

## **ATHLETIC TRAINING SERVICES AGREEMENT**

This ATHLETIC TRAINING SERVICES AGREEMENT (the “Agreement”) is made as of this 1<sup>st</sup> day of September 2023 (“Effective Date”), by and between, **Saint Elizabeth Medical Center, Inc. dba St. Elizabeth Healthcare**, a Kentucky nonprofit corporation with a principal office located at 1 Medical Village Drive, Edgewood, KY 41017 (“Contractor”) and **Dayton Independent Schools**, located at 200 Clay Street, Dayton, KY 41074 (“School”).

### **RECITALS:**

**WHEREAS**, School desires to have certain athletic training services provided in connection with its athletic programs; and

**WHEREAS**, Contractor has agreed to perform such services for School on the terms and conditions set forth in this Agreement.

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

**1. Services, Exclusivity.**

Contractor agrees to furnish those services set forth in the attached **Exhibit A** (the “Services”). During the term of this Agreement, Contractor shall be designated as the exclusive provider of Services to School. Contractor will also be the exclusive healthcare advertiser at School.

**2. Responsibilities of School.**

School agrees to comply with the additional responsibilities set forth in the attached **Exhibit B** entitled “Responsibilities of School”.

**3. Consideration.**

a. In exchange for Contractor's Services and the Sponsorship Stipend, School shall recognize St. Elizabeth Healthcare as the exclusive athletic training services provider for School and agrees not to enter into any agreements or arrangements to provide signage at the School's home venues with any other healthcare organization.

b. Contractor will purchase promotional materials and/or sponsorships in the amount of Ten Thousand Dollars (\$10,000.00) per twelve-month contract year (“Sponsorship Stipend”). The promotional materials and/or sponsorships will be reasonably agreed upon by the School and Contractor and may include but are not limited to, booster and event program advertisements, golf outing sponsorships, special event sponsorships, space to place banner advertisements, public address announcements, and other promotional opportunities offered by School. School agrees that Contractor will be the exclusive healthcare-related sponsor during the term of this Agreement. School will not make public announcements during sporting events advertising for any other healthcare-related entity without the prior written consent of Contractor. School will not display any other healthcare-related entity's logo and/or name on scoreboards or anywhere on School

property without the prior written consent of Contractor. Contractor and School may update the advertisements and promotional materials throughout the term of this Agreement.

c. In the event of termination, for any reason, prior to the end of the term of the Agreement, School shall reimburse Contractor the pro-rated amounts for any prepaid sums within sixty (60) days of the date of termination. In any dispute involving sums owed to Contractor, Contractor shall be entitled to any and all costs and expenses associated with collection of unpaid sums, including but not limited to attorneys' fees and interest at 15% per annum.

#### **4. Term, Termination.**

a. Term. This Agreement shall commence on the Effective Date above and continue for a two (2) year period ("Initial Term"), unless otherwise earlier terminated as provided for herein. Thereafter, this Agreement shall automatically renew for successive terms of one (1) year each (each a "Renewal Term") Provisions of this Agreement shall apply to both the Initial Term and the Renewal Term save where the context requires otherwise.

b. Termination. Notwithstanding the foregoing, St. Elizabeth Healthcare may terminate the Agreement at any time, without cause, by giving no less than thirty (30) days prior written notice to School. After the Initial Term, School may terminate the Agreement without cause by providing St. Elizabeth Healthcare with no less than thirty (30) days written notice prior to the end of the then current Term. Either Party may terminate this Agreement with cause upon written notice to the other party as follows: (i) if either party breaches a material provision of this Agreement and such breach is not cured within thirty (30) days after written notice has been given to the breaching party; (ii) in the event of a filing of a petition in bankruptcy whether voluntary or involuntary.

c. Effect of Termination. As noted above, upon early termination of the Agreement, with or without cause, any financial consideration pre-paid by Contractor shall be refunded by School at a prorated amount within sixty (60) days of the effective date of termination.

#### **5. Independent Contractor.**

The relationship of the parties is that of independent contractors and nothing herein shall be construed as otherwise. Contractor, in performing the Services, is acting in the capacity of an independent contractor, and is not an agent, servant, partner, or employee of School. Contractor will have control over the performance of the Services and shall be solely responsible for payment of its federal and local taxes, salary for its employees, Social Security payments, and any and all other expenses incurred by Contractor in the performance of this Agreement. None of the benefits provided by School to its employees including, but not limited to, Workers' Compensation insurance, disability insurance, medical insurance and employment insurance shall be provided by School to any of Contractor's employees.

#### **6. Insurance.**

a. Contractor, at its expense, shall carry a policy or policies of professional liability and general liability insurance issued by an insurance carrier or shall maintain an adequately funded self-insurance plan, providing coverage in the amount of at least \$1 million per occurrence and \$3 million aggregate per year, which insures Contractor and each employee thereof against

any act, error or omission of Contractor and Contractor's employees in the performance of Services under this Agreement. Contractor shall also provide Workers' Compensation insurance to its employees as may be required and consistent with state law. Contractor agrees to promptly furnish to School upon request evidence of such insurance coverage.

b. School, at its expense, shall carry a policy or policies of professional liability and general liability insurance, issued by an insurance carrier providing coverage in the amount of at least \$1 million per occurrence/claim and \$3 million aggregate per year, which insures School and each employee thereof against any act, error or omission of School and School's employees. School shall also provide Workers' Compensation insurance to its employees as may be required and consistent with state law. School agrees to promptly furnish to Contractor upon request evidence of such insurance coverage.

**7. Indemnification.**

a. Contractor shall indemnify, defend, and hold School harmless from and against any and all liability, judgments, costs, damages, claims or demands, including, without limitation, reasonable attorneys' fees, arising out any third-party claim directly caused by the negligence or willful misconduct of Contractor in the performance of the Services herein.

b. School shall indemnify, defend, and hold contractor harmless from and against any and all liability, judgments, costs, damages, claims or demands, including, without limitation, reasonable attorneys' fees, arising out of any third-party claim directly caused by the negligence or willful misconduct of School arising from School's athletic programs, maintenance of its facilities or otherwise related to Schools obligations under this Agreement.

**8. Notices.**

All notices, requests, demands, directions and other communications required or permitted under the provisions of this Agreement, or otherwise with respect hereto, shall be in writing and shall be: (i) mailed by first class registered or certified mail, return receipt requested, postage prepaid; or (ii) sent by next day business courier (such as Federal Express or the like); or personally delivered; as follows:

If to School:

Dayton Independent Schools  
200 Clay Street  
Dayton, KY 41074  
Attention: Superintendent

If to Contractor:

St. Elizabeth Sports Medicine  
10095 Investment Way  
Florence, KY 41042  
Attention: Scott Helton  
Director of Sports Medicine and  
Athletic Training Services

With a copy to:

St. Elizabeth Healthcare  
1 Medical Village Drive  
Edgewood, KY 41017  
Attention: Gary Blank, EVP/COO

or to such other address(es) or to the attention of such other person(s) and officer(s) as the addressee of any such notice shall have previously furnished to the sender in writing. Each notice or communication which shall be transmitted in the manner described above shall be deemed sufficiently given, served, sent, or received for all purposes at such time as it is sent to the addressee (with return receipt, delivery receipt being deemed conclusive evidence of such mailing, transmission or delivery), or at such time as delivery is refused by the addressee on presentation.

**9. Confidentiality.**

Each party shall keep confidential all Confidential Information of the other party (“owning party”) and shall not use or disclose Confidential Information either during or at any time after the term of this Agreement, without the owning party’s express written consent, unless required to do so by law, court order or subpoena in which case a party shall not disclose such Confidential Information until it has provided advance written notice to owning party such that owning party may timely act to protect such disclosure. For purposes of this provision, “Confidential Information” means non-public information about either party or its employees or agents that is disclosed or becomes known to the other party as a consequence of or through its activities under this Agreement, including, but not limited to proprietary, financial, strategic, and operational information. Confidential Information received or acquired by the parties during the term of this Agreement may be utilized or disclosed on a need-to-know basis and in furtherance of the objectives sought by the parties under this Agreement. Confidential Information shall not include information (as demonstrated by contemporaneous documentation) that: (i) was known or used by the receiving Party prior to its receipt from the disclosing Party, without obligation of confidentiality; (ii) is or becomes public knowledge, other than through acts or omissions of the receiving Party; (iii) is developed by the receiving Party independently of the Confidential Information received hereunder; or (iv) is lawfully obtained by the receiving Party without any restriction on use and disclosure from sources independent of the other Party who have a lawful right to disclose such Confidential Information.

**10. Compliance, HIPAA.**

Each party agrees to comply with any and all applicable laws, rules and regulations including but not limited to Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and regulations promulgated thereunder, as well as other State and Federal laws and regulations relating to the security, protection, and privacy of individually identifiable health care information. School shall further ensure that School complies with the rules and regulations of the KHSAA, NCAA and any other applicable School requirements. The parties acknowledge and agree that Contractor is not subject to, and shall not be responsible for, School's compliance with the KHSAA, NCAA or any other applicable School requirements and School shall indemnify, defend and hold harmless Contractor from any and all liability, judgments, costs, damages, claims or demands, including, without limitation, reasonable attorneys’ fees, arising out any such noncompliance or violations of School.

a. Authorization/Release. Prior to the relevant sports season and/or at the beginning of each academic school year, School will obtain for each student athlete involved in a program for which Contractor will provide services hereunder a HIPAA-compliant authorization signed by the student (if age 18 or over) and/or his/her parent or guardian permitting Contractor to treat the student and to release pertinent information to School relating to any Services provided by

Contractor to the student under this Agreement. Students without a completed and signed Authorization will not be able to receive treatment from Contractor. School will advise all student athletes that failure to complete and sign an Authorization will result in not being able to receive treatment from Contractor as provided for under this Agreement. An "Authorization for Treatment and Release of Health Information" is attached hereto as **Exhibit C**.

**11. Assignment.**

Neither party shall assign any right or any part of this Agreement without first obtaining the prior written consent of the other party.

**12. Waiver.**

If either party waives a breach of any provision of this Agreement by the other party, such waiver shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement, not impair either party's rights with respect to any other breach of this Agreement.

**13. Modification.**

Any matter of agreement herein contained may be altered from time to time by the written consent of both parties hereto without in any way affecting the remainder of the Agreement. Any such modification shall be attached hereto and become a part hereof.

**14. Severability.**

In the event any one or more provisions contained in this Agreement is/are for any reason deemed invalid or unenforceable, such invalidity or unenforceability shall not affect any provisions hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been herein contained.

**15. Headings.**

The headings used in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction or limit the scope or intent of any provision of this Agreement.

**16. Counterparts.**

This Agreement may be executed in several counterparts or with counterpart signature pages, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same Agreement.

**17. No Third Party Rights.**

This Agreement is solely being undertaken for the benefit of the parties hereto and is not being entered into for the benefit of any other person or entity, including, but not limited to, any patients or their representatives.

**18. Governing Law/Venue.**

This Agreement shall be governed by and construed according to the laws of Commonwealth of Kentucky, and Kenton County, Kentucky, shall be the sole and exclusive venue for any state court proceeding which may arise out of this Agreement.

**19. Entire Agreement; Prior Agreement.**

This Agreement contains the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes any prior written or oral agreements or understandings, and any contemporaneous oral agreements or understandings, between them respecting the subject matter hereof. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein. For avoidance of doubt, as of the Effective Date of this Agreement, the 2016 Athletic Training Services Agreement between the parties ("Prior Agreement") is hereby terminated and replaced in its entirety by this Agreement.

**20. Authority.**

Each of the parties hereby represents and warrants to the other party that it has the right, power, and legal authority to enter into and fully perform this Agreement in accordance with its terms and that this Agreement when executed and delivered by the parties will be a legal, valid and binding obligation enforceable against the parties in accordance with its terms.

IN WITNESS WHEREOF, the parties have hereunto set their hands and executed this Agreement as of the Effective Date first written above.

**Dayton Independent Schools**

**Saint Elizabeth Medical Center, Inc.**

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

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

Name: \_\_\_\_\_

Name: Gary Blank

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

Title: EVP & Chief Operating Officer

## **EXHIBIT A – CONTRACTOR SERVICES**

1. To the extent available and mutually agreed upon by the parties, a duly Licensed Athletic Trainer employed by Contractor will be made available to provide athletic training services to School on a mutually agreeable scheduled basis as set forth in this Exhibit A.
2. The Services are further limited to those within the scope of the Athletic Trainer's licensure and upon receipt of required authorization from students. Any and all Services will be performed within the limitations of the Kentucky Board of Medical Licensure Athletic Trainer's Practice Act and any other applicable law and all other applicable state and federal laws dictating the scope of practice for Athletic Trainers.
3. Contractor will make a good faith effort to provide coverage of onsite events and practices as the parties mutually agree. However, such coverage of services is not guaranteed and is contingent upon Contractor personnel availability and as subject to Contractor personnel staffing, scheduled time off, holidays, sick days, and other such factors outside of Contractor's control.
4. All Services will be provided on School's premises with the exception of sports events at other schools where the School's athletes are the "visiting" team to the extent such off site Services are mutually scheduled by the parties.
5. In the case(s) of multiple events occurring simultaneously, School and Contractor will mutually agree upon reasonable coverage of all events.
6. Contractor will assist to facilitate reasonable services of a team physician for mutually scheduled events.
7. As permitted by applicable law and a completed "Authorization for Treatment and Release of Health Information" (See, Exhibit C), Contractor will provide School with information and records regarding the care and treatment rendered by the Athletic Trainer under this Agreement. Contractor will facilitate appropriate and reasonable communication regarding an injured athlete between appropriate personnel.
8. In cooperation with School's administration, Contractor will assist with the development of emergency action plans for athletic venues. Notwithstanding the foregoing, School is ultimately and solely responsible for approval and implementation of such emergency actions plans.

## **EXHIBIT B – ADDITIONAL RESPONSIBILITIES OF SCHOOL**

In addition to the terms and conditions contained in the Agreement, School shall also be responsible for the following:

1. Provide a dedicated area on School premises that is reasonably acceptable to Contractor (the “Athletic Training Room”) to perform the Services, other than the Services that may be provided at events.
2. Take such action and adopt such policies as are reasonable and desirable to facilitate communication between School, its coaches and other representatives of School's athletic department, and Contractor.
3. School shall comply with any and all applicable law, rules regulations and requirements of its governing agencies’ including but not limited to the KHSAA and NCAA.
4. School will foster a culture of respect for Contractor’s staff including appropriate communication and support for medical decisions.
5. Designate School’s Athletic Director to serve as the primary contact for Contractor’s communication with School.
6. Provide Contractor with athletic event schedules at least one (1) month prior to the first scheduled event and communicate revisions to the schedule to Contractor no less than two (2) weeks prior to any such revision. Failure to timely provide information may result in unavailability of Services for such events.
7. School shall foster a culture of respect for Contractor's Athletic Trainer staff including but not limited to appropriate communication and support for the decisions recommended and made by Contractor staff. School shall ensure that School staff, teachers, coaches, parents, and Students shall at all times be courteous and respectful to Contractor staff providing Services under this Agreement. Violations of this section 7 shall be grounds for immediate termination of the Agreement by Contractor.



## **EXHIBIT C**

### **AUTHORIZATION FOR TREATMENT & RELEASE OF HEALTH INFORMATION**

As (please specify) parent/guardian of \_\_\_\_\_ (the “Student”), a student at \_\_\_\_\_ School (the “School”) in \_\_\_\_\_, (city/state), who desires to participate in extracurricular athletic program(s) of the School (the “Program”), I understand that in the course of competing in the Program or Program-sponsored events the Student may require attention or assistance from medical personnel for illness or injury incurred while participating in such Program-sponsored sporting events. I understand that the School has arranged for St. Elizabeth Healthcare to provide such attention and assistance during certain Program-sponsored events, and I authorize Student to receive such attention and assistance. I, the undersigned, hereby authorize St. Elizabeth Healthcare to release necessary medical information about the Student obtained in the course of providing attention or assistance during Program-sponsored events to the School and its representatives including, but not limited to, coaches, athletic director, team and/or family physician, for the purpose of making determinations regarding the continued participation of the Student in the Program or Program-sponsored sporting events.

I understand that I have the right to revoke this authorization at any time except to the extent St. Elizabeth Healthcare has already acted as a result of this authorization. I further understand that any revocation must be provided in writing to St. Elizabeth Healthcare.

I also understand that when information is used or disclosed based on an authorization, the information may be re-disclosed by the recipient and no longer protected by the Standards for the Privacy of Individually Identifiable Health Information.

This authorization shall expire at the end of the Program(s) season(s).

I understand that I have the right to refuse to sign this authorization.

\_\_\_\_\_  
Student’s Name

\_\_\_\_\_  
Street/box number

\_\_\_\_\_  
Student’s Date of Birth

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Student’s Signature (required if student is 18  
or over or will turn 18 before program ends)

\_\_\_\_\_  
Student’s Telephone Number

\_\_\_\_\_  
Name of Parent or Guardian

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Parent or Guardian

\_\_\_\_\_  
Relationship to Student (Parent, Guardian, etc.)