

# SECURITIES AND EXCHANGE COMMISSION

## FORM 8-K

Current report filing

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### FILER

#### **Intrepid Holdings, Inc.**

CIK: **1125856** | IRS No.: **880465858** | State of Incorporation: **NV** | Fiscal Year End: **1231**  
Type: **8-K** | Act: **34** | File No.: **001-16173** | Film No.: **05789371**  
SIC: **6159** Miscellaneous business credit institution

Mailing Address  
160 WIMBERLY RANCH DR.  
WIMBERLY TX 78676

Business Address  
160 WIMBERLY RANCH DR.  
WIMBERLY TX 78676  
2818145242

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington D.C., 20549**

**Form 8-K**

**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report: April 27, 2005

**Intrepid Holdings, Inc.**

(Name of small business issuer in its charter)

**Nevada**

(State or other jurisdiction of incorporation or organization)

**88-0465858**

(I.R.S. Employer Identification No.)

**001-16173**

(Commission File No.)

**9100 Southwest Freeway, Suite 130A, Houston, TX**

(Address of principal executive offices)

Issuer's telephone number: **(713) 776-8984**

**77074**

(Zip Code)

Former Name or Address if changed since last report: 160 Wimberley Ranch Dr., Wimberley, Texas 78676.

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions.

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 1.01 Entry into a Material Definitive Agreement**

On April 27, 2005, Intrepid Holdings, Inc. entered into an asset purchase agreement with Rx Fulfillment Services, Inc., ("RxFS") a Texas corporation under which we purchased all of the assets of RxFS in exchange for 26,525,188 shares of newly issued, unregistered common stock of Intrepid Holdings.

The assets acquired included certain contracts and contractual rights owned by RxFS to provide pharmacy services and pharmacy fulfillment services for a nationwide software provider of e-prescription software named VipMedRx, Inc. ("VMRx"). In addition, we acquired a contractual relationship that allows us to access the certification and license of a Texas pharmacy that will provide pharmacy services on behalf of the Company.

Beginning in 2006, physicians in the U.S. will be required to generate their prescriptions electronically rather than by hand as they have done historically. VMRx provides the software that automates this process as well as providing information on drug interaction, electronic medical records and professional education materials for doctors. We expect to work closely with VMRx in the marketing of this software to doctors across America beginning in May of 2005. A core target market for us will be the African-American medical community.

Patients who visit a doctor using the VMRx software suite, will be offered the option of having their prescription delivered directly to their home or office by RxFS. We expect to open a fulfillment center in the next sixty days and begin delivering prescriptions to patients in July of this year.

### **Item 2.01 Completion of Acquisition or Disposition of Assets.**

On April 27, 2005, Intrepid Holdings acquired the assets of Rx Fulfillment Services, Inc., a Texas corporation. The seller of the assets was not a related party or affiliate of Intrepid Holdings. We purchased the assets for 26,525,188 shares of newly issued unregistered common stock of Intrepid Holdings. The assets acquired consist primarily of the following four contracts: i) an Agency Agreement between the Seller and VipMedRx (“VMRx”) of Silver Springs, MD. Under this contract, VMRx will act as an agent for the pharmacy services provided by us subsequent to the acquisition; ii) an Order Fulfillment Agreement between VMRx and the Seller under which RxFS acts as a licensed pharmacy to fill prescriptions issued by physicians using the VMRx software system.; iii) a lease agreement with La Porte Apothecary, Inc., under which we are authorized to operate as a Class A Pharmacy as a sub-contractor to the Lessor; and iv) a Joint Venture Agreement between Laura Clelland, d/b/a DiebeteSource under which we will provide pharmacy fulfillment services to the joint venture and for which we will own a 49% interest in the joint venture.

Subsequent to the closing of the asset purchase described above, we retained the services of the President of the Seller, Mr. Maurice Stone to serve as our Chief Executive Officer and as Chairman of the Board.

### **Item 2.03 Creation of a Direct Financial Obligation**

On April 27, 2005, Intrepid Holdings executed a Promissory Note in the amount of \$400,000 to Galleria Securities, Inc. of Wimberley, Texas. Under the terms of this Note, the company must repay the principal of this Note within six months. Interest will accrue at a rate of 7% if the note is not paid by the due date. In addition, we have agreed to repay the note out of the proceeds of any private placement that we conduct during the term of the note by applying 50% of the net proceeds of any private placement investment directly to the Note’ s retirement.

### **Item 5.02 Election of Directors; Appointment of Principal Officers.**

On April 29, 2005, the Board of Directors unanimously elected additional directors to join Thomas J. Cloud, Jr. the Company’ s current director on the Board of Directors:

Maurice Stone, Chairman, 9100 Southwest Freeway, Suite 130A, Houston, Texas 77074;  
Daryl Webster, 9100 Southwest Freeway, Ste. 130A, Houston, Texas 77074;  
James B. Hill, 9100 Southwest Freeway, Ste. 130A, Houston, Texas 77074;  
Toney Means, 9100 Southwest Freeway, Ste. 130A, Houston, Texas 77074;  
James Shelton, 9100 Southwest Freeway, Ste. 130A, Houston, Texas 77074;  
Ernest Carter, 9100 Southwest Freeway, Ste. 130A, Houston, Texas 77074;  
Jonathan Gilchrist, 1240 Blalock Rd., Ste. 150, Houston, Texas 77055

Mr. Shelton will serve as Chairman of the Executive Compensation Committee.

Mr. Gilchrist will serve as Chairman of the Audit Committee.

Mr. Cloud will continue his service as a director of the company as well.

In addition, the Board of Directors designated the following individuals to serve as officers of the Corporation in addition to Thomas J. Cloud, Jr. who will continue to serve as President:

Maurice Stone, CEO, 9100 Southwest Freeway, Ste. 130A, Houston, Texas 77074;  
Daryl Webster, CFO, 9100 Southwest Freeway, Ste. 130A, Houston, Texas 77074;  
Theodis Ware, Vice President, 9100 Southwest Freeway, Ste. 130A, Houston, Texas 77074;

#### **Item 8.01 Other Events - Change of Address and Contact Number**

The Company has changed the location of its principal place of business to 9100 Southwest Freeway, Suite 130A, Houston, Texas 77074. The principal contact number for the Company is now (713) 776-8984.

#### **Item 9.01 Exhibits and Financials**

<b>Exhibit 10.01</b>	<b>Agency Agreement between Rx Fulfillment Services, Inc. and VipMedRx dated January 6, 2005.</b>
<b>Exhibit 10.02</b>	<b>Order Fulfillment Agreement between Rx Fulfillment Services, Inc. and VipMedRx dated January 6, 2005.</b>
<b>Exhibit 10.03</b>	<b>Lease Agreement between La Porte Apothecary, Inc. and Rx Fulfillment Services, Inc. dated February 9, 2005.</b>
<b>Exhibit 10.04</b>	<b>Joint Venture Agreement between Rx Fulfillment Services, Inc. and Laura Clelland dated February 10, 2005.</b>

The financial statements of Rx Fulfillment Services, Inc., will be filed in an amendment no later than 71 calendar days from the file date of this report.

#### **SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Current Report on Form 8-K to be signed on its behalf by the undersigned hereunto duly authorized.

Intrepid Holdings, Inc.

By: /s/ Thomas John Cloud, Jr.

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Thomas John Cloud, Jr.  
President

## AGENCY AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into as of the 6th day of January, 2005, by and between R<sub>X</sub> FULFILLMENT SERVICES, INC., having its principal office at 9100 Southwest Freeway, Suite 130A, Houston, Texas 77074 (hereinafter referred to as R<sub>X</sub>FS) and VipMedR<sub>X</sub> having its principal office and place of business at 8807 Colesville Rd, Suite 2, Silver Springs, MD 20910 (hereinafter referred to as "AGENCY").

WHEREAS, R<sub>X</sub>FS desires to engage the services of AGENCY as an independent sales representative on the terms and conditions set forth herein, and AGENCY desires to represent and sell products and services of R<sub>X</sub>FS on such terms and conditions as set forth below.

NOW THEREFORE, in consideration of the promises and mutual benefits and obligations of the parties, which are hereafter set forth, and the sufficiency of which is hereby expressly acknowledged, it is hereby agreed as follows:

1. Appointment of Agency. R<sub>X</sub>FS hereby appoints AGENCY as its representative, and AGENCY hereby agrees to act for R<sub>X</sub>FS as its exclusive sales agency for the products and services, described in Exhibit A ("Products and Services"), throughout the Territory, or otherwise defined area (the "Territory") listed within this Agreement.
  - 1.1. Territory. The term "Territory" as used in the Agreement is defined to mean the unique customer set serviced by VMR<sub>X</sub> and its affiliated entities as identified in Exhibit B. AGENCY may market in other territories from time to time, which may be included within this agreement, with the written permission of R<sub>X</sub>FS on a case-by-case basis.
  - 1.2.
  - 1.3. Exclusivity. During the term of this Agreement, R<sub>X</sub>FS will not appoint any other person, firm, or corporations as a distributor, AGENCY, or sales representative for the Products and Services within the Territory except providing for the fact that R<sub>X</sub>FS has a first right of refusal to market its products and service directly to end users.
2. Responsibilities of AGENCY. Within the territory described in Paragraph 1, AGENCY shall:
  - 2.1. Best Efforts to Market. AGENCY agrees use its best efforts in marketing R<sub>X</sub>FS Products and Services as described in Exhibit A which is incorporated herein as though set out verbatim, in the Territory. In order to develop the full sales potential of the Territory, AGENCY agrees that it will perform at its expense the duties describe in subparagraphs a. through b.
    - a. Promotion and Marketing. AGENCY shall engage in sales promotion activities in the Territory, which promotion activities shall include but not be limited to, prospecting, sales presentations, demonstrations, industry and association convention attendance and distributing printed material supplied by R<sub>X</sub>FS to current and potential customers. The Products and Services will at all times be designated by their current names (as designated by R<sub>X</sub>FS) and identified as the Products and Services of R<sub>X</sub>FS being offered for sale through AGENCY as an Independent Sales AGENCY of R<sub>X</sub>FS.
    - b. Coordination. AGENCY will coordinate its sales efforts with R<sub>X</sub>FS. To this end AGENCY will:
      - (1) Effectively and promptly follow up leads and referrals supplied by R<sub>X</sub>FS and keep R<sub>X</sub>FS informed of the results;
      - (2) Inform R<sub>X</sub>FS of all inquires and bid requests relating to the potential sale of Products and Services;
      - (3) Furnish R<sub>X</sub>FS with copies of all printed materials used by AGENCY which are not supplied by R<sub>X</sub>FS and in which R<sub>X</sub>FS or the Products and Services are mentioned, which must be approved in writing in advance by R<sub>X</sub>FS; and
      - (4) Convey to R<sub>X</sub>FS any information, which may be of value to R<sub>X</sub>FS that may come to AGENCY' s attention concerning market conditions, competition, pricing, customers, and prospects.

- 2.2. Pricing Orders. AGENCY will adhere to RxFs then current published price lists or special quotations authorized in writing by RxFs in soliciting orders for the Products and Services; and, unless otherwise authorized by RxFs, all prices are subject to change at any time prior to acceptance of an order or contract by RxFs.
- 2.3. General Conduct. AGENCY shall adhere to, cooperate, and comply with RxFs sales policies and programs. AGENCY will at all times conduct its business in a manner that will reflect favorably on RxFs and its Products and Services and will not engage in any deceptive, misleading, illegal or unethical business practice.
- a. Inspection. RxFs shall have the right upon reasonable notice and during normal business hours to visit AGENCY' s place(s) of business for the purpose of verifying satisfaction by AGENCY of its duties under this Agreement.
- 2.4. Competitive Activities. AGENCY will not act as an AGENCY, employee, or in any other manner for any Product and Services in the Territory, which compete, directly or indirectly with the Products and Services specifically listed in this Agreement. AGENCY will disclose to RxFs the identities of all Agreements for Products and Services, which it currently represents that may compete, directly or indirectly with RxFs products and services specifically listed in this Agreement. AGENCY will notify RxFs of contemplated additions to such representations prior to making new commitments.
- a. Additional Product or Service Lines. If also handling additional product or service lines, to give equal importance, emphasis and time to promoting RxFs products or services.
- 2.5. Sales Quotas and Purchase Objectives. AGENCY shall be expected to maintain a sales volume deemed reasonable for its Territory, to be determined from a monthly sales review conducted by RxFs and AGENCY through the first year of this Agreement. Within 30 days of the signing of this Agreement, AGENCY and RxFs will conduct a Planning Session to establish definitive Purchase Objectives for this Agreement. Thereafter these Purchase Objectives will be reviewed and revised as necessary annually.
- 2.6. AGENCY Reports. AGENCY agrees to make periodic reports to RxFs, as reasonably requested by RxFs with respect to sales and potential sales, including available information relating to conditions in the Territory and the financial status of customers and potential customers. AGENCY also shall report to RxFs such information as is necessary to enable RxFs to supply Products and Services that shall meet customer' s specifications, safety codes and similarly regulations and requirements in the Territory. AGENCY acknowledges that it is RxFs' S objective to obtain "sole-source negotiated sales" whenever possible.
- (1) Monthly sales tracing report coinciding with the review of Purchase Objectives outlined in Section 2.5 of this Agreement.  
This report is to include the following information regarding customers who have received shipments of RxFs Products, delivery of RxFs Services, or are potential customers of RxFs: name, city, state, zip code; primary contact, phone number, fax number, email address, website, year-to-date sales revenue by product or service, forecasted future sales revenue by product or service, and other information that RxFs may require from time-to-time.
- 2.7. AGENCY' s Operations and Expenses. Except as hereinafter specified, AGENCY shall be responsible for all expenses incurred by it in connection with the implementation and performance of its duties and obligations under this Agreement, including but not limited to, the expenses incurred in fulfilling its duties and responsibilities as provided in Paragraph 2; salaries for its personnel; costs and expenses associated with establishing and maintaining its sales organization and offices; advertising and promotion expenses and any and all taxes, duties, tariffs or charges which may be imposed on the AGENCY in the Territory. Subject to written approval in advance by RxFs in advance for each specific trip, RxFs shall reimburse AGENCY for its actual and reasonable travel, room and board expenses incurred, while performing services under this Agreement in the Territory areas which are outside of the AGENCY' s principal business or residence, provided that AGENCY shall subject reasonable documentation for such expenses.
- 2.8. Compliance with the Law. AGENCY agrees that in rendering services and in carrying out its other duties under this Agreement, it shall neither undertake nor cause or permit to be undertaken any activity which is illegal under the laws of the Territory or of the United States of America.
- a. AGENCY covenants and warrants to RxFs that any fees or commissions paid to or to be paid to AGENCY under this Agreement are for AGENCY' s own account, and that except as appropriate to carry out AGENCY' s duties set forth herein in a legal manner, AGENCY has not, has no obligation to, and shall not, directly or indirectly, give, offer, pay, promise to pay, or authorize the payment of money or thing of value to any other person in connection with the transactions for which commissions hereunder are to be paid. AGENCY agrees not to take any actions that would cause RxFs to violate any United States, State, and foreign antitrust laws, Medicare and Medicaid Coverage Regulations and Requirements, Safe Harbor Regulations, Anti-Kickback

Statutes, Fraud and Abuse Laws. AGENCY further agrees and warrants that no officer, director, employee, or AGENCY of AGENCY is an official of the Government.

- b. AGENCY understands and agrees that RxFS may comply with any legal provision requiring disclosure, or any request from the United States Government or the Government of the Territory to disclose, by affidavit or AGENCY as well as the identities of AGENCY' s principal and the amount of any payment made or to be made to AGENCY hereunder.
- c. AGENCY covenants and warrants that it shall make and keep books, records, and accounts that, in reasonable detail, accurately and fairly reflect the transactions performed by it hereunder and the dispositions of the commissions paid to AGENCY pursuant to this Agreement.
- d. In the event of a material breach of AGENCY' s representations, warranties, or obligations under this paragraph, this Agreement may be immediately terminated by RxFS. For the purposes of this paragraph, a material breach of representation, warranty or obligation by AGENCY shall be such failure of compliance or breach of this paragraph as may be determined by the arbitration panel provided for in Paragraph 13 hereof, or as may in the reasonable opinion, rendered after giving AGENCY a full opportunity to present its position as to the relevant law and facts of independent counsel (i.e., counsel not previously having represented RxFS) appointed by RxFS place RxFS in jeopardy of civil or criminal liability under the laws of the United States or the Territory.

2.9. Orders. AGENCY shall submit contracts and/or orders for Products or Services in one of the following manners:

- a. By RxFS Web Site directly to RxFS;
- b. Via the US Postal Mail to the address in this Agreement; or
- c. By Fax to the Fax in this Agreement.

2.10. Indemnification. AGENCY will indemnify and hold RxFS harmless from any liabilities or damages that RxFS may suffer by reason of AGENCY' S breach of any representations or warranties made by AGENCY directly to customers or expressly authorized in writing by AGENCY.

3. Product and Service Pricing. RxFS has the exclusive right to establish and set all prices and pricing guidelines for its products and services.

3.1. Payment Terms. All products and services are sold to customers including all normal, shipping, transportation, insurance and similar charges, which shall be the responsibility of customer. If shipments are made in installments, each shipment shall be a separate and independent transaction and shall be invoiced by RxFS and payable by customer separately.

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3.2. Proprietary Rights. All patents and patent applications, trademarks, service marks, copyrights, trade names, and other proprietary rights in and with respect to RxFs Products or Services are and will remain exclusively the property of RxFs. During the term of this Agreement, AGENCY may indicate that it is an authorized AGENCY of RxFs and may use the trademarks, service marks, logos, symbols, and trade names of RxFs applicable to RxFs Products or Services in connection with AGENCY' s distribution and sale of RxFs Products or Services in the Territory in accordance with the terms of this Agreement. All use of such trade names, trademarks, logos, and symbols shall be immediately discontinued upon the termination of this Agreement. AGENCY shall not remove from, alter, or add to any trade name, label, logo, decal, trademark, patent number, or serial number affixed by RxFs to any of RxFs Products. AGENCY shall not directly or indirectly obtain or attempt to obtain at any time any right, title or interest by registration or otherwise in or to the trade names, trademarks, symbols, or designations owned or used by RxFs. AGENCY shall notify RxFs of any use of RxFs trademark or trade name, which comes to its attention that may infringe upon RxFs rights and shall cooperate at RxFs expense in any prosecution of such infringement.

4. COMPENSATION.

4.1. Commission Payments. In consideration for the sales and promotion efforts of AGENCY, RxFs will pay AGENCY a commission on all collected revenue from the sales of Products and Services delivered to customers in the Territory if such deliveries are the result of firm orders or sales contracts signed by the customer and RxFs during the term of this Agreement and all commission payments shall survive termination of this Agreement. Such commission shall be equal to the applicable percentage as set forth below of the net revenues invoiced on sales of the Products in the Territory. Net revenues for the purpose of determining commissions are the gross sales price of the products and services ordered, sold to, invoiced to, and collected from customers in the AGENCY' s Territory, less contractual discounts, expense charges, shipping charges, and applicable taxes.

RETAIL COMMISSION SCHEDULE:

	<u><b>Pharmaceutical Products</b></u>
Commission	5.0%
	<u><b>Specialized Dispensing Systems</b></u>
Commission	5.0%
	<u><b>Durable Medical Equipment</b></u>
Commission	3.0%
	<u><b>Consultant Pharmacist Services</b></u>
Commission	0.5%

a. Eligibility for Commissions After Termination. Commission payments will survive the termination of this Agreement as follows:

- (1) Contracts and Orders. RxFs will pay AGENCY commission payments on all collected sales for Products and Services provided under sales contracts executed in the AGENCY' s Territory during the term of this Agreement for the term of the Contract between RxFs and the Customer.

4.2. Payment. Except as provided herein or otherwise agreed to in writing on an individual order basis, commission payments in respect to Products and Services sold will be due and payable to the AGENCY on or before the 20<sup>th</sup> day following the end of the calendar month in which RxFs receives payment from the sale of such Products and Services. Any reduction in commissions, such as may result from a return of products, will be deducted from subsequent commission payments, and any balance not so repaid within 60 days after termination of this Agreement will be repaid by AGENCY in cash upon demand.

4.3.

Advances/Draws. R<sub>X</sub>FS may advance funds from time-to-time, at its discretion, to the AGENCY for various development and marketing expense. Any advance of funds paid shall be deducted from the commissions earned or if such commission are insufficient, shall be repaid upon demand by R<sub>X</sub>FS.

4.4. Statements and Records.

- a. Each remittance of commissions will be accompanied by a statement, certified to be correct by an officer of R<sub>X</sub>FS, showing the commissions accrued and adjustments for the preceding calendar quarter and any other information necessary in order for the proper determination of the amount of commissions payable under the terms of this Agreement.
- b. R<sub>X</sub>FS shall establish and maintain full, true and accurate books and records containing information, which may be necessary for the purpose of showing the commissions payable to the AGENCY. Such records shall be maintained by R<sub>X</sub>FS at its principle offices in the United States, and said records shall be open at all reasonable times, for a period of (5) years following the end of the calendar quarter to which they pertain, for inspection by an independent public accountant obtained by the AGENCY in order to verify the statements of R<sub>X</sub>FS and the commissions which shall be remitted to the AGENCY. Any information obtained as a result of any such inspection shall be maintained in confidence by such public accountant and by the AGENCY and shall be disclosed only to such extent as may be require in order for the AGENCY to enforce its rights to receive commissions as provided in this Agreement.

5. Duties and Responsibilities of R<sub>X</sub>FS. R<sub>X</sub>FS shall:

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- 6.1. Support Services. R<sub>X</sub>FS will provide the following support services for the benefit of AGENCY: email account, marketing materials, business cards, and other support services that may be deemed necessary from time to time.
- 6.2. Pricing Schedule. Maintain a current Product Pricing Schedule for all standard items and services.
- 6.3. Sales and Service Assistance. Provide sales and technical assistance to AGENCY, including but not limited to providing sales leads for potential customers within the territory who contact R<sub>X</sub>FS directly.
- 6.4. Technical Support. R<sub>X</sub>FS will provide technical support to AGENCY on application problems relating to the Products and Services.
- 6.5. Sales and Technical Information. R<sub>X</sub>FS will provide AGENCY with sales and technical information regarding the Products at R<sub>X</sub>FS sole expense and in quantities and volume to be established by R<sub>X</sub>FS. All such items and material provided by R<sub>X</sub>FS to AGENCY shall remain the property of R<sub>X</sub>FS, and shall be returned to R<sub>X</sub>FS by AGENCY when R<sub>X</sub>FS so requests, but in no event late that the effective date of termination of this Agreement.
- 6.6. Demonstrations and Briefings. As reasonably requested by AGENCY, R<sub>X</sub>FS from time to time shall arrange for introductory briefings and demonstrations with respect to the Products and Services, as well as more advanced programs depending on specific Products and Services under consideration and the nature of the promotion, sale and other services to be performed by AGENCY with respect thereto, so as to familiarize AGENCY with the use and applications of the Products and Services and to facilitate AGENCY' s performance of its duties hereunder. R<sub>X</sub>FS and AGENCY may consult from time to time and review the nature and content of such briefings and programs to determine whether they are accomplished their purposes and whether improvements can be made thereto. Such briefings and programs may take place at R<sub>X</sub>FS principal place of business, or may be conducted at the AGENCY' s principal place of business or elsewhere in the Territory, as the parties agree to be most appropriate under the circumstances. R<sub>X</sub>FS shall bear the cost of arranging and conducting such programs, including the cost of its personnel, and AGENCY shall likewise bear its own costs and expenses. Subject to advance written approval by R<sub>X</sub>FS for each such trip, R<sub>X</sub>FS will reimburse AGENCY for reasonable travel and living expenses actually incurred in connection with such programs.

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- 6.7. Technical Assistance. R<sub>X</sub>FS shall provide and make available expert personnel and technical assistance, in the manner and at the time R<sub>X</sub>FS considers appropriate under the circumstances, to follow-up AGENCY' S promotion and sales activities, as described in Paragraph 2.6, and to fulfill customer order or contract requirements. R<sub>X</sub>FS shall be solely responsible for the design, development, supply production and performance of its Products and Services, and the performance of its expert personnel and the furnishing of technical assistance.
- 6.8. Order Information. R<sub>X</sub>FS will provide information to AGENCY on price, delivery, scheduling and servicing problems, sales orders, order status, and invoices.
- 6.9. Quality of Products and Services. R<sub>X</sub>FS will assume all responsibility for the quality and performance of its Products and Services and not hold AGENCY responsible for expenses related to the exchange or return of sub-standard, defective products or refunds to Federal, State and other third party payers resulting from denials, overpayments, billing errors, audits, or prepayment review.
- 6.10. Product Limited Warranty. R<sub>X</sub>FS warrants that all R<sub>X</sub>FS Products and Services sold hereunder shall, at the time of shipment to customer, conform to R<sub>X</sub>FS and/or the manufacturer' s or suppliers standard specifications and shall be free from defects in material and workmanship.
- 6.11. Indemnification. R<sub>X</sub>FS will indemnify and hold AGENCY harmless from any liabilities or damages that AGENCY may suffer by reason of R<sub>X</sub>FS breach of any representations or warranties made by R<sub>X</sub>FS directly to customers or expressly authorized in writing by R<sub>X</sub>FS.
- 6.12. Order Fulfillment. R<sub>X</sub>FS shall use its best efforts to meet the delivery dates for Products and Services requested by customers or potential customers in contracts or orders delivered to R<sub>X</sub>FS and otherwise to fulfill its commitments pursuant to orders and services delivered to and accepted by R<sub>X</sub>FS hereunder.

## 7. Term and Termination.

- 7.1. This agreement shall become effective upon its execution and shall continue for one (1) year from the date first above written unless sooner terminated as hereinafter provided. It shall continue in full force and effect from term to term thereafter unless terminated by either party by 60 days prior written notice to the other party as hereinafter set forth.
- 7.2.
- 7.3. This Agreement may be terminated by either party upon sixty (60) days written notice any time after the first anniversary of this Agreement.
- 7.4.
- 7.5. Cause. Notwithstanding any above provision, either party may terminate this Agreement at any time upon thirty (30) days written notice for cause; that is, for failure of either party to comply with any of the terms of this Agreement.
- 7.6. Rights. Upon termination, all trade names, patents, designs, drawings, engineering or other data, photographs, samples, demonstration equipment, literature, and sales aids of every kind specific to R<sub>X</sub>FS, shall remain the property of R<sub>X</sub>FS, the same items specific to AGENCY shall remain the property of AGENCY and AGENCY or R<sub>X</sub>FS shall prepare all such in its possession with reasonable promptness for shipment, F.O.B. shipping point, as may be directed by either company. Neither company shall make or retain copies of any "confidential" information with which it may have been furnished hereunder.
- 7.7. Termination for Default. If either party defaults in the performance of this Agreement, including, but not limited to, failure of AGENCY to meet the Purchase Objectives, the other party may give written notice to the defaulting party specifying the nature and extent of the default and the defaulting party shall have thirty (30) days thereafter to cure such default. If such default is not cured within the thirty (30) day period, the aggrieved party, by written notice, may declare this Agreement immediately terminated for default. If during the term of this Agreement either party is adjudged bankrupt or insolvent, makes an assignment for the benefit of its creditors, or has a receiver appointed for it or any of its properties, the other party shall have the right to terminate this Agreement immediately upon written notice to such party.

- 7.8. Unfilled Orders. In the event of, and upon termination of this Agreement, RxFs, at its option, may cancel all unfilled orders of AGENCY for the Products or Services outstanding as of the date on which the termination notice is given.
- 7.9. Return of Property. Upon expiration or termination of this Agreement for any reason, all property, data, and Confidential Information of RxFs in AGENCY' s possession or control shall be returned to RxFs within thirty (30) days.
- 7.10. Non-Solicitation. For a period of one (1) year after the termination of this Agreement, AGENCY shall not solicit any customers and/or clients of RxFs for any products or services specifically provided by RxFs under this Agreement. RxFs shall be entitled to enforce this clause in any court and/or manner provided for under law, including the right to seek injunctive relief. AGENCY shall be responsible for all cost and/or damages incurred by RxFs in the enforcement of its rights under this Agreement, including but not limited to, reasonable attorney' s fees.
- 7.11. No Additional Remedies. It is expressly understood and agreed that the rights of termination and non-renewal as provided in this Agreement are absolute and that both parties hereto have considered the making of expenditures in preparing for the performance of this Agreement and possible losses and damages incident and resulting to them in the event of its termination or non-renewal. Therefore, in agreeing to the terms of this Agreement, including termination and non-renewal herein, it is with full knowledge of such possibilities, and except as provided herein, neither party hereto shall be responsible to the other for compensation, damages, or otherwise by reason of such termination or non-renewal either party hereto shall be free to solicit and sell to any customer accounts without restriction.
8. Notices. Any notice to be given hereunder shall be in writing and shall be deemed given when delivered to a courier for overnight or next business day delivery or registered or certified mail, postage prepaid, to the party notified, addressed to such party at its address appearing herein, or such other address as such other party may have substituted by written notice to the other.
9. Assignment. AGENCY' s rights obligations under this Agreement are not assignable, in whole or in part, either either voluntarily or by action of law, without the prior written consent of the Company. Any attempted assignment is in violation of this Agreement and shall be void.
10. Waiver. Any waiver, at any time, of any of the terms and conditions of this Agreement, shall not constitute or be deemed a modification, cancellation or waiver of the same or other terms and conditions at any time thereafter. Additionally, the failure or delay of either party to exercise any right hereunder shall not be deemed to be a waiver of such right, and the delay or failure of either party to terminate this Agreement for breach or default shall not be deemed to be a waiver of the right to do so for that or any subsequent breach or default or for the persistence in a breach or default of a continuing nature.
11. Entire Agreement. Other than as specifically referred to herein, this Agreement constitutes the entire Agreement between the parties hereto and cancels and supersedes all previous agreements, either express or implied, between the parties with respect to the subject matter hereof. Any modifications or amendments to this Agreement must be in writing and signed by both parties hereto.
12. Force Majeure. Neither Party shall not be liable for delays in delivery or failure to manufacture or deliver Products or otherwise to perform any obligation due to either party under this Agreement due to any cause beyond RxFs reasonable control, such as an act of God, act of civil or military authority, labor dispute, fire, riot, civil commotion, sabotage, war, embargo, blockage, flood, epidemic, power shortage, or when due to governmental restriction or shortage or delay in delivery of raw materials or components.
13. Applicable Law. The parties agree that this Agreement shall be governed by and construed under the internal laws of the State of Texas, as applicable to agreements made and to be performed in such state, without regard to principles of conflicts of law.

- 14. Arbitration. Except for actions to protect Proprietary Rights and to enforce an arbitrator's decision hereunder, all disputes, controversies, or claims arising out of or relating to this Agreement or a breach thereof shall be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association ("AAA") then in effect. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties in accordance with AAA rules. The arbitration shall take place in Harris County, Texas. The arbitrator shall apply the laws of the State of Texas to all issues in dispute. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Legal fees shall be awarded to the prevailing party in the arbitration.
- 15. Independent Contractor. AGENCY is an independent contractor and not an agent or employee of RxFs, and will not hold itself out as, or give any person reason to believe that it is, an agent, partner, joint venturer, or employee of RxFs. As an independent contractor, AGENCY shall not acknowledge or accept orders on behalf of RxFs or make any representations or warranties of any kind on behalf of RxFs. AGENCY is not authorized to waive any right or to incur, assume or create any debt, obligation, contract, or release of any kind in the name of or on behalf of RxFs. AGENCY and its AGENCY' s and employees shall not be entitled to any benefits, privileges, or compensation given or extended by RxFs to RxFs employees. All sales representatives, other AGENCY' s, and employees of AGENCY shall be deemed AGENCY' s employees exclusively, and the entire management, direction, and control thereof shall be vested exclusively in AGENCY.
- 16. Warranties. By execution of this Agreement, AGENCY represents and warrants to RxFs (RxFs being entitled to rely fully upon such representation) that (i) the individual(s) signing this Agreement has full and complete individual and/or corporate authority to enter into this Agreement, (ii) that the officer(s) executing on behalf of AGENCY is duly empowered to so execute and as of the date of his/her signing, holds in good standing the office indicated and (iii) that AGENCY intends to be legally bound by the terms set forth herein.
- 17. Headings. The paragraph headings contained herein are for convenience only and are not to be construed as part of this Agreement.

In witness whereof, the parties hereto, intending to be legally bound, have caused this Agreement to be executed by their duly authorized officers on the date first above written.

**SALES AGENCY:**

**COMPANY:**

**VipMedRx:**  
 X **FULFILLMENT SERVICES, INC.:**  
 8807 Colesville Rd, Suite 2,  
 Silver Springs, MD 20910  
 202.528.6262 Phone / 301.565-4349 Facsimile

**R**  
 9100 Southwest Freeway, Suite 130A  
 Houston, TX 77074  
 713.776.8984 Phone/713.988.7034 Facsimile

By //s// Ernest L. Carter, Jr  
 Ernest L. Carter, Jr., CEO

By //s// Daryl K Webster \_\_\_\_\_  
 Daryl K. Webster, CFO

## EXHIBIT A.

### PRODUCTS AND SERVICES

RxFS provides incentive for sales of the following products and services to long-term care facilities, child or juvenile facilities, prisons, or other closed-door contract sales opportunities:

- Pharmaceutical Products
- Specialized Dispensing Systems
- Durable Medical Equipment
- Consultant Pharmacist Services

#### PHARMACEUTICAL PRODUCTS

FDA-approved prescription drugs, including injectable drugs, intravenous admixtures, vaccines, enteral and parenteral nutrition products, generic medications, nonprescription drugs prescribed by an authorized prescriber, and medications compounded for unique patient care needs.

#### SPECIALIZED DISPENSING SYSTEMS

Numerous residents, multiple medications, and varying schedules - It's no wonder medication passes are the most difficult part of a long-term care-giver's day. RxFS believes that the distribution of medications in long-term care settings must rely on specialized dispensing systems that improve the quality of care by helping guarantee that residents receive the right drugs in the right doses at the right time.

Diversicare believes that Med passes don't have to be time-consuming, tedious, or treacherous. With the Company's dispensing system, the pharmacist premeasures doses and packages medications for residents' daily consumption. These doses are then placed in mobile medication carts with compartments that organize each patient's medications. Dosing and packaging are customized to meet the unique needs of individual patients and specific long-term care settings. This provides the three (3) greatest benefits to long-term care patient/drug interactions:

**Increase Efficiency - Pass** medications quickly by eliminating time spent setting up med passes. No more fumbling with foil punch cards or pill bottles. RxFS' s simple system organizes each resident's medications so caregivers can quickly dispense the prescribed meds at the correct time.

**Eliminate Errors** - To protect the facility from medication errors, meds are preloaded in color-coded cassettes. Each color indicates time of day. Cassettes are rotated after each pass for at-a-glance assurance that all meds have been given accurately.

**Detect Tampering** - RxFS' s cassettes feature tabs that fracture when opened. This ensures any tampering is immediately detected.

RxFS also provides the following dispensing services:

**Regular and Emergency (24-hour-a-day) Dispensing** - Drug products are delivered at regular intervals daily, and emergency deliveries should take place within two hours of receipt of the medication order.

**Return of Unused Products for Credit** - In states in which the practice is allowed, nursing homes and other long-term care facilities are allowed to return properly packaged unused medications for credit to long-term care pharmacists.

**Proper Disposal of Controlled Substances** - To prevent abuse, nursing homes are required to track all controlled substances. The Company assists the homes with this function by making certain that controlled substances are disposed of properly and the disposal is recorded.

## DURABLE MEDICAL EQUIPMENT

RxFS provides medical related equipment and supplies for patients to assist them in achieving a better standard of living when dealing with issues related to limited mobility due to illness, injury, or age. Equipment items supplied include standard care items such as wheelchairs, walkers, or canes, as well as specialized or custom designed wheelchairs or orthopedic devices. Many other assistive devices are also provided such as reachers, adjustable beds, bedpans, and other items. The Company also provides devices and tools to help with therapy and rehabilitation due to illness, accident, or injury.

## CONSULTANT PHARMACIST SERVICES

Consultant pharmacist services are essential to the Company's clients. These unique services produce a benefit that assures residents of nursing homes and other long-term care facilities will receive cost-effective optimal drug therapy. By itself, a drug is not beneficial to a patient; it benefits the patient only when it produces the best possible health outcomes. Our consultant pharmacist services make certain that this happens by focusing on the patient - not just the drug. The following is a brief overview of these services:

**Drug Regimen Review (DRR).** Monthly DRR for every nursing home resident is required by federal law; this is a minimum for the Company's pharmacists, who routinely practice ongoing monitoring, with interventions when appropriate. DRR encompasses a range of activities designed to guarantee that patients receive the proper medications at the right time in the correct doses. It is an ongoing and systematic process to assure quality. The RxFS pharmacist begins by collecting information on the resident's medical history, diagnosis, treatments, physician orders, laboratory tests, medication history, diet, and care plan. The resident's complete medical record is examined to determine (a) the appropriateness of the prescribed drugs, (b) potential or actual drug-drug interactions, drug-disease, or drug-food interactions, and (c) the appropriateness of the dosages and the intervals at which the medication is to be taken.

While review of the complete medical record is important to drug regimen review, accurate assessment depends on close contact with the patient. In this way, DRR is truly patient centered. Adverse drug reactions such as confusion, anorexia, and movement disorders are often subtle, and the long-term care pharmacist must visit with the patient to determine the presence and cause of these conditions. Timely visits also alert the long-term care pharmacists to emerging problems that can then be addressed before they fully manifest. This constant vigilance improves the patient's quality of life and ensures cost-effective care.

DRR also succeeds because it is comprehensive and interdisciplinary. It takes into account the entire spectrum of patient care, from diet to exercise to physician orders, because drug therapy affects and is impacted by all of these. Isolated findings may be misleading if not considered in the context of the resident's total care plan.

**Interventions Following DRR.** Once comprehensive DRR uncovers a potential or actual problem with a resident's therapy, one or more of several interventions by the long-term care pharmacist may be indicated. Alternative AGENCY's can be substituted for existing medications, drugs can be added or deleted from the regimen, doses can be modified, or therapeutic interchange can occur.

**Utilization Management.** Like DRR, utilization management encompasses a range of interventions by the long-term care pharmacist that promote high-quality, cost-effective care. All of these interventions rely on long-term care pharmacists' ongoing monitoring of therapeutic outcomes; in other words, every activity moves toward the clinical and quality-of-life goals outlined in the patient's specific care plan. The Company provides the following utilization management programs and strategies:

*Formulary development and management.* Formularies, which guide utilization of the drugs within certain therapeutic classes, should be required. The formulary, however, should not be simply a list of drugs; rather it should provide guidelines for when a certain drug should be used to treat a certain ailment. The Company's pharmacists work with physicians on the pharmacy and therapeutics (P and T) committees of nursing homes to develop a formulary based on therapeutic value and cost containment. Without such a formulary, lower cost but therapeutically inappropriate medications could lead to higher drug and other health care costs in the future.

Once the formulary is developed, it must be managed. Clear lines of communication between long-term care pharmacists and prescribing physicians allow them to discuss the appropriateness of a certain medication for a particular patient. In some cases, therapeutic interchange should occur. When the physician and the pharmacist determine that a nonformulary drug is best for the patient, a formulary override is typically approved.

*Therapeutic interchange* follows readily from careful formulary development. Once the therapeutic value of certain medications for the treatment of specific conditions is well established by the institution's P and T committee, cost-effective therapeutic interchange can occur without controversy.

*Generic substitution*, when appropriate, should be encouraged under the long-term care pharmacy benefit. Generic substitution decreases drug product costs when the long-term care pharmacist recommends replacement of a more costly brand-name medication with a less costly but therapeutically equivalent generic medication.

*Drug use evaluation (DUE)/Drug utilization review (DUR)* is a systematic ongoing program in which the long-term care pharmacist reviews patterns of drug use in a long-term care facility and then assesses the appropriateness of such patterns against established standards. DUE/DUR helps the long-term care pharmacist identify problems within the long-term care facility.

*Disease management* draws on long-term care pharmacists' expertise in drug and non-drug interventions. By working with other health professionals, they can help assure conformity to published therapeutic guidelines for the treatment of chronic diseases. This attention to the patient's overall health, not just the effect of drug therapy in isolation, makes the long-term care pharmacist especially valuable in improving the quality of care and preventing costly acute interventions for nursing home residents.

**In-service Training Programs** - The Company provides in-service training programs delivered by its long-term care pharmacists. These pharmacists regularly conduct training and education programs for other health professionals to improve drug therapy in the long-term care facility. These programs include training nurses to monitor patient outcomes, identify side effects of medications, and administer residents' drugs properly; discussing drug-food interactions with dietitians; educating staff on the most efficient procedures for handling medications and medication records; and other programs.

**Continuous Quality Improvement Programs (CQI)** - RxFS pharmacists participate in continuous quality improvement programs with the facility. CQI programs allow pharmacists a vehicle to monitor the complete system of medication delivery to the patient. By establishing and monitoring indicators of service, they ensure that safe and cost-effective medication ordering, supply, storage, and administration continues. This prevents medication errors and controls health care costs.

**Interdisciplinary Care Planning** - Interdisciplinary care planning brings health professionals together on a regular basis to discuss the care of individual patients. The Company's long-term care pharmacists offer their assessment of residents' drug therapy and therapeutic goals and can learn from physicians, nurses, dietitians, and others about patients' conditions and progress. Interdisciplinary care planning brings the patients' medical records to life; it permits everyone who cares for a specific patient to discuss conditions and behaviors that a medical record alone cannot capture.

#### **Technological Supports and Documentation**

The Company currently documents the consultant pharmacist services it performs in the patient's medical record. As part of this process, the Company and the facility can document certain outcomes. For example, decreased use of psychoactive medications, when appropriate, has been shown to reduce residents' falls and even mortality. These documentation mechanisms enhance the ability of its pharmacists to standardize documentation of specific patient outcome measurements to payers.

**EXHIBIT B.**  
**TERRITORY**

The following list is the territory as defined by VMRx and RxFS:

Members of the National Medical Association that utilize VMRx Services

\*NetViewMD and its associated web clients

Licensed Medical Professionals contracted to VMRx within the states that VMRx does business.

Additional customers may be added from time to time to this Exhibit.

\* Due to the unique nature of this customer, VMRx commission shall be at a rate of 2% versus the normal rates referred to in Section 4.1 of the Agreement.

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## ORDER FULFILLMENT AGREEMENT

This Order Fulfillment Agreement (“Agreement”) is entered into effective as of the 6th day of January , 200 5 (the “Effective Date”), by and between VMRx, Inc. (“ VMRx ”) and Rx Fulfillment Services, Inc. .. (“ RxFS ”)

WHEREAS, VMRx operates an on-line website that allows retail customers to order prescription medications.

WHEREAS, VMRx desires to engage a licensed pharmacy to fill the valid medication orders it receives from physicians on-line.

WHEREAS, RxFS operates a licensed pharmacy and it desires to fill the valid on-line medication orders received by VMRx ..

NOW THEREFORE, in consideration of the premises, the mutual covenants contained herein and other good and valuable consideration, the legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Basic Agreement.** VMRx and RxFS agree to develop a computer and customer service interface for the purposes of conducting valid prescription medication transactions via an on-line telemedicine physician/patient consultation .. VMRx will build and maintain a web site. VMRx will also conduct all marketing and merchandising efforts, collect all orders and send orders to RxFS .. RxFS will be responsible for filling the medication orders and packing and shipping the orders directly to the customer.

2. **Exclusivity.** RxFS will be the exclusive supplier of medication and related product order fulfillment services for VMRx ..

3. **Pricing of Fulfillment Services.** RxFS shall have the sole authority to set pricing for the products and services it provides. The pricing of Fulfillment Services shall equal the cost of the drugs purchased by RxFS plus its retail margin unless the parties shall agree in writing to a different charge at a later time .. Any different charges for a specific item shall be attached hereto as Exhibit A.

4. **Collections and Tax Matters.** RxFS shall be exclusively responsible for the collection of all payments for orders submitted through VMRx ’ s website. As such, RxFS acknowledges that it or its agent is solely responsible for identifying and resolving sales and use tax collection issues for product orders, including the necessity of charging and collecting such taxes.

5. **Reports.** The parties agree to provide each other such reports as are mutually agreed upon or as either party shall reasonably request during the performance of any Fulfillment Services.

6. **Payment Terms.**

(a) **Fulfillment Services.** RxFS shall invoice the end-user patient, and/or insurance provider, resulting from orders submitted through VMRx's website for the Fulfillment

Services setting forth (i) a detailed list of Fulfillment Services provided by RxFS during the month (e.g., quantity/rate/extension) and (ii) associated charges for the services.

(b) **Billing Disputes.** VMRx and RxFS shall use their best efforts to expediently resolve any disputed invoice through negotiations between each party's Account Manager.

(c) **Interest.** RxFS shall assess interest at a rate of 1% per month on all receivables not paid within the above-stated time periods. Interest will start accruing on the 30<sup>th</sup> day from the date of invoice, and will continue to accrue until all overdue payments, plus interest charges, are paid in full.

7. **Books and Records.**

(a) **Recordkeeping.** Both parties agree to keep complete and accurate books of account, records, and other documents with respect to this Agreement ("Books and Records"). Such Books and Records shall be kept by both parties for three (3) years following expiration or termination of the Agreement.

(b) **Audit.** The Books and Records shall be available for inspection and copying by any qualified representative or agent of a party or its affiliates, at the expense of that party, subject to the following terms and conditions: (a) such examination shall take place at the principal place of business or the location where the Books and Records are regularly maintained, during normal business hours and only to the extent necessary to verify inventory levels and payment amounts; (b) the party demanding the audit shall give the other party at least seven (7) business days' written notice prior to any such examination; (c) both parties shall keep each party's Confidential Information disclosed to it during the examination confidential in accordance with each party's obligations set forth in Section 13 below; and (d) a party may not conduct more than four (4) such inspections during any twelve-month period during the term of this Agreement.

8. **Term and Termination.** This Agreement may be terminated as follows:

(a) **Term and Renewal Option.** Unless terminated earlier, the term of this Agreement shall be for a period of five (5) years commencing on the Effective Date and terminating on January 6, 2010 ("Expiration Date") (the "Original Term"); provided, however, that VMRx shall have the option of extending the Original Term for three additional one (1) year terms ("Additional Terms") after the Expiration Date on the terms and conditions provided herein, such option to be effected by VMRx providing written notice to RxFS of its intent to extend the Original Term no later than thirty (30) days prior to the Expiration Date or, after the Expiration Date and during an Additional Term, by providing such written notice 30 days prior to the expiration date of the Additional Term, as applicable.

(b) Termination. This Agreement may be terminated as follows:

(1) Breach - by either party, upon 30 days prior written notice to the other party, in the event of a material breach of this Agreement by the other party. The written notice shall specify the precise nature of the breach. In the event the breaching party cures the breach within the 30 day notice period, this Agreement shall not terminate.

(2) Insolvency - by either party, immediately upon written notice to the other party, in the event the other party voluntarily files or has filed involuntarily against it a petition under the United States Bankruptcy Code, including a petition for Chapter 11 reorganization as set forth in the United States Bankruptcy Code.

(3) Performance - by VMRx upon 30 days prior written notice to RxFS in the event that RxFS fails to fill the responsibilities hereunder in a reasonable manner that is satisfactory to VMRx ..

(c) Other Rights. The rights of the parties to terminate this Agreement are not exclusive of any other rights and remedies available at law or in equity, and such rights shall be cumulative. The exercise of any such right or remedy shall not preclude the exercise of any other rights and remedies.

(d) Post-Termination Performance. Notwithstanding any termination by either party of this Agreement, RxFS shall continue to fulfill all orders from customers, and VMRx shall continue to remit amounts due to RxFS under this Agreement, in connection with any product orders made prior to the effective date of such termination.

(e) Return of Proprietary Information. Upon termination of this Agreement for any reason, each party shall immediately return to the other all property (including without limitation, Confidential Information and all material related to any customers) that it has received from the other party in connection with the performance of its obligations hereunder except to the extent such property is needed to fulfill its continuing obligations under Section 8(d) above. In such event, such property shall be returned immediately upon the party's fulfillment of its obligations under such Section 8(d).

(f) Survival. Sections 8(d), 8(e), 8(f), 11, 12, 13 and 14 shall survive any expiration or termination of this Agreement.

## 9. License.

(a) Trademark License. VMRx hereby grants to RxFS a limited, revocable, non-exclusive license to use the trademarks, logos, or artwork owned or licensed to VMRx and identified in Exhibit I hereto (collectively referred to as the "Licensed Marks"), solely for the purpose of displaying such Licensed Marks on packaging, invoices and customer service correspondence. Other than as contemplated by this Agreement, RxFS shall not make any other use of the Licensed Marks or any related marks or intellectual property of VMRx ..

## 10. Relationship of the Parties.

(a) Independent Contractors. The relationship created hereunder between RxFS and VMRx shall be solely that of independent contractors entering into an agreement. No representations or assertions shall be made or actions taken by either party which could imply or establish any agency, joint venture, partnership, employment or trust relationship between the parties with respect to the subject matter of this Agreement. Neither RxFS nor VMRx shall have any authority or power whatsoever to enter into any agreement, contract or commitment on behalf of the other, or to create any liability or obligation whatsoever on behalf of the other, to any person or entity.

(b) Customers. VMRx is not a licensed pharmacy, whereas RxFS is a licensed pharmacy. Accordingly, VMRx will act as a marketer for the sale of prescription medications. Customers seeking prescription medications through VMRx ' s website will be directed to RxFS and RxFS will establish a direct pharmacy patient relationship with that customer for the purpose of filling any and all prescription requests. RxFS will be responsible for exercising its professional judgment with respect to filling the prescription request of each patient. RxFS responsibilities will include the right and obligation to determine what documentation is necessary for the fulfillment of a prescription request, and the procedures for filling such prescriptions, including the determination not to fill such prescription. VMRx will not establish a pharmacy patient relationship with such customers, and it will not participate in the prescription fulfillment process. However, the customers referred to RxFS by VMRx will be derived through VMRx ' s website and such customers will become part of VMRx ' s and RxFS database. VMRx shall have sole and exclusive rights to the database and the use of the information contained in the database , except that VMRx will share these rights with RxFS where it concerns prescription fulfillment services .. RxFS shall have no other rights to the database or the data contained therein.

## 11. Representations and Warranties.

(a) Representations and Warranties of RxFS. With the knowledge that VMRx is relying thereon in entering into this Agreement, RxFS hereby represents, warrants and covenants as follows:

(1) RxFS is a corporation duly organized, validly existing, and in good standing under the laws of the State of Texas ..

(2) This Agreement constitutes the legal, valid, and binding obligation of RxFS , enforceable against RxFS in accordance with its terms, except as enforcement may be limited by any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and except as enforcement may be limited by general principles of equity. As of the Effective Date, RxFS has taken all corporate action necessary for the authorization, execution and delivery of this Agreement, and for the performance by RxFS of its obligations under this Agreement.

(3) Neither the execution and delivery of this Agreement nor the consummation or performance of any obligations hereunder shall, directly or indirectly (with or without notice or lapse of time) in any material respect, contravene, conflict with, or result in a violation or breach of any provision of, or give any person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any material contract to which RxFS is a party.

(4) RxFS is not and shall not be required to give any notice to or obtain any consent from any person in connection with the execution and delivery of this Agreement or the consummation or performance of any of its obligations hereunder.

(5) RxFS is, to its knowledge, and, at all times during the performance of Fulfillment Services under this Agreement, will remain in material compliance with all applicable laws, rules and regulations, including, but not limited to, all state and federal laws regulating the licensing of pharmacies and the dispensing of prescription drugs.

(6) RxFS is not currently in default under any material contract or agreement.

(b) Representations and Warranties of VMRx. With the knowledge that RxFS is relying thereon in entering into this Agreement, VMRx hereby represents, warrants and covenants as follows:

(1) VMRx is a corporation duly organized, validly existing, and in good standing under the laws of the State of Nevada, and has the full power to grant the license rights set forth in this Agreement.

(2) This Agreement constitutes the legal, valid, and binding obligation of VMRx, enforceable against VMRx in accordance with its terms except as enforcement may be limited by any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and except as enforcement may be limited by general principles of equity. As of the Effective Date, VMRx has taken all corporate action necessary for the authorization, execution and delivery of this Agreement, and for the performance by VMRx of its obligations under this Agreement.

(3) Neither the execution and delivery of this Agreement nor the consummation or performance of any obligations hereunder shall, with or without notice or lapse of time, in any material respect, contravene, conflict with, or result in a violation or breach of any provision of, or give any person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any material contract to which VMRx is a party.

(4) VMRx is not and shall not be required to give any notice to or obtain any consent from any person in connection with the execution and delivery of this Agreement or the consummation or performance of any of its obligations hereunder.

(c) Survival. The representations and warranties under this Section 11 shall survive the termination of this Agreement.

12. **Indemnification, Insurance and Limitations on Liability**.

(a) Indemnification by RxFS. Subject to the limitations specified in this Section 12, RxFS shall indemnify, hold harmless and defend VMRx and each person or entity that is a stockholder, officer, director, partner, employee, affiliate or agent of VMRx from and against any and all losses, claims, damages, liabilities, whether joint or several, expenses (including reasonable legal fees and expenses), judgments, fines and other amounts paid in settlement, incurred or suffered by any such person or entity arising out of or in connection with (i) the inaccuracy of any representation or warranty made by RxFS hereunder, (ii) any breach of this Agreement by RxFS, (iii) any negligent act or omission by RxFS or its employees or agents in connection with the performance by RxFS or its employees or agents of the Fulfillment Services hereunder, provided such negligent act or omission was not done or omitted at the direction of VMRx; or (iv) any action for personal injury, death, disability, property damage or cause of action relating to drugs dispensed by RxFS under this contract, the failure to properly and timely dispense drugs under this contract or the failure to comply with applicable regulatory rules or regulations in connection with the dispensing of drugs under this agreement.

(b) Indemnification by VMRx. Subject to the limitations specified in this Section 12, VMRx shall indemnify, hold harmless and defend RxFS and each person or entity that is a stockholder, officer, director, partner, employee, affiliate or agent of RxFS from and against any and all losses, claims, damages, liabilities, whether joint or several, expenses (including reasonable legal fees and expenses), judgments, fines and other amounts paid in settlement, incurred, or suffered by any such person arising out of or in connection with (i) the inaccuracy of any representation or warranty made by VMRx hereunder, (ii) any breach of this Agreement by VMRx, (iii) any negligent act or omission by VMRx or its employees or agents in connection with the performance by VMRx or its employees or agents required of VMRx hereunder, provided such negligent act or omission was not done or omitted at the direction of RxFS ..

(c) Notice and Defense of Third-Party Claims. If a claim for indemnification hereunder arises from a claim or demand from a third party, the rights of the indemnified parties to be indemnified pursuant to this Agreement and any Schedule shall be governed by the following:

(1) Promptly after receipt by an indemnified party of notice of any claim, allegation or facts which may result in a claim for indemnification hereunder, an indemnified party shall give the indemnifying party prompt notice thereof. The failure to give such notice shall not affect the indemnified party's ability to seek reimbursement unless such failure has materially and adversely affected the indemnifying party's ability to defend the claims.

(2) An indemnified party shall have the right (i) to employ separate counsel in any action as to which indemnification may be sought under any provision of this Agreement and to participate in the defense thereof, or (ii) to the extent that it may wish, jointly with any other indemnified party, to assume the defense of any such action with counsel reasonably satisfactory to the indemnifying party, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (x) the indemnifying party has agreed in writing to pay such fees and expenses, (y) the indemnifying party has failed to assume the defense thereof without reservation and employ counsel within a reasonable period of time after being given the notice required above, and as a consequence thereof the indemnified party has employed separate counsel to protect its rights, or (z) the named parties to any such action (including any impleaded parties) include both such indemnified party and the indemnifying party and such indemnified party shall have been advised by its counsel that representation of such indemnified party and the indemnifying party by the same counsel would be inappropriate under applicable standards of professional conduct (whether or not such representation by the same counsel has been proposed) due to actual or potential differing interests between them. It is understood, however, that the indemnifying party shall, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of only one separate firm of attorneys (in addition to any local counsel) at any time for all such indemnified parties having actual or potential differing interest with the indemnifying party.

(3) The indemnifying party shall not be liable for any settlement of any such action effected without its written consent, which consent shall not be unreasonably withheld, but if settled with such written consent, or if there be a final judgment against any indemnified party in any such action, the indemnifying party agrees to indemnify and hold harmless any indemnified parties to the extent provided above from and against any loss, claim, damage, liability or expense by reason of such settlement or judgment.

(d) Limitations on Liability. IN NO EVENT SHALL EITHER PARTY'S LIABILITY HEREUNDER INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES, EVEN IF SUCH PARTY SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

(e) Dispute Resolution. To be selected jointly by two mediators selected by the parties.

(1) If there is any controversy, dispute or claim arising out of or relating to interpretation or breach of this Agreement, the parties will endeavor to settle it promptly.

(2) If such a dispute cannot be resolved, the parties will promptly initiate and participate in good faith mediation of the dispute, with the mediator to be selected jointly by the parties or, if the parties cannot agree upon a mediator, by a mediator to be selected jointly by two mediators selected by the parties.

(3) If the dispute is not resolved through mediation, the parties will promptly submit such dispute to binding arbitration in accordance with the Commercial Arbitration Rules and regulations of The American Arbitration Association ("AAA"), with the arbitrator to be a retired federal or state court judge jointly selected by the parties or, if the parties cannot agree, by an arbitrator that satisfies such qualifications and that is jointly selected by two arbitrators selected by the parties. Judgment upon the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction.

(4) Nothing shall prevent either party from directly seeking injunctive or other equitable relief from any court of competent jurisdiction in situations where damages would not adequately compensate for an alleged breach of this Agreement.

(5) The prevailing party in any mediation, arbitration or legal action to enforce or interpret this Agreement shall be entitled to recover from the non-prevailing party all costs and expenses, including reasonable attorneys' fees, incurred in such action or proceeding.

(f) Survival. The provisions of this Section shall survive the termination of this Agreement.

### 13. Confidentiality.

(a) General. As used herein, "Confidential Information" means (i) the terms and provisions of this Agreement and any related documents delivered concurrently herewith, and (ii) all computer hardware, all software, all data, reports, analyses, compilations, studies, interpretations, forecasts, records and other materials (in whatever form maintained, whether documentary, computer storage or otherwise) that contain or otherwise reflect information concerning VMRx , RxFS , any of their subsidiaries or affiliates, or any portion thereof, that one party or its Agents may provide to the Receiving Party or its Agents in connection with this Agreement ("Provided Information"), together with all data, reports, analyses, compilations, studies, interpretations, forecasts, records or (ii) other materials (in whatever form maintained, whether documentary, computer storage or otherwise) prepared by the Disclosing Party receiving Provided Information or its Agents that contain or otherwise reflect or are based upon, in whole or in part, any Provided Information or that reflect the review of, interest in, or evaluation of all or any portion of the transactions contemplated by this Agreement and any related documents delivered concurrently herewith ("Derived Information"). As used herein, "Agents" means, collectively, the respective directors, employees, controlling persons or attorneys of the parties. As used herein, the term "person" shall be broadly interpreted to include, without limitation, any corporation, partnership, trust or individual; the term "Receiving Party" shall mean the person receiving Provided Information; and the term "Disclosing Party" shall mean the person delivering the Provided Information.

(b) Acknowledgement. The parties hereby agree that all Confidential Information shall be kept confidential and shall not, without the prior written consent of the Disclosing Party, be disclosed by the Receiving Party in any manner whatsoever, in whole or in part, other than to the Disclosing Party's Agents, and shall not be used, directly or indirectly, for any purpose other than in connection with this Agreement and not in

any way inherently detrimental to the other party. Moreover, the parties agree to reveal Confidential Information only to their Agents if and to the extent that such Agents, have a strict need to know such Confidential Information for the purpose of the Receiving Party satisfying its obligations under this Agreement and are informed of the confidential nature of the Confidential Information and agree to be bound by the terms and conditions of this Agreement. The parties shall each be responsible for any breach of this Agreement by their respective Agents (including Agents who, subsequent to the first date of disclosure of Confidential Information hereunder, become former Agents). Moreover, the parties shall take all reasonably necessary measures to restrain their respective Agents (and former Agents) from unauthorized disclosure or use of the Confidential Information.

(c) Exceptions. Notwithstanding anything in this Agreement to the contrary, Confidential Information shall not include any information which:

(1) at the time of disclosure to the Receiving Party is generally available to and known by the public (other than as a result of any disclosure made directly or indirectly or other action or inaction by the Receiving Party or anyone to whom the Receiving Party or any of its Agents transmit or transmitted any Confidential Information);

(2) becomes publicly available in the future (other than as a result of a disclosure made directly or indirectly or other action or inaction by the Receiving Party or anyone to whom the Receiving Party or any of its Agents transmit or have transmitted any Confidential Information);

(3) was available to the Receiving Party or its Agents on a non-confidential basis from a source other than the Disclosing Party or any of its Subsidiaries or affiliates or any of their respective Agents providing such information (provided that to the best of the Receiving Party's knowledge, after due inquiry, such source is not or was not bound to maintain the confidentiality of such information); or

(4) has been independently acquired or developed by the Receiving Party without violating any of its obligations under this Agreement, provided such independent development can reasonably be proven by the Receiving Party upon written request.

In the event that a party or any of such party's Agents become legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information of the other party, that party or person under the legal compulsion (the "Compelled Party") from whom such information is being sought shall, unless prohibited by law, provide the party to whom such Confidential Information belongs with prompt prior written notice of such requirement so that it may seek a protective order or other appropriate remedy, or both, or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or the other party waives compliance with the provisions hereof, the Compelled Party agrees to furnish only such portion of the Confidential Information that the Compelled Party is advised by written opinion of its counsel is legally required to be furnished by it and shall exercise its reasonably best efforts to obtain reliable assurance that confidential treatment shall be accorded such Confidential Information. Notwithstanding the foregoing, to the extent required under applicable state and federal securities laws, either party may file this Agreement as an exhibit with federal and state securities filings, provided that each party shall use its best efforts to obtain confidential treatment of the portions of this Agreement that contain Confidential Information. In this regard, the party making such filing shall obtain the prior written consent of the other party, which consent shall not be unreasonably withheld.

(d) Use of Confidential Information. Each party shall be subject to the obligations under this Section 13 until the expiration of three (3) years following the termination of this Agreement. Other than as specifically provided in this Agreement, neither party shall duplicate the Disclosing Party's Confidential Information for any purpose other than for the performance of its obligations under this Agreement and for the benefit of the Disclosing Party; or use the Disclosing Party's Confidential Information for any reason or purpose other than as expressly permitted in this Agreement.

(e) Return of Confidential Information. Upon termination of this Agreement or if either party so requests, the Receiving Party shall return to the Disclosing Party or destroy all copies of the Confidential Information in its possession and the possession of its Agents and will destroy all copies of any Derived Information; provided, however, that this Agreement will continue to apply to the Confidential Information and/or Derived Information contained or reflected in such copies.

(f) Equitable Relief. The Parties agree that they would be irreparably injured by a breach of this Agreement by the other party or its Agents and that the other party shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Section 13. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 13 by either party or their Agents, but shall be in addition to all other remedies available at law or in equity.

14. **Miscellaneous Provisions**.

(a) Notices. All notices, demands, requests, approvals, consents or other communications to be given or delivered under this Agreement ("Notices") will be in writing and will be deemed to have been given

- (1) when delivered in person or by courier or confirmed facsimile;
- (2) upon confirmation of receipt when sent by certified mail, return receipt requested; or
- (3) five (5) days after deposit in first class U.S. mail, as the case may be to the addresses indicated below:

If to RxFS :

Rx Fulfillment Services, Inc.  
 9100 Southwest Freeway  
 Suite 130 A  
 Houston, Texas 77074  
 Attention: Daryl Webster, CFO  
 Facsimile: (713) 988-7034

If to VMRx :

VMRx, Inc.  
 8807 Colesville Rd  
 Suite 2  
 Silver Springs, MD 20910

Attention: Ernest L. Carter, Jr., President  
 Facsimile: (301) 565-4349

or to such other addresses as a party may designate from time to time by written notice to the other party.

(b) Severability. Whenever possible, each provision of this Agreement and any Schedule shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(c) Amendment and Waiver. This Agreement may be amended, and any provision of this Agreement may be waived; provided that any such amendment or waiver will be binding upon any party hereto only if such amendment or waiver is set forth in a writing executed by such party. No course of dealing between or among any persons having any interest in this Agreement will be deemed effective to modify or amend any part of this Agreement or any rights or obligations of any person under or by reason of this Agreement. The waiver of any default, or the remedying of any default in any manner, shall not operate as a waiver of any other prior or subsequent default. No extension of time for the performance of any obligation or act shall be deemed to be an extension of time for the performance of any other obligation or act hereunder. No delay or omission by a party to exercise rights hereunder shall impair any such rights or shall be construed to be a waiver of any such default or any acquiescence therein.

(d) Complete Agreement. This Agreement, all Schedules and exhibits hereto and any related documents delivered concurrently herewith, contain the complete agreement between the parties relating to the Fulfillment Services and supersede any prior understandings, agreements or representations by or between the parties, written or oral, which may be related to the subject matter hereof in any way.

(e) Further Assurances. The parties will each execute such other documents and take such actions as the other may reasonably request in order to effect the relationships, services and activities contemplated by this Agreement and to account for and document those activities.

(f) Headings. Section headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

(g) Governing Law. The internal law, and not the law of conflicts, of the State of Texas will govern all questions concerning the construction, validity and interpretation of this Agreement and the performance of the obligations imposed by this Agreement.

(h) Assignment. This Agreement and all of the provisions will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, except that neither this Agreement nor any of the rights, interest or obligations set forth in each may be assigned by any party hereto without the prior written consent of the other party hereto, which shall not be unreasonably withheld. Notwithstanding the foregoing, VMRx shall have the right to assign this Agreement to any wholly owned subsidiary of VMRx ..

(i) Interpretation. Each party acknowledges it has participated in the negotiation and preparation of this Agreement, and has reviewed this Agreement and had the opportunity to consult with its counsel and accountants with respect to its terms. Therefore, each Party agrees that the rule of construction to the effect that any ambiguities in a document shall be interpreted against the drafting party, will not be utilized in the interpretation, construction, or enforcement of this Agreement, and no consideration shall be given to the issue of which party hereto actually prepared, drafted or requested any term or condition of this Agreement or other instrument subject hereto.

(j) Force Majeure. Neither party shall be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to acts of God, public enemy, war, strikes or labor disputes, or any other cause beyond the parties' reasonable control (each a "Force Majeure"), it being understood that lack of financial resources shall not to be deemed a cause beyond a party's control. Each party shall notify the other party promptly of the occurrence of any Force Majeure and carry out this Agreement as promptly as practicable after such Force Majeure is terminated. The existence of any Force Majeure shall not extend the term of this Agreement.

(k) Counterparts. This Agreement may be signed in any number of counterparts.

IN WITNESS WHEREOF, the parties hereto executed this Agreement effective as of the date first set forth above.

**VMRx:**

8807 Colesville Rd, Suite 2,  
Silver Springs, MD 20910  
202.528.6262 Phone / 301.565-4349 Fax

**Rx FULFILLMENT SERVICES, INC.:**

9100 Southwest Freeway, Suite 130A  
Houston, TX 77074  
713.776.8984 Phone/713.988.7034 Fax

By //s// Ernest L. Carter, Jr.

Ernest L. Carter, Jr., CEO

//s// Daryl K. Webster \_\_\_\_\_

Daryl K. Webster, CFO



## LEASE AGREEMENT

This Lease Agreement (the “Agreement”) is entered into as of the 9<sup>th</sup> day of February, 2005 (the “Effective Date”), by and between La Porte Apothecary Inc. d.b.a. Lava Rock Apothecary, Inc. (the “Owner”) located at 2925 West T.C. Jester, Suite 2B, Houston, Texas 77054 and Rx Fulfillment Services, Inc. (the “Company”) located at 9100 Southwest Freeway, Suite 130A, Houston, Texas 77074. The purpose of this Agreement is to express the terms upon which the Owner will grant the Company a license for the right to use of the Owner’ s name and business model to operate a “Class A Pharmacy” to fill all prescriptions as a sub-contractor. (the “Company”)

**Term of License:** This Agreement shall begin on the Effective Date and continue thereafter for sixty (60) consecutive months and shall automatically renew on the same terms and conditions for an additional sixty (60) months unless the Company gives Owner written notice of Company’ s intention not to renew the Agreement at least sixty (60) days prior to the expiration of the sixty (60) month term. Owner and Company may terminate this lease prior to the end of term upon written mutual written agreement.

**Owner/Lessor:**

La Porte Apothecary, Inc.  
Apothecary, Inc.

**Company/Lessee:**

Rx Fulfillment Services, Inc.                      d.b.a. Lava Rock

**Signature:** //s// James Hills

**Date:** 2/09/05

**Signature:** //s// Daryl Webster

**Date:** 2/09/05

# JOINT VENTURE AGREEMENT

**THIS JOINT VENTURE AGREEMENT** entered into this 10th day of February 2005 by and between RX Fulfillment Services, Inc. ("RX"), a Texas corporation, and Laura Clelland d.b.a. DiabeteSource ("DS").

## WITNESSETH

**WHEREAS**, RX provides pharmacy and medical products and services for patients and healthcare facilities (the "Services") and desires access to new markets;

**WHEREAS**, DS markets medical products and services, and desires assistance in supplying these products and services; and

**WHEREAS**, RX and DS desire to create a company to provide each of its products and services under one company to the Indian Health Services, markets identified as American Indian reservations and other Indian Nation affiliated healthcare markets; and

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual promises, covenants, and agreements contained herein, the parties hereto do hereby promise, covenant and agree as follows:

### 1. **Definitions.**

Throughout this Joint Venture Agreement, and unless the context otherwise requires, the following words shall have the indicated meanings:

- 1.1. 'Agreement' This Joint Venture Agreement.
- 1.2. 'Bankruptcy' The filing by a Joint Venturer of a petition commencing a voluntary case under the Bankruptcy Code (Title 11 of the United States Code); a general assignment by a Joint Venturer for the benefit of creditors; an admission in writing by a Joint Venturer of its inability to pay its debts as they become due; the filing by a Joint Venturer of any petition or answer in any proceeding seeking for itself, or consenting to, or acquiescing in, any insolvency, receivership, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law or regulation, or the filing by a Joint Venturer of an answer or other pleading admitting or failing to deny, or to contest, the material allegations of the petition filed against it in any such proceeding; the seeking of, or consenting to, or acquiescence by a Joint Venturer in the appointment of any trustee, receiver, or liquidator of it, or any part of its property; and the commencement against a Joint Venturer of an involuntary case under the Bankruptcy Code, or a proceeding under any receivership, composition, readjustment, liquidation, insolvency, dissolution or like law or statute, which case or proceeding is not dismissed or vacated within 60 days.
- 1.3. "Joint Venturers" DS, RX and any other person or persons or entity or entities who may subsequently be designated as a member of this joint venture pursuant to the further terms of this Agreement.
- 1.4. "Joint Venture" The joint venture formed by this Agreement.
- 1.5. "Joint Venture Interest" A Joint Venturer's share of the profits and surplus of the Joint Venture.
- 1.6. "Joint Venture Rights" The property rights of a Joint Venturer which are comprised of a Joint Venturer's: (i) right in specific Joint Venture property, (ii) interest in the Joint Venture, and (iii) right to participate in the management thereof.

2. **Name.**

The name of the Joint Venture shall be "REZ Healthcare, Inc.", an Arizona corporation, and any further reference herein to the Joint Venture will be identified as "Joint Venture."

3. **Principal Place of Business.**

The principal office and place of business of the Joint Venture (the "Office") shall be 207 Williamson Avenue, Winslow, AZ 86047. The alternate office for finance and administration shall be 9100 Southwest Freeway, Suite 130-A, and Houston, Texas, 77074. The Joint Venture shall have such other or additional offices as the Joint Venturers may determine from time to time.

4. **Business and Purpose.**

The sole purpose of the Joint Venture is to market the Services, and to engage in such operations and business as may be deemed necessary or appropriate to accomplish such purpose.

5. **Term.**

The Joint Venture shall commence upon the date of this Agreement. Unless sooner terminated pursuant to the further provisions of this Agreement, the Joint Venture shall continue until January 31, 2010, subject to the provisions of Section 9. Thereafter, this Agreement shall be renewed and continue from term to term unless at least three months prior to January 31, 2010, or to the end of any subsequent term year, one of the Joint Venturers gives written notice to the other Joint Venturer of its intent to terminate the Joint Venture as of the end of such year.

6. **Capital Contributions.**

6.1. No cash contributions or capital shall be required by this Joint Venture.

6.2. The Joint Venturers may, at their discretion, make capital contributions in such amounts and at such times, as they shall deem appropriate.

6.3. A capital account shall be established and maintained in all events for each Joint Venturer in the manner provided under and in accordance with applicable Treasury Regulations. Accordingly, a Joint Venturer's capital account shall include generally, without limitation, the initial capital contribution of a Joint Venturer, (i) increased by the Joint Venturer's allocable share of income and gain, and (ii) decreased by distributions of money or property, allocations of expenditures of the Joint Venture, and allocations of losses and deductions, and (iii) as otherwise adjusted in accordance with the additional rules set forth in the applicable Treasury Regulations.

6.4. Except as specifically provided in this Agreement, or as otherwise provided by law, no Joint Venturer shall have the right to withdraw or reduce its contributions to the capital of the Joint Venture.

7. **Profit and Loss.**

7.1. The percentages of Joint Venture Rights and Joint Venture Interest of each of the Joint Venturers in the Joint Venture shall be as follows:

DS	51 %
RX	49 %

7.2. Except as provided in Section 6.3 of this Agreement, for purposes of the Internal Revenue Code of 1986, as amended (the "Code"), or the corresponding provisions of any future federal internal revenue law, or any similar tax law of any state or jurisdiction, the determination of each Joint Venturer's distributive share of all items of income, gain, loss, deduction, credit or allowance of the Joint Venture for any period or year shall be

made in accordance with, and in proportion to, such Joint Venturer's percentage of Joint Venture Interest as it may then exist, unless otherwise required by the applicable Treasury Regulations.

7.3. Notwithstanding Section 6.2 of this Agreement, all items of income, gain, loss, deduction, credit or allowance with respect to property contributed to the Joint Venture by a Joint Venturer shall be allocated among the Joint Venturers so as to take account of the variation between the basis of the contributed property and its fair market value at the time of the contribution, which allocation shall be made in accordance with the Internal Revenue Code and the regulations issued under such provisions.

## 8. **Distribution of Profits.**

8.1. The Managers will provide financial statements to the Joint Venturers on a quarterly basis. The net cash from operations of the Joint Venture shall be distributed at such times as may be determined by unanimous agreement of the Managers, but not less frequently than every calendar quarter; such distribution among the Joint Venturers shall be made in proportion to their Joint Venture Interests.

8.2 As used in this Section 7, the term "net cash from operations" shall mean: the gross cash proceeds from the Joint Venture operations less the portion thereof used to pay or establish reserves for all Joint Venture expenses, debt payments, capital improvements, replacements, and contingencies, all as determined by the Managers. "Net Cash From Operations" shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established.

## 9. **Responsibilities and Duties.**

9.1. RX Responsibilities: RX Shall have the responsibility of establishing and providing all durable medical equipment and pharmaceutical services for the customers of this Joint Venture through the operation of its facilities. These services shall include but not be limited to the following:

- a. Establish, man and operate the facilities to be used to provide the Services ("Facilities").
- b. Provide the connecting database, services and other hardware and software necessary to operate the Facilities.
- c. Provide training and support for the operation of all remote locations.
- d. Provide the properly licensed and trained personnel necessary to operate the facilities and remote locations and to provide the Services.
- e. Shall maintain the books and records of the Joint Venture and shall establish and maintain all banking and other funding relationships for the Joint Venture.

9.2. DS Responsibilities: DS shall refer customers to the Joint Venture and shall otherwise market the delivery of Services to end-user customers of the Joint Venture. These services shall include but not be limited to the following:

- a. Establishing and negotiating the initial terms of all contracts entered into by the Joint Venture prior to acceptance by the Joint Venture for final contracting.
- b. Providing on-site customer contacts, presentations, and interaction concerning the Services.
- c. Verifying, confirming, and ensuring delivery of all Services.
- d. Advising the Joint Venture of customer satisfaction and acceptance issues and ensuring that any outstanding issues are resolved and followed up on.

## 10. **Customers.**

10.1 **Referrals.** DS shall refer customers to the Joint Venture and it is hereby agreed that all customers referred by DS shall be and shall remain the exclusive customers of this Joint Venture and all revenues produced by providing the Services shall be the earnings solely of the Joint Venture. In addition, all customers referred by DS shall be the exclusive customers of the Joint Venture in the future and any future customers in the same category as customers referred by DS shall be the exclusive customers of this Joint Venture now and in the future. By way of example, but not limitation, if DS refers an Indian Reservation Facility to the Joint Venture, then all future Indian Reservation Facilities which thereafter become customers of the Joint Venture or shall be the exclusive customer of the Joint Venture, without regard to the origination of that particular customer.

10.2. **Damages.** In light of the agreement set forth above in Section 10.1, which is essential to this Agreement, in the event that DS or its affiliates provide services identical or similar to the Services, to any customer referred by RX or The Joint Venture, as defined in Section 10.1 above then RX shall be entitled to damages equal to 49% of all revenue received by DS or its affiliates at any time, notwithstanding the termination of the Joint Venture. This clause shall serve as the termination of the Joint Venture.

## 11. **Rights, Duties and Powers of the Managers; Certain Agreements Respecting the Joint Venturers' Representatives.**

11.1. The Joint Venture shall be managed by the designees of the Joint Venturers. Initially, Laura Clelland and Daryl Webster shall manage this Joint Venture and the term "Managers" used throughout this Agreement shall mean and refer to Ms. Clelland and Mr. Webster in that capacity.

11.2. Management and operation of the Joint Venture business shall in every respect be the full, complete, and exclusive responsibility of the Managers. The Managers shall devote to the conduct of the Joint Venture business so much of their time as may be reasonably necessary for efficient operation of the Joint Venture business. The Managers, in extension and not in limitation of the powers given to them by law or the other provisions of the Agreement, shall, in their sole discretion, have full power in the management and operation of the Joint Venture business to do any and all acts and things necessary, proper, convenient or advisable to effectuate the purposes of the Joint Venture, subject to the provisions of this Agreement.

11.3. Without the consent of all of the Joint Venturers, no Joint Venturer shall, on behalf of the Joint Venture, borrow or lend money, make, deliver or accept any commercial paper, or execute, seal or deliver any deed to secure debt, bond, lease, guaranty, security instrument, security agreement or financing statement, or purchase or contract to purchase, or sell or contract to sell, or encumber any property for or of the Joint Venture.

11.4. The Managers shall not be entitled to any compensation from the Joint Venture, either directly or indirectly, for acting as Managers. This provision shall not, however, be construed to prevent the Managers from receiving compensation from the Joint Venture for action taken in a capacity other than as Managers, or for the payment of all expenses and costs incurred by the Managers with respect to the management of the Joint Venture.

11.5. The Managers shall be responsible to the Joint Venture as fiduciaries in accordance with the laws of the State of Texas. Subject to the provisions of this Agreement, the Managers may contract with any person or entity, at reasonable rates of compensation, for the performance of any services that reasonably may be required to carry on the business of the Joint Venture. Nothing contained herein shall be construed to constitute any Joint Venturer the agent of another Joint Venturer, except as provided herein, or in any manner to limit the Joint Venturers in the carrying on of their own respective businesses or activities. Any of the Joint Venturers or any director, officer, shareholder, agent, servant or employee of any of the Joint Venturers may engage in and possess any interest in other businesses of every nature and description, independently or with others, and neither the Joint Venture nor the Joint Venturers shall have any rights, by virtue of this Agreement or otherwise, in and to such independent ventures or the income or profits derived therefrom, or any rights, duties or obligations in

respect thereof. This provision shall not limit the effect of any other agreement between any Joint Venturer, in its own behalf, and any director, officer, shareholder, agent, servant or employee of that Joint Venturer.

11.6. The Managers shall manage, operate and control the affairs of the Joint Venture to the best of their ability and shall use their best efforts to carry out the businesses and purposes of the Joint Venture as set forth in Section 3 of this Agreement, and in connection therewith, the powers of the Managers shall include, by way of illustration and not of limitation, the power, at the sole cost and expense of the Joint Venture, to:

- a. Enter into agreements and contracts with any person(s) and give receipts, releases and discharges, with respect to all of the foregoing and any matters incident thereto, as the Managers may consider advisable or appropriate.
- b. Maintain, at the expense of the Joint Venture, adequate records and accounts of all operations and expenditures, and furnish the Joint Venturers with annual statements of account as of the end of each Joint Venture fiscal year, together with tax reporting information.
- c. Purchase at the expense of the Joint Venture, liability and any other insurance in such amounts and with such companies as the Managers shall determine, in their sole discretion, to protect the Joint Venture's properties and business and to protect the Joint Venturers against the risks automatically insured against or otherwise deemed appropriate by the Managers.
- d. Perform any and all other acts or activities customary or incident to the furtherance of the purpose of this Joint Venture as set forth herein.

11.7. Indemnification.

- a. DS (including its officers, directors, shareholders, servants, employees and agents) shall not be liable for and RX hereby indemnifies and agrees to hold harmless DS (including its officers, directors, shareholders, servants, employees and agents and each person controlling, controlled by or under common control with DS (collectively "Indemnified Parties")) against any third party claim arising out of the activities and operations of RX, and all judgments, fines, amounts paid in settlement and reasonable expenses, including reasonable attorneys', accountants' and experts' fees, actually and necessarily incurred by the Indemnified Parties or any of them as a result of such claim, unless caused by willful misconduct. Notwithstanding anything to the contrary contained in this Agreement, RX shall have no liability to the Joint Venture or any of the Joint Venturers unless the loss is caused by willful misconduct with respect to its obligations contained herein.
- b. RX (including its officers, directors, shareholders, servants, employees and agents) shall not be liable for and DS hereby indemnifies and agrees to hold harmless RX (including its officers, directors, shareholders, servants, employees and agents and each person controlling, controlled by or under common control with RX (collectively "Indemnified Parties")) against any third-party claim arising out of the activities and operations of DS, and all judgments, fines, amounts paid in settlement and reasonable expenses, including reasonable attorneys', accountants' and experts' fees, actually and necessarily incurred by the Indemnified Parties or any of them as a result of such claim, unless caused by willful misconduct. Notwithstanding anything to the contrary contained in this Agreement, DS shall have no liability to the Joint Venture or any of the Joint Venturers unless the loss is caused by willful misconduct with respect to its obligations contained herein.

11.8.

Without the prior written consent of all other Joint Venturers, the Joint Venture Interest and Joint Venture Rights of a Joint Venturer as a Joint Venturer shall not be sold, hypothecated, pledged, assigned, donated or otherwise transferred.

12. **Legal Title to Joint Venture Property.**

Legal title to the property of the Joint Venture shall be held in the name of "REZ Healthcare, Inc."

**13. Banking.**

All revenues of the Joint Venture shall be deposited regularly in the Joint Venture savings and checking accounts at such bank or banks as shall be selected by RX, and the signature of a Manager designated by RX shall be honored for banking purposes, other than the extension of credit to or the borrowing of money by or on behalf of the Joint Venture.

**14. Books.**

Proper, just and true books of account shall be kept by the Joint Venturers and entries promptly made therein of all of the transactions of the Joint Venture, and such books of account shall be open at all times to the inspection and examination of the Joint Venturers. The books shall be kept on the cash receipts and disbursements basis and the fiscal year of the Joint Venture shall be the calendar year. Unless otherwise agreed by the Joint Venturers, a review shall be made as of the closing of each fiscal year of the Joint Venture by independent certified public accountants who shall be engaged by the Joint Venture, if desired at that time.

**15. Termination and Withdrawal.**

No Joint Venturer may withdraw from the Joint Venture prior to the end of the Term. On termination of this Agreement future revenues from then existing customers of the Joint Venture shall be handled in accordance with Section 10 hereof.

**16. Bankruptcy.**

Upon the bankruptcy of any Joint Venturer (the "Bankrupt Joint Venturer") before withdrawal, the non-Bankrupt Joint Venturer shall have the right to elect, by written notice to the Bankrupt Joint Venturer, within thirty (30) days of the date of such bankruptcy (the "Bankruptcy Date"), that the business of the Joint Venture shall not be wound up but, instead, that the business of the Joint Venture shall continue as if said bankruptcy had not occurred; provided, that if the non-Bankrupt Joint Venturer elects that the Joint Venture shall not be wound up, the non-Bankrupt Joint Venturer shall purchase and the Bankrupt Joint Venturer shall sell all of the Joint Venture Interest and Joint Venture Rights (the "Bankrupt Joint Venturer's Interest") owned by the Bankrupt Joint Venturer in the Joint Venture at the Bankruptcy Date at a price (the "Bankrupt Purchase Price") equal to the Book Value, as determined in accordance with generally accepted accounting principles, of the Bankrupt Joint Venturer's Interest. The Bankrupt Purchase Price shall be payable in cash at closing. The closing of said purchase shall be held at the office of the Joint Venture thirty (30) days after the determination of Book Value, or at such other place and time as shall be agreed upon by the Joint Venturers.

17. **Certain Warranties and Representations.**

17.1. DS warrants and represents to RX that:

- a. DS is, and at all times while a Joint Venturer under this Agreement shall be, a corporation duly organized, validly existing and in good standing under the laws of the State of Arizona; and that DS has and, at all times while a Joint Venturer under this Agreement shall have, the power and authority to conduct all of the activities conducted by it and to be conducted by it under this Agreement, and
- b. DS has the power and authority to execute, seal and deliver this Agreement, to consummate the transactions contemplated by this Agreement and to take all other actions required to be taken pursuant to the provisions of this Agreement; and this Agreement is valid and binding upon DS in accordance with its terms. Neither the execution, sealing and delivering of this Agreement nor the consummation of the transactions hereby contemplated will constitute any violation or breach of the articles of incorporation or the bylaws of DS or any provision of any contract, document or instrument to which DS is a party, to which DS is bound, or by which any of the assets or property of DS may be affected or secured, or any order, writ, injunction, decree, statute, rule or regulation.

17.2. RX warrants and represents to DS that:

- a. RX is, and at all times while a Joint Venturer under this Agreement shall be, a corporation duly organized, validly existing and in good standing under the laws of the State of Texas; and that RX has and, at all times while a Joint Venturer under this Agreement shall have, the power and authority to conduct all of the activities conducted by it and to be conducted by it under this Agreement; and
- b. RX has the power and authority to execute, seal and deliver this Agreement, to consummate the transactions contemplated by this Agreement and to take all other actions required to be taken pursuant to the provisions of this Agreement; and this Agreement is valid and binding upon RX in accordance with its terms. Neither the execution, sealing and delivering of this Agreement nor the consummation of the transactions hereby contemplated will constitute any violation or breach of the articles of incorporation or the bylaws of RX or any provision of any contract, document or instrument to which RX is a party, by which RX is bound, or by which any of the assets or property of RX may be affected or secured, or any order, writ, injunction, decree, statute, rule or regulation.

18. **Notices.**

Any and all notices, offers, acceptances, requests, certifications and consents provided for in this Agreement shall be in writing and shall be given and be deemed to have been given when mailed by registered or certified mail, return receipt requested, to the last address which the addressee has given to the Joint Venture. The address of each Joint Venturer is set forth under its signature at the end of this Agreement, and each Joint Venturer agrees to notify the other Joint Venturers of any change of address. The address of the Joint Venture shall be its principal office.

19. **Governing Law.**

It is the intent of the parties hereto that all questions with respect to the construction of this Agreement and the rights, duties, obligations and liabilities of the parties shall be determined in accordance with the applicable provisions of the laws of the State of Texas.

20. **Arbitration**

Except for actions to protect Proprietary Rights and to enforce an arbitrator's decision hereunder, all disputes, controversies, or claims arising out of or relating to this Agreement or a breach thereof shall be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association ("AAA") then in effect. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties in accordance with AAA rules. The arbitration shall take place in Harris County, Texas. The arbitrator shall apply the laws of the State of Texas to all issues in dispute. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Legal fees shall be awarded to the prevailing party in the arbitration.

21. **Miscellaneous Provisions.**

21.1. This Agreement shall be binding upon, and inure to the benefit of, all parties hereto, their legal representatives, guardians, successors, and their assigns to the extent, but only to the extent, that assignment is provided for in accordance with, and permitted by, the provisions of this Agreement.

21.2. Nothing herein contained shall be construed to constitute any Joint Venturer the agent, servant or employee of the other Joint Venturer, except as specifically provided in this Agreement, or to limit in any manner the Joint Venturers or their respective directors, officers, shareholders, agents, servants, and employees in carrying on their own respective businesses or activities.

21.3. The parties hereto agree that they and each of them will take whatever action or actions are deemed by counsel to the Joint Venture to be reasonably necessary or desirable from time to time to effectuate the provisions or intent of this Agreement, and to that end the parties hereto agree that they will execute, acknowledge, seal and deliver any further instruments or documents which may be necessary to give force and effect to this Agreement or any of the provisions hereof, or to carry out the intent of this Agreement, or any of the provisions hereof.

21.4. Throughout this Agreement, where such meanings would be appropriate: (i) the masculine gender shall be deemed to include the feminine and the neuter and vice versa, and (ii) the singular shall be deemed to include the plural, and vice versa. The headings herein are inserted only as a matter of convenience and reference, and in no way define, limit or describe the scope of the Agreement, or the intent of any provisions thereof.

21.5. This Agreement and any Exhibit attached hereto sets forth all (and is intended by all parties hereto to be an integration of all) of the promises, agreements, conditions, understandings, warranties and representations among the parties hereto with respect to the Joint Venture, the business of the Joint Venture and the property of the Joint Venture, and there are no promises, agreements, conditions, understandings, warranties or representations, oral or written, express or implied, among them other than as set forth herein.

21.6. Nothing contained in this Agreement shall be construed as requiring the commission of any act contrary to law. Wherever there is any conflict between any provision of this Agreement and any statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the provisions of this Agreement thus affected shall be curtailed and limited only to the extent necessary to conform with said requirement of law. In the event that any part, article, section, paragraph or clause of this Agreement shall be held to be indefinite, invalid or otherwise unenforceable, the entire Agreement shall not fail on account thereof, and the balance of the Agreement shall continue in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have executed, sealed and delivered this Agreement, all as of the date first above written.

**LAURA CLELLAND**  
**d.b.a. DIABETESOURCE, INC.**  
207 Williamson Avenue  
Winslow, AZ 86047  
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By:     //s// Laura Clelland      
Laura Clelland

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By:     //s// Daryl Webster      
Daryl Webster