

**PHYSICAL REHABILITATION AGREEMENT
BETWEEN
NIAGARA FALLS MEMORIAL MEDICAL CENTER
AND
KENMORE TOWN OF TONAWANDA UNION FREE SCHOOL DISTRICT
2016 – 2017 School Year**

This Physical Rehabilitation Agreement, made this 10th day of February, 2016, by and between NIAGARA FALLS MEMORIAL MEDICAL CENTER, (the "Hospital" OR "NFMCM") and KENMORE TOWN OF TONAWANDA UNION FREE SCHOOL DISTRICT (the "Agency") (individually the "Party", collectively the "Parties").

WHEREAS, the Hospital is an acute care hospital licensed pursuant to Article 28 of the New York Public Health Law, and is duly authorized and licensed to provide physical rehabilitation services, including certified athletic trainers; and

WHEREAS, the Agency desires to obtain the services of **certified athletic trainers** from the Hospital; and

WHEREAS, the Agency requires its student athletes to undergo **pre-participation physical evaluations** ("PPE's") by qualified medical practitioners, and

WHEREAS, the Agency can provide physicians and physician extenders who are qualified to perform PPE's; and

WHEREAS, the Hospital agrees to provide at fair market value in accordance with the terms of this Agreement and in compliance with the Medicare Anti-Kickback Statute (42 U.S.C. 1320a - 7b(b)) and the regulations and Safe Harbors promulgated thereunder, the use of its physical rehabilitation facilities, equipment and certified athletic trainers service **and** PPE's for the benefit of the Agency's students (hereinafter physical rehabilitation services and services); and

WHEREAS, the Agency and Hospital desire to cooperate in order to meet the needs of each student participating in athletic activities in a coordinated manner.

NOW, THEREFORE, in consideration of the mutual covenants, promises and undertaking hereinafter set forth, the parties agree as follows:

1. OBLIGATIONS OF HOSPITAL

ATHELETIC TRAINING

- a) Provide the services of (2) two certified athletic trainer for approximately 30 hours per week to the agency during the Fall, Winter and Spring school sport seasons.
- b) Athletic trainer coverage will be concentrated on those days of highest athletic participation and/or days of contact and collision-type sports activity.
- c) The athletic trainers will be BOC certified.

- d) Maintain an adequate quality control program in compliance with the requirements of the New York State Department of Health and in accordance with all applicable rules and regulations promulgated by local, state and federal regulatory agencies and other appropriate public or private licensing or accrediting organizations. Upon request of Agency, Hospital will provide verification of such New York State licensure or accreditation.
- e) Perform all functions in compliance with applicable guidelines issued by Medicare and Medicaid.
- f) Represents that its employees are, and will be, adequately trained, as is appropriate to the nature of the services they are performing, in accordance with 29 CFR 1910.1030 et seq, the OSHA Bloodborne Pathogens regulations (the Regulations).
- g) Provide for the preparation of appropriate reports and documentation in connection with the services rendered pursuant to this Agreement.
- h) Provide services in a prompt and efficient manner.
- i) Provide such services in the same manner, in accordance with the same standards, as are offered to other Hospital patients.
- j) Hospital represents and warrants that it will not seek payment from the student or student's parent/guardian, his/her physician or any other party or payor for services provided pursuant to this Agreement.

PPE'S

- a) NFMCM shall offer services as an independent contractor via qualified physicians and physician extenders (herein, the "Physicians"). The Physicians shall conduct PPE's of all Agency students who appear with proper documentation and parental consent forms at the time and place designated by the Agency. The parties agree that NFMCM may assign other qualified physicians licensed to practice medicine in New York State who are not associated with NFMCM to perform PPE's on an "as needed" basis.
- b) The PPE's shall consist of the services set forth in Exhibit C herein.
- c) NFMCM shall work cooperatively and in consultation with the Agency and its employees in providing the services required under this Agreement.
- d) NFMCM shall be responsible for the timely preparation of the Pre-participation Physical Evaluation Form, attached hereto as Exhibit B, for each the Agency student screened pursuant to this Agreement.
- e) The Agency hereby acknowledges that NFMCM responsibilities and obligations under this Agreement are strictly limited to the performance of PPE's.
- f) All medical records generated by the Physicians in the course of the PPE's, including the Pre-participation Physical Evaluation Form, are the property of the Agency and shall be held confidential. Such medical records may not be released or disclosed to a third

party without the prior written approval of the Agency.

2. OBLIGATIONS OF AGENCY

- a) Pay to the Hospital Compensation in a timely manner, pursuant to Section 4.
- b) Agency will provide to Hospital a description of services, duties and responsibilities to be performed hereunder, which will be attached to this Agreement as Exhibit A.
- c) Agency will evaluate Hospital's performance on an on-going basis. The Parties agree to use best efforts to resolve any identified deficiencies or other operational issues.
- d) Agency agrees not to hire or solicit for hire any employees of Hospital who have directly served the Agency for a period of one (1) year following their termination of their services to the Hospital.
- e) The duties and responsibilities performed by such athletic trainers while working at or for the Agency will be under the supervision, direction and control of the Agency and the Agency's administrative personnel.

3. MUTUAL OBLIGATIONS

In the performance of this Agreement, the Parties agree as follows:

- a) Scheduling for athletic trainer's services will be arranged between the Agency and the Hospital's Director of Sports Medicine/Summit Rehab Manager, pursuant to **Exhibit B**, attached. Such hours shall be amended by the mutual written consent of the Parties. The provision of PPE's shall be in accordance with **Exhibit C** hereto.
- b) The location for services will be determined by the Hospital and the Agency's Athletic Director, pursuant to Exhibit B.
- c) Nothing contained in this Agreement shall prohibit the Parties from exercising independent professional judgment.
- d) Nothing contained in this Agreement shall affect the independent operations of either Party.
- e) Nothing contained in this Agreement shall create any contractual third party beneficiary liability upon the parties to any other person, patient or otherwise.
- f) Nothing contained in this Agreement shall restrict either Party from entering into a similar agreement with other entities performing like services.
- g) Nothing contained in this Agreement shall place liability for the debts or obligations of one Party upon the other.
- h) To adhere to State and federal laws prohibiting discrimination on the basis of race, creed, color, national origin, sex, age, sponsor, political affiliation or citizenship status.
- f) No Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder for any reason beyond its control, including without limitation, acts of god or the public enemy, flood, storms or any statute, regulation, rule or action of any federal, state or local government or any agency thereof. In addition, no party shall be deemed to be in violation of this Agreement if it is

prevented from performing any of its obligations, other than direct patient care, due to strikes or other labor activities.

g) Hospital has in place a Compliance Program and Code of Conduct which has as its goal to ensure that the Hospital complies with federal, state and local laws and regulations. It focuses on risk management, the promotion of good corporate citizenship, including a commitment to uphold a high standard of ethical and legal business practices, and the prevention of misconduct. Agency acknowledges Hospital's commitment to corporate responsibility and agrees to conduct all business transactions which occur pursuant to this Agreement in accordance with the underlying philosophy and objectives of the Compliance Program and Code of Conduct adopted by Hospital.

h) Agency acknowledges Hospital's affirmative obligation to comply with Federal regulations prohibiting Hospital from contracting with individuals or entities that have been excluded from participation in Medicare or other government funded health care programs. Accordingly, Agency hereby acknowledges it is not an excluded entity, or employs, or is owned or operated by an excluded individual, as defined at § 1128 and 1128A of the Social Security Act.

I) The Agency shall indemnify and hold the Hospital harmless against any and all suits, claims, demands or liabilities arising out of, or in any way connected to, any acts or omission to act by the Agency and its agents, officers and employees undertaken or required by or otherwise arising out of the performance of this Agreement.

m) The Hospital shall indemnify and hold the Agency harmless against any and all suits, claims, demands or liabilities arising out of, or in any way connected to, any acts or omission to act by the Hospital and its agents, officers and employees undertaken or required by or otherwise arising out of the performance of this Agreement.

4. COMPENSATION

For Athletic Training Services, Hospital and Agency agree that Hospital shall be compensated for services rendered pursuant to this Agreement in the amount of Sixty Thousand Dollars and No Cents (\$60,000.00) for 2016-2017 school year for a total of (2000) hours for Kenmore EAST and Kenmore WEST high schools). This agreement is compensation for Physical Rehabilitation Services rendered under this Agreement. Accrued fees will be paid to the Hospital of (2) payments/year in December and June of each year. Such compensation shall be considered full payment to the Hospital for Services rendered hereunder.

For PPE's, the Agency agrees to pay NFMCC a fee (see exhibit C) per PPE. NFMCC shall invoice the Agency after the yearly physicals done in the spring (May/June) and after the make-up physicals in the fall (August), winter (October), and spring (March) seasons. Payment shall be due not later than thirty (30) days from the date of the invoice. The parties agree to perform a reconciliation within fifteen (15) days of the completion of all PPE's for the applicable athletic season and to remit payment to the other in the event of an overpayment or underpayment, within thirty (30) days of a completed reconciliation.

5. INSURANCE

- a) Hospital agrees to maintain general and professional liability insurance and Agency agrees to maintain general liability insurance in an amount sufficient and acceptable to the other, of at least \$1,000,000, or any higher amount to cover the acts and omissions of their respective employees for services rendered pursuant to this Agreement.
- b) Upon request, Hospital agrees to furnish Agency with a current and valid Certificate of Insurance relating to the extent and amount of professional and general liability insurance Agency agrees to furnish Hospital with a current and valid Certificate of Insurance relating to the extent and the amount of general liability insurance. Each Party agrees to keep and to maintain said insurance coverage in full force and effect during the term of this Agreement. Any modification or alteration of such coverage or program, by either Party, which shall have a material effect on the Section, shall be promptly communicated to the other Party, and if not cured shall be cause for termination of this agreement. Hospital will add Agency as an additional insured.

6. INDEMNIFICATION

- a) The Agency shall indemnify and hold harmless NFMMC, their employees or agents from and against all losses, and all claims, demands, payments, suits, actions, recoveries and judgments of every nature and description made, brought or recovered against the indemnified party or such party's employees or agents by reason of the acts, omissions or conduct of the Agency, its employees or agents.
- b) NFMMC shall indemnify and hold harmless the Agency from and against all losses, and all claims, demands, payments, suits, actions, recoveries or judgments of every nature and description made, brought or recovered against the indemnified party by reason of any negligent act, omission or conduct of any NFMMC employee or agent, subject to the limitations set forth in Section 3 above. Notwithstanding anything herein to the contrary, this right of indemnification shall not apply to, and NFMMC shall not be responsible for, the acts or omissions of those physicians unassociated with NFMMC who are assigned by NFMMC to conduct PPE's under this Agreement.

7. INDEPENDENT CONTRACTOR

- a) In the performance of services performed pursuant to this Agreement, both parties agree that the Hospital is performing as an independent contractor.
- b) Neither Party has the authority to enter into any contracts or to assume any obligations, undertakings or commitments for or on behalf of the other Party except as expressly set forth herein or to make any warranties or representations for or on behalf of the other Party.

8. ACCESS TO RECORDS

- a) In accordance with provisions of 42 U.S.C. 1395x(v) (1) (I) and 42 C. F. R. 420.300 et. seq., and Section 952 of the Omnibus Reconciliation Act of 1980, or regulations adopted thereto, as are applicable to this Agreement, Hospital shall make available upon the written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, this

Agreement and any other books, records and documents of Hospital that are necessary to certify to such persons the nature and extent of services rendered. The obligation of Hospital to make records available shall extend for four (4) years after the furnishing of such services pursuant to this Agreement.

b) In accordance with provisions of 42 U. S. C. 1395x(v) (1)(I) and 42 C. F. R. 420.300 et seq., and Section 952 of the Omnibus Reconciliation Act of 1980, or regulations adopted thereto, as are applicable to this Agreement, Agency shall make available upon the written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement and any other books, records and documents of Agency that are necessary to certify to such persons the nature and extent of costs incurred by the Agency for services furnished by Agency for which payment may be made under Medicare, Medicaid or other federal reimbursement program. The obligation of Agency to make records available shall extend for four (4) years after the furnishing of such services pursuant to this Agreement.

9. TERM

The Term of this Agreement will commence on August 1, 2016 and terminate on June 30, 2017 unless sooner terminated in accordance with the provisions of Section 10.

10. TERMINATION

This Agreement shall terminate upon the occurrence of any of the following events:

- a) Upon ninety (90) day prior written notice by either Party to the other Party during the term of this Agreement;
- b) In the event that either Party shall be notified that the license(s) issued to it by any governmental body pertaining to its principle purpose of operation has been withdrawn or suspended, either Party may elect to terminate this agreement effective immediately upon mailing such notice.
- c) In the event of cancellation or termination of insurance coverage required by paragraph 5 and/or any period of uninsured services during the term of this agreement, assuming the Hospital has not cured the lapse.

11. USE OF NAME

Neither Party may use the name of the other Party in any promotion or advertising unless such use shall be approved, in writing, by the Party whose name is to be used. Such approval shall be deemed withdrawn upon termination of this agreement as provided in Section 10.

12. REFERRALS

The compensation set forth in Section 4 does not take into account the volume or the value of referrals, if any between the Agency and the Hospital, and is not intended to influence the volume or value of referrals between the Agency and the Hospital.

13. COMPLIANCE WITH LAW

The terms of this Agreement are intended to be in compliance with all federal, state and local statutes, regulations and ordinances applicable on the date this Agreement takes affect. Should legal counsel for either Party reasonably conclude that any portion of this Agreement may be in violation of any subsequent enactments by federal, state or local authorities, then this Agreement shall terminate upon thirty (30) days written notice thereof to the other Party.

14. HIPAA

In accordance with provisions of the Health Insurance Portability and Accountability Act of 1996 (P.L. 1040191) or regulations adopted thereto, as are applicable to this Agreement, the parties agree to:

- a) Restrict use and disclosure of protected health information as permitted by the agreement, HIPAA, state and federal law;
- b) Use safeguards to prevent unauthorized use or disclosure;
- c) Report to the covered entity any unauthorized use or disclosure;
- d) Extend compliance obligations to subcontractors and agents;
- e) Make protected health information available upon individual's request;
- f) Incorporate changes and additions to protected health information of which the covered entity notifies the business associate;
- g) Make its books, records and information practices regarding protected health information available to the Department of Health and Human Services;
- h) Return or destroy all protected health information upon contract termination;
- i) Authorize the covered entity to terminate the contract for material breach;
- j) Agree to the right of the covered entity to monitor the business associate's compliance;
- k) Agree to the right of the covered entity to cure a breach by the business associate;
- l) Agree to the right of the covered entity to seek an injunction (with stipulation to burden of proof);
- m) Agree to indemnification for breach;
- n) Agree to no cap damages on liability for breaches of confidentiality;
- o) Relinquish control to the covered entity for subpoenas received by the business associate;
- p) Use data in accordance with applicable laws.

15. GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the State of New York.

16. ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, legal representatives, successors and, when applicable, assigns. Neither Party shall have the right to assign its obligations, or all or any portion of its rights or interests under this Agreement, without the written consent of the other Party; provided, however, that Hospital may assign this Agreement, without Agency's consent, to any entity owned by or under control of Hospital.

17. PRIOR AGREEMENTS

This Agreement supersedes and serves to terminate any previous agreements between the parties relating to the subjects addressed herein.

18. WAIVER

No waiver of any breach or failure by either Party to enforce any of the terms of this Agreement at any time shall, in any manner, limit or constitute a waiver of such Party's rights thereafter to fully enforce such provisions or to require such performance at any time thereafter or otherwise to compel strict compliance with any term of this Agreement.

19. NOTICES

Any notice, request, demand or other communication required or permitted by this Agreement shall be deemed to be properly given if delivered by hand (including overnight courier mail) or when mailed certified or registered mail with postage prepaid, addressed as follows:

If to Agency: Kenmore-Town of Tonawanda Union Free School District
1500 Colvin Boulevard
Buffalo, New York 14223
Attn: Brett Banker, Athletic Director

If to Hospital: Niagara Falls Memorial Medical Center
621 Tenth Street
Niagara Falls, NY 14302
Attn.: President & CEO

The addresses for the purposes of this Section may be changed only by giving written notice of such change in the manner provided herein for giving notices.

20. CAPTIONS

The captions of the sections herein are inserted as a matter of convenience only and in no way define, limit or describe the scope of this Agreement or any provisions hereof.

21. ENTIRE AGREEMENT

This Agreement and attachments hereto, set forth the entire agreement and understanding between the parties hereto as to the subject matter hereof. It may be amended only by a written instrument signed by both parties hereto making specific reference to this Agreement and expressing the plan or intention to modify it.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above set forth.

Kenmore-Town of Tonawanda Union Free School District

By: _____

Name: _____

Title: _____

Date: _____

Niagara Falls Memorial Medical Center

By: _____

Joseph A. Ruffolo, President & CEO

EXHIBIT A SERVICES

Niagara Falls Memorial Medical Center Department of Physical Rehabilitation will provide all Agency- required Athletic Trainer staffing, documentation and services including:

Evaluations

Re-evaluations

Progress Evaluations

Agency Staff and Family Education

Agency Staff In-servicing

See Exhibit C for PPE Services

EXHIBIT B

Niagara Falls Memorial Medical Center Department of Rehabilitation Services will provide (2) BOC certified athletic trainers (hereinafter known as "ATC") to the Kenmore-Town of Tonawanda Union Free School District.

The (2) ATC's supplied by NFMMC Rehabilitation Services will be BOC certified and NYS registered, and will work approximately (30) hours per week. Coverage for the Kenmore-Town of Tonawanda Union Free School District will be during the fall, winter, and spring sports seasons with coverage to be concentrated on days of highest athletic participation and/or days of contact and collision-type sports activity.

Typical Hours of Service will be:

Fall Season-

Staffed ATC in training room at Kenmore EAST and Kenmore WEST: Training room hours TBD

Game coverage concentration will be for:

Football (home modified, home and away JV and Varsity football games), Home soccer, swim and volleyball events.

Winter Season-

Staffed ATC in training room at Kenmore EAST and Kenmore WEST: Training room hours TBD

Game coverage concentration will be for:

On-site ATC for JV & Varsity home men's and women's basketball games, swimming, Federation hockey games for men's and women's and wrestling matches.

Spring Season-

Staffed ATC in training room at Kenmore EAST and Kenmore WEST: Training room hours TBD

Game coverage concentration will be for:

On-site ATC for JV and Varsity home baseball and softball games, Lacrosse games and track meets.

The duties and responsibilities performed by such athletic trainers while working at or for the Kenmore-Town of Tonawanda Union Free School District, as herein provided, will be supervised, directed, and controlled by the Kenmore-Town of Tonawanda Union Free School District and its administrative personnel.

EXHIBIT C

PPE's

- I. NFMMC will provide approximately (300) Pre-participation Physical Examinations in compliance with American College of Sports Medicine standard of care guidelines.
2. Pre-participation Physical Examinations will take place as scheduled by the Agency for May/June for the each of the upcoming school years under this Agreement. Examinations will be performed at the Agency at a location furnished by the Agency.
3. NFMMC will offer a "make up day" for students who transfer into the district or are unable to attend the core screening sessions. The make up day will be mutually agreed upon by the Agency and NFMMC and will correspond to the beginning of each scholastic athletic season.

Sports Physical Cost for May/June physicals

# of students	Cost/PPE
1000 or >	\$15.00
900-1000	\$18.00
800-900	\$19.00
700-800	\$20.00
600-700	\$21.00
500-600	\$22.00
400-500	\$23.00
300-400	\$24.00
200-300	\$25.00
100-200	\$26.00

the cost per PPE for the make-up sessions that are held in August, October, and February would be at a flat rate of \$20.00/PPE.

EXHIBIT D

CPR/AED and NYS First Aid for Coaches

Prices for AHA CPR/AED training and NYS First Aid for Coaches through NFMMC:

AHA HCP CPR/AED course

New certification: \$50/participant includes book
Recertification: \$35/participant

NYS First Aid for Coaches

New certification: \$60/participant (12 hour course)
Recertification: \$40/participant (5.5 hour course)

These courses are offered at NCCC on a scheduled course basis prior to each sports season with make-ups available on an as needed basis.

EXHIBIT E

SAMPLE SUMMER STRENGTH AND CONDITIONING CAMP



Kenton Athletes! If your looking for that EDGE, be a part of The Competitive Edge Sports Performance Progam sponsored by NFMCC & UBMD Orthopaedics & Sports Medicine.

Who: All KTUFSD Athletes grades 7-12 are invited to attend.

When:

Time:

Where:

What: Competitive Edge is a dedicated sports performance program dedicated to educating athletes on how to increase their success on the field, ice, or court. Success in athletics revolves around one's ability to integrate speed, agility, core strength and muscle endurance to perform at the top of one's game.

Cost: