

**WellCall Wellness Coaching Membership  
PROFESSIONAL AGREEMENT**

This Agreement (“Agreement”) effective as of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, with offices located at \_\_\_\_\_, (referred to herein as “Wellness Professional”) and JDCI, with offices located at 3940 Canal Road Lake Oswego, OR 97034, (referred to herein as “JDCI”), with regard to services (as hereinafter defined) provided by WellCall, Inc. (referred to herein as “WellCall”) (Wellness Professional and JDCI sometimes referred to herein collectively as “the parties”).

WHEREAS, Wellness Professional seeks to access the WellCall health and wellness telephone and internet coaching, counseling, online health risk assessment, information, education, and referral services (collectively referred to herein as the “Services”); and

WHEREAS, JDCI and WellCall desire to provide access to the Services to Wellness Professional and his/her patients, employees, members; and

WHEREAS, the Wellness Professional is a Sub-Client as defined by the Master Agreement by and between JDCI and WellCall dated August 1, 2007, and as may be amended from time to time;

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

1. Wellness Professional is purchasing unlimited access for their Active Patient base to contact a team of trained wellness-coaches provided by WellCall. Wellness coaching services are to be offered by Wellness Professional complimentary to ALL active patients, employees, members of the practice. Wellness Professional agrees NOT to charge additional fees for the WellCall Services.

2. Wellness Professional shall pay the following per person, per month fee (“PPPM Fee”) to JDCI for the Services to be provided by WellCall to the Wellness Professional’s patients, employees, members:

\$1 per patient per month, with a minimum payment of \$200 per month. The PPPM Fee is to be calculated by counting the number of Active Patients of the Wellness Professional which is defined as the number of people who receive services at the Wellness Professionals office within an average 30-day period multiplied by \$1.

The PPPM Fee will remain fixed, unless there is an increase or decrease of 15% of the Wellness Professional’s Active Patients at which point the new number of Active Patients is to be multiplied by \$1 to become the new fixed monthly payment. Wellness Professional hereby agrees to notify JDCI prior to the first day of the each month in the event of an increase or decrease in patient volume which will result in an adjustment in monthly fees. JDCI reserves the right for it, or its designee, to conduct an audit of Wellness Professional’s patient files for purposes of confirming the number of Active patients as represented by Wellness Professional for any given month(s).

3. Simultaneously with the execution of this Agreement, Wellness Professional shall execute an “Authorization of Payment” (annexed hereto as Attachment 1) to enable JDCI to process

payments against Wellness Professional's credit card on the first day of each month for the PPM for Services for that month. Payments not made or authorized by the fifth day of the month shall result in a discontinuance of Services. In addition, Wellness Professional shall be charged a processing fee by JDCI in the amount of \$25 for each declined credit card transactions processed pursuant to the terms of this Agreement.

4. The initial term of this Agreement shall be for a period of one (1) year commencing with the first day of the month following the month in which this Agreement is executed. Subsequently, this Agreement shall automatically renew for successive one (1) year terms. At the end of the initial term, and at the end of each subsequent term, either party may, with or without cause, terminate this Agreement upon thirty (30) days advanced written notice to the other party with an effective termination date being the last day of the month following the month in which the termination notice is given. Rates shall remain in effect for the initial term of the contract unless mutually agreed to by both parties. Any subsequent change in rates shall be mutually agreed to by both parties, prior to commencement of a new term.

5. JDCI and its affiliates reserve the right to refuse, limit or cancel any coaching session and/or membership if a patient, employee or member of the Wellness Professional, or the Wellness Professional himself/herself has exhibited unreasonable behavior; is deemed (in the sole and absolute opinion of JDCI) to be abusive or disruptive; or has otherwise breached this Agreement or the Membership Terms and Conditions as set forth by JDCI from time to time. JDCI and its affiliates reserve the right to refuse, limit or cancel any membership or discontinue providing the Services to Wellness Professional or to a particular patient, employee or member of Wellness Professional, at any time in its sole and absolute discretion.

6. Neither JDCI, its principals, employees, contractors, affiliates, licensors, nor anyone else who has been involved in the creation, production or delivery of their Products or the Services, including but not limited to the Product's authors and publishers, shall be liable for any indirect, consequential, incidental or punitive damages arising out of the use or inability to use the Products and/or Services. The limitations set forth above shall be deemed to apply to the maximum extent permitted by applicable law. JDCI's total aggregate liability for damages hereunder shall be limited to the amount actually paid by Wellness Professional for the six (6) month period immediately preceding the accrual of any claim. Wellness Professional acknowledges and agrees that he/she has fully considered the foregoing allocation of risk and find it reasonable, and that the foregoing limitations and exclusions are an essential basis of the bargain which constitutes this Agreement.

7. Wellness Professional agrees to defend, indemnify, and hold harmless JDCI, its officers, directors, employees and affiliates for any claim, liability, loss, expense or damage (including reasonable attorneys' and accountants' fees) arising from the conduct on the part of Wellness Professional in relation to any claim of any patient, employee or member of Wellness Professional.

8. Wellness Professional has read, agrees to and has simultaneously executed the terms and conditions of the License Agreement annexed hereto as Attachment 2, as it relates to the use of any and all intellectual property, logos and trademarks owned by JDCI.

9. Wellness Professional hereby agrees that he/she shall obtain from each and every patient, employee and member of Wellness Professional to whom access to the Services is granted, a release compliant with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to allow the

patient's, employee's or member's Protected Health Information (as defined by 45 CFR 164.501) collected in the course of the Services provided to be shared among WellCall, JDCI and Wellness Professional. Wellness Professional further agrees to provide to JDCI a copy of said release form duly executed by the patient, employee or member. Wellness Professional hereby agrees to indemnify and hold JDCI and WellCall, their respective officers, directors, employees and affiliates, harmless for any claim, liability, loss, expense or damage (including reasonable attorneys' and accountants' fees) due to any violation of HIPAA as a result of Wellness Professional's failure to procure and maintain on file the appropriate HIPAA release.

10. This Agreement may only be amended by the mutual agreement and the written consent of all parties hereto. If any provision of this Agreement shall be prohibited under applicable law, or shall be invalid or unenforceable for any reason, such provision shall be ineffective only to the extent of such prohibition, invalidity or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

11. This Agreement shall be governed in accordance with the laws of the State of Oregon, without regard to conflict of law principles. Any action or claim brought with respect to this Agreement or the Services provided hereunder shall be commenced in the Supreme Court of the State of Oregon, County of Clackamas.

12. For purposes of this Agreement, fax copies of signatures shall be deemed original signatures.

Wellness Professional

JDCI Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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

# ATTACHMENT 1

## Authorization of Payment

I, Wellness Professional, certify that I currently have \_\_\_\_\_ “Active Patients” - the number of people who receive services at my office within an average 30-day period.

I agree to notify JDCI in the event that my “Active Patients” volume increases or decreases by 15% or more of my Active Patients and I hereby agree that the revised number of Active Patients shall serve as the basis of a new authorized monthly fee.

I authorize JDCI Inc. to process my credit card in the amount of \$ \_\_\_\_\_ each month as per the terms of this Agreement, subject to adjustment based on the number of Active Patients as described herein.

Name on Card: \_\_\_\_\_

Visa MC Amex Discover Card Number: \_\_\_\_\_

Exp Date: \_\_\_\_\_ 3 digit security \_\_\_\_\_

Signature: \_\_\_\_\_

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

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Cell: \_\_\_\_\_

Email: \_\_\_\_\_ Website: \_\_\_\_\_

*For official use only:*

Year \_\_\_\_\_

	Amount Processed	Date	Initials	Comments
Jan	_____	_____	_____	_____
Feb	_____	_____	_____	_____
Mar	_____	_____	_____	_____
Apr	_____	_____	_____	_____
May	_____	_____	_____	_____
Jun	_____	_____	_____	_____
Jul	_____	_____	_____	_____
Aug	_____	_____	_____	_____
Sep	_____	_____	_____	_____
Oct	_____	_____	_____	_____
Nov	_____	_____	_____	_____
Dec	_____	_____	_____	_____

**IMPORTANT: CAREFULLY READ THIS LICENSE AGREEMENT ("LICENSE") BEFORE USING THIS SERVICE.**

\* THIS IS AN AGREEMENT BETWEEN YOU AND JDCI, INC. ("JDCI"). BY OFFERING THE WELLCALL COACHING MEMBERSHIP SERVICE, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, PROMPTLY NOTIFY JDCI INC. TO DISCONTINUE YOUR SERVICE AGREEMENT.

**A. DEFINITIONS:**

JDCI is also referred to in this License as "we" or "us."

The "SERVICES" consist of: all materials, supplies and information provided by JDCI and its affiliates, which may include, but are not limited to: (a) the WellCall Coaching Membership marketing materials; (b) the Discover Wellness Presents: PowerPoint CD; (c) all materials, supplies and information provided or disseminated by WELLCALL, INC., directly to you or through us by virtue of agreements between or among you, us and WELLCALL, INC.; and (d) any other supplemental and supporting materials which may be provided to you or authorized by JDCI for the Service.

The "MARKS" consist of: all logos, images, symbols, text, and printed materials provided or disseminated to you by us in connection with the Services and any agreement between you and us, including but not limited to DISCOVER WELLNESS, DISCOVER WELLNESS PRESENTS, CHIEF WELLNESS OFFICER, THE ULTIMATE SOLUTION TO AMERICA'S HEALTH CARE CRISIS, and the Apple Logo.

**B. SCOPE OF LICENSE:**

hereby grants you a non-exclusive, non-transferable license, to use the Services and Marks in accordance with all of the terms and conditions of this License. You represent and warrant that the Services will only be utilized by your active patients and employees of your particular company located within a single office. You are responsible for the compliance of your employees and agents with the terms of this License. You agree that your use of the Services and Marks shall comply with all applicable laws and regulations.

**C. YOU MAY NOT:**

1. Use or distribute the Services or Marks except as expressly permitted in this License.
2. Sell or otherwise provide the Services to any third parties besides your active patients, your employees and employees of employers you properly indicate are your clients.
3. Transfer the Services or Marks or your rights under this License to someone else.

**D. TERM:**

Unless terminated earlier as provided in this paragraph, the term of this License shall be deemed to have commenced on the date of purchase and shall continue thereafter in accordance with your Service agreement. Your rights regarding the Services and Marks under this License shall remain in effect only as long as you are in full compliance with the terms and conditions of this License, and shall terminate automatically if you fail to comply with any such terms or conditions. You agree, upon termination, to return or destroy all copies of the materials received, made or used by you in connection with this License. Paragraphs D, E, F, and G and your indemnity obligations hereunder shall survive the expiration or termination of this Agreement for any reason.

**E. TRADEMARKS:**

and its licensors grant you a nonexclusive license to use its Marks, including its trade name, trademarks and logos. You agree and stipulate that the current standards of quality of the goods and services provided by you are adequate to meet the foregoing requirements and have the approval of JDCI. This license does not grant you permission to utilize the title DISCOVER WELLNESS and/or DISCOVER WELLNESS CENTER as the title or name of your business or office and these terms and the Marks may not be used for outside signage or as an identifier or logo for your office location. You shall use or display the licensed Marks only in connection with the Service, and in a form and manner complying with reasonable standards prescribed by JDCI to promote and foster the goodwill represented by the

Marks. You agree to use status appropriate trademark attribution such as ™, ®, or "Registered Trademark" when utilizing the Marks.

**E. OWNERSHIP:**

Ownership of any and all copyrights, trademarks, and other intellectual property rights are and shall remain the ownership of JDCI. All rights of any kind that are not expressly granted in this License are entirely and exclusively reserved for and owned by JDCI.

**F. LIMITED WARRANTY; EXCLUSIONS OF LIABILITY:**

1. The provisions of this Paragraph F apply to the maximum extent permitted by applicable law. You may have other rights, which vary from state to state and country to country.
2. JDCI does not warrant that the Services will meet your requirements, or that the Services will be error free. JDCI does not make, and hereby disclaims any implied warranties of non-infringement, merchantability and fitness for a particular purpose. No oral or written information or advice given by JDCI, its distributors, agents or employees shall create a warranty or in any way increase the scope of the warranty, and you may not rely on any such information or advice.
3. Neither JDCI, its principals, employees, contractors, affiliates, licensors, nor anyone else who has been involved in the creation, production or delivery of the Services, including but not limited to WellCall Inc., shall be liable for any indirect, consequential, incidental or punitive damages arising out of the use or inability to use the Service. The limitations set forth above shall be deemed to apply to the maximum extent permitted by applicable law. JDCI's aggregate liability hereunder shall be limited to the amount actually paid by you for the Services for the six (6) month period immediately preceding the accrual of any claim. You acknowledge and agree that you have fully considered the foregoing allocation of risk and find it reasonable, and that the foregoing limitations and exclusions are an essential basis of the bargain between you and JDCI.
4. You agree to defend, indemnify and hold harmless JDCI, its principals, employees, contractors, affiliates, licensors, and anyone else who has been involved in the creation, production or delivery of the Service, including but not limited to WellCall Inc., from any and all third party claims and damages arising from your use of the Services and/or your breach of any of the restrictions set forth herein.

**G. GENERAL:**

This License forms the entire agreement between you and us regarding the subject matter set forth herein, superseding any other agreement or discussions, oral or written, and may not be changed except by a signed agreement. This License shall be governed by and construed in accordance with the laws of the State of Oregon. If any provision of this License is declared by a Court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from the License and the other provisions shall remain in full force and effect. The prevailing party in any action to enforce or interpret this License agreement shall be entitled to recover its costs and expenses, including attorneys' fees.

You agree to the exclusive jurisdiction of, and venue in, the state and federal courts located or covering the County of Clackamas, State of Oregon, for any dispute or matter relating to, arising from or connected with this License. In the event of any breach of this agreement by you, JDCI shall have the right to seek injunctive relief and the enforcement of judgments in any court of competent jurisdiction. Any waiver by us of any violation of this License by you shall not constitute, nor contribute to, a waiver by us of any other or future violation of the same provision, or any other provision, of this License. The parties acknowledge and agree that no third party (including but not limited to your customers/patients/employees) shall have any rights, either against us, as a third party beneficiary of any rights, licenses, products or services granted or provided by us to you hereunder. JDCI may freely assign or delegate this Agreement, in whole or in part. This License is personal to you, and you agree not to assign or delegate, in whole or in part, this License or any of your rights or obligations hereunder.