

CONSULTANT AGREEMENT

THIS AGREEMENT is between the CITY OF VALDEZ AND SCHOOLS, whose address is P.O. Box 307, Valdez, Alaska 99686, hereinafter referred to as "Account" and MEDICAL REHABILITATION CONSULTANTS, INC., whose address is 111 West Cataldo, Suite 200, Spokane, Washington 99201-3203, hereinafter referred to as "Consultant".

WHEREAS, Consultant is in the business of utilization management, medical case management and rehabilitation consulting services; and

WHEREAS, Account wishes to contract with Consultant for the provision of certain services for and to the benefit of those covered by the terms of its plan of benefits; and

WHEREAS, Consultant is willing to provide such services based upon the terms and conditions contained herein; and

WHEREAS, Account is willing to pay Consultant for services provided based upon the terms and conditions herein;

NOW, THEREFORE, for and in consideration of the recitations set forth above, the terms, conditions and covenants herein contained and the mutual benefits derived herefrom, the parties do hereby contract, covenant and agree as follows:

1. TERM. The term of this agreement shall be for one calendar year commencing April 1, 2019 and ending March 31, 2020. At the end of the term set forth above, both parties shall have the option to renegotiate the terms, conditions, and compensation set forth herein. If the parties have not agreed upon a new contract prior to March 31, 2020, this agreement shall continue uninterrupted until an agreement has been reached and contracted between both parties.

2. SERVICES TO BE PROVIDED. Consultant shall provide to members of

Account the following services:

a) Precertification/Pre-authorization/Medical Necessity Determinations for the following:

1) Inpatient Hospitalizations

- Concurrent Review
- Retrospective Review
- Second Medical Opinion (if recommended)
- Emergency Admissions

2) Outpatient Surgeries (hospital setting or free-standing surgical facility)

b) Medical Consultation

c) Medical Case Management

d) Hospital/Facility Bill Reviews (excess of \$10,000 per incident)

3. COMPENSATION. Account shall pay Consultant \$2.55 per eligible employee per month for Precertification/Pre-authorization Review. All additional services, as enumerated above, provided by Consultant shall be invoiced according to the attached fee schedule. See Attachment A for a complete detailed fee schedule.

4. PAYMENT. Meritain Health, the claims administrator for Account, shall send Consultant monthly payments for Precertification/Pre-authorization Review according to the current number of insured employees for that month. Each billing cycle shall encompass one calendar month. All payments shall be made within thirty (30) days after receipt of the billing statements.

5. TERMINATION. Either party may terminate this agreement by ninety (90) days written notice to the other party. In the event of such termination, Account shall pay Consultant for all work undertaken prior to the date of termination.

6. PROFESSIONAL LIABILITY INSURANCE. Consultant agrees to maintain Professional Liability insurance covering the acts of its agents and employees in the amounts held by Consultant at the time of the execution of this Agreement (\$1,000,000 per incident, \$3,000,000 aggregate).

7. COMPLIANCE WITH LAWS. Consultant shall comply with all applicable federal, state, and local laws and regulations.

8. HIPAA BUSINESS ASSOCIATE AGREEMENT. This Business Associate Agreement section of this Consultant Agreement is between Medical Rehabilitation Consultants (“Business Associate”), and City of Valdez & Schools (“Covered Entity”).

WHEREAS, the U.S. Department of Health and Human Services ("HHS") has promulgated regulations set forth in Title 45 C. F. R. Parts 160, 162, and 164 and Title 42, Part 1320d, implementing the privacy requirements set forth in the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”) provisions and any regulations promulgated thereunder, including but not limited to the Privacy Rule, the Security Rule, the Enforcement Rule and the Breach Notification Rule, as such laws and regulations may be amended from time to time (collectively, the “HIPAA Rules”).

WHEREAS, Covered Entity will make available and/or transfer to Business Associate certain information, including Protected Health Information (“PHI”) in conjunction with goods or services that are being provided by Business Associate to Covered Entity, that is confidential and must be afforded special treatment and protection;

WHEREAS, Business Associate will have access to and/or receive from Covered Entity or it’s representative agents certain information that can be used or disclosed only in accordance with this Agreement and the Health and Human Services Privacy and Security Regulations; and

WHEREAS, the Parties desire to comply with the requirements of the Privacy Rule;

NOW THEREFORE, in consideration of the mutual promises made below and the exchange of information pursuant to the agreement, the Covered Entity and Business Associate agree as follows:

- a) Definitions. Capitalized terms not otherwise defined in this Agreement shall have the meanings given to them in 45 C. F. R. Parts 160, 162, and 164 and are incorporated herein by reference.
- b) Obligations and Activities of Business Associate.
 - i. Permitted Uses and Disclosures. Business Associate agrees to not use or disclose PHI other than as permitted or required by the Agreement or as required by law.
 - ii. Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. Business Associate will implement administrative, physical, and

technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule.

- iii. Obligation to Mitigate. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- iv. Documenting Disclosures. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C. F. R. 164.528.
- v. Reporting of Disclosure. Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which Business Associate becomes aware and/or any Security Incident of which it becomes aware.
 - (1) Exceptions. Business Associate need not report disclosure of information or otherwise account for disclosures of PHI that this Agreement or Covered Entity in writing permits or requires:
 - A. for the purpose of Company's Treatment activities, Payment activities, or Health Care Operations;
 - B. to the Individual who is the subject of the PHI disclosed, to that Individual's Personal Representative or to another person or entity authorized by the Individual;
 - C. to persons involved in that Individual's Health Care or Payment for Health Care;
 - D. for notification for disaster relief purposes;
 - E. for national security or intelligence purposes;
 - F. to Law Enforcement Officials or Correctional Institutions regarding Inmates;
 - G. in another written agreement between the Parties.

- vi. Business Associate's Agents. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Moreover, Business Associate shall ensure that any agent or subcontractor agrees to implement reasonable and appropriate safeguards to protect Covered Entity's PHI.
- vii. Availability of Information in a Designated Record Set. Business Associate agrees to provide access, at the request of Covered Entity, and in a reasonable time and manner mutually agreed upon between the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C. F. R. 164.524. Business Associate shall not be responsible for maintaining the Designated Record Set.
- viii. Amendment of Protected Health Information in a Designated Record Set. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C. F. R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner mutually agreed upon by the parties.
- ix. Access for Regulatory Compliance. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a reasonable time and manner or as designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule and Security Rule.
- x. Availability of Information. Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time and manner, information collected in accordance with Subsection b) ix. of this Agreement, to permit

Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C. F. R. 164.528.

- xi. Standard Transactions. Business Associate shall conduct health care transactions in accordance with the requirements (including effective date) of the HIPAA Transaction Rule (45 C. F. R. Parts 160 and 162). In the event that Business Associate transmits or receives any Covered Electronic Transaction on behalf of the Covered Entity, it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule to the extent required by law, and shall ensure that any agents that assist Business Associate in conducting Covered Electronic Transactions on behalf of the Covered Entity agree in writing to comply with the Standards for Electronic Transactions Rule to the extent required by law.
- xii. Security Incident Response Plan. Business Associate will maintain (and, if necessary, develop and implement) a written security incident response plan to ensure that any Breach will be promptly discovered and reported to Covered Entity in accordance with this Agreement.
- xiii. Notification To Covered Entity Of Breach. Business Associate will notify Covered Entity of any Breach which Business Associate discovers, regardless of whether the Breach results from the actions of Business Associate or its agents or subcontractors.
 - (1) Business Associate will provide such notice orally to Covered Entity within five (5) business days of Business Associate's discovery of the Breach, or of any incident which might, upon further investigation, constitute a Security Breach, followed by a report in writing (facsimile or e-mail is acceptable) when available within reasonable time, but in any event within 60 days of discovery of the Breach.
 - (2) The written report shall include the following, at a minimum, subject to the availability of necessary information:
 - A. a description of the incident;
 - B. the date that the incident occurred;
 - C. the date that the incident was discovered;

- D. the identity and last known mailing address of each affected individual;
- E. the affected categories of PHI for each affected individual;
- F. a description of the steps taken to investigate the incident;
- G. an identification of any law enforcement agency that has been contacted about the incident and contact information for the relevant official;
- H. a description of the steps that have been, or will be, taken to mitigate the incident; and
- I. a description of the steps that have been, or will be, taken to prevent a recurrence, including where applicable discipline of the person(s) responsible for the Breach.

- (3) Business Associate will update the written report periodically as material, new information becomes available.
- (4) If a law enforcement official determines that a notification, notice, or posting required by Section b) xiii. of this Agreement or by law would impede a criminal investigation or cause damage to national security, and a law enforcement official instructs Business Associate in writing to delay such notification, notice, or posting, such notification, notice, or posting shall be delayed in the same manner as provided under 45 C. F. R. 164.528(a)(2) of the Privacy Rule.

xiv. Cooperation In Security Incident Response And Mitigation Of Damages.

Business Associate will, at its own expense, cooperate with Covered Entity in its investigation of, and response to, any Security Breach. Covered Entity shall remain solely responsible for providing all notices. Covered Entity will determine (a) the content of any notice provided in connection with a Security Breach, regardless of whether that notice is to be sent to affected individuals, federal or state government agencies, or the media; and (b) the services, if any, to be offered to affected individuals. Business Associate will take, at its own expense, measures reasonably necessary to mitigate any known, harmful effect of a Security Breach.

- xv. Data Ownership. Business Associate acknowledges that Business Associate has no ownership rights with respect to any PHI received from, or created by, Business Associate on Covered Entity's behalf.
- c) Permitted Uses and Disclosures by Business Associate.
- i. General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of the Covered Entity as specified in the Third Party Administrative Services Agreement between the Parties, provided that any such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- ii. Specific Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may disclose PHI:
- (1) for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;
 - (2) to carry out the legal responsibilities of Business Associate;
 - (3) to provide Data Aggregation services to Covered Entity as permitted by 42 C. F. R. 164.504(e)(2)(i)(B);
 - (4) to report violations of law to appropriate Federal or State authorities, consistent with 164.502(j)(1), which disclosure shall not be limited by this Agreement to the extent such limitation is contrary to 164.502(j)(1); and
 - (5) as otherwise agreed in writing by the Parties.
- iii. Requests For Access To PHI. In the event Business Associate maintains an electronic health record with respect to an Individual's PHI, Business Associate will comply with (1) a request by Covered Entity or the Individual

for a copy of such PHI in electronic form, and (2) a clear, conspicuous, and specific request by the Individual to transmit the PHI directly to a third party designated by the Individual. The charge for any such copy shall not exceed Business Associate's labor costs in responding to the requests for the copy.

- iv. Minimum Necessary. Whenever practicable, Business Associate will limit its use or disclosure of, and requests for, PHI to the Limited Data Set. If such limitation is not practicable, Business Associate will limit its use or disclosure of, and its requests for, PHI to the minimum necessary to accomplish the purpose of such use, disclosure, or request. This provision does not apply to the following: (1) disclosures of PHI to the individual, (2) uses or disclosures of PHI pursuant to an authorization executed by the individual or the individual's personal representative, (3) disclosures of PHI made to HHS, (4) uses or disclosures of PHI that are required by law; or (5) uses or disclosures of PHI that are required for compliance with HIPAA or its implementing regulations. In the event that HHS issues final regulations defining what constitutes "minimum necessary," the definition of minimum necessary contained in such final regulations, and any relevant, related requirements, shall supersede and replace this provision.

d) Obligations of Covered Entity.

- i. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C. F. R. 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- ii. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- iii. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C. F. R. 164.522., to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

- e) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under

the Privacy Rule, or other applicable Federal, state, or local regulation, if done by Covered Entity, except for data aggregation or management and administrative activities of the Business Associate as authorized under Section c).

f) **Electronic Data Interchange.** The Business Associate agrees that if it (or any of its agents or subcontractors) conducts electronic transmissions on behalf of the Covered Entity for which the Secretary has established a “standard transaction,” the Business Associate (and such agents and subcontractors) shall comply with the requirements of the Standards for Electronic Transactions under 45 C. F. R. Parts 160 and 162.

g) **Term and Termination.**

i. **Term.** The Term of this Agreement shall be effective on the HIPAA Privacy and HIPAA Security effective dates of this Plan and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this section.

ii. **Termination for Cause.** Upon Covered Entity’s knowledge of a material breach by Business Associate, Covered Entity shall:

- (1) provide an opportunity for Business Associate to cure the breach or end the violation;
- (2) if Business Associate does not cure the breach or end the violation within 30 days or the time specified by Covered Entity, whichever is longer, terminate this Agreement; or
- (3) if Business Associate has breached a material term of this Agreement and cure is not possible, immediately terminate this Agreement.

iii. **Effect of Termination.**

- (1) Except as provided in paragraph (2) of this section below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of

subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

- (2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

h) Indemnification

- i. General Indemnification. Except as provided in Section g) ii. of this Agreement, each party agrees to indemnify the other party, its directors, officers, employees, and agents and hold them harmless for any and all reasonable expenses, claims and other liabilities (the “Liabilities”) to the extent the Liabilities are caused by or result from the negligence, intentional misconduct or other breach of this Agreement of the indemnifying party or its directors, officers, employers or agents.

ii. Indemnification for Breach.

- (1) Business Associate shall defend and indemnify Covered Entity, its parent and subsidiary corporations, officers, directors, employees and agents, Plan Administrator and the Plan from and against any and all claims, inquiries, investigations, reasonable attorneys’ fees, costs, monetary penalties, and damages incurred as a result of any Breach caused by the negligent acts or omissions of Business Associate, its agents or subcontractors. Such indemnification shall include the reasonable attorneys’ fees and other expenses (including the cost of any services offered to affected individuals in the security breach notification) incurred by Covered Entity in connection with the provision of notice of a Breach to affected individuals.

(2) Covered Entity shall defend and indemnify Business Associate, its parent and subsidiary corporations, officers, directors, employees and agents, from and against any and all claims, inquiries, investigations, reasonable attorneys' fees, costs, monetary penalties, and damages incurred as a result of any Breach caused by the acts or omissions of Covered Entity, its parent or subsidiary corporations, officers, directors, employees or agents. Such indemnification shall include the reasonable attorneys' fees and other expenses incurred by Business Associate in connection with the Breach.

i) **Miscellaneous.**

- i. **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended, and for which compliance is required.
- ii. **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the HIPAA Rules.
- iii. **Survival.** The respective rights and obligations of Business Associate under Section g) iii. of this Agreement shall survive the termination of this Agreement.
- iv. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule and the Security Rule.

9. **ASSIGNMENTS.** This agreement is binding upon both parties hereto and their heirs, successors, and assigns. Neither party may assign or transfer any interest, in whole or in part, without the other party's prior written consent.

10. **DEFAULT.** In the event of default in any of the terms of this agreement by either party, the non-defaulting party shall have, without limitation, all remedies available at law.

11. **ATTORNEY FEES.** In the event it shall become necessary for either party to obtain the services of an attorney to enforce the terms hereof, the defaulting party shall pay all reasonable attorneys fees and costs including all court costs, witness fees and legal expenses incurred by the non-breaching party, with or without suit. In the event of suit, the substantially prevailing party shall be entitled to recover to reimbursement by the non-prevailing party for its

court costs and reasonable attorney fees, including such costs and fees that are incurred upon appeal.

12. VENUE AND APPLICABLE LAW. This agreement is made and entered into in accordance with, and shall be interpreted by, the laws of the State of Washington. Any action or proceeding to interpret this agreement or any of its provisions shall be commenced in Spokane County, Washington.

13. WAIVER, MODIFICATION, OR AMENDMENT. No waiver, modification, or amendment of any term or condition of this agreement shall be effective unless in writing, and no waiver or indulgence by either party of any deviation by the other party from full performance of this agreement shall be a waiver of the right to subsequent or other full, strict, and timely performance.

14. MERGER CLAUSE. This agreement expresses the full and final purpose and agreement between the parties and said agreement shall not be qualified, modified, or supplemented by course of dealing, usage of trade, or course of performance. There are no verbal agreements which qualify, modify, or supplement this agreement.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first hereinabove written.

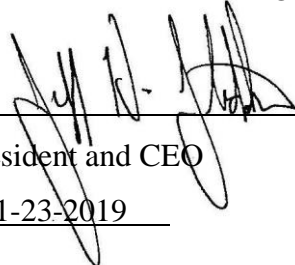
CITY OF VALDEZ & SCHOOLS

By: _____

Title: _____

Date: _____

MEDICAL REHABILITATION CONSULTANTS, INC.

By:  _____

President and CEO

Date: 01-23-2019

Attachment A

CITY OF VALDEZ & SCHOOLS

Contracted Services Fee Schedule

Effective April 1, 2019

| | |
|---|--|
| Utilization Management: Includes: Precertification, Pre-authorization, and Medical Necessity Determinations for the following: | \$2.55 per insured employee per month |
| 1) Inpatient hospitalizations | |
| - Concurrent Review | |
| - Retrospective Review | |
| - Second Medical Opinion (if recommended) | |
| 2) Outpatient Surgeries (hospital setting or free-standing surgical facility) | |
| Medical Case Management: | \$155.00/hour |
| Medical Consultation & Research: | \$155.00/hour |
| Physician Consulting (if required for medical necessity determinations): | \$400.00/hour (one-hour minimum) |
| Hospital Bill Review: | \$155.00/hour |
| <u>Expenses</u> | |
| Travel Time: | \$155.00/hour |
| Long Distance Telephone: | \$ 0.10/minute |
| Mileage: | \$ 0.50/mile |
| Meal Per Diem (for overnight travel only): | \$ 60.00/day |
| Other (parking, fax, overnight mail, medical records): | Actual + 20% |