

APA REGISTRY
PARTICIPATION AGREEMENT

THIS AGREEMENT is entered into and made effective the ____ day of _____, 2017 (“Effective Date”), by and between (a) the American Psychiatric Association, a District of Columbia nonprofit corporation with its principal place of business at 1000 Wilson Boulevard, Suite 1825, Arlington, VA 22209 (“APA”); and (b) _____, a physician or physician practice group representing the physicians listed in Appendix A attached hereto (“Participant”), confirming their election to participate in APA’s Registry (as defined below) and agreement to be bound by the terms of this Agreement. APA and Participant are each a “Party” to this Participation Agreement and are referred to collectively herein as the “Parties.”

WHEREAS, APA has developed and owns certain computerized databases containing information relating to patient treatment and the practice of medicine, and third parties submit data to these databases pursuant to APA rules (said databases collectively referred to herein as the “Registry”); and

WHEREAS, Participant has expressed an interest in participating in the Registry in accordance with APA requirements;

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants contained herein, and for other good and valuable consideration, the Parties hereto agree as follows:

1. Participation in the Registry.

1.1 Participant agrees to participate in the Registry by transmitting data through a web-based portal or other means designated by APA, either directly or via a third-party vendor designated by Participant (a “Vendor”) for the collection and submission of data pertaining to the practice of psychiatric procedures and clinical services.

1.2 Participant will participate in the data harvests conducted by the Registry by submitting Participant’s data to APA through the web-based portal, and otherwise complying with the rules and harvest schedules reasonably established by APA in connection therewith.

1.2.1 Participant hereby warrants, to the best of its knowledge, that all data submitted for inclusion in the Registry will be accurate and complete, and acknowledges that such data may be subject to independent audit in accordance with terms and conditions mutually agreed upon by the Parties. Participant will use its best efforts to address any data or related deficiencies identified by APA, and agrees to cooperate with and assist APA and its designees in connection with the performance of any independent audit of Participant’s data submissions or data submission process.

1.2.2 Participant warrants that it will take all reasonable steps to avoid the submission of duplicative data for inclusion in the Registry.

1.2.3 Participant agrees to assist and cooperate with APA in its efforts to conduct the Registry.

1.2.4 If applicable, Participant takes full responsibility for the acts and omissions of any Vendor it uses. For purposes of this Agreement, any submission of data by Participant through its Vendor shall be treated as if such data were submitted directly by Participant. Participant will immediately notify APA of any changes to the agreement between Participant and the Vendor. The Vendor must also complete an Authorized Vendor Agreement with APA and enter into a business associate agreement with Participant which complies with the privacy and security regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA Regulations”) in order to act on the Participant’s behalf, and Participant acknowledges that the Vendor will not be authorized to participate in the Registry on Participant’s behalf until such agreements are completed.

1.2.5 Participant represents and warrants that it has full authority to enter into this Agreement (and the BAA/DUA attached as Appendix C and more fully described in Section 5 herein) on behalf of the clinicians listed in Appendix A and to bind those clinicians to the terms and conditions of this Agreement and such clinicians have agreed to be so bound. This paragraph holds true for any clinician added to Appendix A subsequent to Participant signing this Agreement.

1.3 Participant agrees and acknowledges that its (or Vendor’s) failure to submit data to the Registry, or its (or Vendor’s) submission of data to the Registry that does not comply with APA requirements, may result in Participant’s failure to receive one or more reports generated by the Registry (see Section 2).

1.4 Participant agrees and acknowledges that the data captured by the Registry will include certain entity and physician-identifying information (which shall be encrypted during transfer and at rest in the Registry software system). Participant agrees that it is Participant’s responsibility to obtain any permissions required in order to submit such data for inclusion in the Registry, and specifically agrees to indemnify, defend, and hold harmless APA from and against all claims and liabilities associated therewith to the extent permitted by applicable law.

2. Registry Reports. Provided that Participant participates in the Registry in accordance with APA requirements, Participant will be entitled to receive electronic access to APA data entry and review forms; reports and graphical dashboards; complimentary annual standard Registry reports, each of which will include both aggregated data from the Registry and Participant-specific information; and such other reports as APA or its independent service providers may prepare for Participants. All such reports shall be structured to reflect data of the Participant, as directed by Participant in a written request. Additional reports may be created for Participant in consideration of the fees required by APA to provide them. The aggregated data included in any and all reports provided hereunder constitute “APA Intellectual Property” (as

defined herein) and, as such, may not be reproduced, further disseminated or otherwise used except as provided in Section 6.4 of this Agreement.

3. Participant Ad Hoc Queries. Participant may submit to APA for analysis such requests for ad hoc queries (requiring access to and analysis of aggregate data from the Registry) as Participant may desire. All such requests for ad hoc queries shall be subject to prior approval by APA, in accordance with such procedures and other requirements as it may reasonably establish, before efforts are undertaken to respond thereto. In its response to each of Participant's ad hoc queries, APA shall give due consideration to scientific merit, the funds and other resources available to address ad hoc queries and other pertinent factors; provided, however, that APA may condition its approval of a request for an ad hoc query upon Participant's agreement to pay the fees required by the APA and any other service providers in order to appropriately address Participant's ad hoc query. As a part of its efforts to promote the use of the Registry as a tool for the development of beneficial scientific information, APA will provide reasonable assistance to Participant in refining Participant's requests for ad hoc queries so as to enhance their potential for approval in light of the pertinent factors noted above.

4. Fees and Membership Requirements (Appendix B). The Registry fees [and membership requirements] are set forth in Appendix B, which is attached hereto and incorporated herein by reference. The American Board of Psychiatry and Neurology ("ABPN") has provided a monetary grant to partially support the development of the Registry and ensure the opportunity for participation in the Registry by ABPN diplomates.

5. Confidentiality. The Parties understand that APA will need to be able to use and disclose confidential data for the purposes set forth in this Agreement. Such use and disclosure will include data aggregation and de-identification services. APA acknowledges that the data submitted to the Registry by Participant are deemed confidential. Accordingly, APA agrees and acknowledges that it will treat, and require any subcontractors with access to such data to treat, such information as confidential. The Parties hereby agree to comply with all applicable statutes and regulations, under federal and state laws, including but not limited to the HIPAA Regulations and any other applicable statutes or regulations concerning patient privacy and data security. To that end, it is agreed and acknowledged that the Parties are executing the Business Associate Agreement and Data Use Agreement ("BAA/DUA") attached hereto as Appendix C in conjunction with their execution of this Agreement, which is incorporated herein by reference and made part of this Agreement.

6. Intellectual Property.

6.1 It is agreed and acknowledged that all data submitted for inclusion in the Registry by or on behalf of Participant are and shall remain Participant's proprietary information, and may be used by APA and its designees only in accordance with the terms of this Agreement and any subsequent instruction from Participant with respect thereto (*e.g.*, in connection with data collection efforts of geographically based groups of physicians).

6.2 Participant hereby agrees that all data submitted by or on behalf of Participant to APA or APA's designee for purposes of inclusion in the Registry may be used by APA as a part

of the Registry and any subset thereof that APA may choose to create and use as it sees fit for the purposes of promoting Participant's and other Registry participants' health care operations, for medical research (as defined by the HIPAA Regulations) by APA and others authorized by APA, and the other interests of the Registry (including, without limitation, publication of such data); provided, however, that no such data shall be used and disclosed in such a way as to identify Participant or any individual physician or physician group, unless and until Participant advises APA in writing that it has authorized and/or secured appropriate consent for such disclosure. APA will not share Protected Health Information with third parties except as otherwise authorized under this Agreement, the BAA/DUA in Appendix B, and the HIPAA Regulations.

6.3 Participant acknowledges that APA is and shall be deemed the owner of all rights to the Registry including but not limited to the aggregate data contained therein and subsets thereof; all data fields, data elements, datasets, databases, and data dictionaries developed by and for the Registry; any and all reports based on the Registry data, and all information derived therefrom (including, without limitation, all risk algorithms and associated Beta coefficients and Y intercepts); and all trademarks, trade secrets and all other intellectual property arising from or reflected in the Registry, with the exception of Participant's data (collectively, "APA Intellectual Property").

6.4 Participant may not use APA Intellectual Property without first obtaining the express written consent of APA, provided that Participant may use aggregated data from the Registry that have been included in APA reports to Participant or previously released to the public by APA (*e.g.*, in published reports and slide sets) without first obtaining such written consent so long as Participant does not make any statements about such data that are false or misleading.

6.5 Neither Party shall use the name, trademark, or logo of the other Party or its employees for promotional purposes without prior written consent of the relevant Party, except that APA may list Participant as a participating entity on its website and in other materials for noncommercial purposes.

7. CMS Quality Reporting Consents/Waivers. If the Registry or its designee is approved as Qualified Clinical Data Registry ("QCDR") or Qualified Registry for purposes of reporting physician performance measurement data under the Medicare Physician Quality Reporting System ("PQRS") and/or the Medicare Merit-Based Incentive Payment System ("MIPS"), and if Participant has submitted data to the Registry for procedures performed by physicians who are affiliated with Participant, either as an employee, contractor, or member of Participant's workforce; and if Participant or any such affiliated physician wishes to participate in the PQRS and/or MIPS program through the Registry, acting either as a QCDR or a Qualified Registry, Participant hereby agrees and consents to the Registry's use of Participant's data for purposes of reporting Participant's or its affiliated physicians' data to the Medicare program for PQRS and/or MIPS purposes. In addition, Participant and/or Participant's affiliated physicians must execute the Registry's Consents/Waiver form as amended from time to time, as a condition of participating in the Registry's PQRS and MIPS reporting program.

8. Indemnification; Limitation of Liability. APA agrees to indemnify, defend, and hold harmless Participant from and against any and all third-party claims, costs and expenses (including attorneys' fees and expenses), demands, actions and liabilities of every kind and character whatsoever arising or resulting in any way from APA's negligence, willful misconduct, or breach of its obligations under this Agreement and the BAA/DUA, absent the gross negligence or willful misconduct of Participant. All of the foregoing rights of indemnification shall apply to any expenses incurred by Participant in defending itself against claims of gross negligence or willful misconduct unless a court of competent jurisdiction concludes in a final judgment that such party seeking indemnification has committed gross negligence or willful misconduct.

Participant agrees to indemnify, defend, and hold harmless APA and its subcontractors (if any) from and against any and all third-party claims, costs and expenses (including attorneys' fees and expenses), demands, actions and liabilities of every kind and character whatsoever arising or resulting in any way from Participant's negligence, willful misconduct, or breach of its obligations under this Agreement and the BAA/DUA, absent the gross negligence or willful misconduct of APA or its subcontractors. All of the foregoing rights of indemnification shall apply to any expenses incurred by APA and its subcontractors in defending themselves, respectively, against claims of gross negligence or willful misconduct unless a court of competent jurisdiction concludes in a final judgment that such party seeking indemnification has committed gross negligence or willful misconduct.

Under no circumstances will either Party be liable to the other for any indirect or consequential damages of any kind, including lost profits (whether or not the Parties have been advised of such loss or damage) arising in any way in connection with this Agreement.

9. Insurance. At all times during the term of this Agreement and the accompanying BAA/DUA, Participant and APA shall maintain insurance with coverage and limits reasonably sufficient to cover their respective obligations hereunder and shall provide proof of such insurance upon the other Party's request. Participant may satisfy the foregoing requirement through an appropriate self-insurance program, but must provide proof of such insurance upon APA's request.

10. Term and Termination.

10.1 Subject to the terms of Section 10.2, this Agreement shall be effective upon the Effective Date and for a period of one year thereafter, and shall be automatically renewed on an annual basis thereafter unless either Party provides the other with a written notice of termination no less than sixty (60) days prior to the anniversary date of the Agreement.

10.2 Either Party may terminate this Agreement upon sixty (60) days written notice to the other Party. This Agreement may be terminated at any time upon either Party's material breach of this Agreement and the other Party's provision of written notice thereof; provided, however, that if said breach is cured to the non-breaching Party's satisfaction (as reflected in

written notice thereof) within thirty (30) days after the provision of such notice, said termination notice shall be of no further force or effect and this Agreement shall be fully reinstated.

11. Equitable Relief. The Parties understand and agree that money damages may not be a sufficient remedy for the breach of the provisions of this Agreement, and that emergency injunctive relief shall be available as a potential remedy for any such breach by either Party. Such remedy shall not be deemed to be the exclusive remedy for the breach of this Agreement, but shall be in addition to all other remedies at law or in equity to the non-breaching Party.

12. Independent Contractors. The relationship of the Parties to this Agreement is that of independent contractors, and not that of master and servant, principal and agent, employer and employee, partners, or joint venturers.

13. Notices. All notices and demands of any kind or nature which either Party to this Agreement may be required or may desire to serve upon the other in connection with this Agreement shall be in writing, and may be served personally, by registered or certified United States mail, by facsimile transmission or by overnight courier (e.g., Federal Express or DHL), or by email with written confirmation to the following addressees:

If to Participant:

Attn: _____

Email: _____

If to APA:

American Psychiatric Association
1000 Wilson Boulevard, Suite 1825
Arlington, VA 22209
Attn: Colleen Coyle
Email: ccoyle@psych.org

Service of such notice or demand so made shall be deemed complete on the first business day of or after actual delivery. Without limiting the generality of the foregoing, if notice is given by facsimile transmission, such notice shall be deemed to be provided upon confirmation of the receipt of the transmission. Either Party may, from time to time, by notice in writing served upon the other Party, designate a different mailing address or a different person to which all further notices or demands shall thereafter be addressed.

14. Headings. The headings of the various sections hereof are intended solely for the convenience of reference and are not intended for any purpose whatsoever to explain, modify or place any construction upon any of the provisions of this Agreement.

15. Assignment. This Agreement may not be assigned by either Party without the prior express written approval of the other Party, except that either Party may assign this Agreement to an affiliate, successor entity, or subsidiary without the written approval of the other Party.

16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

17. Waiver. A waiver by either Party to this Agreement of any of its terms or conditions in any one instance shall not be deemed or construed to be a general waiver of such term or condition or a waiver of any subsequent breach.

18. Choice of Law and Forum. This Agreement shall be governed in all respects according to the laws of the Commonwealth of Virginia irrespective of its choice of law rules. In addition, the Parties consent to be subject to the exclusive jurisdiction of the federal and local courts of the Commonwealth of Virginia for any litigation, special proceeding, or other proceeding between the Parties that may arise out of, or be brought in connection with or by reason of, this Agreement. Each Party agrees that the provisions of this Section 18 are specifically enforceable, and that it shall pay all expenses, damages, and costs (including attorneys' fees and expense) of any other Party if it commences, prosecutes, or permits to continue any actions in any other forum.

19. Severability. All provisions of this Agreement are severable. If any provision or portion hereof is determined to be unenforceable by a court of competent jurisdiction, the rest of this Agreement shall remain in full effect, provided that its general purposes remain reasonably capable of being effected.

20. Survival. The provisions of Sections 1.4, 5, 6, 8, 9, 11, 13, 18 and all other terms within this Agreement that are necessary or appropriate to give meaning thereto shall survive any termination of this Agreement.

21. Entire Agreement. This Agreement (a) constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof; (b) supersedes and replaces all prior agreements, oral or written, between the Parties relating to the subject matter hereof; and (c) except as otherwise indicated herein, may not be modified, amended or otherwise changed in any manner except by a written instrument executed by the Party against whom enforcement is sought.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement, as of the date and year first written above.

AMERICAN PSYCHIATRIC ASSOCIATION

PARTICIPANT

By: _____
Shaun Snyder, JD, MBA

By: _____

Its: Chief Operating Officer

Its: _____

Date: _____

Date: _____

Appendix A

List of Providers Participating in the Registry

(TO BE ADDED ONLY IF PARTICIPANT IS THE EMPLOYER)

Appendix B

Fees and Membership Requirements

Membership in the Registry is without charge to APA members at this time. Non-members of APA may participate without charge until December 31, 2017.

Appendix C

**BUSINESS ASSOCIATE AGREEMENT
AND DATA USE AGREEMENT**