

SERVICES AGREEMENT

THIS SERVICES AGREEMENT (the “**Agreement**”) is made and entered into effective as of July 22, 2020 (the “**Effective Date**”), by and between UofL Health – Louisville, Inc. dba Frazier Rehabilitation Institute (hereinafter referred to as “**Provider**” or “**Frazier**”) and the Jefferson County Board of Education d.b.a. Jefferson County Public Schools (hereinafter referred to as “**Client**” or “**JCPS**”) for the provision of athletic trainer services at the Client’s various sporting events (“**Events**”), and to assist Client in the development and maintenance of an athletic training program designed to reduce athletic injuries and promote the safe and prompt rehabilitation of students after athletic injuries.

RECITALS

WHEREAS, Frazier has the expertise and ability to provide the Services, as defined below; and

WHEREAS, Frazier desires to provide to JCPS, and JCPS desires to utilize, the Services.

NOW, THEREFORE, in consideration of the premises, the mutual promises, covenants and conditions contained herein, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Frazier and JCPS (hereinafter, collectively, the “**Parties**” or each, individually, a “**Party**”) agree as follows:

1. **SERVICES.**

1.1. **“Services” defined.** “Services” means:

- (a) The professional medical services of, visitation at the Schools by, and coverage of Events by, Provider’s certified athletic trainers (“**Trainers**”), as assigned by Provider.

1.2. **Location of Services.** The Services hereunder shall be provided to each of two JCPS schools: (i) DuPont Manual High School; and (ii) Doss High School (individually, a “**School**” and collectively, the “**Schools**”).

1.3. **Trainer Qualifications and Scope of Services.**

- (a) **Trainers.** Provider shall designate one Trainer to serve as the primary Trainer at each School, who shall coordinate coverage and Services with the Client’s Athletic Director. Provider shall further designate an alternate Trainer for each School, who shall serve in the primary Trainer’s role when the primary Trainer is unavailable.

- (i) **Certification.** Trainers shall be duly certified by the National Athletic Trainers Association.

- (ii) **Background Check.** Pursuant to KRS 160.380, Frazier shall require all Trainers to submit to a national and state (fingerprint) criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services. Provider shall provide Client with additional evidence that Trainers have successfully completed a criminal background check as needed.

- (b) **Hours of Work.** A Trainer will provide Services for approximately 15 hours per week, at each of the Schools.

(c) **Services to be Rendered.** Services rendered by a Trainer under this Agreement shall consist of and be limited to:

- (i) Coverage at all home Events for the football, soccer, field hockey, basketball, baseball, softball and track and field programs at the Schools;
- (ii) Advising Client in the establishment of an athletic training room at the Schools;
- (iii) Assisting Client faculty and athletic coaching staff in the development and implementation of a student athletic training program;
- (iv) Advising Client as to the supplies and training equipment needed for the athletic training program;
- (v) Assisting Client faculty and athletic coaching staff in the design and implementation of a continuing education program for the Schools' athletic coaching staff;
- (vi) Providing conditioning and flexibility training suggestions to the School coaching staff with the advice and consent of a team physician;
- (vii) Evaluating the need for a medical records system for athletic injuries and assisting with implementation as reasonably necessary;
- (viii) Monitoring of athletic injuries and developing injury prevention training and programs with the advice and consent of a team physician;
- (ix) Coordinating and providing injury follow-up and evaluation to be reported to team physicians, which shall include annual pre-participation screening; and
- (x) Designing and implementation of an emergency medical service protocol for the Schools, including concussion protocols.

Follow-up treatment will not be provided. Each individual is responsible for their own follow-up treatment, tests, and/or examinations.

2. PROVIDER'S OBLIGATIONS.

2.1. For the provision of the Services contemplated herein, Provider will provide the following:

- (a) Primary Trainers, in accordance with Section 1.3
- (b) Alternate Trainers, in accordance with Section 1.3
- (c) Documentation of Trainers' successful completion of criminal background check
- (d) Trainer compensation and all employee benefits
- (e) Banners, signs, other advertising materials for advertisement in Client's stadiums, gymnasiums, soccer fields, baseball fields, tennis courts, and other sites where Events are to occur.

3. CLIENT'S OBLIGATIONS

3.1. In order for Provider to render Services, Client will provide the following:

- (a) All athletic training supplies to be used by Trainers
- (b) An athletic training room within each of Client's Schools

- (c) Allow Provider to advertise in Client's stadiums, gymnasiums, soccer fields, baseball fields, tennis courts, and other sites where home Events are to occur
 - (d) During Events referenced in Section 1.3(c)(i), a designated first-aid area in a central location with easy access to the game to observe participants for injuries.
 - (e) Table, chairs, and trash can at designated first-aid area
 - (f) Access to private room or area for examination as needed
 - (g) Ice available in sufficient quantity for injuries
 - (h) Close access to communication system for contacting EMS and participants' family members if necessary
 - (i) Hydration stations for participants (water/cups/etc.)
 - (j) Regular P.A., marquee, scoreboard, etc. announcements to identify first-aid locations and to state that athletic training Services are provided by Provider
4. **TERM AND TERMINATION.** This Agreement shall commence on July 22, 2020 and end on June 30, 2022. The Agreement may be extended by mutual written agreement of the Parties. Either Party may terminate this Agreement with ninety (90) days written notice to the other Party.
 5. **TRAINER COMPENSATION.** The Trainers, in their provision of the Services contemplated in this Agreement, shall be compensated in their capacity as employee(s) of Provider. No compensation from Client to Provider will be provided.
 6. **RELATIONSHIP OF THE PARTIES.** Nothing in this Agreement is intended to create an employer-employee relationship, a partnership or other joint venture relationship, or any other legal relationship between the Parties. The Parties will not have any authority to execute any contracts on behalf of the other, or to bind each other in any way. Both Parties understand and agree that they will not be treated as employees of the other for federal, state, or local tax purposes. If the Internal Revenue Service or any other governmental agency should question or challenge the independent contractor status of either Party, the Party receiving information of such challenge will immediately notify the other, and both Parties will have the right to participate in any discussions, negotiations, protests, conferences, and proceedings with respect to such challenge.
 7. **LIABILITY INSURANCE.** The Parties shall, at their own expense, maintain and carry liability insurance in a sum no less than \$1,000,000 for a single claim or \$3,000,000 for aggregate claims. Frazier agrees to provide JCPS with a certificate of insurance, with JCPS listed as an additional insured. Frazier is responsible for carrying worker's compensation insurance for its Trainers, within the limits prescribed by law.
 8. **INDEMNIFICATION AND HOLD HARMLESS.** To the extent permitted by law, both Parties agree to indemnify and hold the other Party, including its trustees, officers, directors, employees, affiliates and agents, harmless from any claim, demand, suit, loss or liability which the indemnified Party may sustain as a result of the indemnifying Party's breach of its duties or the indemnifying Party's errors or omissions within the terms of this Agreement; provided, however, that neither Party will hold the other harmless from any claims, demands or causes or action arising or resulting directly or indirectly from negligence (whether sole, joint, concurring, or otherwise) of the other Party, its trustees, officers, directors, employees, affiliates or agents, or any other person or entity not subject to the indemnifying Party's supervision or control. These indemnifications will include reasonable expenses, including attorney's fees, incurred by defending such claims and damages incurred by reason of the

indemnifying Party's failure to comply with applicable laws, ordinances, and regulations or for damages caused by the indemnifying Party. As a condition precedent to asserting a right of indemnity, the Party seeking indemnification will have given the indemnifying Party timely, written notice of the assumption of the claim as to which the right of indemnification is claimed to exist.

9. **NO DUTY TO REFER.** The Parties acknowledge and agree that it is not a direct or indirect purpose of this Agreement that either Party is inducing, or attempting to induce, the other to refer any individual to the other or to any other person or facility for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Medicare, Medicaid, or any other governmental or private payment program, and that there is no obligation on the part of Client or its agents to refer patients to, or order items or services from, Provider or its affiliates.

10. CONFIDENTIALTY AND PRIVACY.

10.1. Both Parties recognize the importance of the Health Insurance Portability and Accountability Act ("**HIPAA**") and the regulations promulgated thereunder in maintaining security, privacy and confidentiality of patient information. Therefore, to the extent that each Party's business functions are governed by the HIPAA transaction, security and/or privacy regulations, each Party will have all appropriate organizational and technical policies, procedures and safeguards in place in order to comply with the applicable provisions of the HIPAA regulations. Furthermore, both Parties agree to execute any and all documents, as necessary, in order for either Party to comply with the requirements of HIPAA and the regulations promulgated there under.

10.2. If the performance of this Agreement involves the transfer by JCPS to Frazier of any data regarding any student that is subject to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g as amended, ("**FERPA**"), Frazier agrees to:

- (a) In all respects comply with the provisions of FERPA, including any requirements of Chapter 99 of Title 34 of the Code of Federal Regulations, and any other applicable state or federal law.
- (b) Use any such data for no purpose other than to fulfill the purposes of this Agreement, and not share any such data with any person or entity other than Frazier and its employees, contractors, volunteers, and agents, without the prior approval of JCPS. Disclosure shall be limited to only those employees, contractors, volunteers, or agents who are necessary for the fulfillment of this Agreement.
- (c) Require all employees, contractors, volunteers, and agents of Frazier to comply with all applicable provisions of FERPA with respect to any such data. Frazier shall require and maintain confidentiality agreements with each employee, contractor, volunteer or agent with access to data pursuant to this agreement.
- (d) Maintain any such data in a secure environment, whether physical or electronic, and not copy, reproduce, or transmit any such data except as necessary to fulfill the purposes of this Agreement. Frazier shall notify JCPS within 24 hours in the event of any data breach or disclosure of data to any person or entity other than the parties listed in section (b) of this provision.
- (e) Collect, store, and maintain data in a manner that does not permit the identification of an individual student by anyone other than employees, contractors, or agents of Frazier

necessary for the fulfillment of this Agreement and having a legitimate interest related to the purposes of this Agreement in knowing such personal 3 identification, and not disclose any such data in a manner that would permit the identification of an individual student in any form, including, but not limited to, published results of studies.

- (f) Destroy or return to JCPS any such data obtained under this Agreement within thirty days (30) after the date by which it is no longer needed by Frazier for the purposes of this Agreement. Frazier will require all employees, contractors, volunteers, or agents of any kind to comply with this provision.
- (g) JCPS retains the right to audit Frazier's compliance with the confidentiality requirements of this provision.

11. NOTICES. All notices required or permitted to be given under the terms of this Agreement shall be in writing, and shall be effective upon delivery if delivered to the addressee in person, effective three (3) business days after mailing if mailed by certified mail, postage prepaid, return receipt requested, or effective the next business day if delivered by overnight courier with charges prepaid, as follows:

If to Provider: **UofL Health-Louisville, Inc. dba
UofL Health – Frazier Rehabilitation Institute
220 Abraham Flexner Way
Louisville, KY 40202
Attn: CAO**

If to Client: Activities and Athletics Department
Jefferson County Public Schools
3332 Newburg Road
Louisville, KY 40218
Attn: Executive Director

or to such other address as either Party shall have designated for notices to be given in accordance with this Section.

12. MISCELLANEOUS.

- 12.1. Recitals.** The recitals are true and correct and are incorporated herein in their entirety.
- 12.2. Governing Law.** This Agreement is executed and delivered in the Commonwealth of Kentucky, and it will be governed by, construed and administered in accordance with, the laws of Kentucky. Jefferson County, Kentucky will be the sole and exclusive venue for any litigation or other proceedings between the Parties which may be brought or arise out of or in connection with or by reason of this Agreement.
- 12.3. Entire Agreement.** This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof and all prior agreements or understandings will be deemed merged herein.
- 12.4. Amendments.** No amendments or modifications of this Agreement will be made or deemed to have been made unless in writing and executed by the Party to be bound thereby.

- 12.5. **Waiver.** No provision of this Agreement will be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by the Parties hereto. No waiver by either Party hereto of any breach of, or of compliance with, any condition or provision of this Agreement by the other Party will be considered a waiver of any other condition or provision or of the same condition or provision at another time.
- 12.6. **Assignment.** This Agreement cannot be assigned by either Party without the prior written consent of the other Party.
- 12.7. **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) will be excluded from this Agreement and the balance of the Agreement will be interpreted as if such provision were so excluded and will be enforceable in accordance with its terms.
- 12.8. **Headings; Construction.** The headings contained in this Agreement are for convenience only and will not be deemed a part of this Agreement in construing or interpreting the provisions hereof. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.
- 12.9. **Tax Exempt Status of Provider.** If at any time it is reasonably determined by Provider's legal counsel that any provision of this Agreement could be deemed by the Internal Revenue Service to be inconsistent with the requirements of Section 501(c) (3) of the Internal Revenue Code of 1986, as amended (the "Code"), or give rise to "intermediate sanctions" under Section 4958 of the Code, Provider may modify such provision in a manner designed to eliminate such risk. Such modification shall be made after notice thereof has been provided by Provider to Client and Client has been given an opportunity to discuss the modification with Provider. If the Parties cannot agree on such modification, Provider shall have the option to terminate this Agreement upon written notice to Client.
- 12.10. **No Third Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right or remedy under or by reason of this Agreement.
- 12.11. **Changes in Law or Interpretation of Law.** The Parties recognize that this Agreement at all times is subject to applicable federal, state and local laws. The Parties further recognize that this Agreement shall be subject to amendments in and changing interpretations of such laws and regulations and to possible new legislation as well. Should any provision of law (including existing law) invalidate, or otherwise be inconsistent with, the terms of this Agreement or cause one or both of the Parties to be in violation of a material law, the Parties shall exercise their best efforts to negotiate an amendment to this Agreement so as to comply with such law, while maintaining the terms and intent of this Agreement to the greatest extent possible consistent with the requirements of law. If a Party reasonably requests an amendment to this Agreement pursuant to this Section and such amendment is not negotiated within sixty (60) days, or sooner if required by law, following notice of one Party to the other that the Agreement or any portion thereof is invalid or inconsistent with applicable law, the Party

requesting the amendment may terminate this Agreement.

- 12.12.** Provider shall not discriminate on the basis of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions).

[SIGNATURE PAGE FOLLOWS]

Jefferson County Public Schools

Martin Pollio, Ed.D
Superintendent

Date: _____

UofL Health – Louisville, Inc. dba
UofL Health-Frazier Rehab Institute



Kenneth P. Marshall
Vice President

Date: 6/17/2020