

## **THERAPY SERVICES AGREEMENT**

This Therapy Services Agreement ("Agreement") is made and entered into as of July 01, 2021 between Ark Rehab, P.S.C., a Kentucky professional services corporation ("Ark"), having its principal office at 710 E. Main Street, Lexington, Kentucky 40502 and Garrard County Board of Education at 322 W. Maple Ave, Lancaster, KY 40444 ("Facility").

### **WITNESETH**

Whereas Facility desires to provide Physical Therapy, Occupational Therapy and Speech Language Pathology services ("Therapy Services") to its patients at all and at any other ancillary offers mutually agreed upon in writing by the parties ("Premises").

Whereas Ark is engaged in the business of rendering Therapy Services and desires to provide such services for patients of the Facility on the Premises.

Now therefore, in consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

### **ARTICLE I**

#### **Purpose and Duties**

- 1.1 **Purpose.** The purpose of this Agreement is to set forth terms and conditions under which the Facility will retain Ark and Ark will assume the responsibility for performing Therapy Services to patients of Facility on the Premises.
- 1.2 **Relationship of the Parties.** It is specifically understood that Ark shall be an independent contractor and none of its personnel shall be considered employees of the Facility. Facility shall not be required to withhold any or all federal income, state income, social security, local payroll or other relevant taxes, or to secure workers compensation or employee's liability insurance of any kind on behalf of Ark or its employees. All designations of therapy personnel on the

Premises at any given time shall be made by Ark, subject only to the terms of this Agreement.

- 1.3 Duties of Ark. During the term (as hereinafter defined) Ark shall be responsible for furnishing medically necessary Therapy Services to patients of Facility on the Premises. In connection with the delivery and performance of Therapy Services, Ark shall:

- (A) Licensed Therapy Personnel and Other Allied Therapy Professionals. Ark shall make available licensed Physical Therapist(s), Occupational Therapist(s), Speech Language Pathologist(s), or Assistant(s), and Technician(s) (collectively, "Therapists"), adequate in training and number to provide Therapy Services to patients of the Facility on the Premises. The parties recognize that Ark might not always be able to provide Therapists to Facility at the times requested by the Facility. Accordingly, Ark shall schedule Therapist visits at such times as Therapists are reasonably available, taking into consideration the Facility's scheduling preferences. Ark shall be responsible for the supervision, administration and compensation of such personnel.
- (B) Independent Medical Judgment. Subject to Physician Supervision (as hereinafter defined) licensed/certified professional staff furnished by Ark shall freely and independently exercise his/her professional medical judgment consistent with the applicable standards of care in the provision of Therapy Services.
- (C) No Discrimination. Ark shall provide the Therapy Services in a manner that does not discriminate on the basis of race, sex, religion, age, national origin, place of residence, health status, need for services, referral sources, ability to pay, or source of payment for services rendered.



## ARTICLE II

### Indemnity and Insurance

- 2.1 Indemnity by Facility. Facility shall indemnify and hold harmless from and against all claims, demands, costs, expense, liabilities and losses that might result against Ark because of any alleged malfeasance, negligence or malpractice caused or alleged to be caused by the Facility, its employees, agents or contractors.
- 2.2 Indemnity by Ark. Ark shall indemnify and hold Facility harmless from and against all claims, demands, costs, expenses, liabilities and losses that might result against Facility as a consequence of alleged professional malpractice, malfeasance or negligence caused by Ark, its employees, agents or contractors.
- 2.3 Professional Malpractice Liability. Each party shall maintain in full force and effect throughout the Term of this Agreement and for a period of three (3) years thereafter a policy or policies of professional malpractice liability insurance providing coverage for claims by persons who sustain personal injuries due to professional services provided. The minimum limits of liability of such insurance shall be one million dollars (\$1,000,000.00) per occurrence, three million dollars (\$3,000,000.00) annual aggregate occurrences.
- 2.4 Workers Compensation Insurance. Throughout the Term of this Agreement, Ark shall maintain on its employees in full force and affect a policy or policies of worker's compensation insurance in the amount required by law, issued by and binding upon a responsible insurance company doing business in the state of Kentucky.

## ARTICLE III

### Term of Agreement

- 3.1 The term ("Term") of this Agreement shall be for an initial period of one (1) year, commencing on July 01, 2020 and ending June 30, 2022. Either Ark or Facility shall have the right to cancel and terminate this Agreement at any time during the Term of this Agreement, with or without cause, upon thirty (30) days prior written

notice to the other party, without any intentional interruption or decrease in the level of services provided during such notice period. Provided, however, that either party may immediately terminate this Agreement upon the failure of the other party to substantially carry out and perform or upon the material breach by the other party of any of its duties, obligations or responsibilities hereunder.

#### **ARTICLE IV**

##### **Professional Fees**

- 4.1 **Professional Fee Arrangement.** Facility shall compensate (“Ark Renumeration”) Ark for Therapy Services rendered hereunder in accordance with the Fee Arrangement attached hereto as Exhibit A and by reference made a part hereof (“Professional Fee Arrangement”). Both parties agree to review the Professional Fee Arrangement on or about the end of each calendar quarter during the Term of this Agreement. The Professional Fee Arrangement shall not be affected by utilization or volume of the services performed.
- 4.2 **Patient Billing.** Ark shall submit to Facility, in accordance with Facility procedures, a daily summary of Therapy Services rendered to each patient. All summaries shall be documented and supported by adequate clinical records. Facility shall prepare all bills and claims filed for services provided by Ark in a lawful and correct manner consistent with state and federal law, including guidance issued by government health programs and health plans and other third party payers. Facility shall be responsible for billing each patient for whom Therapy Services are rendered during its normal billing cycle.
- 4.3 **Ark Renumeration.** Ark shall bill Facility once per month. Facility shall remit payment in full to Ark within thirty (30) days of the date on the invoice. If the invoice is not paid in full within thirty (30) days of the date on the invoice, the Facility shall incur delinquency charges at the monthly rate of two percent (2%) or, if less, the maximum amount permitted by law, from the date due until paid.



Facility shall be solely responsible for the billing and collection of all fees charged to its patients for Therapy Services rendered by Ark hereunder and shall diligently pursue the same. Ark shall not be held responsible or be expected to reimburse amounts paid to Ark by Facility in the event of third party or patient nonpayment to the Facility for Therapy Services rendered by Ark.

## **ARTICLE V**

### **Duties of Facility**

- 5.1 Facility shall provide, at its expense, adequate facilities reasonably needed for Ark to carry on its duties as provided for in this Agreement, including, but not limited to: adequate space within the Premises; water, heat and electric power; telephone and other utilities; reasonable office equipment and supplies, such as patient files and all rehabilitation equipment necessary to perform the Therapy Services provided for under this Agreement.

## **ARTICLE VI**

### **Solicitation of Employees**

- 6.1 During the term of this Agreement and for a period of one (1) year from the date of termination of this Agreement the Facility agrees as follows:  
That the Facility will not approach, solicit, consider, nor hire in any capacity, by either employment or through contract, any employee or independent contractor of Ark who has rendered Services under this Agreement.

## **ARTICLE VII**

### **Compliance with Fraud and Abuse/Stark Law**

- 7.1 It is the intent and good faith belief of the parties hereto that this Agreement complies with the provisions of the federal and state fraud and abuse/anti-kickback statutes [42 U.S.C. § 1320a – 7b (b) and KRS 216.2950] and regulations promulgated hereunder. It is also the intent and good faith belief of the parties hereto that this Agreement complies with the applicable provisions of the federal and state laws restricting physician self-referrals to entities with which they have a financial relationship [42 U.S.C. § 1395nn and KRS 216.2950] and regulations promulgated hereunder. Subsequent to the execution of this Agreement, should any provision of this Agreement be deemed by either party to be contrary to the provisions of said laws and regulations then the parties agree to renegotiate, in good faith, the problematic provision to the mutual satisfaction of the parties. In the event the parties are not able to reach a mutual agreement, then either party may terminate this Agreement upon thirty (30) days written notice to the other party if the terminating party has a good faith belief that the problematic provision creates an unfavorable exposure under said statute, act, regulations or safe harbor provisions.

## **ARTICLE VIII**

### **Compliance with the Health Insurance Portability and Accountability Act**

- 8.1 It is the intent and good faith belief of the parties hereto that this Agreement complies with the provisions of the Health Insurance Portability and Accountability Act and privacy regulations promulgated hereunder at 45 C.F.R. Parts 160 and 164. Subsequent to the execution of this Agreement should any provision of this Agreement be deemed, by either party, to be contrary to the provisions of said laws, or regulations, then the parties agree to attempt in good faith to renegotiate the problematic provision to the mutual satisfaction of the parties. In the event the parties are not able to mutually agree on modification of



the problematic provision, then either party may terminate this Agreement upon thirty (30) days written notice to the other party if the terminating party has a good faith belief that the problematic provision creates an unfavorable exposure under said act and regulations.

- 8.2 Ark agrees to provide Therapy Services in compliance with the HIPAA policies and procedures of the Facility.

## **ARTICLE IX**

### **Representations and Warranties**

- 9.1 Facility and Ark represents, warrants and agrees that it and any of its employees and agents acting under, or in connection with, this Agreement shall at all times comply with any and all applicable federal and state statutes, regulations, standards, guidelines, memorandums, guidance and letters including, but not limited to, those related to billing, reporting, reimbursement, fraud and abuse.
- 9.2 Facility and Ark represent, warrant and agree that all amounts paid under this Agreement, reflect the total amount of the applicable payer is established reimbursement rate for the professional services provided under this agreement and that any changes to such established rates, once final and effective, will result in a corresponding change to the professional fees set forth herein. Any such adjustments will be effective from the effective date established by the relevant payer.

## **ARTICLE X**

### **Miscellaneous**

- 10.1 Remedies for Breach. In the event that either party hereto defaults in the performance or observance of any of the terms, conditions or obligations contained in this Agreement, such party agrees to indemnify and save harmless the other party from and against any and all loss, liability, expense (including attorney's fees) and costs relating thereto. These remedies shall, however, be

cumulative and not exclusive and shall be in addition to all the rights of action and the remedies that the parties may have under this Agreement, or at law or in equity.

- 10.2 Headings. Article and section headings as used herein are used for convenience only and shall not be used to interpret this Agreement.
- 10.3 Construction. This Agreement shall be construed and governed in all respects, under, and by, the laws of the Commonwealth of Kentucky.
- 10.4 Successors. This Agreement shall inure to the benefit of and be binding upon the parties hereto their assigns and their successors in interest. Provided, however, no party to this Agreement shall assign their rights and duties hereunder within the prior written consent of the other party.
- 10.5 Severability. If any part of this Agreement is, at any time, declared invalid by a court of competent jurisdiction, such part of the Agreement shall not affect the validity of any remaining portions, which remaining portions shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared as the intention of the parties hereto that they would have executed the remaining portions of this Agreement without including therein any such part, parts or portions which may hereafter for any reason be declared invalid.
- 10.6 Notice. Any notice under this Agreement shall be deemed duly given, if delivered by hand or mailed, certified or registered mail, with postage prepaid to the Facility at 322 W. Maple Ave, Lancaster, KY 40444 and to Ark Rehab, P.S.C. at 710 E. Main Street, Lexington, Kentucky 40502.
- 10.7 Amendment. This Agreement shall not be subject to any amendment, modification or alteration except as may be agreed to at any time in writing by the parties hereto.
- 10.8 Changes in Law. Subject to any change in the law applicable to this Agreement, each party agrees to negotiate in good faith and amend the terms of this Agreement.
- 10.9 Entire Agreement. This Agreement and the Schedules attached hereto contain the entire understanding of the parties as to the terms and conditions of their



relationship. This Agreement supersedes all previous representations, understandings or agreement, oral or written, between the parties with respect to the subject matter described in this Agreement.

10.10 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, and all of which shall constitute but one (1) and the same instrument.

In witness whereof, the parties have executed this Agreement as of the date first above written.

Garrard County Board of Education

By: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Ark Rehab, P.S.C.

A Kentucky professional services corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

## EXHIBIT A

### Professional Fee Arrangement

Contractor shall provide Physical Therapy, Occupational Therapy and Speech Language Pathology services to the Facility.

Reimbursement fees for Physical Therapy, Occupational Therapy and Speech Language Pathology services are as follows:

Physical Therapist:	\$ 65 / Hr
Physical Therapy Assistant	\$ 58/ Hr
Occupational Therapist:	\$ 65/ Hr
Occupational Therapy Assistant	\$ 53/ Hr
Speech Language Pathology:	\$ 65 / Hr

Travel time will be reimbursed for round-trip travel for all therapists utilized by the Facility. Travel for this contract will be two hours (2) hours. All travel time required by the Facility will be reimbursed. Travel time will be calculated from Ark's central office at 710 E. Main Street, Lexington, KY 40502.

Facility also agrees to pay for time spent on documentation services for patients while on premises at the above-mentioned rates.

Facility representative: \_\_\_\_\_

Date: \_\_\_\_\_

Ark Representative: \_\_\_\_\_

Date: \_\_\_\_\_