

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION

IN RE: ENCOUNTER MEDICAL  
ASSOCIATES, LLC, f/k/a  
Encounter Medical Associates, PC, f/k/a  
Encounter Medical Associates Ltd.  
d/b/a eMedical Associates,  
Debtor

CHAPTER 11  
CASE NO. 19-20009-JRS  
CONTESTED MATTER

ENCOUNTER MEDICAL ASSOCIATES, LLC,  
Movant  
v.  
IBERIA BANK,  
LIFTFORWARD, INC.,  
BUSINESS ADVANCE TEAM, LLC,  
COMPLETE BUSINESS SOLUTIONS GROUP,  
INC., and  
KALAMATA CAPITAL GROUP,  
Respondents

JUDGE SACCA

**DEBTOR'S SUPPLEMENTAL MOTION FOR AUTHORITY TO USE  
CASH COLLATERAL  
ON INTERIM AND ONGOING BASIS**

COMES NOW ENCOUNTER MEDICAL ASSOCIATES, LLC, Debtor and Movant  
herein, who files this *Supplemental Motion for Authority to Use Cash Collateral on Interim and  
Ongoing Basis*, respectfully showing the

35. Debtor incorporates herein paragraphs 1-35 of Debtor's *Motion for Authority to Use Cash  
Collateral on Interim and Ongoing Basis* and Exhibits A through F [Doc. No. 9] as if restated  
verbatim.

36. **Kalamata Captial Group** entered into a Merchant Agreement with Debtor dated

October 3, 2018, and a true and correct is annexed hereto as **Exhibit G**.

37. Pursuant to aforesaid Merchant Agreement, Debtor assigned to Kalamata Capital Group certain future accounts, contract rights and other entitlements concerning Debtor's receipts and granted Klamat Capital Group a security interests in, inter alia, accounts and chattel paper.

38. Debtor has been unable to locate a UCC-1 Financing Statement filed in the public records in the State of Georgia but, upon information and belief, Kalamata Capital Group asserts a security interest in Cash Collateral, as defined in Section 363(a) of the Bankruptcy Code.

39. Debtor scheduled Complete Kalmata Capital Group as having an unliquidated claim in the amount of \$50,750.00 [Doc. No. 1].

WHEREFORE, Debtor prays that this Court

- a. Hear this Motion on an Expedited basis, and enter the proposed Interim Order annexed hereto as **Exhibit F** authorizing the use of Cash Collateral and adequate protection payments;
- b. Set this matter for a final hearing to determine the terms and conditions for an order authorizing Debtor's use of Cash Collateral and the payment of adequate protection on an ongoing basis;
- c. Grant Debtor such other and further relief as the Court determines to be just and equitable.

Counsel for Debtor and Movant

/s/ Edward F. Danowitz

Edward F. Danowitz

Georgia Bar No. 003180

[Edanowitz@danowitzlegal.com](mailto:Edanowitz@danowitzlegal.com)

**Danowitz Legal, P.C.**  
300 Galleria Parkway, Suite 960  
Atlanta, GA 30339  
770-933-0960

**CERTIFICATE OF SERVICE**

I certify that I have electronically filed the foregoing *Debtor's Supplemental Motion for Authority To Use Cash Collateral on Interim and Ongoing Basis* with the Clerk of Court using the CM/ECF system, which will send electronic notification to all users who have consented to such service pursuant BLR 5005-8 and General Order 25-2018.

Counsel for the Debtor

/s/ Edward F. Danowitz  
Edward F. Danowitz  
Ga. State Bar No. 003180  
***Danowitz Legal, P.C.***  
300 Galleria Parkway NW  
Suite 960  
Atlanta, GA 30339  
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[EDanowitz@DanowitzLegal.com](mailto:EDanowitz@DanowitzLegal.com)



**MERCHANT AGREEMENT**

Agreement dated October 3, 2018 between Kalamata Capital Group ("KCG") and the Merchant listed below ("MERCHANT")  
(Month) (Day) (Year)

Business (Merchant) Legal Name: ENCOUNTER MEDICAL ASSOCIATES DG, LLC State of Inc. / Org. : GA

Doing Business As: EMEDICAL ASSOCIATES Federal Tax ID (EIN): 90-0730068

Entity Type: Corporation ( ) Limited Liability Company (x) Sole Proprietorship ( ) Other ( )

Business Address: 3075 RONALD REAGAN BLVD STE 501 City: CUMMING State: GA Zip: 30041

Mailing Address: SAME AS ABOVE City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Purchase Price:** \$35,000.00

**Specified Percentage:** 15 % **Specific:** DAILY **Amount:** \$ 508.00

**Purchased Amount:** \$50,750.00

**PURCHASE AND SALE OF FUTURE RECEIVABLES**

Merchant hereby sells, assigns and transfers to KCG (making KCG the absolute owner) in consideration of the "Purchase Price" specified below, the "Specified Percentage" of all of Merchant's future accounts, contract rights and other entitlements arising from or relating to the payment of monies from Merchant's customers' and/or other third party payors (the "Receipts" defined as all payments made by cash, check, electronic transfer or other form of monetary payment in the ordinary course of the Merchant's business), for the payments due to Merchant as a result of Merchant's sale of goods or services (the "Transactions") until the amount specified below (the "Purchased Amount") has been delivered by or on behalf of Merchant to KCG.

There is no interest rate or payment schedule and no time period during which the Purchased Amount must be collected by KCG. Merchant going bankrupt or going out of business, in and of itself, does not constitute a breach of this Agreement. KCG is entering into this Agreement knowing the risks that Merchant's business may slow down or fail, and KCG assumes these risks based on Merchant's representations, warranties and covenants in this Agreement, which are designed to give KCG a reasonable and fair opportunity to receive the benefit of its bargain.

KCG will debit the Specific Amount each business day from only one depositing bank account, which account must be acceptable to, and pre-approved by, KCG (the "Account") into which Merchant and Merchant's customers shall remit the Receipts from each Transaction, until such time as KCG receives payment in full of the Purchased Amount. If Merchant's bank is closed on a business day, then KCG will debit the Specific Amount for that day on

the next business day in addition to the regularly scheduled debit. Merchant hereby authorizes KCG to ACH debit the Specific Amount from the Account on a daily basis. KCG's payment of the Purchase Price shall be deemed the acceptance and performance by KCG of this Agreement. Merchant understands that it is responsible for ensuring that the Specific Amount to be debited by KCG remains in the Account and will be held responsible for any fees incurred by KCG resulting from a rejected ACH attempt or an Event of Default. KCG is not responsible for any overdrafts or rejected transactions that may result from KCG's ACH debiting the Specific Amount under the terms of this Agreement. Notwithstanding anything to the contrary in this Agreement or any other agreement between KCG and Merchant, upon the occurrence of an Event of Default under Section 3 of the MERCHANT AGREEMENT TERMS AND CONDITIONS the Specified Percentage shall equal 100%. A list of all fees applicable under this Agreement is contained in Appendix A.

**Merchant may use the Purchase Price solely for business purposes and not for personal, family or household purposes.** Merchant is selling a portion of a future revenue stream to KCG at a discount, not borrowing money from KCG.

**THE MERCHANT AGREEMENT "TERMS AND CONDITIONS", THE "SECURITY AGREEMENT AND GUARANTY" AND THE "ADMINISTRATIVE FORM HEREOF, ARE ALL HEREBY INCORPORATED IN AND MADE A PART OF THIS MERCHANT AGREEMENT.**

**FOR THE MERCHANT (#1)** By: ALFRED A IFARINDE ALFRED A IFARINDE  
(Print Name and Title) (Signature)

**FOR THE MERCHANT (#2)** By: \_\_\_\_\_  
(Print Name and Title) (Signature)

**BY OWNER (#1)** By: ALFRED A IFARINDE ALFRED A IFARINDE  
(Print Name and Title) (Signature)

**BY OWNER (#2)** By: \_\_\_\_\_  
(Print Name and Title) (Signature)



## **TERMS AND CONDITIONS OF MERCHANT AGREEMENT**

### **I. TERMS OF ENROLLMENT IN PROGRAM**

#### **1.1 Merchant Deposit Agreement and Processor**

Merchant shall (A) execute an agreement acceptable to KCG with a Bank acceptable to KCG to obtain electronic fund transfer services for the Account, and (B) execute an agreement acceptable to KCG with a credit and debit card processor (the "Processor") instructing the Processor to deposit all Receipts into the Account. Merchant shall provide KCG and/or its authorized agent(s) with all of the information, authorizations and passwords necessary for verifying Merchant's receivables, receipts, deposits and withdrawals into and from the Account. Merchant hereby authorizes KCG and/or its agent(s) to withdraw from the Account via ACH debit the amounts owed to KCG for the receipts as specified herein and to pay such amounts to KCG. These authorizations apply not only to the approved Account but also to any subsequent or alternate account used by the Merchant for these deposits, whether preapproved by KCG or not. This additional authorization is not a waiver of KCG's entitlement to declare this Agreement breached by Merchant as a result of its usage of an account which KCG did not first pre-approve in writing prior to Merchant's usage thereof. The aforementioned authorizations shall be irrevocable without the written consent of KCG.

#### **1.2 Term of Agreement**

This Agreement shall remain in full force and effect until the entire Purchased Amount and any other amounts due are received by KCG as per the terms of this Agreement.

#### **1.3 Future Purchase of Increments**

Subject to the terms of this Agreement, KCG offers to purchase additional Receipts in the "Increments" stated in on Page 1 of this Agreement, if any. KCG reserves the right to delay or rescind the offer to purchase any Increment or any additional receipts, in its sole and absolute discretion.

#### **1.4 Adjustments to the Specific Amount**

The Specific Amount is intended to represent the Specified Percentage of Merchant's Receipts each calendar month. At any time, KCG may adjust the Specific Amount so that the amount received by KCG in the future more closely represents the Specified Percentage. Also, once each calendar month Merchant may request that KCG reconcile Merchant's actual receipts and adjust the Specific Amount so that the amount received by KCG in the future more closely represents the Specified Percentage. Upon receipt of a written reconciliation request from Merchant, KCG may request any and all information from Merchant that KCG, in its sole judgment, believes is necessary to accurately reconcile the amount KCG has received from Merchant with the actual Specified Percentage. KCG shall not be required to adjust the Specific Amount until such time as it has received all such requested information.

#### **1.5 Financial Condition**

Merchant and Guarantor(s) (as hereinafter defined and limited) authorize KCG and its agents to investigate their financial responsibility and history, and will provide to KCG any authorizations, bank or financial statements, tax returns, etc., as KCG deems necessary in its sole and absolute discretion prior to or at any time after execution of this Agreement. A photocopy of this authorization will be deemed as acceptable as an authorization for release of financial and credit information. KCG is authorized to update such information and financial and credit profiles from time to time as it deems appropriate.

#### **1.6 Transactional History**

Merchant authorizes all of its banks, brokers and processors to provide KCG with Merchant's banking, brokerage and/or processing history to

determine qualification or continuation in this program and for collections purposes. Merchant shall provide KCG with copies of any documents related to Merchant's card processing activity or financial and banking affairs within five days after a request from KCG.

#### **1.7 Indemnification**

Merchant and Guarantor(s) jointly and severally indemnify and hold harmless Processor, its officers, directors and shareholders against all losses, damages, claims, liabilities and expenses (including reasonable attorney's fees) incurred by Processor resulting from (a) claims asserted by KCG for monies owed to KCG from Merchant and (b) actions taken by Processor in reliance upon any fraudulent, misleading or deceptive information or instructions provided by KCG.

#### **1.8 No Liability**

In no event will KCG be liable for any claims asserted by Merchant or Guarantors under any legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is waived by both Merchant and Guarantor(s). In the event these claims are nonetheless raised, Merchant and Guarantors will be jointly liable for all of KCG's attorney's fees and expenses resulting therefrom.

#### **1.9 Reliance on Terms**

Section 1.1, 1.6, 1.7, 1.8 and 2.5 of this Agreement are agreed to for the benefit of Merchant, KCG, Processor, and Merchant's bank and notwithstanding the fact that Processor and the bank is not a party of this Agreement, Processor and the bank may rely upon their terms and raise them as a defense in any action.

#### **1.10 Sale of Receipts**

Merchant and KCG agree that the Purchase Price under this Agreement is in exchange for the Purchased Amount, and that such Purchase Price is not intended to be, nor shall it be construed as a loan from KCG to Merchant. Merchant agrees that the Purchase Price is in exchange for the Receipts pursuant to this Agreement, and that it equals the fair market value of such Receipts. KCG has purchased and shall own all the Receipts described in this Agreement up to the full Purchased Amount as the Receipts are created. Payments made to KCG in respect to the full amount of the Receipts shall be conditioned upon Merchant's sale of products and services, and the payment therefore by Merchant's customers. In no event shall the aggregate of all amounts or any portion thereof be deemed as interest hereunder, and in the event it is found to be interest despite the parties hereto specifically representing that it is NOT interest, it shall be found that no sum charged or collected hereunder shall exceed the highest rate permissible at law. In the event that a court nonetheless determines that KCG has charged or received interest hereunder in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by applicable law and KCG shall promptly refund to Merchant any interest received by KCG in excess of the maximum lawful rate, it being intended that Merchant not pay or contract to pay, and that KCG not receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by Merchant under applicable law. As a result thereof, Merchant knowingly and willingly waives the defense of Usury in any action or proceeding.

#### **1.11 Power of Attorney**

Merchant irrevocably appoints KCG as its agent and attorney-in-fact with full authority to take any action or execute any instrument or document to settle all obligations due to KCG from Processor, or in the case of a violation by Merchant of Section 1 or the occurrence of an Event of



Default under Section 3 hereof, including without limitation (i) to obtain and adjust insurance; (ii) to collect monies due or to become due under or in respect of any of the Collateral; (iii) to receive, endorse and collect any checks, notes, drafts, instruments, documents or chattel paper in connection with clause (i) or clause (ii) above; (iv) to sign Merchant's name on any invoice, bill of lading, or assignment directing customers or account debtors to make payment directly to KCG; and (v) to contact Merchant's banks and financial institutions using Merchant and Guarantor(s) personal information to verify the existence of an account and obtain account balances (vi) to file any claims or take any action or institute any proceeding which KCG may deem necessary for the collection of any of the unpaid Purchased Amount from the Collateral, or otherwise to enforce its rights with respect to payment of the Purchased Amount. In connection therewith, all costs, expenses and fees, including legal fees, shall be payable by Merchant.

#### **1.12 Protections against Default**

The following Protections 1 through 8 may be invoked by KCG immediately and without notice to Merchant in the event: (a) Merchant takes any action to discourage the use of electronic check processing that are settled through Processor, or permits any event to occur that could have an adverse effect on the use, acceptance, or authorization of checks or other payments or deposits for the purchase of Merchant's services and products including but not limited to direct deposit of any checks into a bank account without scanning into the KCG electronic check processor; (b) Merchant changes its arrangements with Processor or the Bank in any way that is adverse or unacceptable to KCG; (c) Merchant changes the electronic check processor through which the Receipts are settled from Processor to another electronic check processor, or permits any event to occur that could cause diversion of any of Merchant's check or deposit transactions to another processor; (d) Merchant intentionally interrupts the operation of this business transfers, moves, sells, disposes, or otherwise conveys its business and/or assets without (i) the express prior written consent of KCG, and (ii) the written agreement of any purchaser or transferee to the assumption of all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to KCG; (e) Merchant takes any action, fails to take any action, or offers any incentive—economic or otherwise—the result of which will be to induce any customer or customers to pay for Merchant's services with any means other than payments, checks or deposits that are settled through Processor; or (f) Merchant fails to provide KCG with copies of any documents related to Merchant's card processing activity of financial and banking affairs within five days after a request from KCG. These protections are in addition to any other remedies available to KCG at law, in equity or otherwise pursuant to this Agreement. **Protection 1:** The full uncollected Purchased Amount plus all fees (including reasonable attorney's fees) due under this Agreement and the attached Security Agreement become due and payable in full immediately. **Protection 2:** KCG may enforce the provisions of the Personal Guaranty of Performance against the Guarantor(s). **Protection 3:** Merchant hereby authorizes KCG to execute in the name of the Merchant a Confession of Judgment in favor of KCG in the amount of Purchased Amount stated in the Agreement. Upon an Event of Default, KCG may enter that Confession of Judgment as a Judgment with the Clerk of any Court and execute thereon. **Protection 4:** KCG may enforce its security interest in the Collateral. **Protection 5:** The entire Purchased Amount and all fee (including reasonable attorney's fees) shall become immediately payable to KCG from Merchant. **Protection 6:** KCG may proceed to protect and enforce its right and remedies by lawsuit. In any such lawsuit, if KCG recovers a Judgment against Merchant, Merchant shall be liable for all of KCG's costs of the lawsuit, including but not limited to all reasonable attorneys' fees and court costs. **Protection 7:** This Agreement shall be deemed

Merchant's Assignment of Merchant's Lease of Merchant's business premises to KCG. Upon breach of any provision in this Agreement, KCG may exercise its rights under this Assignment of Lease without prior Notice to Merchant. **Protection 8:** KCG may debit Merchant's depository accounts wherever situated by means of ACH debit or facsimile signature on a computer-generated check drawn on Merchant's bank account or otherwise for all sums due to KCG.

#### **1.13 Protection of Information**

Merchant and each person signing this Agreement on behalf of Merchant and/or as Owner or Guarantor, in respect of himself or herself personally, authorizes KCG to disclose information concerning Merchant's and each Owner's and each Guarantor's credit standing (including credit bureau reports that KCG obtains) and business conduct only to agents, affiliates, subsidiaries, and credit reporting bureaus. Merchant and each Owner and each Guarantor hereby and each waives to the maximum extent permitted by law any claim for damages against KCG or any of its affiliates relating to any (i) investigation undertaken by or on behalf of KCG as permitted by this Agreement or (ii) disclosure of information as permitted by this Agreement.

#### **1.14 Confidentiality**

Merchant understands and agrees that the terms and conditions of the products and services offered by KCG, including this Agreement and any other KCG documents (collectively, "Confidential Information") are proprietary and confidential information of KCG. Accordingly, unless disclosure is required by law or court order, Merchant shall not disclose Confidential Information of KCG to any person other than an attorney, accountant, financial advisor or employee of Merchant who needs to know such information for the purpose of advising Merchant ("Advisor"), provided such Advisor uses such information solely for the purpose of advising Merchant and first agrees in writing to be bound by the terms of this section. A breach hereof entitles KCG to not only damages and reasonable attorney's fees but also to both a Temporary Restraining Order and a Preliminary Injunction without Bond or Security.

#### **1.15 Publicity**

Merchant and each of Merchant's Owners and all Guarantors hereto all hereby authorizes KCG to use its, his or her name in listings of clients and in advertising and marketing materials.

#### **1.16 D/B/A's**

Merchant hereby acknowledges and agrees that KCG may be using "doing business as" or "d/b/a" names in connection with various matters relating to the transaction between KCG and Merchant, including the filing of UCC-1 financing statements and other notices or filings.

## **II. REPRESENTATIONS, WARRANTIES AND COVENANTS**

Merchant represents warrants and covenants that, as of this date and during the term of this Agreement:

#### **2.1 Financial Condition and Financial Information**

Merchant's and Guarantors' bank and financial statements, copies of which have been furnished to KCG, and future statements which will be furnished hereafter at the discretion of KCG, fairly represent the financial condition of Merchant at such dates, and since those dates there has been no material adverse changes, financial or otherwise, in such condition, operation or ownership of Merchant. Merchant and Guarantors have a continuing, affirmative obligation to advise KCG of any material adverse change in their financial condition, operation or ownership. KCG may request statements at any time during the performance of this Agreement and the Merchant and Guarantors shall provide them to KCG within five business days after request from KCG. Merchant's or Guarantors' failure to do so is a material breach of this Agreement.

#### **2.2 Governmental Approvals**

Merchant is in compliance and shall comply with all laws and has valid permits, authorizations and licenses to own, operate and lease its



properties and to conduct the business in which it is presently engaged and/or will engage in hereafter.

### **2.3 Authorization**

Merchant, and the person(s) signing this Agreement on behalf of Merchant, have full power and authority to incur and perform the obligations under this Agreement, all of which have been duly authorized.

### **2.4 Insurance**

Merchant will maintain business interruption insurance naming KCG as loss payee and additional insured in amounts and against risks as are satisfactory to KCG and shall provide KCG proof of such insurance upon request.

### **2.5 Electronic Check Processing Agreement**

Merchant will not change its Processor, add terminals, change its financial institution or bank account(s) or take any other action that could have any adverse effect upon Merchant's obligations under this Agreement, without KCG's prior written consent. Any such changes shall be a material breach of this Agreement.

### **2.6 Change of Name or Location**

Merchant will not conduct Merchant's businesses under any name other than as disclosed to the Processor and KCG, nor shall Merchant change any of its places of business without prior written consent by KCG.

### **2.7 Daily Batch Out**

Merchant will batch out receipts with the Processor on a daily basis.

### **2.8 Estoppel Certificate**

Merchant will at every and all times, and from time to time, upon at least one (1) day's prior notice from KCG to Merchant, execute, acknowledge and deliver to KCG and/or to any other person, firm or corporation specified by KCG, a statement certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and stating the dates which the Purchased Amount or any portion thereof has been repaid.

### **2.9 No Bankruptcy**

As of the date of this Agreement, Merchant is not insolvent and does not contemplate filing for bankruptcy in the next six months and has not consulted with a bankruptcy attorney or filed any petition for bankruptcy protection under Title 11 of the United States Code and there has been no involuntary petition brought or pending against Merchant. Merchant further warrants that it does not anticipate filing any such bankruptcy petition and it does not anticipate that an involuntary petition will be filed against it.

### **2.10 Unencumbered Receipts**

Merchant has good, complete, unencumbered and marketable title to all Receipts, free and clear of any and all liabilities, liens, claims, changes, restrictions, conditions, options, rights, mortgages, security interests, equities, pledges and encumbrances of any kind or nature whatsoever or any other rights or interests that may be inconsistent with the transactions contemplated with, or adverse to the interests of KCG.

### **2.11 Business Purpose**

Merchant is a valid business in good standing under the laws of the jurisdictions in which it is organized and/or operates, and Merchant is entering into this Agreement for business purposes and not as a consumer for personal, family or household purposes.

### **2.12 Defaults under Other Contracts**

Merchant's execution of, and/or performance under this Agreement, will not cause or create an event of default by Merchant under any contract with another person or entity.

### **2.13 Good Faith**

Merchant and Guarantors hereby affirm that Merchant is receiving the Purchase Price and selling KCG the Purchased Amount in good faith and

will use the Purchase Price funds to maintain and grow Merchant's business.

## **III. EVENTS OF DEFAULT AND REMEDIES**

### **3.1 Events of Default**

The occurrence of any of the following events shall constitute an "Event of Default" hereunder: (a) Merchant or Guarantor shall violate any term or covenant in this Agreement; (b) Any representation or warranty by Merchant in this Agreement shall prove to have been incorrect, false or misleading in any material respect when made; (c) the sending of notice of termination by Merchant; (d) the Merchant fails to give KCG 24 hours advance notice that there will be insufficient funds in the account such that the ACH of the specific daily amount will not be honored by Merchant's bank, and Merchant fails to supply all requested documentation and allow for daily monitoring of its bank account; (e) Merchant shall transfer or sell all or substantially all of its assets; (f) Merchant shall make or send notice of any intended bulk sale or transfer by Merchant; (g) Merchant shall use multiple depository accounts without the prior written consent of KCG (h) Merchant shall encumber its receipts or obtain any additional financing, loan, or merchant cash advance after the date KCG remits the Purchase Price (i) Merchant shall breach the negative pledge in the Security Agreement (j) Merchant shall change its depositing account without the prior written consent of KCG; or (k) Merchant shall close its depositing account used for ACH debits without the prior written consent of KCG (l) Merchant's bank returns a code other than NSF cutting KCG from its collections (m) Merchant shall default under any of the terms, covenants and conditions of any other agreement with KCG.

### **3.2 Personal Guaranty**

In the Event of a Default, KCG will enforce its rights against the Guarantors of this transaction. Said Guarantors will be jointly and severally liable to KCG for all of KCG's losses and damages, in addition to all costs and expenses and legal fees associated with such enforcement.

### **3.3 Remedies**

In case any Event of Default occurs and is not waived pursuant to Section 4.4. hereof, KCG may proceed to protect and enforce its rights or remedies by suit in equity or by action at law, or both, whether for the specific performance of any covenant, agreement or other provision contained herein, or to enforce the discharge of Merchant's obligations hereunder (including the Guaranty) or any other legal or equitable right or remedy. All rights, powers and remedies of KCG in connection with this Agreement may be exercised at any time by KCG after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

### **3.4 Costs**

Merchant shall pay to KCG all reasonable costs associated with (a) an Event or Default, (b) breach by Merchant of the Covenants in this Agreement and the enforcement thereof, and (c) the enforcement of KCG's remedies set forth in this Agreement, including but not limited to court costs and attorneys' fees.

### **3.5 Required Notifications**

Merchant is required to give KCG written notice within 24 hours of any filing under Title 11 of the United States Code. Merchant is required to give KCG seven days' written notice prior to the closing of any sale of all or substantially all of the Merchant's assets or stock.

## **IV. MISCELLANEOUS**

### **4.1 Modifications; Agreements**

No modification, amendment, waiver or consent of any provision of this Agreement shall be effective unless the same shall be in writing and signed by KCG.

**4.2 Assignment**

KCG may assign, transfer or sell its rights to receive the Purchased Amount or delegate its duties hereunder, either in whole or in part.

**4.3 Notices**

All notices, requests, consents, demands and other communications hereunder shall be delivered by certified mail, return receipt requested, to the respective parties to this Agreement at the addresses set forth in this Agreement. Notices to KCG shall become effective only upon receipt by KCG. Notices to Merchant shall become effective three days after mailing.

**4.4 Waiver Remedies**

No failure on the part of KCG to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided hereunder are cumulative and not exclusive of any remedies provided by law or equity.

**4.5 Binding Effect; Governing Law, Venue and Jurisdiction**

This Agreement shall be binding upon and inure to the benefit of Merchant, KCG and their respective successors and assigns, except that Merchant shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of KCG which consent may be withheld in KCG's sole discretion. KCG reserves the rights to assign this Agreement with or without prior written notice to Merchant. This Agreement shall be governed by and construed in accordance with the laws of the state of New York, without regards to any applicable principals of conflicts of law. Any suit, action or proceeding arising hereunder, or the interpretation, performance or breach hereof, shall, if KCG so elects, be instituted in any court sitting in New York, (the "Acceptable Forums"). Merchant agrees that the Acceptable Forums are convenient to it, and submits to the jurisdiction of the Acceptable Forums and waives any and all objections to jurisdiction or venue. Should such proceeding be initiated in any other forum, Merchant waives any right to oppose any motion or application made by KCG to transfer such proceeding to an Acceptable Forum. ADDITIONALLY, MERCHANT AGREES THAT ANY SUMMONS AND/OR COMPLAINT OR OTHER PROCESS TO COMMENCE ANY LITIGATION BY KCG WILL BE PROPERLY SERVED IF MAILED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE MAILING ADDRESS(ES) LISTED ON PAGE 1 OF THIS AGREEMENT.

**4.6 Survival of Representation, etc.**

All representations, warranties and covenants herein shall survive the execution and delivery of this Agreement and shall continue in full force until all obligations under this Agreement shall have been satisfied in full and this Agreement shall have terminated.

**4.7 Interpretation**

All Parties hereto have reviewed this Agreement with attorney of their own choosing and have relied only on their own attorneys' guidance and advice. No construction determinations shall be made against either Party hereto as drafter.

**4.8 Severability**

In case any of the provisions in this Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of any other provision contained herein shall not in any way be affected or impaired.

**4.9 Entire Agreement**

Any provision hereof prohibited by law shall be ineffective only to the extent of such prohibition without invalidating the remaining provisions hereof. This Agreement and the Security Agreement and Guaranty hereto embody the entire agreement between Merchant and KCG and supersede all prior agreements and understandings relating to the subject matter hereof.

**4.10 JURY TRIAL WAIVER**

THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THE TRANSACTIONS OR THE ENFORCEMENT HEREOF. THE PARTIES HERETO ACKNOWLEDGE THAT EACH MAKES THIS WAIVER KNOWINGLY, WILLINGLY AND VOLUNTARILY AND WITHOUT DURESS, AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH THEIR ATTORNEYS.

**4.11 CLASS ACTION WAIVER**

THE PARTIES HERETO WAIVE ANY RIGHT TO ASSERT ANY CLAIMS AGAINST THE OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW AS AGAINST PUBLIC POLICY. TO THE EXTENT EITHER PARTY IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST THE OTHER, THE PARTIES HEREBY AGREE THAT: (1) THE PREVAILING PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS OR REPRESENTATIVE ACTION (NOT WITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT); AND (2) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS OR REPRESENTATIVE ACTION.

**4.12 Facsimile & Digital Acceptance**

Facsimile signatures and digital signatures hereon shall be deemed acceptable for all purposes.

Initial(s):     *all*





KALAMATA CAPITAL GROUP

**SECURITY AGREEMENT AND GUARANTY**

Business (Merchant) Legal Name: ENCOUNTER MEDICAL ASSOCIATES DG, LLC Federal Tax ID (EIN): 90-0730068

Doing Business As: EMEDICAL ASSOCIATES

Business Address: 3075 RONALD REAGAN BLVD STE 501 City: CUMMING State: GA Zip: 30041

**Additional Guarantor(s):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECURITY AGREEMENT**

**Security Interest**

This Agreement will constitute a security agreement under the Uniform Commercial Code. Merchant and Guarantor(s) grants to KCG a security interest in and lien upon: (a) all accounts, chattel paper, documents, equipment, general intangibles, instruments, and inventory, as those terms are each defined in Article 9 of the Uniform Commercial Code (the "UCC"), now or hereafter owned or acquired by Merchant and/or Guarantor(s), (b) all proceeds, as that term is defined in Article 9 of the UCC (c) all funds at any time in the Merchant's and/or Guarantor(s) Account, regardless of the source of such funds, (d) present and future Electronic Check Transactions, and (e) any amount which may be due to KCG under this Agreement, including but not limited to all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). Merchant agrees to provide other security to KCG upon request to secure Merchant's obligations under this Agreement. Merchant agrees that, if at any time there are insufficient funds in Merchant's Account to cover KCG's entitlements under this Agreement, KCG is granted a further security interest in all of Merchant's assets of any kind whatsoever, and such assets shall then become Secured Assets. These security interests and liens will secure all of KCG's entitlements under this Agreement and any other agreements now existing or later entered into between Merchant, KCG or an affiliate of KCG. KCG is authorized to file any and all notices or filings it deems necessary or appropriate to enforce its entitlements hereunder.

This security interest may be exercised by KCG without notice or demand of any kind by making an immediate withdrawal or freezing the Secured Assets. KCG shall have the right to notify account debtors at any time. Pursuant to Article 9 of the Uniform Commercial Code, as

amended from time to time, KCG has control over and may direct the disposition of the Secured Assets, without further consent of Merchant. Merchant hereby represents and warrants that no other person or entity has a security interest in the Secured Assets. With respect to such security interests and liens, KCG will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from KCG written consent prior to granting a security interest of any kind in the Secured Assets to a third party. Merchant and Guarantor (s) agree(s) that this is a contract of recoupment and KCG is not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, Merchant and Guarantor(s) agree(s) not to contest or object to any motion for relief from the automatic stay filed by KCG. Merchant and Guarantor(s) agree(s) to execute and deliver to KCG such instruments and documents KCG may reasonably request to perfect and confirm the lien, security interest and right of setoff set forth in this Agreement. KCG is authorized to execute all such instruments and documents in Merchant's and Guarantor(s) name.

Merchant and Guarantor(s) each acknowledge and agree that any security interest granted to KCG under any other agreement between Merchant or Guarantor(s) and KCG (the "Cross-Collateral") will secure the obligations hereunder and under the Merchant Agreement. Merchant and Guarantor(s) each agrees to execute any documents or take any action in connection with this Agreement as KCG deems necessary to perfect or maintain KCG's first priority security interest in the Collateral and the Additional Collateral, including the execution of any account control agreements. Merchant and Guarantor(s) each hereby authorizes KCG to file any financing statements deemed

necessary by KCG to perfect or maintain KCG's security interest. Merchant and Guarantor(s) shall be liable for, and KCG may charge and collect, all costs and expenses, including but not limited to attorney's fees, which may be incurred by KCG in protecting, preserving and enforcing KCG's security interest and rights.

**Negative Pledge**

Merchant and Guarantor(s) each agrees not to create, incur, assume, or permit to exist, directly or indirectly, any lien on or with respect to any of the Collateral or the Additional Collateral, as applicable.

**Consent to Enter Premises and Assign Lease**

KCG shall have the right to cure Merchant's default in the payment of rent on the following terms. In the event Merchant is served with papers in an action against Merchant for nonpayment of rent or for summary eviction, KCG may execute its rights and remedies under the Assignment of Lease. Merchant also agrees that KCG may enter into an agreement with Merchant's landlord giving KCG the right: (a) to enter Merchant's premises and to take possession of the fixtures and equipment therein for the purpose of protecting and preserving same; and/or (b) to assign Merchant's lease to another qualified business capable of operating a business comparable to Merchant's at such premises.

**Remedies**

Upon any Event of Default, KCG may pursue any remedy available at law (including those available under the provisions of the UCC), or in equity to collect, enforce, or satisfy any obligations then owing to KCG, whether by acceleration or otherwise.

Initial(s):     *all*



KALAMATA CAPITAL GROUP

GUARANTY OF PERFORMANCE

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE "MERCHANT AGREEMENT", INCLUDING THE "TERMS AND CONDITIONS", ARE HEREBY INCORPORATED IN AND MADE A PART OF THIS SECURITY AGREEMENT AND GUARANTY. CAPITALIZED TERMS NOT DEFINED IN THIS SECURITY AGREEMENT AND GUARANTY, SHALL HAVE THE MEANING SET FORTH IN THE MERCHANT AGREEMENT, INCLUDING THE TERMS AND CONDITIONS.

As an additional inducement for KCG to enter into this Agreement, the undersigned Guarantor(s) hereby provides KCG with this Guaranty. Guarantor(s) will not be personally liable for any amount due under this Agreement unless Merchant commits an Event of Default pursuant to Paragraph 3.1 of this Agreement. Each Guarantor shall be jointly and severally liable for all amounts owed to KCG in the Event of Default. Guarantor(s) guarantee Merchant's good faith, truthfulness and performance of all of the representations, warranties, covenants made by Merchant in this Agreement as each may be renewed, amended, extended or otherwise modified (the "Guaranteed Obligations"). Guarantor's obligations are due at the time of any breach by Merchant of any representation, warranty, or covenant made by Merchant in the Agreement.

Guarantor Waivers

In the event of a breach of the above, KCG may seek recovery from Guarantors for all of KCG's losses and damages by enforcement of KCG's rights under this Agreement without first seeking to obtain payment from Merchant, any other guarantor, or any Collateral or Additional Collateral KCG may hold pursuant to this Agreement or any other guaranty.

KCG does not have to notify Guarantor of any of the following events and Guarantor will not be released from its obligations under this Agreement if it is not notified of: (i) Merchant's failure to pay timely any amount required under the Merchant Agreement; (ii) any adverse change in Merchant's financial condition or business; (iii) any sale or other disposition of any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations; (iv) KCG's acceptance of this Agreement; and (v) any renewal, extension or other modification of the Merchant Agreement or Merchant's other obligations to KCG. In addition, KCG may take any of the

following actions without releasing Guarantor from any of its obligations under this Agreement: (i) renew, extend or otherwise modify the Merchant Agreement or Merchant's other obligations to KCG; (ii) release Merchant from its obligations to KCG; (iii) sell, release, impair, waive or otherwise fail to realize upon any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations; and (iv) foreclose on any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations in a manner that impairs or precludes the right of Guarantor to obtain reimbursement for payment under this Agreement. Until the Purchased Amount and Merchant's other obligations to KCG under the Merchant Agreement and this Agreement are paid in full, Guarantor shall not seek reimbursement from Merchant or any other guarantor for any amounts paid by it under this Agreement. Guarantor permanently waives and shall not seek to exercise any of the following rights that it may have against Merchant, any

other guarantor, or any collateral provided by Merchant or any other guarantor, for any amounts paid by it, or acts performed by it, under this Agreement: (i) subrogation; (ii) reimbursement; (iii) performance; (iv) indemnification; or (v) contribution. In the event that KCG must return any amount paid by Merchant or any other guarantor of the Guaranteed Obligations because that person has become subject to a proceeding under the United States Bankruptcy Code or any similar law, Guarantor's obligations under this Agreement shall include that amount.

Guarantor Acknowledgement

Guarantor acknowledges that: (i) He/She is bound by the Class Action Waiver provision in the Merchant Agreement Terms and Conditions; (ii) He/She understands the seriousness of the provisions of this Agreement; (ii) He/She has had a full opportunity to consult with counsel of his/her choice; and (iii) He/She has consulted with counsel of its choice or has decided not to avail himself/herself of that opportunity.

FOR THE MERCHANT (#1)

By: ALFRED A IFARINDE (Print Name and Title)

ALFRED A IFARINDE (Signature)

SSN# 395-08-2449

Driver's License

FOR THE MERCHANT (#2)

By: (Print Name and Title)

(Signature)

SSN#

Driver's License

BY OWNER (#1)

By: ALFRED A IFARINDE (Print Name and Title)

ALFRED A IFARINDE (Signature)

SSN# 395-08-2449

Driver's License

BY OWNER (#2)

By: (Print Name and Title)

(Signature)

SSN#

Driver's License

FOR THE GUARANTOR(S) (#1)

By: ALFRED A IFARINDE (Print Name and Title)

ALFRED A IFARINDE (Signature)

SSN# 395-08-2449

Driver's License

FOR THE GUARANTOR(S) (#2)

By: (Print Name and Title)

(Signature)

SSN#

Driver's License



**APPENDIX A - FEE STRUCTURE:**

- A. Underwriting Fee \$875.00 to cover underwriting and related expenses.
- B. Origination Fee \$875.00 to cover cost of Origination and ACH Setup.
- C. NSF Fee (Standard) \$35.00 (each)
- D. Rejected ACH / Blocked ACH / Default Fee \$2,500.00 When Merchant BLOCKS Account from our Debit ACH, or when Merchant directs the bank to reject our debit ACH, which places them in default (per contract). When Merchant changes bank Account cutting us off from our collections.
- E. Bank Change Fee \$50.00 When Merchant requires a change of Bank Account to be Debited, requiring us to adjust our system.
- F. Wire Fee - Each Merchant shall receive their funding electronically to their designated bank account and will be charged \$50.00 for a Fed Wire or \$0.00 for a bank ACH.

**AGREED AND ACKNOWLEDGED:**

**BY MERCHANT (#1)** By: ALFRED A IFARINDE ALFRED A IFARINDE  
 (Print Name and Title) (Signature)

**BY MERCHANT (#2)** By: \_\_\_\_\_  
 (Print Name and Title) (Signature)



KALAMATA CAPITAL GROUP

AUTHORIZATION AGREEMENT FOR DIRECT DEPOSIT (ACH CREDIT) AND DIRECT PAYMENTS (ACH DEBITS)
PAYMENTS WILL APPEAR ON YOUR BANK STATEMENTS AS "KALAMATA CAPITAL GROUP".

DEFINITIONS (Capitalized terms used in this Authorization Agreement without definition shall have the meanings set forth in the Merchant Agreement):

Merchant Agreement: Merchant Agreement between KCG and Seller, dated as of: October 3, 2018
(Month) (Day) (Year)

KCG: Kalamata Capital Group

Seller: ENCOUNTER MEDICAL ASSOCIATES DG, LLC Federal Tax ID (EIN): 90-0730068
(Business Legal Name)

Designated Checking Account:

Bank Name: BRANCH BANKING AND TRUST COMPANY Branch: Cumming, Georgia

ABA: Routing: 061113415 DDA: Account: 0005241949518

By signing below, Seller attests that the Designated Checking Account was established for business purposes and not primarily for personal, family or household purposes. This Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits) is part of (and incorporated by reference into) the Merchant Agreement. Seller should keep a copy of this important legal document for Seller's records.

DISBURSMENT OF ADVANCE PROCEEDS

By signing below, Seller authorizes KCG to disburse the Advance proceeds less the amount of any applicable fees upon Advance approval by initiating ACH credits to the Designated Checking Account, in the amounts and at the times specified in the Merchant Agreement.

By signing below, Seller also authorizes KCG to collect amounts due from Seller under the Merchant Agreement by initiating ACH debits to the Designated Checking Account, as follows:

In the amount of: \$ 508.00 (or) Estimated percentage of each Banking Deposit: 15 %

On the Following Day(s): MONDAY - FRIDAY

If any payment date falls on a weekend or holiday, I understand and agree that the payment may be executed on the next business day. If a payment is rejected by Seller's financial institution for any reason, including without limitation insufficient funds, Seller understands that KCG may, at its discretion, attempt to process the payment again as permitted under applicable ACH rules. Seller also authorizes KCG to initiate ACH entries to correct any erroneous payment transaction.

MISCELLANEOUS

KCG is not responsible for any fees charged by Seller's bank as the result of credits or debits initiated under this Authorization Agreement. The origination of ACH debits and credits to the Designated Checking Account must comply with applicable provisions of state and federal law, and the rules and operating guidelines of NACHA (formerly known as the National Automated Clearing House Association).

This Authorization Agreement is to remain in full force and effect until KCG has received written notification from Seller at the address set forth below at least 5 banking days prior of its termination to afford KCG a reasonable opportunity to act on it. The individual(s) signing below on behalf of Seller certifies that he/she is an authorized signer on the Designate Checking Account. Seller will not dispute any ACH transaction initiated pursuant to this Authorization Agreement, provided the transaction corresponds to the terms of this Authorization Agreement. Seller requests the financial institution that holds the Designated Checking Account to honor all ACH entries initiated in accordance with this Authorization Agreement.

Seller: ENCOUNTER MEDICAL ASSOCIATES DG, LLC Date: October 3, 2018
(Business Legal Name) (Month) (Day) (Year)

Authorized Signer (#1): ALFRED A IFARINDE ALFRED A IFARINDE
(Print Name and Title) (Signature)

Authorized Signer (#2): (Print Name and Title) (Signature)



Dear Merchant,

Thank you for accepting an offer from Kalamata Capital Group. We are looking forward to building a relationship with your business that allows you to reach and exceed your goals. Please note that prior to funding your account, our Underwriting department needs to see the most recent balance and activity information in real-time as a fraud countermeasure and in order to ensure the health of your business aligns with the terms of your offer. For your convenience, we have three secure options for you to choose from to complete this step.

**Please provide information required for read-only access\* to your business account.**

**Bank portal website:** \_\_\_\_\_

**Username:** \_\_\_\_\_

**Password:** \_\_\_\_\_

**Security Question 1:** \_\_\_\_\_

**Answer 1:** \_\_\_\_\_

**Security Question 2:** \_\_\_\_\_

**Answer 2:** \_\_\_\_\_

**Security Question 3:** \_\_\_\_\_

**Answer 3:** \_\_\_\_\_

Any other information necessary to access your account:

\_\_\_\_\_

info@emedicalassociates.com

\* Read only access can be easily arranged by calling your Bank, allowing our Underwriters to view account information without being able to transfer, debit or otherwise access funds.