

## **CLIENT AGREEMENT**

**THIS CLIENT AGREEMENT** (this “Agreement”) is made as of April 14, 2022 (the “Effective Date”) by and between **TIMELY TELEHEALTH, LLC**, a Texas limited liability company having its principal place of business at 1315 S. Adams St., Fort Worth, Texas 76104 (“**TimelyMD**”), and **LEE COLLEGE**, having its principal place of business at 200 Lee Dr., Baytown, TX 77520 (the “**Client**”). TimelyMD and Client may hereinafter be referred to, individually, as a “**Party**” and collectively, as the “**Parties**”.

### **WITNESSETH**

**WHEREAS**, TimelyMD provides access to individuals to remote telehealth consultations provided via telephone and/or video by healthcare providers, therapists, and/or counselors (each, a “**Provider**”) under contract with one or more professional entities (collectively, the “**Professional Entities**”) for which TimelyMD provides administrative services (as hereinafter further defined, collectively the “**Telehealth Consultations**,” and the services provided by TimelyMD to its clients, the “**Access Services**”); and

**WHEREAS**, the Client desires to retain TimelyMD to provide Access Services.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual promises and conditions set forth herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1. DEFINITIONS.** For purposes of this Agreement:

- a) “**Telehealth Consultations**” shall mean any contact between an Enrollee (as such term is defined in **Section 2(a)** hereof) and a Provider or practitioner, relating to, as applicable and appropriate, the care and personal coaching of a patient with the use of telehealth technology. Telehealth Consultations shall include “**Remote Medical Consultations**”, “**Talk Now Consultations**”, “**Health Coaching Consultations**”, “**Psychiatric Consultations**”, and “**Scheduled Consultations**”
- (b) “**Remote Medical Consultations**” shall mean on demand, medical diagnostic remote Telehealth Consultations by a licensed healthcare Provider.
- (c) “**Talk Now Consultations**” shall mean on demand, non-diagnostic personal coaching by a qualified mental health practitioner.
- (d) “**Health Coaching Consultations**” shall mean on demand, non-diagnostic coaching with a qualified nutritionist.
- (e) “**Psychiatric Consultations**” shall mean scheduled psychiatric Telehealth Consultations based on availability, provided by a licensed psychiatric Provider.
- (f) “**Scheduled Consultations**” shall mean scheduled mental health Telehealth Consultations provided by a licensed Provider.

**2. ACCESS SERVICES.** Pursuant to the terms and conditions of this Agreement, Client and TimelyMD agree that:

- (a) TimelyMD shall facilitate access by the Client’s students, and employees (individually, an “**Enrollee**” and, collectively, as the “**Enrollees**”) to Telehealth Consultations. TimelyMD will provide the Enrollees with access to Telehealth Consultations 24 hours per day, 365 days per year during the Term (as such term is defined in **Section 4(a)** hereof).
- (b) TimelyMD shall cooperate with the Client in implementing the Access Services.

- (c) The following are applicable to TimelyMD's provision of Access Services:
- (i) In order to request a Telehealth Consultation, an Enrollee will navigate to TimelyMD's mobile application, web portal or otherwise contact TimelyMD to request a Telehealth Consultation.
  - (ii) TimelyMD will collect from the Enrollee information TimelyMD requires to facilitate the Telehealth Consultation, and then will facilitate a Telehealth Consultation.
  - (iii) The "Service Area" for which Telehealth Consultations are available is set forth in Exhibit A attached hereto and made a part hereof, as such Service Area may be amended from time to time solely by TimelyMD in accordance with Section 7 hereof.
  - (iv) TimelyMD will use its best efforts to facilitate the commencement of: (x) a remote medical Telehealth Consultation, via telephone or secure video, within one hundred twenty (120) minutes of an Enrollee's successful completion of a request for a Telehealth Consultation; (y) a mental health Telehealth Consultation via telephone or secure video, within twenty-four (24) hours of an Enrollee's successful completion of a request for a Telehealth Consultation; provided; however, that if the Enrollee is in crisis, TimelyMD will use its best efforts to commence the mental health Telehealth Consultation immediately at the time such consultation is requested; and (z) a self-scheduled mental health counseling session based on availability of licensed counselors, as applicable (the "Telehealth Counseling Consultations").
  - (v) The Telehealth Consultation will be conducted by, and the responsibility of the Provider. As part of the Telehealth Consultation, the Provider will initially request the Enrollee to verify their identity after which the Provider will consult with the Enrollee and diagnose and counsel the Enrollee and, if applicable and medically necessary, issue a prescription, as the Provider deems medically necessary.
- (d) Commencing June 2022, Timely MD will provide twice-annual metrics reports to the Client on each of January and June during the Term, which reports shall include the following metrics with respect to the Enrollees:
- Total visits
  - Average provider response time
  - Prescription/Diagnosis metrics
  - Demographics
  - Utilization

3. **CLIENT'S OBLIGATIONS.** To assist TimelyMD in providing the Access Services, the Client agrees to:

- (a) Provide a description of the Access Services to the Enrollees as provided to the Client by TimelyMD;
- (b) Cooperate with TimelyMD in implementing the Access Services;
- (c) Commence detailed outreach marketing, as approved by TimelyMD, to student Enrollees to encourage them to use the Access Services, which outreach and marketing plan shall include providing the Access Services to all Client's full-time students and eligible full-time and part-time employees; and

- (d) If Single Sign On (SSO) is not possible at the institution, deliver, on or before July 1, 2022, via a secure file transfer to TimelyMD a list of student Enrollees to TimelyMD, in a format approved in writing by TimelyMD, for student Enrollees eligible to receive the Access Services for the term commencing August 22, 2022, which shall include all eligible Lee College students; and on each subsequent December 1st and July 1st during the Term, deliver via a secure file transfer a list of student Enrollees to TimelyMD, in a format approved in writing by TimelyMD, for student Enrollees eligible to receive the Access Services for the following academic semester/session(s). This agreement is based on an estimated population size of 7,100 students.

#### **4. FEE FOR SERVICE; PAYMENT TERMS.**

- (a) **TimelyMD shall issue to the Client invoices for the Access Services, as set forth in Exhibit A attached hereto and made a part hereof, as follows:**
- (i) The one-time set-up fee of Fifteen Thousand (\$15,000) Dollars has been waived due to a multi-year agreement; and
- (ii) TimelyMD will invoice the “Enrollment Fee”, calculated as set forth in Exhibit A attached hereto and made a part hereof, of the estimated student and employee population.
- (b) The fees payable pursuant to this Section 3 are in addition to the fees charged by the Providers for mental health services rendered during Telehealth Consultations (if applicable).

#### **5. TERM; TERMINATION.**

- (a) General. This Agreement shall commence as of the Effective Date and continue until July 30, 2025 (the “Initial Term”) and will automatically renew thereafter for additional one-year terms on the anniversary of August 1, 2025 (each, a “Renewal Term”), unless (i) one Party delivers to the other written notice of termination (a “Termination Notice”) at least ninety (90) days before expiration of the Term then in effect or unless earlier terminated as set forth below. The Initial Term and any and all renewal terms are referred to in this Agreement, collectively, as the “Term.”
- (b) With Cause. Either Party may terminate this Agreement with Cause by delivery of a Termination Notice. “Cause” shall mean: (i) a breach of the terms of this Agreement, including, without limitation, failure by the Client to pay in full any outstanding invoices issued by TimelyMD on the due date thereof, that continues after thirty (30) days from the date that the non-breaching Party provides to the breaching Party written notice of such breach; (ii) the commission of a criminal offense under any United States federal, state or local law, rule or regulation by a Party concerning or relating to “kickbacks”; (iii) a violation by a Party or any person employed or engaged by a Party of any civil or administrative law, rule or regulation, federal, state or local, which could reasonably be expected to subject any Professional Entity or any Providers to a fine, to civil monetary penalties and/or to suspension or exclusion from any federal or state health care program; (iv) any action by which causes TimelyMD to violate any federal, state or local law, rule or regulation relating to marketing in the healthcare field; or (v) failure by TimelyMD to provide the Access Service and Telehealth Consultations pursuant to the requirements of this Agreement.
- (c) Suspension of Services. In addition to its rights of termination as set forth in Section 4(b) hereof, if Client fails to make any payment in full within thirty (30) days of the date of TimelyMD’s invoice, TimelyMD shall have the right to suspend the Access Services to Enrollees unless and until TimelyMD receives payment in full of any invoices due and owing as well as any and all accrued interest thereon. Suspension of services does not relieve any party of its obligation to pay fees incurred according to Exhibit A during the suspension period.

- (d) Effect of Termination. Within thirty (30) days of the date of termination, the Client shall pay to TimelyMD any unpaid amounts owed to TimelyMD pursuant to Section 3. Except as otherwise set forth in this Agreement, all obligations of the Parties hereto shall cease upon termination. Upon termination of this Agreement, the Client shall immediately return to TimelyMD any and all materials received or copied from TimelyMD with respect to the Access Services and Telehealth Consultations.

## **6. INTELLECTUAL PROPERTY.**

- (a) TimelyMD Marks. TimelyMD grants to the Client, throughout the Term, the non-exclusive right and license to use the common law and/or registered trademarks of TimelyMD (the “Marks”) solely in connection with making the Telehealth Consultations available to the Enrollees. The Client acknowledges TimelyMD’s ownership of the Marks and agrees that it will not contest such ownership or the validity of the Marks. All trademark and service mark rights arising from the use of the Marks hereunder by the Client shall insure to the benefit of TimelyMD. The Client agrees that its right to use the Marks under this Agreement is conditioned upon the Client taking steps to assure that the nature and quality of its activities carried out under the Marks are consistent with standards that will be established by TimelyMD from time to time during the Term.
- (b) Proprietary Rights. All materials utilized by the Client in connection with the Access Services must be approved in advance by TimelyMD, constitute intellectual property of TimelyMD and may be used by the Client only in connection with making the Telehealth Consultations available to the Enrollees.
- (c) Client Marks. The Client grants to TimelyMD, throughout the Term, the non-exclusive right and license to use the common law and/or registered trademarks of the Client (the “Client Marks”) solely in connection with making the Telehealth Consultations available to the Enrollees, which shall include, without limitation, use of the Client’s logo on (i) TimelyMD’s promotional materials for Enrollees; and (ii) TimelyMD’s website. TimelyMD acknowledges the Client’s ownership of the Client Marks and agrees that it will not contest such ownership or the validity of the Client Marks. All trademark and service mark rights arising from the use of the Client Marks hereunder by TimelyMD shall insure to the benefit of the Client. TimelyMD agrees that its right to use the Client Marks under this Agreement is conditioned upon TimelyMD taking steps to assure that the nature and quality of its activities carried out under the Client Marks are consistent with standards that will be established by Client from time to time during the Term.

## **7. INDEMNIFICATION.**

- (a) Except when indemnification is prohibited by the Texas Constitution, each Party (the “Indemnifying Party”) shall indemnify and hold harmless the other Party and its respective shareholders, members, directors, officers, employees, agents, consultants and contractors (collectively, the “Indemnified Parties”), from and against any and all losses (whether joint or several), liabilities (including settlements and judgments), damages, fines, deficiencies, and related costs and expenses (including interest, court costs, reasonable fees and expenses of attorneys, accountants and other experts or other reasonable fees and expenses of litigation or other proceedings) (the “Losses”), and shall defend the Indemnified Parties against any third party claim or threatened third party claim for Losses, arising out of or in connection with the Indemnifying Party’s negligent performance of, or failure to perform, any of its obligations under this Agreement.
- (b) Except when indemnification is prohibited by the Texas Constitution, Indemnified Parties shall give the Indemnifying Party prompt written notice of any event or assertion of which Indemnified Parties obtains knowledge concerning any claims and as to which Indemnified Parties may request indemnification hereunder, provided that any delay in providing written notice shall not serve as a bar to indemnification

hereunder except to the extent that Indemnifying Party's ability to defend against or avoid claims has been prejudiced by such delay. The Parties shall cooperate in determining the validity of any claim or assertion requiring indemnity hereunder and in defending against third parties with respect to the same, at Indemnifying Party's cost and expense. Indemnifying Party shall promptly (and in no event later than thirty (30) days after receiving notice of a claim) decide whether to assume control of the defense of a claim, and if Indemnifying Party does not elect to control such defense, then Indemnified Parties shall assume such control of the defense. The Party that is not controlling the defense of a claim may have its own counsel present at its own cost to monitor proceedings related to the claim. In the event that Indemnifying Party elects to control the defense of a claim, Indemnifying Party's choice of counsel shall be reasonably satisfactory to Indemnified Parties, and Indemnified Parties shall be entitled to participate in such defense and shall cooperate fully in connection therewith. Indemnifying Party hereby agrees not to settle or compromise any claim without prior written consent of Indemnified Parties.

- (c) Neither Party shall have liability to the other Party for indirect, special, incidental, or consequential damages arising out of this Agreement.
- (d) TimelyMD shall, throughout the duration of this Agreement, at its expense, carry and from time to time renew, the following insurance.
  - (i) Medical Malpractice Insurance in the minimum amount of \$1,000,000 per occurrence/ \$3,000,000.00 in the aggregate; and
  - (ii) Comprehensive General Liability Insurance in the minimum amount of \$1,000,000.00 combined single limit covering both Bodily Injury and Property Damage including broad form contractual liability coverage for TimelyMD's indemnification as provided for in this Agreement.

8. **REGULATORY ENVIRONMENT.** The Client acknowledges and agrees that TimelyMD may, without breaching or terminating this Agreement, discontinue providing the Access Services and the Telemedicine Consultations in any state at any time upon delivery of written notice to the Client, if TimelyMD determines, in its reasonable discretion, that it must do so as the result of the regulatory environment in that state.

9. **CONFIDENTIALITY.**

- (a) Neither Party, except as required by law or court or arbitrator of competent jurisdiction, shall divulge, furnish or make available to any third party, or without the other Party's prior written consent any confidential or proprietary information of or concerning the other Party ("Confidential Information") or use the Confidential Information except in connection with performance of its obligations under this Agreement. Confidential Information includes methods of operation and organization, lists of clients or suppliers, business plans, expansion plans, pricing schedules or any other such information or data, and specific information that is designated by a Party as confidential or proprietary. Confidential Information does not include information that (i) is already public knowledge or has become a part of the public domain through no breach of this Agreement; (ii) a Party develops without any use of or reference to the other Party's information; or (iii) a Party subsequently acquires by lawful means from a third party without any obligation of confidentiality to that third party.
- (b) The Parties acknowledge that monetary damages for breach of this Section 8 will be inadequate and that, in addition to any other remedy the non-breaching Party or parties may have, the non-breaching Party or parties will be entitled to injunctive or other equitable relief to restrain any such breach or threatened breach, without any bond or other security being required. This Section 8 shall survive termination of this Agreement for any reason.

- (c) The extent the services are regulated by the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (“HIPAA”) or involve information that is Protected Health Information (“PHI”) as that term is defined by HIPAA, the parties agree to use, disclose, and secure employees’ and family members’ PHI in accordance with the HIPAA rules and other applicable requirements and to execute such other documents or amendments hereto and take such other actions as may be necessary to comply with HIPAA and other related laws.
  - (d) In addition to the foregoing obligations, if Client provides TimelyMD with any legally confidential information including but not limited to confidential personnel information or "personally identifiable information" from student education records as defined by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and the implementing regulations in Title 34, Part 99 of the Code of Federal Regulations, TimelyMD hereby certifies that collection of this information from Client is necessary for the performance of the TimelyMD’s duties and responsibilities on behalf of Client under this Agreement.
- 10. **NOTICES.** All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed duly given when delivered to a Party at the address set forth on the signature page for such party. Delivery of notices or other communications may be made by courier, registered mail, telecopy or electronically.
- 11. **COMMUNICATIONS.** TimelyMD will provide a description of the Access Services for use by the Client to communicate the Access Services to the Enrollees. Client will provide TimelyMD with all enrollees’ email addresses. TimelyMD will provide a description of the Access Services for use by the Client to communicate the Access Services to the Enrollees. TimelyMD will also occasionally communicate with Enrollees directly regarding the Access Services. Any changes or modifications to such description of services, and any and all materials used by the Client or its agents to describe the Access Services must be approved in advance in writing by TimelyMD prior to distribution.
- 12. **DATA TRANSMISSION SECURITY.** Data transmission security is the process of sending data from one computer system to another in a secure manner so that only the intended recipient of the data receives the data and the data sent is identical to the data received. When ePHI is transmitted over an electronic communications network i.e. “the internet”, transmissions of ePHI via a file or document to and from TimelyMD will utilize Secure File Transport Protocol (“SFTP”).
- 13. **WAIVER.** Each Party’s obligations under this Agreement may be waived in writing by such other Party to the extent permitted by applicable law. Any delay or failure to exercise any remedy or right under this Agreement shall not be construed as a waiver of a remedy or right, or an acquiescence in a default.
- 14. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without giving effect to the rules of conflicts of law. Each Party to this Agreement hereby agrees and consents that any legal action or proceedings with respect to this Agreement shall only be brought in the courts of the State of Texas, in Harris County, Texas. By execution and delivery of this Agreement, each such party hereby (i) accepts the jurisdiction of the aforesaid courts; (ii) waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the venue set forth above; and (iii) further waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.
- 15. **ENTIRE AGREEMENT.** This Agreement (including the exhibits hereto) is the entire agreement among the parties concerning the subject matter hereof and supersedes all prior agreements, understandings, memoranda, and other such communications, whether written or oral.
- 16. **PRESS RELEASE.** The Parties acknowledge and agree that TimelyMD shall issue a press release on the Effective Date announcing the Client as a new customer of TimelyMD, which

press release shall be subject to prior review and approval by the Client, which approval shall not be unreasonably withheld.

17. **MISCELLANEOUS.** The Client may not assign any of its rights or duties under this Agreement without the prior written consent of TimelyMD. This Agreement shall be binding upon and inure to the benefit of TimelyMD and its successors and assigns and to the benefit of the Client and the Client's permitted assigns. This Agreement may be amended only by a written instrument signed by both Parties. If any provision of this Agreement is held to be invalid, the remainder of this Agreement will not be affected unless the invalid provision substantially impairs the benefits of the remaining portions of this Agreement. This Agreement may be executed in one or more counterparts.

## **EXHIBIT A**

### **SERVICE AREA AND ENROLLMENT FEES**

The "Service Area" for the Telehealth Consultations provided by licensed healthcare providers, therapists, and/or counselors shall be the state of Texas plus any state in which the Professional Entities have a licensed healthcare provider or qualified practitioner available, as applicable, which Service Area can be modified at any time by TimelyMD in accordance with Section 7 of the Agreement.

"Enrollment Fee" calculated as follows:

Based on an eligible student population not exceeding 4,500 students, the Client shall pay \$141,750 per year for Access Services.

Based on an eligible student population not exceeding 5,000 students, the Client shall pay \$155,000 per year for Access Services.

Based on an eligible student population not exceeding 5,500 students, the Client shall pay \$167,750 per year for Access Services.

Based on an eligible student population not exceeding 6,000 students, the Client shall pay \$180,000 per year for Access Services.

Based on an eligible student population not exceeding 6,500 students, the Client shall pay \$191,750 per year for Access Services.

Based on an eligible student population above 6,500 students, the Client shall pay \$205,999 per year for Access Services.

The Enrollment Fee shall entitle each enrollee to unlimited, on-demand Remote Medical Consultations, Talk Now Consultations and scheduled Health Coaching Consultations with no visit fee for each academic semester or term, as applicable, such Enrollee is enrolled at one of the Client's campuses or is employed as a part-time employee or adjunct faculty member at one of the Client's campuses and for which the Enrollment Fee has been paid by the Client.

In addition, the Enrollment Fee shall entitle each Enrollee up to six (6) Scheduled Consultations with no visit fee for each year such enrollee is enrolled at the Client and for which the Enrollment Fee has been paid by the Client. Any Scheduled Consultations by an Enrollee in excess of six (6) Scheduled Consultations during an academic year will be charged at Seventy Nine (\$79) Dollars per Scheduled Consultation payable by the student Enrollee at the time of such consultation.

The Enrollment Fees shall also entitle the Client's Enrollees to that number of Psychiatric Consultations with no visit fee calculated as follows: 2% (0.02) times the number of student Enrollees listed on the secure file transferred by the Client to TimelyMD in July prior to the beginning of the Client's academic years during the Term; provided; however, such number will be adjusted in December of each of the Client's academic year

during the Term to reflect enrollment with the Client in such spring semester. The Client's counseling center will control the distribution of the psychiatric sessions through use of an access code. In the event that the Client's Enrollees exceed the number of Psychiatric Consultations during the Client's academic year, the Client and TimelyMD shall mutually agree on fees for such Psychiatric Consultations in excess of the capped consultations pursuant to this paragraph.

**TIMELY TELEHEALTH, LLC**

**LEE COLLEGE**

By: Chris Clark

By: Lynda Villanueva

Name: Chris Clark

Name: Dr. Lynda Villanueva

Title: Chief Strategy Officer

Title: President

Date: 04/20/2022

Date: 4/19/2022

*TimelyMD Client Agreement*  
6519328

*Confidential*