

Bay Area Preferred Physicians Physician Participation Agreement

This Agreement is made as of the ____ day of _____, 200__ ("Effective Date") by and between Bay Area Preferred Physicians ("BAPP"), a California non-profit mutual benefit corporation and _____ ("Physician").

WHEREAS, BAPP was formed to facilitate efficient contracting between payers and physicians;

WHEREAS, Physician desires to affiliate with BAPP;

WHEREAS, BAPP and Physician desire to enter into this Physician Participation Agreement in order to define the terms of their relationship;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereof, BAPP and Physician agree as follows:

1. Professional Services Contracting

- a. **Roles of the Parties:** Physician hereby appoints BAPP as Physician's attorney in fact to execute contracts on Physician's behalf with third-party payers under which Physician will render professional services to individuals covered by such payers, and the payment for said services will be made to Physician by such payers, as herein after provided. BAPP may not directly negotiate fees or other pricing terms with either Payer or Physician.
- b. **Definitions of Payer, Network, and Covered Individual:** As used in this Agreement, "payer" or "payers" mean (1) a single third-party payer or (2) a network of payers, which may be a third party administrator, preferred physician organization, health maintenance organization or another payer which markets and solicits contracts with Physician through BAPP on identical terms for more than one employer, insurer, union trust fund, etc. ("Network"). An individual covered by a payer is a Covered Individual.
- c. **Policies and Procedures:** BAPP has adopted, and may from time to time amend, certain operating guidelines, credentialing requirements, rules, regulations, and policies and procedures related to the operations of BAPP and its relationship with physicians ("Policies and Procedures"). The current Policies and Procedures are attached to this Agreement and incorporated herein by this reference. Amendments and modifications to the Policies and Procedures shall be effective when communicated to Physician.
- d. **BAPP and Physician Obligations Under Network Contracts:** When BAPP executes a Network contract as Physician's agent, Physician shall be obligated to provide professional services to beneficiaries of all payers in the Network, including payers who are not identified or participating at the time of the initial Network contract. BAPP shall notify Physician of

additional Network payers and their administrative requirements. Upon receipt of such additional payer information, Physician is obligated to provide professional services to Beneficiaries of additional Network payers.

- e. **Contract Effective Dates:** BAPP contracts with payers and Networks become effective on the date both parties (BAPP and the respective payer or Network) have executed the contract. Physician's obligations to beneficiaries of the payer or Network commence on the effective date of the contract even though from time to time administrative processing of the contract may not be complete as of the effective date, as set forth in Addendum B, Operating Guidelines, a component of the Policies and Procedures.

2. Submission and Use of Physician's Services Schedule and Pricing Schedule

- a. Within 15 days of the Effective Date of this Agreement, Physician shall submit frequently performed services ("Services Schedule") and minimum fees ("Pricing Schedule") as set forth in Addendum B, Operating Guidelines, a component of the Policies and Procedures.
- b. BAPP may use the Pricing Schedules to construct a schedule for payers showing the percentage of participating Physicians who have authorized BAPP to accept proposed contracts at various pricing levels.
- c. BAPP may not in any way change or attempt to change Pricing Schedules submitted by Physician.
- d. BAPP may not distribute or otherwise communicate any information, including summary information, to Physician concerning fees or other pricing terms other participating physicians are willing to accept, and Physician may not distribute or otherwise communicate any information concerning fees or other pricing terms he or she is willing to accept.

3. **Contract Renewals:** From time to time a renewing contract will contain changes in price or non-price terms, and from time to time Physician may change his or her Pricing Schedule. Under either circumstance particular contract processing procedures apply, as set forth in Operating Guidelines in Addendum B.

4. **Contracts BAPP Is Not Obligated to Process:** BAPP is not obligated to accept a proposed payer's contract on Physician's behalf or notify Physician of a proposed payer's contract (together, "process the contract") if BAPP makes a good faith determination, conditions according to the Policies and Procedures set forth in Addendum A, that a majority of BAPP physicians would not be likely to participate in the contract under the proposed terms and. Notwithstanding the foregoing, BAPP may process the contract if in the judgment of BAPP's Board of Directors the proposed payer's contract conforms substantially to the Standard Terms or is otherwise in the best interest of BAPP and/or its physicians.

5. **No Guarantee of Payment:** Physician acknowledges and agrees that BAPP does not undertake to provide, is not responsible for, and shall not be obligated to

provide any payment to Physician for any services provided under any payer contract, even in the event the payer fails to pay Physician. Physician shall look solely to such payer or its designated intermediary for all payments for services rendered.

6. **Payer Contract Analysis Services:** Upon Physician's request BAPP may at its discretion provide information, analysis and assistance to Physician regarding non-price terms of a contract proposal made directly by a payer to Physician.

7. **BAPP as Agent**

- a. Physician acknowledges that BAPP need not execute a contract with a payer on Physician's behalf unless a minimum number, as determined by BAPP, of BAPP's physicians accept or are deemed likely to accept a proposed payer contract.
- b. BAPP may enter into similar agreements with any number of other physicians.
- c. Nothing in this Agreement shall prohibit BAPP from entering into contracts for or on behalf of only one specialty of participating physicians, or with participating physicians with medical staff privileges at certain hospitals, or with offices in a particular location.

8. **Physician Obligations**

- a. **Compliance with BAPP provisions:** Physician agrees to comply fully with all provisions of BAPP's Articles of Incorporation, Bylaws, and all Policies and Procedures of BAPP as may be adopted from time to time and communicated to Physician.
- b. **Adherence to professional, legal, and ethical standards**
 - (a) Physician shall provide cost-effective professional care consistent with accepted professional practices and in accordance with generally accepted legal and ethical standards of the profession.
 - (b) Physician shall be licensed without restriction by the State of California as a physician and shall otherwise meet the standards of BAPP's Credentialing and Recredentialing Plan then in effect. The term "restriction" shall include a revocation of Physician's license by the State of California, whether or not such revocation has been stayed or otherwise held in abeyance in any way. This Agreement shall be automatically and immediately terminated without advance notice to Physician if Physician ceases to be so licensed or ceases to meet such standards.
 - (c) Physician shall not differentiate or discriminate in the treatment of or quality of services delivered to individuals on the basis of race, color, national origin, sex, age, religion, ancestry, marital status, sexual orientation, place of residence, handicap, health status or source of payment, and

shall render professional services to all individuals in the same manner, in accordance with the same standards and within the same time availability as offered Physician's other patients, subject to any limitations set forth in any applicable payer contract.

c. Maintenance of records

- (a) Physician shall maintain appropriate, legible, and timely records on Covered Individuals in accordance with prudent record keeping procedures and as required by law and applicable payer agreement.
- (b) Physician shall allow inspection, audit and duplication of any data and records referred to in this Agreement, including but not limited to billing, payment, assignment, and medical records, upon reasonable notice during regular business hours.
- (c) For purposes of peer and utilization review, and subject to all applicable privacy and confidentiality requirements, medical records of Physician shall be made available upon reasonable request to appropriate participating physicians who have executed a Physician Participation Agreement with BAPP and to BAPP.

d. Insurance

- (a) Physician, at Physician's sole expense, shall maintain insurance of no less than One Million Dollars (\$1,000,000.00) per claim and Three Million Dollars (\$3,000,000.00) in the aggregate for professional liability and such other insurance as shall be reasonably necessary to insure Physician and Physician's employees, agents and contractors against any and all damages arising from Physician's duties and obligations of this Agreement or that would impair the ability of Physician to carry out the terms of this Agreement.
- (b) Upon request Physician shall provide BAPP with proof of coverage.

9. Term and Termination

- a. The term of this Agreement shall begin on the date specified on the signature page of this Agreement and shall continue indefinitely until terminated as hereinafter provided:
- b. This Agreement may be terminated by either party without cause on sixty (60) days written notice to the other party, except that any such termination by BAPP shall be subject to Physician's rights under BAPP's Fair Hearing Plan then in effect.
- c. This Agreement may be immediately terminated by BAPP for cause,

including, without limitation, failure to meet applicable credentialing requirements, limitations on Physician's ability to perform the professional services contemplated by this Agreement, failure to adhere to standards of good medical practice, failure to adhere to BAPP's Policies and Procedures, or material breach of any of the terms of this Agreement.

- d. This Agreement may be immediately terminated by Physician for material breach of this Agreement by BAPP.
- e. BAPP may terminate this Agreement on thirty (30) days written notice to Physician on adoption by BAPP of a bona fide plan to terminate its business and liquidate its assets, or if BAPP is ordered to be liquidated pursuant to a judicial hearing.

10. **Relationship of Parties:** Nothing in this Agreement is intended or shall be construed as creating a relationship of employee and employer, partnership, or joint venture between Physician and BAPP.

11. **Assignment:** This Agreement is personal in nature, and neither of the parties shall, without the consent of the other, assign or transfer this Agreement or any rights or obligations under this Agreement, except that BAPP may assign or transfer this Agreement to a successor corporation in the event of merger, consolidation, or transfer or sale of all or substantially all of the assets of BAPP.

12. **Dispute Resolution:** The parties shall resolve any dispute that arises between them in accordance with the dispute resolution provisions set forth in the Policies and Procedures.

13. **Severability and Effect of Severability**

- a. The invalidity or unenforceability of any term or provision or any clause of this Agreement shall in no way impair or affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
- b. In the event that a provision of this Agreement is determined to be invalid or unenforceable and has the effect of materially altering the obligations of either party, the party so affected shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the other party.

14. **Modification:** No supplement, modification, or waiver of this Agreement shall be binding or effective unless executed in writing by the parties to be bound thereby.

15. **Previous Agreements:** This Agreement, taken together with such documents as are referenced herein, constitutes the sole, entire, and final agreement between the parties hereto relating to the subject matter hereof and supersedes all previous agreements, promises, negotiations or representations, either oral or written, between the parties hereto relating to the subject matter hereof, and any such agreements, promises, negotiations, or representations not expressly incorporated herein shall henceforth be of no force or effect.

16. **Notice:** All notices required under this Agreement shall be in writing and shall be deemed to have been given at the time they are personally delivered to the party to whom given or mailed in any general or branch United States Post Office enclosed in a registered or certified postage-paid envelope addressed to the address of the respective parties stated on the signature page of this Agreement or to any changed address either party may have fixed by notice. Any notice of change of address shall be effective only on receipt.

17. **Governing Law:** This Agreement is subject to and shall be governed solely by the laws of the State of California.

IN WITNESS WHEREOF, BAPP has caused this Agreement to be signed by its duly authorized officer, and Physician has hereunto set Physician's hand, the day and year first above written.

BAPP:

(name/title)

(date)

Physician:

(signature)

(date)

Physician name (printed)