Participating Provider AGREEMENT

THIS PARTICIPATING PROVIDER AGREEMENT (“Agreement”) is made and entered into as of XXXX (“Effective Date”) by and between the MEDICAL SOCIETY (“Medical Society”) and \_\_\_\_\_\_\_\_\_\_ (“Provider”). Medical Society and Provider are sometimes referred to together as the “Parties” and individually as a “Party.”

**Recitals**

**WHEREAS**, Medical Society provides a counseling service to physicians in the community referred to Provider by Medical Society under its NAME OF PROGRAM (the “NAME OF MEDICAL SOCIETY/ABBREVIATION Program”); and

**WHEREAS**, Provider is qualified to, and does provide mental health counseling services; and

**WHEREAS**, Medical Society and Provider desire to enter into this Agreement whereby Provider will provide certain counseling services to Patients referred by Medical Society under the NAME OF MEDICAL SOCIETY/ABBREVIATION Program, all under the terms and conditions of this Agreement.

**Agreement**

**NOW THEREFORE**, the Parties agree as follows:

1. Provider Responsibilities.
   1. Licensure and Qualifications. Provider warrants and represents that he or she has the following licensure in good standing in the State of XXXX and shall maintain such licensure in good standing at all times in providing Covered Services hereunder and has the qualifications to provide the Covered Services hereunder: NAME OF STATE LICENSING BOARD.
   2. Required Notices. Provider shall give notice to Medical Society within two business days of the occurrence of any event that could reasonably be expected to impair the ability of a Provider to comply with the obligations of this Agreement, including any of the following: (a) an occurrence that causes any of the representations and warranties in this Agreement made by or on behalf of a Provider to be inaccurate, (b) a Provider fails to maintain insurance as required by this Agreement, (c) a Provider’s license, certification or accreditation expires or is suspended, revoked, conditioned or otherwise restricted, (d) a Provider is excluded, suspended or debarred from, or sanctioned under a federal health care program, (e) a grievance or legal action is filed by a Patient concerning a Provider, (f) a Provider is under investigation for fraud or a felony, or (g) a Provider enters into a settlement related to any of the foregoing.
   3. Covered Services. Provider shall provide Covered Services, as defined herein, to Patients referred by Medical Society to Provider, subject to and in accordance with the terms and conditions of this Agreement, and in accordance with the standard of care in the community.
   4. Nondiscrimination. Providers shall not discriminate in their treatment of Patients based upon a Patient’s health status, race, ethnicity, national origin, religion, gender, age, mental or physical disability, sexual orientation, or genetic information or any other status prohibited by applicable law.
   5. Insurance. Provider shall procure and maintain during the Term at Provider’s expense professional liability (malpractice) insurance in the amount of at least One Million Dollars and if insurance allows, such insurance shall name Medical Society as an additional insured during the Term. Provider shall deliver to Medical Society proof of such insurance. If insurance does not allow Medical Society as additional insured, then provider shall name Medical Society on Certificate of Liability and shall deliver Certificate to Medical Society as proof. The Medical Society shall reimburse the cost of being added as additional insured.
2. Practice Protocol.
   * 1. Acknowledgment of Unique Circumstances. Provider acknowledges that physicians may not seek out mental health services in the absence of certain assurances regarding anonymity and confidentiality and other assurances to address concerns regarding the impact on licensure of a physician receiving mental health treatment or having a mental health condition. Accordingly, Provider shall not make or record any diagnosis of Patient.
     2. Record-Keeping. Provider shall not create electronic health care records with respect to Patients. All paper records with respect to such Patients shall be maintained at the providers private office.
     3. Confidentiality. Except as provided below in this subparagraph or as compelled by law, Provider shall disclose neither the fact that Patient has received treatment, nor any information whatsoever regarding such treatment without the Patient’s express written consent. Notwithstanding the foregoing, Provider may comply with any applicable law that mandates reporting information to licensing or governmental authorities.
     4. Location of Services. All Covered Services hereunder shall be conducted at the provider’s private office. Provider shall inform the Medical Society NAME OF PROGRAM director of the date and time of all counselling sessions.
3. Compliance.
   1. Laws. Provider shall provide Covered Services in accordance with any and all applicable laws, rules, regulations, statutes, orders, standards, guidance and instructions of any Governmental Authority, as adopted, amended, or issued from time to time, including (a) the Social Security Act, including Titles XVIII (“Medicare”), XIX (“Medicaid”) and XXI (State Children’s Health Insurance Program or “CHIP”), (b) the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), (c) federal and state privacy laws other than HIPAA, (d) federal and state laws regarding patients’ advance directives, (e) state laws and regulations governing the business of insurance, (f) state laws and regulations governing third-party administrators or utilization review agents, and (g) state laws and regulations governing the provision of mental health care services.
   2. Privacy/HIPAA. In addition to adhering to the Practice Protocols stated in Section 2 above with respect to confidentiality and medical records, Provider shall maintain Patient information and mental health records in accordance with Laws, including federal and state Laws related to privacy and confidentiality of Patient information and mental health records, including HIPAA, and shall use and disclose such information or records only in accordance with Laws. The Parties agree to the terms of the Business Associate Agreement attached hereto as Exhibit 1.
4. Eligibility; Benefit Plan
   1. Eligibility. An individual referred to Provider by NAME OF MEDICAL SOCIETY/ABBREVIATION shall be eligible to receive Covered Services under the NAME OF MEDICAL SOCIETY/ABBREVIATION Program, unless Provider is otherwise notified by NAME OF MEDICAL SOCIETY/ABBREVIATION. Due to budgetary fluctuations, NAME OF MEDICAL SOCIETY/ABBREVIATION may at any time notify Provider that additional counselling sessions for a Patient are not authorized and/or that additional Patients will not be referred, and/or place limits on the number of sessions authorized as Covered Services for each Patient.
   2. NAME OF PROGRAM. “Covered Services” means psychological counselling services (i) provided in accordance with the NAME OF MEDICAL SOCIETY/ABBREVIATION Program, an initial summary of which is attached here to as Exhibit 2, which Exhibit 2 may be modified at any time upon notice to Provider; (ii) provided consistent with Provider’s licensure; (iii) provided to a Patient referred to Provider by Medical Society; and (iv) not in excess of any limitation placed on Covered Services by NAME OF MEDICAL SOCIETY/ABBREVIATION (such as a limit on the number of counselling sessions). Provider shall comply with the Program Policies. “Program Policies” means such Medical Society policies and procedures applicable to the Covered Services as communicated to Provider from time to time. Program Policies supplement and are made a part of and incorporated into this Agreement. Medical Society may amend the Covered Services and Program Policies from time to time upon notice to Provider. Medical Society neither dictates nor controls clinical decisions respecting a Patient’s mental health treatment or care. Mental health treatment is the responsibility of the Provider.
   3. Non‑Covered Services. If Provider and Patient mutually decide to continue services outside of the NAME OF MEDICAL SOCIETY/ABBREVIATION Program, they are free to do so. Provider is asked to notify NAME OF MEDICAL SOCIETY/ABBREVIATION when a Patient leaves the NAME OF MEDICAL SOCIETY/ABBREVIATION Program. Before providing services to a Patient that are not Covered Services, Provider shall, (a) inform the Patient that the services are not Covered Services and that they will not be paid for by Medical Society; and that (b) the assurances of the NAME OF MEDICAL SOCIETY/ABBREVIATION Program will no longer apply; and (c) obtain the Patient’s written acknowledgement that future services from Provider are not through any Medical Society program or benefit and will not be paid for by Medical Society. Provider shall contact Medical Society for a coverage determination in any case where Provider is unsure if a service is a Covered Service.
5. Medical Society Responsibilities.
   1. Providing Information. Medical Society shall respond to Provider’s requests for verification regarding whether services are Covered Services and provide other information necessary for Provider to carry out the Covered Services.
   2. Compensation. Medical Society shall pay Provider a fee for the Covered Services of $\*\*\* per one hour counselling session provided to Patients referred to Provider. Subject to Medical Society’s budget and program goals, Medical Society may at any time disqualify a Patient from receiving further Covered Services or otherwise limit the number of counselling sessions Provider may provide to a Patient.
   3. Billing and Payment. Provider shall not bill Patients, any insurance, government program or other payor, except Medical Society as provided herein, for Covered Services.
   4. Invoice Processing. Provider shall bill Medical Society promptly and in no event later than 30 days after Covered Services were provided. Medical Society shall pay invoices within two (2) weeks after receipt of all information necessary to process the invoice.
   5. Insurance. Medical Society shall secure and maintain professional liability (malpractice) insurance coverage in an amount to be determined by Medical Society covering Provider’s professional services hereunder.
   6. No Guarantee of Referrals. This is not an exclusive agreement for either Party, and there is no guarantee that Medical Society will refer Patients to Provider.
6. Records, Access and Audits. Provider shall create paper (not electronic) records relating to the Covered Services (the “Records”) and such records shall be maintained at Medical Society offices. Neither the Records nor any copies thereof shall be removed from Medical Society offices. Provider shall have access to such records as necessary to perform the Covered Services hereunder during the Term. In addition, Medical Society shall allow Provider access to such Records as necessary for Provider to respond to any legal action or proceeding or governmental investigation regarding any Patient treated by Provider, unless prohibited by law.
7. Term and Termination.
   1. Term; Termination. The term of this Agreement shall begin on the Effective Date and continue until the Agreement is terminated in accordance with the terms and conditions of the Agreement (the “Term”). Either Party may terminate this Agreement at any time for any reason immediately upon notice or such later date specified in the notice, unless immediate termination would result in jeopardy to a Patient, in which case termination may occur as early as possible and in no event later than 30 days. Provider shall cooperate with Medical Society in the transition of Patients to other Providers.
   2. Notification to Patients. Upon termination of this Agreement, Medical Society and Provider shall confer regarding whether Medical Society or Provider should communicate this change to any Patient Provider is seeing. The foregoing sentence shall not prevent a Provider from engaging in communications with any Patient regarding the Patient’s mental health.
8. Miscellaneous.
   1. Governing Law/Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the state of XXXX, without regard to principles of conflict of laws. Each of the Parties hereby agrees and consents to be subject to the exclusive jurisdiction and venue of the appropriate state or federal court located in XXXX County, STATE in any suit, action, or proceeding that is not subject to arbitration hereunder, if any.
   2. Waiver of Jury Trial. Each Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, trial by jury in any suit, action or proceeding arising hereunder.
   3. Arbitration. Except as provided by this Agreement, all claims and disputes between the Parties shall be resolved exclusively by final, confidential and binding arbitration in XXXX County, STATE before a single arbitrator. The arbitration shall be conducted through the STATE ARBITRATION SERVICE. The award of the arbitrator may be confirmed or enforced in any court having jurisdiction. Each Party shall assume its own costs related to the arbitration, including costs of subpoenas, depositions, transcripts, witness fees, and attorneys’ fees. The compensation and expenses of the arbitrator and administrative fees or costs of the arbitration shall be borne equally by the Parties.
   4. Equitable Relief. Notwithstanding anything in this Agreement to the contrary, either Party may bring court proceedings to seek an injunction or other equitable relief to enforce any right, duty or obligation under this Agreement.
   5. Independent Contractors. The Parties are independent contractors. This Agreement shall not be deemed to create a partnership or joint venture, or an employment or agency relationship between the Parties. Neither Party has the right or authority to assume or create any obligation or responsibility on behalf of the other. Neither Party is liable for the acts of the other.
   6. Third Parties. Except as otherwise provided in this Agreement, this Agreement is not a third party beneficiary contract and no provision of this Agreement is intended to create or may be construed to create any third-party beneficiary rights in any third party, including any Patient.
   7. Notices. All notices required or permitted under this Agreement must be in writing and sent by (a) hand delivery, (b) U.S. certified mail, postage prepaid, return receipt requested, or (c) overnight delivery service providing proof of receipt. Each Party may designate by notice any future or different addresses to which notices will be sent. Notices will be deemed delivered upon receipt or refusal to accept delivery.
   8. Assignment. Provider may not assign, delegate or transfer this Agreement, in whole or in part, without the prior written consent of Medical Society. Medical Society may assign this Agreement, in whole or in part, to any purchaser of the assets or successor to the operations of Medical Society or its Affiliate.
   9. Severability. When possible, each provision of this Agreement shall be interpreted in such a manner as to be effective, valid and enforceable under Laws. If any provision of this Agreement is held to be prohibited by, or invalid or unenforceable under Laws, such provision shall be ineffective only to the express extent of such prohibition, unenforceability or invalidity, without invalidating the remainder of this Agreement.
   10. Waiver. No waiver shall be effective unless in writing and signed by the waiving Party. A waiver by a Party of a breach or failure to perform this Agreement shall not constitute a waiver of any subsequent breach or failure.
   11. Entire Agreement. This Agreement comprises the complete agreement between the Parties and supersedes all previous agreements and understandings (whether verbal or in writing) related to the subject matter of this Agreement.
   12. Headings. The various headings of this Agreement are provided for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision of it.
   13. Interpretation. Both Parties have had the opportunity to review this Agreement with legal counsel, and any ambiguity found in this Agreement shall not be construed in a Party’s favor on the basis that the other Party drafted the provision containing the ambiguity.
   14. Survival. Any provision of this Agreement, including that which requires or reasonably contemplates the performance or existence of obligations by a Party after expiration or termination of this Agreement, shall survive such expiration or termination regardless of the reason for expiration or termination.
   15. Rights Cumulative. Except as set forth herein, all rights and remedies of a Party in this Agreement are cumulative and in addition to all legal rights and remedies available to such Party.
   16. Counterparts/Electronic Signature. This Agreement may be executed in any number of counterparts. The exchange of copies of this Agreement and of signature pages by electronic transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.

IN WITNESS WHEREOF, the undersigned, with the intent to be legally bound, have caused this Agreement to be duly executed and effective as of the Effective Date.

**NAME OF MEDICAL SOCIETY**

By:

Sign:

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

**PROVIDER**

By:

Sign:

Date:

PROVIDER ADDRESS