

 **INDEPENDENT CONTRACTOR AGREEMENT**

This INDEPENDENT CONTRACTOR AGREEMENT (the “Agreement”) is entered into this **1st** day of **November 2019** and is effective as of the **1st** day of **November 2019** (the “Effective Date”), by and between **BMSC HI, LLC**, a Hawaii limited liability company, (“Company”), and **[THERAPIST NAME], LCSW** (“Provider”).

**RECITALS**

1. The Company is in the business of providing counseling and psychotherapy to persons residing in senior Independent and Assisted Living Facilities (ALF).
2. Provider is a current Licensed Clinical Social Worker in the state of Hawaii and is qualified by training and experience to provide the services required pursuant to this Agreement.
3. The parties desire to enter into this Agreement in order to set out a statement of their respective duties and obligations.

The Company and the Provider agree as follows:

**AGREEMENT**

* 1. **Recitals**: Each of the above recitals is true and correct and by reference made a part of and incorporated into this Agreement.
	2. **Term**: The initial term (“Initial Term”) of this Agreement shall be one (1) year from the Effective Date and shall automatically renew (“Renewal Term”) thereafter on the same terms and conditions unless otherwise terminated in accordance with Section 8 below. The Initial Term and Renewal Term shall collectively be referred to as the “Term.”
	3. **Provider Duties**: Provider will provide supportive psychotherapy counseling to eligible patients residing in senior Independent and Assisted Living Facilities (the “Services”). Provider is at all times (i) licensed by the State of Hawaii as a Licensed Clinical Social Worker and qualified to perform the Services, and (ii) an eligible provider (or eligible to apply to become a provider) under the Medicare and/or applicable Insurance Program(s).
	4. **Provider’s Compensation**: During the Term, in consideration for the Services rendered by Provider pursuant to this Agreement, Provider will receive the compensation (the

“Compensation”) as set forth in Schedule A, attached hereto and incorporated herein by this reference. Compensation will only be paid for services provided to eligible patients (HMO clients are not eligible for our services) who have consented to services that are properly documented and fully released in the PIMSY system (see pg. 8 of schedule B). The Compensation provided in this Agreement resulted from arm’s length negotiations between the parties, determined in a manner which did not take into account the volume or value of any referrals or business otherwise generated between the parties, and to the best knowledge of each party is consistent with fair market value for the Services rendered by Provider. Compensation will be paid on a monthly basis. Compensation is paid the last day of the month for work provided and released the month prior. (EG, work completed in March is paid at the end of April). If the last day of the month ends on a weekend or holiday plan for payment into your bank the following business day.

Provider sessions will be limited to a maximum of 2 session per week or 8 sessions per month during the enrollment to Medicare process.

* 1. **Electronic Medical Records**: Provider is required to use PIMSY electronic record keeping software. Provider shall promptly prepare and provide to Company properly completed medical records and reports (“Records”) of all Services rendered pursuant to the Agreement. Schedule B outlines proper documentation standards required by The Company. Provider’s Records shall be ‘Released for Review’ to Company within **2 days** of each patient encounter. Compensation will only be paid for services that are properly documented and fully released in the PIMSY system on eligible patients (See schedule B). The Company retains the right to withhold Compensation pending its receipt of Provider’s properly documented Records of his or her Services. **All notes for each week must be ‘released for review’ by Sunday at 5pm for the previous week. Any note put in the system and not (released for review) by the last day of each week will have a $5 penalty per note.**
	2. **Assignment of Right to Bill for Services**: Provider hereby assigns to Company Provider’s right to bill for services rendered by Provider and agrees to execute all documents necessary to effectuate same.
	3. **Billing:** Company has the sole and exclusive right to set fees and bill and charge patients and third-party payers for the Services performed pursuant to this Agreement.
	4. **Duty to Account:** Provider will assign account receivables, and will pay to Company all accounts receivable, compensation and any other form of remuneration due from or paid by any source attributable to Services rendered by Provider pursuant to the Agreement. Provider is not entitled to any portion of such fees or receivables, or the proceeds from such receivables, either during the Term of this Agreement or after the termination or expiration of this Agreement. Provider shall not take any actions, or omit to take any actions, that would be inconsistent with or impair any valid obligations enforceable in accordance with applicable laws that are due Company.

# Termination by Company or Provider

* + 1. Either party may terminate this Agreement without cause by providing the other party with not less than five (5) days advance written notice of its intent to terminate the Agreement.
		2. Either party may terminate this Agreement if the other party materially breaches its obligation under this Agreement and fails to cure such breach within two (2) days following receipt of written notice of such breach.
	1. **Effects of Termination**. Upon the termination of the Agreement:
		1. Provider’s duties shall cease on the effective date of termination.
		2. Compensation earned for necessary services to qualified and eligible patients rendered that are properly documented but unpaid by the Termination Date will be paid within sixty (60) days of such date.
	2. **Ownership of Medical Documentation:** The ownership and right of control of all reports, records, and supporting documents prepared in connection with the operation of Company and the performance by Provider of the Services under this Agreement shall vest exclusively in Company. Subject to any laws governing patient confidentiality, Provider shall have the right of access to copies of reports, records, and supporting documentation as necessary to fulfill applicable, local, state and federal requirements, and to respond to professional liability claims.
	3. **Performance Standards**: Provider shall (i) use diligent efforts and professional skills and judgment and (ii) perform Services in accordance with recognized standards of the Provider’s profession.
	4. **Status of Provider**: It is expressly understood and agreed that Provider shall at all times act as an Independent Contractor with respect to Company and not as an employee or agent of Company. Nothing contained in this Agreement shall be construed to create a joint venture, partnership, association or other affiliation, or like relationship, between the parties. Provider shall not have any claim under this Agreement, or otherwise, against Company for vacation pay, paid sick leave, retirement benefits, social security, worker’s compensation, health, disability, professional insurance, unemployment insurance benefits, or other employee benefits of any kind. Provider understands and agrees that:

(i) Provider will not be treated as an employee of Company for federal tax purposes; (ii) Company will not withhold on Provider’s behalf any sums for income tax, unemployment insurance, social security or any other withholding pursuant to any law or requirement of any governmental body, or make available any of the benefits afforded to employees of Company; and (iii) all of such payments, withholdings or benefits, if any, are Provider’s sole responsibility. If the Internal Revenue Service or any other governmental agency should question or challenge Provider’s independent contractor status, the parties hereby agree that both Provider and Company shall have the right to participate in any discussion or negotiation occurring with such agency or agencies, regardless of with whom or by whom such discussions or negotiations are initiated.

* 1. **Insurance**: If required, Provider shall, at Provider’s sole expense, obtain and maintain appropriate liability insurance coverage for the Services provided pursuant to this Agreement. This is determined based upon service location and is subject to change. Provider will deliver evidence of such coverage to the Company upon its request.
	2. **Indemnification:** Provider agrees to fully indemnify and hold harmless Company, its directors, officers, employees, servants, agents, heirs, successors, and assigns, from and against any and all claims, losses, costs, expenses, actions, and causes of action, including reasonable attorneys’ fees at all levels (including appeals) arising out of or by

reason of any damage or injury to persons or property suffered, or claimed to have been suffered, as a result of any breach of this Agreement, illegal activities, acts, misconduct, omissions, or negligence of Provider.

# Restrictive Covenant:

* + 1. **Covenants Not to Compete** as a result of Provider’s engagement under this Agreement, Provider will have access to the Company’s confidential information, including the Company’s list of patients and referral sources. Additionally, the Provider will also, with the Company’s assistance, develop additional patients and referral sources. As a material inducement to the Company to engage Provider, Provider agrees that, during the Term and for a period of one year thereafter (whether by expiration of the Term or any renewals or termination for any reason or no reason), Provider shall not (i) engage in the provision of psychotherapy counseling in any Senior Independent and/or Assisted Living Facility where The Company provides services (ii) accept employment with, provide or otherwise engage in or own any interest in, a business or company which provides psychotherapy counseling in Senior Independent and/or Assisted Living Facilities, which are being serviced by BMSC HI, LLC. Such one year period shall be extended by any period of time during which Provider shall be or shall have been in breach of such covenant (plus the period of any temporary restraining order or other preliminary order preventing immediate enforcement hereof).
		2. **Covenant Not to Solicit**. Provider further agrees that, upon expiration or termination of this Agreement for any reason or no reason, Provider shall not contact, solicit or attempt to contact or solicit any patient previously treated by the Company, including without limitation by means of any direct mailings or announcements, and Provider shall not employ or otherwise engage any person who was employed or engaged by the Company.
		3. **Remedies.** Provider acknowledges that the restrictions contained in this Section are a reasonable and necessary protection of the legitimate business interest of the Company. If there is any violation of these restrictions, the Company shall be entitled to preliminary and permanent injunctive relief in addition to any other remedy and shall be entitled to be reimbursed by Provider for any attorneys’ fees and costs, at all pre-trial and appellate levels, incurred as a result thereof. Nothing herein shall be construed as prohibiting the Company from pursuing any other legal or equitable remedies available to the Company due to a violation of the restrictions contained in this Section.
		4. **Reasonableness of Restrictions**. Provider has carefully read and considered the provisions of this Section 16 and, having done so, agrees that the restrictions and remedies set forth in this Section 16 (including, but not limited to, the time of restriction, the geographical area of restriction, and the damages and injunctive relief provisions herein) are fair and reasonable, and are reasonable required for the protection of the legitimate business interests of the Company.
		5. **Reduction by Court**. The parties agree that if either the time period or the geographic area is deemed too restrictive by any court of competent jurisdiction in any proceeding involving the validity of said covenants, the court may reduce

the offending restriction to the maximum restriction it deems reasonable under the circumstances. The parties agree that of any provision of this Section is held to be invalid or against public policy, the remaining provisions of this Section 16 are severable and shall not be affected thereby.

* + 1. **Third Party Beneficiaries**. The Company and/or its members are entitled to enforce the covenants in this Section.
	1. **Notices.** Any notice required or permitted to be given under this Agreement shall be deemed duly given if in writing and when received by registered or certified mail, by overnight express, or by hand delivery to the Company or Provider at the addresses set forth as follows or to any other address of which notice of the change is given to the parties hereto:

To Company: BMSC HI, LLC

10204 Bode St. STE B

Plainfield, IL 60505

Attn: Melanie Donohue, LCSW, Owner

To Provider: [THERAPIST NAME], LCSW

[STREET ADDRESS]

[CITY, STATE ZIP]

* 1. **Confidentiality of Patient Information**: Provider shall protect the confidentiality of patient information and shall comply with all of Company’s policies on the release of information (whether written or oral) about patients and with any applicable state and federal laws and regulations protecting the confidentiality of patients’ record.
	2. **Survival**: The covenants in Sections 7, 10, 15, 16, 18, 21, and 27 shall survive the expiration or termination of this Agreement.
	3. **No Authority to Bind**: The parties have no authority to enter into any contracts binding upon the other party or to create any obligations on the part of the other party.
	4. **Prevailing Parties**: If any party to this Agreement incurs any legal fees or expenses to enforce or interpret any provision of this Agreement, the prevailing party will be entitled to recover such legal fees and expenses, whether at trial or on appeal.
	5. **Entire Agreement/Modification** This Agreement and all Schedules and Exhibits, expressly incorporated by reference, constitute the entire agreement between the parties relating to Provider’s engagement by Company and supersede any and all prior agreements or oral representations by either party. This Agreement shall not be changed, modified or amended in any respect except by a written instrument signed by the parties hereto.
	6. **Binding Effect/Assignment**: This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns. Provider shall not assign this Agreement without the specific written consent of Company, which may not be unreasonably withheld.
	7. **Headings**: All sections or paragraphs in this Agreement are for convenience only and are not deemed part of the content of this Agreement.
	8. **Waiver**: A waiver by any party of any of the terms and conditions hereof shall not be construed as a general waiver by such party and such party shall be free to reinstate any such term or condition, with or without notice to the other party.
	9. **Counterparts**: This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement. It is understood by provider that policies and procedures will be updated over time and provider is responsible for understanding and obliging to updated policies and procedures. Updated polices and/or procedures will be distributed to provider and signature by provider is required.
	10. **Choice of Law, Jurisdiction; Venue; Inconvenient Forum; Jury Trial**: This Agreement is made and delivered in, and shall be governed by, and construed in accordance with, the applicable laws of the State of Hawaii. Any suit, action or proceeding with respect to this Agreement shall be brought in a court of competent jurisdiction in the respective county of Clark, Nevada where BMSC HI, LLC is providing service. **EACH PARTY WAIVES ALL RIGHTS TO ANY TRIAL BY JURY IN ALL LITIGATION RELATING TO OR ARISING OUT OF THIS AGREEMENT**.
	11. Provider agrees to never transport a patient in their personal vehicle.
	12. Provider agrees to sign in with any independent or assisted living facility’s sign in book on the day any service is provided.
	13. Provider agrees to report any criminal activity and or charges to BMSC HI, LLC via email; HR@bluemoonseniorcounseling.com within 48 hours. Provider understands that criminal activity may result in immediate suspension and or termination of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

# COMPANY:

**BMSC HI, LLC**

By: Melanie Donohue, LCSW

Owner

# PROVIDER:

By: Printed Name: [THERAPIST NAME], LCSW

Date:

Date:

**SCHEDULE A**

# COMPENSATION

|  |  |  |
| --- | --- | --- |
| Code | DESCRIPTION OF SERVICE | Pay Rate |
| 90791 | PSYCHIATRIC DIAGNOSTIC INTERVIEW: COMPLETE HISTORY, ESTABLISHMENT OF A TENTATIVE DIAGNOSIS AND EVALUATION OF PATIENT’S ABILITY AND WILLINGNESS TO WORK TO SOLVE THEIR MENTAL PROBLEM. INCLUDES A COMPLETE MENTAL STATUS EXAM. COVERED ONCE AT THE OUTSET OF AN ILLNESS. MAY BE BILLED AGAIN IF A NEW EPISODE OF ILLNESS OCCURS AFTER A HIATUS. Can includereview and studies of diagnostic studies as needed and make recommendations including communication with family members and/or other sources. | $55.00 |
| 90832 | INDIVIDUAL PSYCHOTHERAPY, INSIGHT ORIENTED, BEHAVIOR MODIFYING AND/OR SUPPORTIVEPsychotherapy, 30 minutes with patient and/or family member. (16 - 37 minutes). “Psychotherapy can never be shorter than 16 minutes” (AMA).Must be 16 minutes or more face-to-face with patient and or family. | $22.00 |
| 90834 | INDIVIDUAL PSYCHOTHERAPY, INSIGHT ORIENTED, BEHAVIOR MODIFYING AND/OR SUPPORTIVE, IN AN OFFICE OR OUTPATIENTFACILITY. Psychotherapy, 45 minutes with patient and/or family member. (38 -52 minutes)’ | $35.00 |
| 90837 | INDIVIDUAL PSYCHOTHERAPY, INSIGHT ORIENTED, BEHAVIOR MODIFYING AND/OR SUPPORTIVE, IN AN OFFICE OR OUTPATIENTFACILITY. Psychotherapy, 60 minutes with patient and/or family member. (53+ minutes) | $50.00 |
| 90846 | FAMILY PSYCHOTHERAPY (WITHOUT PATIENT PRESENT) IS COVERED WHEN THE PRIMARY PURPOSE IS TREATMENT OF THE PATIENT’S CONDITION. EFFORTS ARE FOR THE BENEFIT OF THE PATIENT, NOT ASSISTING FAMILY MEMBER IN UNDERSTANDING PATIENT PROBLEM. | $31.00 |
| 90847 | FAMILY PSYCHOTHERAPY (WITH PATIENT PRESENT) IS COVERED WHEN THE PRIMARY PURPOSE IS TREATMENT OF THE PATIENT’S CONDITION. EFFORTS ARE FOR THE BENEFIT OF THE PATIENT. | $36.00 |

\*THERAPIST WILL BE PAID 100% FOR 2 SESSIONS PER WEEK OR 8 SESSIONS PER MONTH, WHICHEVER IS GREATER, UNTIL THERAPIST BECOMES A FULL MEDICARE PROVIDER.

# Schedule B

The medical record chronologically documents the care of the patient and is an important element contributing to high quality care. Quality medical records support and justify services provided and billed. The medical record is used to validate: (a) The site of the service; (b) the appropriateness of the services provided; (c) the nature of the service (d) the accuracy of the billing; and (e) the identity of the care provider.

The Records must support the medical necessity of the specific Service provided. The Records must indicate and support (a) face-to-face time spent in the psychotherapy encounter, (b) therapeutic interaction between the Provider and patient. In addition, such documentation should: (a) be complete, legible, and signed by the Provider, (b) include the patient’s capacity to participate in and benefit from the Service, (c) include an estimated duration of treatment in terms of number of sessions, (d) document that the treatment is expected to improve the health status or function of the patient, and (e) indicate target symptoms, goals of therapy, response to therapy, and methods of monitoring the outcome.

BMSC HI, LLC requires all Therapist’s to enter timely, accurate and complete medical record documentation into the electronic medical records (EMR) system. The current EMR software system is managed through PIMSY. Each new Independent Contractor will be trained regarding how and what to document in the EMR.

All Medical Record entries should be made as soon as possible after the care is provided, or an event or observation is made. Provider’s Records shall be ‘Released for Review’ to Company within **2 day(s)** of each patient encounter. Compensation will only be paid for services that are properly documented and fully released in the PIMSY system for eligible patients who have consented to services (with proper consents and releases signed by client or POA/guardian on file). The Company retains the right to withhold Compensation pending its receipt of Provider’s properly documented Records of his or her Services. No entry should ever be made in the Medical Record in advance of the service provided to the patient. Pre-dating or backdating an entry is prohibited. No document or entry may be deleted from the record. All notes for each week must be ‘released for review’ by Sunday at 5pm for the previous week

All Medical Record entries are to be dated, the time entered, and signed (proper electronic signature) by the person responsible for providing or evaluating the service provided.

Mental health medical notes are highly protected by the HIPAA Final Privacy Rule, 45 CFR, Section 164 and Medicare mental health local coverage determinations. In accordance with the HIPAA Final Privacy Rule, 45 CFR, Section 164 and Medicare mental health local coverage determinations, BMSC HI, LLC Therapist’s medical record documentation is required to include 1) Initial Assessment 2) Treatment Plan & 3) Progress Note for each patient encounter.

# Clinical Documentation must include:

**Initial Assessment (Psychiatric Diagnostic Interview),** Patient Name, Date of Service, Location code, Billing Code, Therapist signature, the reason for the interview/patient’s chief complaint, A referral source (Physician, Family, Self)**,** History of Present Illness, including length of existence of problems/symptoms/conditions

Past psychiatric history significant medical history and current medications, Social history, Family history, mental status exam, Strengths/liabilities, Diagnosis and Initial Treatment plan.

In circumstances where other informants (family or other sources) are interviewed in lieu of the patient, documentation must include the elements outlined previously, as well as the specific reason(s) for not interviewing the patient. Any notations where family members provided patient history should be included. This should be a rare occurrence.

**The Treatment Plan:** Patient Name, Date of Plan, Therapist signature, Frequency of sessions, estimated duration of treatment (estimated number of sessions), and Patient symptoms targeted for change:

Measurable treatment goals (related to changes in behavior, thought process and/or medications, methods of monitoring outcomes), Descriptive documentation of therapeutic intervention: Why the chosen therapy appropriate modality either in lieu of or in addition to another form of treatment

**Progress note**: Patient Name, Date of Service, Location code, Billing Code, Therapist signature. Counseling session start and stop time, Statement regarding medical necessity (including Diagnosis and emotional/behavioral symptoms that demonstrate inappropriate or maladaptive functioning that is a significant change in the patient’s baseline level of functioning, Detailed summary of the psychotherapy session: (including therapeutic interventions such as examples of attempted behavior modification, supportive interaction, and/or discussion of reality, The degree of patient participation and interaction with the therapist, The reaction of the patient to the therapy session, Changes or lack of changes and/or progress as a result of the psychotherapy session, Progress made toward goals since start of treatment, Treatment plan

# Process flow for providing therapeutic services and using PIMSY:

Upload PIMSY software system onto Computer.

You will be provided with a user name and a password to access your account.

Upon first login, change your password to a unique password and do not share with anybody else.

You will be assigned a test client for you to train and practice on. Schedule your training with BMSC to become familiar with PIMSY.

When a new patient is referred to you patient will be uploaded into your Pimsy account. Therapist meets with patient, signs necessary consent forms, conducts Initial Assessment (90791), faxes consent forms and any additional documentation to BMSC office administrator (who will upload into document section of patient’s EMR).

Therapist will log into their password protected PIMSY account, access new patient’s EMR and document Initial Assessment into EMR. Patient note must be ‘Released for Review’ within 2 days of patient encounter.

Once documented and ready to be reviewed, Therapist will check the box at top left, ‘Release for Review.’

Your note will be reviewed, and note will be checked ‘Reviewed’ if note is properly documented. If note needs edited, ‘released for review’ box will be unchecked and QP will provide documentation support to Therapist so that Therapist makes necessary changes and checks ‘Released for Review’ box again.

Once ‘reviewed’ box is checked, box can be checked for final ‘Release’ and once ‘Release’ box is checked, Note is submitted to billing department.

This process is the same for any additional progress note documenting a clinical session. **All notes for each week must be ‘released for review’ by Sunday at 5pm for the previous week. Any note put in the system and not (released for review) by the last day of each week will have a $5 penalty per note.**