

# **MEDICAL DIRECTOR SERVICES AGREEMENT**

BY AND BETWEEN

Dickinson Fire Department (hereinafter called the “Dickinson FD”),

AND

Dr. David Kuylen (hereinafter called the “Kuylen”).

## **WITNESSETH:**

WHEREAS, the Dickinson FD provides services to its community through the operation of an area Dickinson FD each requires an individual to provide administrative and supervisory services as the Medical Director of the Dickinson FD; and

WHEREAS, Dr. David Kuylen, a licensed medical professional, (hereinafter called the “Medical Director”) desires to provide the administrative and supervisory services required by the Dickinson FD in accordance with the terms of this Agreement; and

WHEREAS, Dickinson FD is contracting on behalf of itself.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound hereby, the parties hereto agree as follows:

### Section 1. Services

- (a) The Medical Director shall provide those services for the Dickinson FD that are described in Appendix A (the “Services”), which is attached hereto and incorporated by reference herein.
- (b) In the event the Medical Director is unable to provide the services set forth in this Agreement, this Agreement may be terminated immediately by either party.

### Section 2. Compensation

- (a) The Dickinson FD shall pay the Medical Director an annual amount of Eight Thousand six-hundred and forty dollars and no/100 Dollars (\$8,640.00) (\$160.00/hour) for all of the Services provided pursuant to this Agreement. Said payments shall be made within thirty (30) days of submission of a bill for services rendered. The Medical Director shall devote an estimated 4.5 hours per month to Dickinson FD in providing Services hereunder.
- (b) The Medical Director shall provide, upon the Dickinson FD’s request, reasonable documentation of time spent in performing said Services.

- (c) Under no circumstances shall the Medical Director bill any patient/resident or any public or private third-party reimbursement entity for any administrative service paid for by the Dickinson FD under this Agreement.
- (d) The parties acknowledge and agree that the compensation set forth herein represents the fair market value of the Services provided by Medical Director to Dickinson FD negotiated in an arm's-length transaction and has not been determined in a manner which takes into account the volume or value of referrals or business, if any, that may otherwise be generated between the parties. It is not the purpose of this Agreement to induce or encourage the referral of any patient/resident, and there is no requirement under this Agreement that the Dickinson FD refer any patient/resident to the Medical Director for any products or services of any kind that may be required by the patients/residents of the Dickinson FD. No payment made under this Agreement is in return for the referral of patients/residents or in return for purchasing or ordering any products or services from the Medical Director.

### Section 3. Licensure

The Medical Director shall be licensed to practice medicine by the State of North Dakota and maintain a valid DEA registration certificate during the term hereof.

### Section 4. Professional Liability Insurance

- (a) The Dickinson FD shall maintain adequate insurance for its operations and consistent with the Services as outlined in this Agreement.
- (b) The Medical Director throughout the term of this Agreement general and professional liability insurance with the minimum coverage limits of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) annual aggregate. Such coverage may be provided through policies obtained from third party insurance carriers or through a program of self-insurance.

### Section 5. Confidentiality Information and Records

All medical records shall be the property of the Dickinson FD and shall at all times be freely available for the use of the Medical Director, provided, however, that such records may not be removed from the Dickinson FD without the specific consent of the Dickinson FD. The Medical Director shall not disclose information relating to the operations or strategic or other proprietary information of the Dickinson FD to persons other than the board, management or medical staff of the Dickinson FD or such governmental or private accreditation or licensing bodies or third-party reimbursement agencies with whom the Dickinson FD has directed or authorized the Medical Director to deal, unless the Dickinson FD shall have given written consent for the release of information. The above shall be deemed to include patients'/residents' records and all other information kept in the normal operation of the Dickinson FD.

## Section 6. Business Associate Agreement

The parties hereto agree that the so-called “Business Associate Agreement” attached hereto as Appendix C is hereby incorporated by reference.

## Section 7. Obligations of the Medical Director

The Medical Director agrees to be personally bound by all of the applicable terms and conditions of this Agreement. Such Agreement shall be substantially in the form set forth in Appendix B. A copy of the written agreement of the Medical Director shall be given to the Dickinson FD at the time this Agreement is executed. The Medical Director shall not provide the Services pursuant to this Agreement unless and until the written agreement is obtained and provided to the Dickinson FD.

## Section 8. Independent Contractor

In the performance of all obligations hereunder, the Medical Director shall be deemed to be independent contractor, and the Dickinson FD shall not withhold or in any way be responsible for the payment of any federal, state or local income or occupational taxes, F.I.C.A. taxes, unemployment compensation or workers compensation contributions, or any other payments for or on behalf of the Medical Director. All such payments, withholdings and benefits are the responsibility of the Medical Director. The Medical Director shall not be considered to be an employee of the Dickinson FD for any purpose whatsoever.

## Section 9. Indemnity

Subject to applicable state law, except for the negligence or willful misconduct of a party, its agent or employee, each party agrees to indemnify the other and hold it harmless from all claims, demands, suits, actions, proceedings, losses and damages of every kind and description, including any attorneys' fees and/or litigation expenses, incurred by said party arising out of the services to be performed pursuant to this Agreement.

## Section 10. Assignment

It is expressly understood by both parties that this Agreement may not be assigned by either party without the written consent of the other party.

## Section 11. Amendments

This Agreement may be amended at any time by mutual agreement of the parties, provided that before any amendment shall be operative or valid, it shall have been reduced to writing and signed by both parties.

## Section 12. Term and Termination

This Agreement shall commence on January 1, 2025 (the “Effective Date”) and be in force for a period of one year from the Effective Date. The Agreement shall be automatically renewed for additional one (1) year periods unless it is otherwise terminated. Either party

may terminate this Agreement at any time after the Effective Date upon giving the other party sixty (60) days' written notice of its intention to terminate. In the event this Agreement is terminated prior to the first anniversary of the Effective Date, the parties shall not enter into any other agreement dealing with the same subject matter for the remainder of the unexpired term.

### Section 13. Entire Agreement

This Agreement constitutes the entire agreement between the parties and contains all the agreements between the parties with respect to the duties of the Medical Director hereunder. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

### Section 14. Strict Performance

No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise a right or remedy shall constitute a waiver. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, condition, agreement and term of this Agreement shall continue in full force and effect with respect to any other existing or subsequent breach.

### Section 15. Third Parties

Nothing in this Agreement shall be construed as creating or giving rise to any rights in any third parties or any persons other than the parties hereto.

### Section 16. Laws

This Agreement shall be construed and enforced under and in accordance with the laws of the State of North Dakota.

### Section 17. Compliance Program

Dickinson FD and Company each acknowledge that the other party hereto maintains its own compliance program, which includes a mechanism for reporting suspected fraud, abuse or other illegal or unethical activities. Each party covenants and agrees that it shall not knowingly act in contravention of the other's compliance policies.

### Section 18. Participation in Government Programs

In the event, and only in the event, if it is applicable to this Agreement, the Medical Director: (a) is, and will remain at all times throughout the term of this Agreement, authorized to participate in the Medicare and state Medicaid programs and shall comply with all conditions of participation or other requirements applicable to participation in such programs; (b) has, and will maintain at all times throughout the term of this Agreement, all the necessary qualifications, certifications, licenses and/or accreditations required by federal, state and local laws and regulations to provide the Services covered by this Agreement; (c) will provide the Services in accordance with the professional standards and

principles applicable to their profession; and (d) is not now subject to exclusion from any participation in any federally funded health care program, including Medicare or Medicaid.

Section 19. Medicare Access to Books and Records

In the event, and only in the event, that Section 952 of P.L. 96-499 (42 U.S.C. §1395x(v)(1)(I)) is applicable to this Agreement, the Medical Director agrees as follows:

- (a) until the expiration of four years after the furnishing of such services pursuant to this Agreement, the Medical Director shall make available, upon written request to the Secretary of the federal Department of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement, and books, documents and records of the Medical Director that are necessary to certify the nature and extent of such costs, and
- (b) if the Medical Director carries out any of the duties of this Agreement through a subcontract, with a value or cost of \$10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary of the federal Department of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

Section 20. Compliance with Laws

If either party determines that any of the terms or conditions of this Agreement becomes violative of the rules, regulations or reimbursement policies of any third-party reimbursement program, any federal or state statute, rule or regulation, or administrative or judicial decision, the parties may mutually agree to alter the terms of this Agreement so that it no longer violates the same, or terminate this Agreement. No such alterations shall have the effect of retroactively reducing payments previously made to the Medical Director for services performed in the past.

Section 21. Prior Agreement

To the extent an agreement currently exists by and between the parties with respect to referenced services or the like, said agreement is hereby terminated and of no further force and effect.

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

**DICKINSON FIRE DEPARTMENT**

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

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**DR. DAVID KUYLEN**

## **APPENDIX A**

### **MEDICAL DIRECTOR RESPONSIBILITIES**

The following items are identified as responsibilities for a Medical Director. The Medical Director shall be responsible to collaborate with Dickinson FD and its staff in accordance with the following:

1. Participate in the development and periodic review of various fire department policies, to be in accordance with applicable law.
2. Participate in the development of written policies relating to the medical, nursing, pharmaceutical and related health services provided by Dickinson FD.
3. Participate in development and periodic review of patient care reports, summaries and policies all related to the health service provided by Dickinson FD.
4. Be available for consultation in development and maintenance of an adequate medical records system.
5. Participate in the Dickinson FD's Quality Assurance program.
6. Be available for consultation and participation in functions of Infection Control to ensure the Dickinson FD develops and implements infection control policies.
7. Be available for consultation and, if necessary, participation in staff in-service training sessions and assisting in designing and implementing appropriate education programs for aides and other non-professional staff.
8. Advise Dickinson FD as to the adequacy of the Dickinson FD's patient/resident care services and medical equipment.
9. Review of incident reports on a quarterly basis to identify health or safety hazards and document recommended changes to prevent reoccurrences and help assure a safe and sanitary environment for patients and staff and also assist with developing and implementing accident reporting policies and procedures.
10. Assist in the establishment of appropriate policies and procedures for use of restraints and/or protective devices and psychotropic medications.
11. Assist the Dickinson FD in establishing policies and procedures that help fulfill requirements for protecting and enhancing patient rights.
12. Work with consultant pharmacist to ensure availability of adequate and appropriate pharmacy services and assist in developing and implementing medication storage and administration policies.

## APPENDIX B

### BUSINESS ASSOCIATE PROVISIONS

The parties also agree to be bound by the following provisions:

#### Section 1. Definitions

- (a) Business Associate. “Business Associate” shall mean Dr. David Kuylen.
- (b) Covered Entity. “Covered Entity” shall mean Dickinson Fire Department.
- (c) Privacy Regulations. “Privacy Regulations” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- (d) Security Regulations. “Security Regulations” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C.
- (e) Secretary. “Secretary” shall mean the Secretary of the federal Department of Health and Human Services.

Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§160.103, 164.304 and 164.501.

#### Section 2. Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law;
- (b) use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement;
- (c) mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement;
- (d) immediately report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware, with such reports including at least the following information:
  - (1) the identity of each individual whose information was accessed, acquired or disclosed during the improper use or disclosure;



- (2) a brief description of what happened;
  - (3) the date of discovery of the improper use or disclosure;
  - (4) the nature of the Protected Health Information that was involved (e.g., social security numbers, date of birth, etc.);
  - (5) any steps individuals should take to protect themselves from potential harm resulting from the improper use or disclosure; and
  - (6) a brief description of what the Business Associate is doing to investigate the improper use or disclosure, to mitigate harm to individuals, and to protect against any further incidents;
- (e) in accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
  - (f) make available to Covered Entity Protected Health Information in a Designated Record Set as necessary to allow Covered Entity to satisfy its obligations under 45 C.F.R. §164.524 to provide Individuals with access to their Protected Health Information;
  - (g) make available to Covered Entity Protected Health Information in a Designated Record Set for amendment and incorporate any amendments made by Covered Entity in accordance with 45 C.F.R. §164.526 ;
  - (h) make available to Covered Entity the information required to allow Covered Entity to provide an accounting of disclosures in accordance with 45 C.F.R. §164.528;
  - (i) make its internal practices, books, and records, including policies and procedures and Protected Health Information, 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 Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Regulations;
  - (j) to the extent the Business Associate is to carry out one or more of Covered Entity's obligations under the HIPAA Privacy Regulations, comply with the requirements of the Privacy Regulations that apply to the Covered Entity in the performance of such obligations;
  - (k) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic

Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity, and otherwise comply with the HIPAA Security Regulations with respect to such electronic Protected Health Information, to prevent uses or disclosures of Protected Health Information other than as provided for by this Agreement; and

- (1) report to Covered Entity any material attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

### Section 3. Permitted Uses and Disclosures by Business Associate

#### (a) General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity pursuant to the underlying service agreement between the parties, provided that such use or disclosure would not violate the Privacy Regulations if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

#### (b) Specific Use and Disclosure Provisions

- (1) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (2) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information 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 be 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.
- (3) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B).
- (4) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §164.502(j)(1).

#### Section 4. Obligations of Covered Entity

Covered Entity shall:

- (a) notify Business Associate of any limitation(s) in its Notice of Privacy Practices in accordance with 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information;
- (b) notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information;
- (c) 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 Protected Health Information.

#### Section 5. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Regulations if done by Covered Entity.

#### Section 6. Term and Termination

- (a) Term. The Term of this Agreement shall be effective as of the effective date of the underlying services agreement between the parties and shall terminate upon the earlier of:
  - (1) expiration or termination of the underlying services agreement; or
  - (2) termination of this Agreement for cause by the Covered Entity as authorized by subsection (b) below.
- (b) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - (1) provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or
  - (2) immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

(c) Effect of Termination.

- (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- (2) In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, 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 Protected Health Information is not feasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

Section 7. Miscellaneous

- (a) Regulatory References. A reference in this Agreement to a section in the Privacy Regulations or Security Regulations means the section in effect, or as amended.
- (b) 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 to comply with the requirements of applicable law governing Protected Health Information.
- (c) Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with applicable law governing Protected Health Information.
- (d) Exclusion from Limited Liability. To the extent Business Associate has limited its liability under the terms of the underlying service agreement, whether with a maximum recovery for direct damages or a disclaimer against any consequential, indirect or punitive damages, or other such limitations, such limitation shall not apply to the following costs to the extent they arise from Business Associate's breach of its obligations relating to the use and disclosure of Protected Health Information:
  - (1) the costs of notifying patients of a breach of their protected health information as required by 45 C.F.R. § 164.400 et seq.;
  - (2) any civil monetary penalties, fines, or other damages resulting from the

action of any state or federal government agency as a result of the breach;

- (3) fees of counsel, forensic computer specialists, and other consultants used to assist the Covered Entity in responding to a breach of Protected Health Information and any subsequent investigation by a federal or state government agency;
- (4) the defense of lawsuits brought by patients alleging invasions of privacy, and any liability resulting from such lawsuits (whether in the form of a judgment or settlement), provided that Business Associate shall have the opportunity to participate in the defense of such lawsuits and to approve any proposed settlement for which it would be financially responsible.

This subsection (d) shall survive termination or expiration of this Agreement for any reason.