ Providers to Beneficiaries.

**1F. “Payor Contracts”** means an agreement between Activ and a Payor pursuant to which Activ agrees to arrange for the delivery of Activ Providers of professional services within the applicable training and experience to Beneficiaries.

**1G. “Program”** means the network of Activ Providers made available to the Beneficiaries of Payors by Activ and the utilization review, quality assurance, marketing, claims repricing, credentialing, consulting and other services provided or offered by Activ in connection with the network.

**1H. “Risk-Sharing Agreement”** means an arrangement to provide provider services in which (1) the arrangement does not restrict the ability, or facilitate the refusal, of Activ Providers participating in the arrangement to deal with Payors individually or through another arrangement, and (2) all Activ Providers participating in the arrangement share substantial financial risk from their participation in the arrangement through (a) the provision of provider services to Payors at a capitated rate; (b) the provision of provider services for a percentage of premium or revenue from Payors; (c) the use of significant financial incentives (e.g., substantial withholds) for its Activ Providers, as a group, to achieve specified cost-containment goals; or (d) the provision of a complex or extended course of treatment that requires the substantial coordination of care by physicians in different specialties offering a complementary mix of services, for a fixed, predetermined payment, where the costs of that course of treatment for any individual patient can vary greatly due to the individual patient's condition, the choice, complexity, or length of treatment, or other factors.

**1J. “including”** means including, without limitation.

## **2. PROVIDER SERVICES AND RESPONSIBILITIES.**

**2A. Provider Commitment.** Provider shall cooperate fully with Activ to provide appropriate and cost-competitive care to Beneficiaries through the application of efficient and aggressive utilization review programs as provided in this Agreement. Provider agrees to submit all claims involving a Payor exclusively to Activ for processing and payment.

**2B. Professional Services.** Provider shall, within the scope of Provider's training and experience, and subject to Provider's standard operating policies and procedures, provide all Medically Necessary chiropractic services to Beneficiaries which are in accordance with the respective contract between Activ and Payor. Provider shall provide chiropractic and related services to Beneficiaries in the same manner as those services are provided to all other of Provider's patients, utilizing resources and materials according to good standards of chiropractic care. Provider shall not discriminate against any Beneficiary in the provision of chiropractic care. Provider is responsible for maintaining an appropriate doctor-patient relationship with individual Beneficiaries and none of the provisions contained in this Agreement has or is intended to have the effect of infringing upon Provider's relationships with individual patients.

**2C. Access to Care.** Provider agrees to provide chiropractic services in a manner to afford timely access to Beneficiaries for chiropractic care. Accordingly, Provider shall maintain office hours which are adequate to service the chiropractic needs of Beneficiaries. Provider further agrees to treat Beneficiaries during Provider's regular business hours, subject to prior appointments, except that for emergency or other extraordinary situations, Provider shall treat Beneficiaries in a manner required by sound chiropractic practice. Provider agrees that Beneficiaries requiring (1) emergency care shall be handled and referred as deemed necessary for the good of the Beneficiary and in accordance with sound chiropractic practice; (2) urgent care shall be seen the same day or referred to another Activ Provider, if available, or appropriate medical or health care specialist; (3) non-urgent care shall be seen within forty-eight (48) hours or referred to another Activ Provider, if available, or appropriate health care Provider.

**2D. Licenses and Insurance.** Provider has and shall throughout the term of this Agreement maintain in good standing all licenses and permits required by state law for Provider's profession. Provider has and shall throughout the term of this Agreement maintain professional liability (malpractice) insurance with minimum coverage amounts of \$1 million/\$3 million and adequate property liability insurance with limits as established by Activ's Board of Directors. Failure to maintain said licenses and liability insurance shall be grounds for immediate termination of this Agreement. If Provider obtains a claims-made insurance policy to fulfill his/her obligations under this Section, Provider agrees to (1) maintain coverage with the same company during the term of this Agreement and for at least ten years following termination of this Agreement, or (2) purchase extended reporting requirement coverage ("tail coverage") upon termination or expiration of any claims-made policy. Evidence of licenses and insurance shall be provided to Activ upon request. Provider shall notify Activ of any change in the information regarding such insurances including a minimum of thirty (30) days prior notice of any change in insurance status or policy information.

**2E. Adverse Action/Change in Status.** Provider shall notify Activ immediately if any action or sanctions are taken in respect to Provider's licenses, certifications, or permits, if any legal actions against or involving Provider are threatened or initiated, or if governmental or similar action is taken against Provider which may impair the ability of Provider to carry out Provider's duties under this Agreement or which relates to Provider's provision of chiropractic or other health care services. Provider represents and agrees that he/she has accurately submitted information to Activ in order to become a Activ Provider and shall notify Activ of any change in the information submitted, including a minimum of thirty (30) days' notice of any change in his/her principal place of business.

**2F. Contracting Activities.** Activ shall review all Risk-Sharing Agreement proposals and may, in its sole discretion, execute a Payor Contract regarding such proposal on behalf of any or all of its Activ Providers. Upon execution of any Payor Contract that is a Risk-Sharing Agreement by Activ, Activ shall inform Provider in writing of the name of the Payor and shall provide a Term Summary Sheet of the Payor Contract to Provider and a copy of the Payor Contract to Provider upon written request. Provider shall be obligated by the terms of the Payor Contract to provide Medically Necessary services to Beneficiaries as provided in the Payor Contracts and this Agreement. In the event that Activ determines in its sole discretion that the managed care proposal or proposed Payor Contract is a non-Risk-Sharing Agreement, or that Activ may not otherwise negotiate such proposal or proposed contract on behalf of Provider, then Activ may, in its discretion, do any one or more of the following:

- (1) Require Provider to provide Activ's agent or another party with a fee schedule or conversion factor representing the minimum payment Provider will accept from a Payor and authorization granting such agent or other third party the right to do any one or more of the following: (i) contract on Provider's behalf with Payors offering prices equal to or better than the level specified by Provider; (ii) contract on Provider's behalf with Payors offering prices equal to or better than those in any contract which Provider has previously approved; and/or (iii) develop a schedule for Payors showing percentages of those who have authorized contracts at various levels; and/or
- (2) Permit Provider to separately negotiate the fees for services under such Payor Contract directly with the Payor or through an independent third party negotiator, and to assist Provider in this regard, Activ will supply an unnegotiated proposed Payor Contract and Term Summary Sheet listing the contract's salient terms.

Notwithstanding any provision herein to the contrary, where there is no Risk-Sharing Agreement and/or Activ and Provider are not sufficiently integrated so as to warrant the submission of jointly determined charges, the Board of Directors of Activ may determine, in its sole discretion, that Activ shall have no involvement in the negotiation of fee arrangements between Provider and Payor.

Provider will not discuss or disseminate to Activ and Activ Providers information regarding fees charged by Provider for professional services except as necessary pursuant to terms of this Agreement. Nothing in this Agreement shall (1) constitute an agreement or commitment by Provider to charge a particular fee or level of fees for any service rendered by Provider, or (2) require that Provider change Provider's standard procedures and practices with respect to professional fees. Professional fees charged for non-covered services and charges to all patients not subject to such Payor Contracts are not affected under this Agreement.

**2G. Direct Payment of Benefits.** Activ shall be authorized to negotiate contracts with Payors that include a requirement that Activ Providers accept direct payment from Payors or Activ for all Medically Necessary services provided to Beneficiaries. These Agreements shall permit Activ Providers to bill and collect from Beneficiaries (1) applicable co-payments and deductibles, and (2) charges for non-Medically Necessary services for which the Beneficiary has agreed in advance of the services' being rendered to assume financial responsibility. For other than as expressly permitted in this subsection, Provider hereby agrees that in no event shall Provider bill, balance-bill, charge, or

seek payment from any Beneficiary or persons or entities other than the Payor for services provided pursuant to this Agreement. If payment is made to Activ for Medically Necessary services but payment is issued in Provider's name, Provider hereby authorizes Activ to accept and negotiate that payment subject to Activ's remittance to Provider of the fees owed to the Provider for those Medically Necessary services.

**2H. Referrals and Consultations.** Provider agrees to refer Beneficiaries only to Activ Providers for consultations and chiropractic services, unless referral to a Non-Activ Provider is Medically Necessary or, as appropriate, specifically requested by the Beneficiary and approved in advance by Activ subject to the provisions of the Payor Contract.

**2I. Terms of Payor Contracts.** Provider understands there will be a separate Term Summary Sheet, substantially in the form attached hereto as Exhibit A, for each Payor Contract. The Term Summary Sheet shall state the name of the Payor, the effective date, and any other information deemed pertinent by Activ. Such Term Summary Sheets will automatically become part of and incorporated into this Agreement. Activ shall provide Providers with notice of each Payor Contract within a reasonable timeframe. Activ has authority to agree on behalf of Provider to the terms and conditions set forth in such Term Summary Sheets and the applicable Payor Contracts, subject to subsection 2F, and accordingly, Provider agrees to be bound by the terms and conditions set forth in such Term Summary Sheets and the applicable Payor Contracts. Such Term Summary Sheets will not be considered an amendment or modification of this Agreement.

**2J. Use of Name.** Provider agrees that his/her name, address, telephone and type of practice may be included in a directory or listing of Activ Providers provided by Activ to Payors and by Payors to Beneficiaries.

**2K. Claims Billing.** Unless directed otherwise by Activ, all claims filed under Payor Contracts shall be filed by Provider with Activ's designated claims management vendor within sixty (60) days of the date of service. Failure to forward claims for services to Beneficiaries to Activ or Activ's claims management vendor for proper review shall be cause for termination. Claims submitted later than sixty (60) days of the date services were provided shall be denied for payment. Provider agrees that he/she will submit claims only for services rendered by him/her to eligible Beneficiaries. In no event, will Provider submit claims only for payment to Activ for services rendered by a non-participating, ineligible, and/or non-credentialed person. Any such claims will be denied for payment and may result in immediate termination of Provider's participation in Activ and in other actions including reporting to proper agencies as deemed appropriate by Activ's Board of Directors and/or UM/QM Committee.

**2L. Primary Payor.** Provider agrees that in the event that a patient has other insurances which would be considered the primary payor for services in accordance with standardly recognized insurance procedures, Provider agrees to submit charges for services to the primary payor prior to submitting charges for payment to Activ as the secondary payor. This provision is subject to the provisions of applicable Georgia and federal law.

**2M. Utilization Management and Quality Assurance Programs.** Provider agrees to comply with, cooperate with, and abide by utilization management and quality assurance procedures and

protocols as structured and approved by Activ. Failure to obtain authorizations and/or provide requested documentation shall be cause for denial of payment of the claims. Provider shall not bill Beneficiary for services rendered which are denied for payment due to the services being deemed non-Medically Necessary unless the Beneficiary was informed prior to the services' being rendered and agreed in writing to accept financial responsibility for such services. From time to time, Provider may be asked to serve on a Activ peer review committee to review documentation pursuant to Activ cases involving Activ Providers other than himself/herself.

**2N. Advertising.** Provider acknowledges that Activ disseminates brochures and other informational materials to prospective Payors and their eligible Beneficiaries and that the success of the Program is dependent on the maintenance of good relations with Activ, Payors and Beneficiaries. During the term of this Agreement, Provider shall not direct advertising or any solicitation to Payors or Beneficiaries, referring to Provider's standing with Activ, without first obtaining the written consent of Activ.

### **3. FEES.**

**3A. Amount.** With respect to Provider participation under the terms of this Agreement, Provider agrees to pay to Activ (i) a non-refundable credentialing fee of \$\_\_\_\_\_, (ii) a nonrefundable membership fee of \$\_\_\_\_\_ for Providers who are not members of Georgia Chiropractic Association), payable upon execution of this Agreement, (iii) a nonrefundable annual membership renewal fee thereafter (the amount of which will be determined by Activ's Board of Directors), due no later than December 31st each year, and (iv) a nonrefundable administrative or access fee in the amount stated in the Term Summary Sheets in Exhibit A of each Payor claim, payable within ten (10) days from date of Activ invoice.

**3B. Failure to Pay.** This Agreement may be terminated immediately by Activ in the event Provider fails to pay any amount as provided in this Agreement promptly when due. In addition, any amount not paid by Provider when due under this Agreement shall accrue interest at the rate of one-and-one-half percent (1-1/2%) per month during the period it is past due and unpaid.

**3C. No Refund.** No refund shall be made by Activ of any portion of any fees paid by Provider if this Agreement is terminated by either party hereto at any time or for any reason.

**3D. Collection.** Should Activ engage an attorney at law to collect any amounts owing under this Agreement, then Provider shall reimburse Activ for all reasonable attorneys' fees incurred by Activ plus, if applicable, court costs.

### **4. UTILIZATION REVIEW.**

**4A. Payor Participation.** To provide assurance to Payors that proposed services and chiropractic care rendered by Activ Providers is Medically Necessary, Activ has incorporated utilization review as an integral part of the Program. Utilization review services shall be rendered by Activ or its selected utilization review vendor or by a program selected by Payor which has been reviewed and approved by Activ to render such reviews.

**4B. Provider Participation.** Provider shall initiate utilization review of proposed treatments for Beneficiaries as directed by Activ. Provider recognizes that payment may be disputed or denied by Payor or Activ if Provider renders chiropractic care beyond designated thresholds to a Beneficiary for whom utilization review as provided herein was not performed. Provider agrees to provide necessary information to the approved utilization review program regarding diagnosis, proposed treatment, prognosis and other information pertinent to the chiropractic care being proposed or rendered by Provider to Beneficiary. Provider shall also initiate contact with the utilization review program in the event of a Beneficiary's utilization of referral for specialty diagnostic services, including but not limited to, MRI, CT Scan, EMG, etc. or a medical or chiropractic consultation.

## **5. RECORDS AVAILABILITY.**

**5A. Records Maintained.** Provider shall prepare and maintain appropriate medical and financial records concerning chiropractic care rendered to Beneficiaries pursuant to this Agreement. Such records shall be maintained in accordance with prudent, generally accepted records-keeping procedures and as required by law. Provider shall permit access to and review and duplication of such records by Activ or its designated representative. Such access, review and duplication shall be made without charge to Activ and shall be allowed by Provider during regular business hours and upon reasonable notice by Activ. Duplication of records shall be at Provider's expense.

**5B. Continuing Confidentiality.** Access to and duplication of such records by Activ shall be subject to all applicable laws and regulations concerning the confidentiality of such records, and Provider shall not be required by this Agreement to provide access to or release from patient medical records any confidential information unless such release is authorized by statute, subpoena, court order, patient consent or other lawful means.

**5C. Access.** Subject to applicable laws and regulations relating to privacy and the confidentiality of patient records, Provider shall give Activ access to records and data maintained by Provider that are necessary to determine Provider's performance under and compliance with this Agreement. Such access shall be without charge to Activ and shall be allowed during regular business hours and upon reasonable notice by Activ.

## **6. DISPUTES.**

**6A. Medical Necessity.** All disputes which may arise relating to the Medical Necessity of chiropractic care or quality of services provided hereunder shall be submitted for resolution in accordance with the dispute procedures approved by Activ's Board of Directors and/or provided under the terms of the contract entered into between Payor and the Activ-approved utilization review organization. If the other parties to such dispute agree to be bound by such resolution, Provider agrees to be so bound.

**6B. Cost.** All disputes related to fees or charges for chiropractic services rendered by Provider hereunder to any Beneficiary shall be submitted for resolution pursuant to the dispute procedures established by the Board of Directors of Activ. If the other parties to such dispute agree to be bound by such resolution, Provider agrees to be so bound. Such dispute procedures shall remain in effect for

a period of three (3) years after termination of this Agreement for the resolution of matters unresolved on the date of termination.

**6C. Other Disputes.** Other disputes concerning administrative and procedural issues under this Agreement may be submitted for resolution pursuant to dispute resolution procedures established by the Board of Directors as the same may be adopted and communicated by Activ to Provider from time to time. If the other parties to such dispute agree to be bound by such resolution, Provider agrees to be so bound. Notwithstanding the foregoing, questions relating to quality of services, Medical Necessity of care and cost of care shall not be submitted for resolution pursuant to this subsection.

**6D. Records.** Provider shall provide to Activ any and all records maintained by Provider that may be necessary for the resolution of disputes pursuant to the provisions of this Section.

## **7. ACTIV SERVICES AND RESPONSIBILITIES.**

**7A. Promotional Services.** Activ will provide marketing and other promotional services on behalf of Activ Providers to potential and existing Payors. Activ shall employ marketing staff to carry out marketing responsibilities on behalf of Activ Providers. Nothing contained herein, however, shall constitute a representation or warranty by Activ as to the minimum level of marketing or other promotional services to be provided on behalf of Provider or any other Activ Providers.

**7B. Payor Contracts.** Activ will negotiate contracts with Payors and make best efforts to secure favorable terms on behalf of Activ Providers. Activ will administer the contracts with Payors.

**7C. Incentives.** Activ shall use its best efforts to require Payors to develop and implement incentives for Beneficiaries to use the services of Activ Providers more frequently than Non-Activ Providers. Incentives may include, but are not limited to (1) health plan policy benefit incentives in the form of lower out-of-pocket expenses and increased percentage of benefits coverage, and/or (2) communications and educational programs designed to create awareness of Activ Providers and benefits of chiropractic care.

## **8. RELATIONS AMONG THE PARTIES.**

**8A. Independent Contractor.** None of the provisions of this Agreement are intended to create, nor shall be deemed or construed to create, any relationship between Activ and Provider other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement. Neither of the parties hereto, nor any of their respective employees, contractors or agents, shall be deemed or construed to be an agent, employee, partner, associate, or joint venture of the other for any purposes whatsoever.

**8B. Chiropractic Care.** Provider shall maintain the doctor-patient relationship with Beneficiaries and is solely responsible to Beneficiaries for the provision of chiropractic services. Activ is not responsible for the provision of such care. Such relationship includes the right of Provider to commence or terminate treatment of Beneficiaries in accordance with generally accepted principles of sound chiropractic practice and treatment. Nothing herein shall be construed to require Provider to commence or continue chiropractic treatment by Provider or to require Beneficiaries to commence or

continue chiropractic treatment by Provider. Further, nothing in this Agreement is intended to supersede or substitute for Provider's clinical judgment concerning the patient's best interests (including choice of consultants).

**8C. No Liability.** Neither Activ nor any of its officers, directors, employees, agents or other representatives shall be liable or responsible in any way to any party or person for any act or omission of Provider in connection with the rendering by Provider of chiropractic care or other health care services to Beneficiaries.

**8D. Separate Contracts.** This Agreement is entered into by Provider and Activ with the express understanding and agreement that it shall not be construed or considered to be a contract between Provider and any other Activ Provider, nor shall it constitute an agreement that Provider may act as agent for any other Activ Provider or impose any liability upon any other Activ Provider by reason of any acts of omission or commission on the part of the Provider, nor shall Provider incur any liability by reason of any acts of omission or commission of any other Activ Provider.

**8E. Further Acts and Documents.** Each of the parties hereby agrees to execute and deliver such further instruments and do such further acts and things as may be necessary or desirable to carry out the purposes of this Agreement.

## **9. INDEMNIFICATION/HOLD HARMLESS.**

**9A.** Activ shall defend, hold harmless and indemnify Provider against any and all claims, liabilities, damages, losses, judgments and expenses (including reasonable attorneys' fees and litigation expense) asserted against, suffered, or incurred by Provider which may relate to or arise out of Activ's breach of its obligations under this Agreement. Within thirty (30) days after receipt by Provider of notice or knowledge of any claim or commencement of any action or proceeding by a third party against Provider subject to indemnification under this subsection, Provider shall give Activ written notice of such claim or the commencement of such action or proceeding in such reasonable detail as Provider possesses.

**9B.** Provider shall defend, hold harmless and indemnify Activ against any and all claims, liabilities, damages, losses, judgments and expenses (including reasonable attorneys' fees and litigation expense) asserted against, suffered, or incurred by Activ which may relate to or arise out of services provided (or failed to have been provided) by Provider under this Agreement, or which may relate to or arise from the malpractice or negligence of Provider or Provider's employees in the discharge of its or their professional responsibilities to a Beneficiary, or which may relate to or arise out of Provider's breach of its obligations under this Agreement. Within thirty (30) days after receipt by Activ of notice or knowledge of any claim or commencement of any action or proceeding by a third party against Activ subject to indemnification under this subsection, Activ shall give Provider written notice of such claim or the commencement of such action or proceeding in such reasonable detail as Activ possesses.

## **10. CONFIDENTIALITY.**

**10A. Records and Data.** Confidential records and data supplied by Provider to Activ under this Agreement shall be treated by Activ as confidential and shall not be disseminated or published except as permitted by law and deemed necessary by Activ to effect the purposes of this Agreement. Activ shall implement reasonable internal procedures (including any procedures required by law) intended to limit access to and guard against improper disclosure of such materials.

## **11. TERM AND TERMINATION.**

**11A. Term.** The initial term of this Agreement shall commence on the Effective Date and shall expire on the December 31<sup>st</sup> first following the Effective Date. Unless earlier terminated as herein provided, this Agreement will be renewed automatically for successive one-year periods following the expiration of the initial term, unless terminated by either party as provided below.

**11B. Termination By Either Party Without Cause.** This Agreement may be terminated for any reason or no reason, with or without cause, by either party upon a minimum of sixty (60) days' written notice to the other party. Subject to the foregoing, unless immediate termination is required as outlined below, the effective date of any termination requested by Provider shall be the closest December 31 or June 30 which is at least sixty (60) days after the date of request for termination.

**11C. Termination By Activ for Cause.** This Agreement may be terminated by Activ for cause immediately upon written notice to Provider. The term "for cause" shall include, but shall not be limited to, the following: (1) Provider makes/furnishes false or misleading information to Activ, (2) Provider's failure to comply with Activ's reimbursement, referral or authorization policies, (3) Provider's failure to timely remit Activ fees provided herein, (4) Provider's failure to comply with license requirements as provided herein, (5) Provider's failure to abide by Activ's general, utilization review or quality assurance procedures and protocols (which shall also give Activ the option to deny reimbursement), (6) Provider's failure to maintain adequate liability insurance as provided herein, (7) Provider commits professional misconduct, violates the principles of professional ethics or, in the determination of Activ, has been subject to an excessive number of professional liability claims, (8) Provider acts or provides care in a manner which, in the determination of Activ, threatens potential serious injury to Beneficiaries or to the reputation of Activ or in a manner which may adversely affect the ability of Activ to conduct business, (9) Provider is subject to an indictment or investigation for a felony or to any professional disciplinary action, or (10) Provider breaches any other obligation under this Agreement and fails to cure same within five (5) days after written notice thereof from Activ.

**11D. Survival.** Upon termination of this Agreement, all accrued but unsatisfied obligations as of the date of termination shall survive, as shall all provisions which by their nature or express terms survive, including Sections 5, 6, 8C, 8D, 8E, 9, 10, 11D and 13.

## **12. WAIVER.**

Provider hereby consents to examination and evaluation of treatment given by Provider to any Beneficiary in connection with the utilization review and dispute resolution programs described in or provided by this Agreement. Provider hereby releases any person participating in such programs

(including but not limited to Activ and its employees and representatives, and Payor, Beneficiaries and Payor's employees and representatives) from any claims and liabilities arising from or based upon actions taken, statements made or information given by such person in good faith and without malice.

### **13. MISCELLANEOUS.**

**13A. Headings; Gender.** The headings or titles provided throughout this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. As used herein, in interpreting this Agreement in a given context, the masculine pronoun shall be deemed where appropriate to include the feminine and neuter pronouns, the feminine pronoun shall be deemed where appropriate to include the masculine and neuter pronouns, and the neuter pronoun shall be deemed where appropriate to include the masculine and feminine pronouns.

**13B. Amendments.** Activ may amend this Agreement from time to time as deemed necessary by the Board of Directors of Activ, and any amendment shall automatically become effective and a part of this Agreement thirty (30) days after written notice of the amendment is given to Provider. Provider may terminate participation pursuant to the terms outlined in Section 11, as applicable.

**13C. Assignment.** Provider may not assign any of its rights or delegate any of its duties or obligations hereunder without the written consent of Activ. Activ may assign its rights or delegate any of its duties hereunder with notification provided to Provider via first class mail within sixty (60) days prior to the effective date of such action authorized by the Activ Board of Directors.

**13D. Invalidity or Unenforceability.** The invalidity or unenforceability of any terms or provisions hereof shall in no way affect the validity or enforceability of any other term or provision hereof.

**13E. No Waiver.** No waiver of any breach of any provision or condition of this Agreement by either party hereto shall be deemed to be a waiver of a similar or dissimilar provision or condition at any prior or subsequent time, or of the provision or condition itself.

**13F. Proprietary Information.** Provider agrees that procedures, policies and systems developed and established by Activ in fulfilling its responsibilities under this Agreement and the identity of other Activ Providers constitutes confidential information. Provider agrees that during the term of this Agreement and for a period of three (3) years thereafter (or in the case of a trade secret, for so long as the information remains a trade secret), Provider shall not disclose to any person or entity or use information confidential to Activ.

**13G. Non-Solicitation.** Provider agrees that the business relationship established between Activ and its Payors and the employer and Payor groups with which it contracts shall be deemed the property of Activ. All lists of Payor Contracts shall be the sole property of Activ. During the term of this Agreement and any renewal thereof, and for a period of three (3) years from the date of termination for any reason, Provider agrees that Provider will not, directly or indirectly, (1) initiate any action to solicit or attempt to solicit, for the purpose of providing chiropractic services outside the Program, any Beneficiary for whom Provider provided chiropractic services inside the Program

at any time during the two (2) years preceding the termination of this Agreement (or, if this Agreement has not terminated at the time of the initiation of such action or attempt, during the two (2) years preceding such initiation); or (2) initiate any action to solicit or attempt to solicit any Payor from whom Provider received payment for claims inside the Program at any time during the two (2) years preceding termination of this Agreement (or, if this Agreement has not terminated at the time of the initiation of such action or attempt, during the two (2) years preceding such initiation) to provide or arrange to provide chiropractic services to patients whose claims would be paid by Payor outside the Program.

**13H. Non-Exclusive Agreement.** Subject to subsections 13F, 13G and 13L, nothing contained in this Agreement shall prohibit or restrict Provider from affiliating with, or contracting to provide chiropractic care services for, any other health care delivery organizations.

**13I. Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior agreements, understandings, negotiations or representations, whether written or oral, between the parties.

**13J. Governing Law.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Georgia.

**13K. No Third Party Beneficiary.** Notwithstanding that benefits may insure to Payors and Beneficiaries under this Agreement, it is not the intention of Activ or Provider that such Beneficiaries shall be third party beneficiaries of the obligations assumed by either party to this Agreement, except as expressly provided for in Payor Contracts, and no such Beneficiaries shall have the right to enforce any such obligation.

**13L. Pre-Existing Contract With Payors.** Provider agrees that if Provider has a pre-existing contract with a Payor with whom Activ enters into a Payor Contract, the Payor Contract and the Provider obligations thereunder pursuant to this Agreement supersede any and all obligations under Provider's preexisting contract with that Payor.

**13M. Notices.** All notices and other communications provided for by this Agreement shall be in writing and shall be personally delivered or sent by first class certified U.S. mail, postage prepaid to the following address:

**ACTIV:** ActivHealthCare, Inc.  
P. O. Box 1368  
Lilburn, GA 30048

**PROVIDER:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices shall be deemed given when personally delivered or seventy-two (72) hours after the date deposited in the mail.

[Signatures on next page.]

IN WITNESS WHEREOF, Activ and Provider have duly executed this Agreement, effective as of the Effective Date.

**“ACTIV”**

**ACTIVHEALTHCARE, INC.**

Signed: \_\_\_\_\_

Name: Mark Brickhouse

Title: : Executive Director

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

**“PROVIDER”**

Print Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

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

GA License #: \_\_\_\_\_

**EXHIBIT A  
ACTIV PAYOR CONTRACT**

**TERM SUMMARY SHEET**

Go to our website at [www.activhealthcare.com](http://www.activhealthcare.com) to view and print the Term Summary Sheets. If you do not have internet capability please contact our office at 770-455-0040 to have them faxed or mailed to you.

Term Summary Sheets are a summary only of certain aspects of the Payor Contract in question. A copy of the Payor Contract will be made available upon written request to Activ by Provider. Pursuant to Sections 2F and/or 2I of the Provider Agreement, Provider agrees to be bound by the terms and conditions of the Payor Contract in question.