

AGREEMENT
Between
COUNCIL ON NATUROPATHIC MEDICAL EDUCATION
And
DANIEL D. SEITZ

This Agreement is made as of the 1st day of December, 2014 by and between the Council on Naturopathic Medical Education, Inc. (the “Council”), a Washington, DC not-for-profit corporation with a principal location at 244 Main Street, Great Barrington, Massachusetts and Daniel D. Seitz of Great Barrington, Massachusetts (“Employee”).

WITNESSETH:

Whereas, the Council is formed for the purpose of accrediting naturopathic medical education programs and is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

Whereas, the Council desires to employ Employee to serve as the Executive Director of the Council, and Employee wishes to be employed by the Council upon the terms and conditions set forth in this Agreement

Now Therefore, in consideration of the premises and mutual covenants herein contained, the parties hereto agree as follows:

1. **Contract Period.** The Council hereby contracts with Employee for the three-year period from January 1, 2015 to December 31, 2017, unless this Agreement is earlier terminated under one or more of the provisions of Section 4 of this Agreement.

2. **Duties.**

(a) **Scope.** Employee shall serve the Council as its Executive Director and shall perform the duties and responsibilities set forth in the “Job Description of the Executive Director” attached as Exhibit “A”, together with such other duties and responsibilities as may be assigned by the Board of Directors of the Council. All duties and responsibilities shall be performed faithfully and diligently and with such standards as are customarily adhered to by executive directors of accreditation agencies. Employee shall use his best efforts to further the welfare of the Council. Employee shall report to the Board of Directors of the Council and shall work in collaboration with the President of the Board.

(b) **Time Commitment and Location.** The Executive Director position is classified as full-time exempt. Employee shall develop his own work schedule and devote 1.0 FTE (100%) effort to the professional duties and responsibilities under this Agreement. Employee shall perform his work in an office furnished by the Council in or near to the town of Great Barrington, Massachusetts, and in

such other locations as are required to conduct the business of the Council.

3. **Compensation.**

(a) **Salary.** In consideration of the performance by Employee of his duties and responsibilities as set forth in Section 2 above and of Employee's observance of the other covenants set forth in this Agreement, the Council shall pay to Employee an annual salary of One Hundred Thirty Thousand dollars (\$130,000), payable in equal monthly installments, during the first year of this Agreement covering the period January 1, 2015 through December 31, 2015. Any increases in compensation, as either a salary increase or bonus, during the second and third years of this Agreement must be approved by the Board of Directors of the Council upon the recommendation the Executive Committee, following an annual review of Employee's performance. The salary paid under this Agreement shall constitute complete payment for the services to be performed hereunder and, in no case, shall Employee bill or assert any claim for payment against any other person or organization for services provided for the Council on Naturopathic Medical Education.

(b) **Benefits.** The Council will not provide Employee with any fringe benefits including, without limitation, health and dental insurance, disability insurance, pension contribution, and life insurance; provided, however, Employee will be entitled to vacation leave time of three (3) weeks in a fifty-two (52) week period. Vacation leave time may be taken at such time or times as shall not compromise the work of the Council and be mutually satisfactory to employee and the President of the Council. One week of vacation leave time may be carried over from year to year.

(c) **Expense Reimbursements.** The Council will reimburse Employee for reasonable and necessary out-of-pocket expenditures properly documented and related to the performance of services under this Agreement including expenditures for (i) airline and ground transportation, including rental car fees as appropriate, to on-site evaluations, board meetings, public agency meetings and professional conferences, (ii) single-occupancy hotel accommodations and reasonable expenditures on food, (iii) automobile use for Council business at the current U.S. federal mileage rate, and (iv) the purchase of supplies and materials and accounting and publications software used solely for Council business, and printing, photocopying, postage and shipping expenses.

4. **Termination of Agreement.** This Agreement may be terminated at any time during its term as follows:

(a) immediately, upon the death of Employee;

(b) by the Council, immediately, upon the liquidation/dissolution of the Council;

(c) by the Council, immediately, upon the occurrence of any of the following events: (i) willful or gross neglect by Employee in the course of carrying out his duties under this Agreement; (ii) willful or gross misconduct (including without limitation the commission of any dishonest or fraudulent act) of Employee; or (iii) a charge against Employee for a felony or any crime or offense involving moral turpitude.

(d) by the Council, at any time Employee breaches any of the warranties or representations set forth in this Agreement. At Council's sole discretion, the employee may be given four (4) weeks in which to remedy the breach;

(e) by the Council, with not less than thirty (30) days prior written notice, upon the expiration of a period of disability. A period of disability shall result from Employee's inability, due to injury, physical or mental illness, to perform his normal duties hereunder for a period of thirty (30) consecutive days or an aggregate of sixty (60) days within a one-year period; or

(f) by either party, upon a material breach, with not less than fourteen (14) days prior written notice, provided either party is given an opportunity to remedy the breach during the notice period.

5. Effect of Termination. In the event this Agreement expires or is terminated by either party, the Council shall pay to Employee, or Employee's estate or other legal representative of Employee, his salary accrued to the date of termination or expiration of this Agreement, and Employee and his estate or other legal representative shall have no further rights under this Agreement. Rights and benefits of Employee, Employee's estate, or other legal representative under employee benefit plans and programs of the Council, if any, will be determined in accordance with the terms and provisions of such plans and programs.

6. Notices. Notices required or permitted to be given under this Agreement shall be in writing and shall be deemed served if delivered personally or by overnight carrier or mailed by certified mail, postage prepaid, and properly addressed to the respective party to whom such notice relates at the addresses set forth below.

If to the Council:

G. Lansing Blackshaw, Ph.D.
75 Court Street
Belfast, ME 04915

(Or to the current Council President if Dr. Blackshaw is no longer on the board.)

If to Employee:

Daniel D. Seitz
48 Grove Street
Great Barrington, MA 02130

Any of the above addresses may be changed at any time by notice given as provided above; provided, however, that any such notice of change of address shall be effective only upon receipt. All notices, requests or instructions given in accordance with this Agreement shall be deemed received on the date of delivery, if hand-delivered, and two business days after the date of mailing, if mailed.

7. Confidentiality.

(a) Employee shall, during his employment with the Council and at all times thereafter, treat all Confidential Material (as hereinafter defined) of the Council or any member of the Council confidentially. Employee shall not, without the prior written consent of the Board of Directors of the Council, disclose such Confidential Material, directly or indirectly, to any party, who at the time of such disclosure is not an employee or agent of the Council, or remove from the Council's premises any notes or records relating thereto, copies or facsimiles thereof (whether made by electronic, electrical, magnetic, optical, laser, acoustic or other means), or any other property of the Council. Employee agrees that all Confidential Material, together with all notes and records of Employee relating thereto, and all copies or facsimiles thereof in the possession of Employee (whether made by the foregoing or other means) are the exclusive property of the Council. Employee shall not use any Confidential Material of the Council, or any other property of the Council, in any manner not specifically directed by the Council or in any way that is detrimental to the Council, as determined by the Board of Directors of the Council in its sole discretion.

(b) For the purposes hereof, the term "Confidential Material" shall mean all information in any way concerning the activities, business or affairs of the Council or any member of the Council, including, without limitation, information concerning trade secrets, any revenue or other financial information concerning the Council, any information concerning projects in research and development or marketing plans for any products, services or other projects of the Council, and all information concerning the practices, members and other customers of the Council, and any information in any way concerning the activities, business or affairs of any of such members or customers, which is furnished to Employee by the Council or any of its members, agents, customers or otherwise acquired by Employee in the course of Employee's employment with the Council; provided, however, that the term "Confidential Material" shall not include information which (i) becomes generally available to the public other than as a result of a disclosure by Employee, (ii) was available to Employee on a non-confidential basis prior to Employee's employment with the Council or (iii) becomes available to Employee

on a non-confidential basis from a source other than the Council or any of its members, agents, or customers, provided that such source is not bound by a confidentiality agreement with the Council or any of such members, agents, or customers.

(c) Promptly upon the request of the Council, Employee shall deliver to the Council all Confidential Material relating to the Council and all other property of the Council in the possession of Employee without retaining a copy thereof, unless, in the opinion of counsel for the Council, either returning such Confidential Material or failing to retain a copy thereof would violate any applicable Federal, state, or local law, in which event such Confidential Material shall be returned without retaining any copies thereof as soon as practicable after such counsel advises that the same may be lawfully done. The Council shall reimburse the Employee for any expenses incurred in delivering property of the Council to a location designated by the Council.

(d) In the event that Employee is required, by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process, to disclose any Confidential Material relating to the Council, Employee shall provide the Council with prompt notice thereof so that the Council may seek an appropriate protective order and/or waive compliance by Employee with the provisions hereof; provided, however, that if in the absence of a protective order or the receipt of such a waiver, Employee is, in the opinion of counsel for the Council, compelled to disclose Confidential Material not otherwise disclosable hereunder to any legislative, judicial or regulatory body, agency or authority, or else be exposed to liability for contempt, fine or penalty or to other censure, such Confidential Material may be so disclosed.

8. Non-Competition.

(a) Employee acknowledges that the services to be rendered by Employee to the Council are of a special and unique character. Employee agrees that, in consideration of Employee's employment hereunder, Employee will not (a) at any time commencing on the date hereof through and including the date which is one (1) year following the date of termination or expiration of this Agreement, directly or indirectly, (i) engage whether as principal, agent, investor, distributor, representative, stockholder, employee, consultant, volunteer or otherwise, in any activity or business venture anywhere, which is competitive with the business of the Council or (b) at any time, take any action or make any statement the effect of which would be, directly or indirectly, to impair the good will of the Council or the business reputation or good name of the Council, or be otherwise detrimental to the Council, including any action or statement intended, directly or indirectly, to benefit a competitor of the Council.

(b) Employee and the Council agree that if, in any proceeding, the court or other

authority shall refuse to enforce the covenants herein set forth because such covenants cover too extensive a geographic area or too long a period of time, any such covenant shall be deemed appropriately amended and modified in keeping with the intention of the parties to the maximum extent permitted by law.

9. Equitable Relief. In the event of a breach or threatened breach by Employee of any of the provisions of Sections 7 or 8 of this Agreement, Employee hereby consents and agrees that the Council shall be entitled to pre-judgment injunctive relief or similar equitable relief restraining Employee from committing or continuing any such breach or threatened breach or granting specific performance of any act required to be performed by Employee under any of such provisions, without the necessity of showing any actual damage or that money damages would not afford an adequate remedy and without the necessity of posting any bond or other security. The parties hereby consent to the jurisdiction of the Federal courts located in District of Massachusetts or the Business Law Session of the Massachusetts Superior Court for any proceedings under this Section 9. Nothing herein shall be construed as prohibiting the Council from pursuing any other remedies at law or in equity that it may have.

10. Specific Performance. Without intending to limit the remedies available to the Council, Employee agrees that damages at law will be an insufficient remedy to the Council in the event that Employee violates any of the terms of Sections 7 or 8 of this Agreement and that the Council may apply for and obtain immediate injunctive relief in any court of competent jurisdiction or restrain the breach or threatened breach of, or otherwise specifically enforce, any of the agreements and covenants contained in such Sections. The parties hereto understand that each of the agreements and covenants of Employee contained in Sections 7 and 8 of this Agreement is an essential element of this Agreement and agree that the obligations of Employee thereunder will survive the termination or expiration of this Agreement.

11. Withholding. All payments required to be made by the Council hereunder to Employee or Employee's beneficiaries, including Employee's estate, shall be subject to withholding of such amounts relating to taxes as the Council may reasonably determine it should withhold pursuant to any applicable law or regulation.

12. Mediation.

(a) In the event a dispute, claim or controversy arises out of or relates to this Agreement, a breach hereof or the operation of the business of the Council, the parties to the dispute, claim or controversy shall attempt in good faith to resolve such matter through negotiations. If the dispute, claim or controversy is not resolved by negotiations, the matter shall be submitted to the American Arbitration Association ("AAA") for mediation in Boston, MA pursuant to the terms and conditions set forth below. Either party may commence mediation by providing to the AAA and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The mediation will be

conducted in accordance with the provisions of the AAA's Commercial Mediation Rules in effect at the time of filing the request for mediation. The parties will cooperate with the scheduling of the mediation proceedings.

(b) The parties to this Agreement represent and covenant that they shall participate in mediation in good faith and shall share equally in the cost of mediation. All offers, promises, and statements, whether oral or written, made in the course of mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any AAA employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties; provided, however, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

(c) Any person who is a party to mediation may seek equitable relief to preserve the status quo pending completion of that process. Except for such an action to obtain equitable relief, no party may commence a civil action with respect to the matters submitted to mediation until the matter is settled among all the parties in writing or until the mediator issues a decision, whichever shall come first.

(d) The provisions of this Section 13 may be enforced by a court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys fees, to be paid by the party against whom enforcement is ordered. By signing this Agreement, each party agrees to have all disputes, claims or controversies arising out of or relating to this Agreement decided by the procedures set forth above in this Section 13. Each party agrees to submission of all disputes, claims or controversies, which are not resolved through negotiation, to mediation in accordance with this Agreement.

13. Property of the Council. At all times during and after the term of this Agreement, all business records including, but not limited to, contracts, books of account, correspondence, general administrative records, records of surveyors and decisions relating to accreditation or non-accreditation, appeals of non-accreditation decisions, all information generated under or contained in the computer information system including without limitation computer files, and any other business information of any kind or nature, as well as all manuals and publications and all equipment, furnishings, fixtures, improvements and supplies, shall be and remain the sole property of the Council.

14. Survival. All matters that (i) expressly survive the expiration or termination of this Agreement, (ii) relate to the expiration or termination of this Agreement, or (iii) in the normal course would not occur or be effectuated until after any such expiration or termination, as well as all rights and obligations of the parties pertaining thereto, shall survive any expiration or termination and be given full force and effect notwithstanding

such expiration or termination.

15. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Council and (i) any entity with which the Council merges or consolidates or to which the Council transfers all or substantially all of its assets or (ii) any entity to which the Council assigns this Agreement, and upon Employee and his executors, administrators, personal representatives, heirs and legatees of the parties. This Agreement may not be assigned by Employee without the written consent of the Council.

16. Amendment; Waiver; Rights of Third Parties. The provisions of this Agreement may be modified, amended or waived, but only upon the written consent of the party against whom enforcement of such modification, amendment or waiver is sought and then such modification, amendment or waiver shall be effective only to the extent set forth in such writing. No delay or failure on the part of any party in exercising any right, power or remedy under this Agreement shall effect or operate as a waiver thereof, nor shall any single or partial exercise thereof or any abandonment or discontinuance of steps to enforce such right, power or remedy preclude any further exercise thereof. Nothing contained in this Agreement is intended to or shall confer upon any person not a party hereto any rights or remedies, and no person other than the parties hereto shall be required to approve or consent to any amendment or modification of the provisions of this Agreement or any waiver of such provisions.

17. Severability. Should any provision of this Agreement be held by a court of competent jurisdiction to be enforceable only if modified, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding upon the parties hereto with any such modification to become a part hereof and treated as though originally set forth in this Agreement. The parties further agree that any such court is expressly authorized to modify any unenforceable provision of this Agreement in lieu of severing the unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied in this Agreement to the maximum extent permitted by law. The parties expressly agree that this Agreement, as so modified by the court, shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been set forth herein.

18. Other General Provisions. This Agreement supersedes any and all prior and contemporaneous agreements, representations and understandings of the parties, and it sets forth the entire agreement between the Council and Employee pertaining to its

subject matter. Section and subsection headings are not to be considered part of this Agreement and are included solely for the convenience of the parties hereto and not intended to be full or accurate descriptions of the content thereof. All exhibits attached to this Agreement shall be deemed to be incorporated by reference herein. This Agreement shall take effect as an instrument under seal and shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard, however, to Massachusetts' principles of conflict of laws. This Agreement may be executed in duplicate counterparts, each of which when executed and delivered is an original, but all of which together shall constitute one instrument.

In Witness Whereof, the parties to this Agreement have caused the same to be executed under seal as of the date first set forth hereinabove.

Employee:

Daniel Seitz, J.D., Ed.D.

Date

For the Council on Naturopathic Medical Education:

G. Lansing Blackshaw, Ph.D.
President, Council on
Naturopathic Medical Education

Date