

## **Dahl Memorial Medical Clinic Medical Advisor Agreement**

This Agreement is made and entered into this 25th day of February 2022, by and between Dahl Memorial Clinic (hereinafter Clinic), a division of the Municipality of Skagway (hereinafter Municipality), located in Skagway, Alaska, 99840 and Nicholas Rosenfeld, MD (hereinafter Medical Advisor), of Juneau, Alaska.

WHEREAS, the Clinic desires to obtain the services of Medical Advisor for the Clinic, and Dr. Rosenfeld is willing to provide such services, the Clinic and Dr. Nicholas Rosenfeld agree as follows:

### **I. Term**

- a. Term Period:** The term of this Agreement shall be a two-year period commencing on, February 25, 2022 through February 24, 2024 (hereinafter the “Expiration Date”). This Agreement shall terminate automatically at the expiration date. Notwithstanding this provision, this Agreement may be terminated as provided in I (b) thru I (d) of this Agreement.
- b. Optional Termination of Agreement:** Notwithstanding the foregoing, this Agreement is terminable at will and may be terminated by either party for no reason, with ninety (90) days’ advance written notice to the other party.
- c. Termination for Cause:** If Medical Advisor commits a material breach of any of the terms or conditions of this Agreement and fails to correct such a breach within ten (10) days after written notice thereof from the Clinic, the Clinic may, at its own option, terminate this Agreement for cause immediately, or at any designated future time provided that the breach still exists, by delivering to Medical Advisor, a written notice of termination, which may be made effective immediately.
- d. Automatic Termination:** This Agreement shall automatically terminate upon the occurrence of any of the following events:
  - i.** Medical Advisor’s license to practice medicine in Alaska is suspended, revoked, canceled, or limited.
  - ii.** Malpractice insurance as provided in Section V of this Agreement becomes unobtainable due to acts or conduct of the Medical Advisor.
  - iii.** Medical Advisor is convicted of violating a statute or law of the State of Alaska, another state or the United States, which statute or law relates to the care of medicine.
  - iv.** If Medical Advisor engages in misconduct related to the care of patients, or not in keeping with the standard of care of patients, in the sole discretion of the Clinic.
  - v.** Conviction of Medical Advisor of a felony or any other illegal conduct substantially detrimental to the business or reputation of the Clinic.
  - vi.** Mental or physical disability of Medical Advisor for any reason that renders Medical Advisor unable to effectively perform their responsibility under this Agreement for more than ninety (90) continuous days in a twelve (12) month period.
  - vii.** Any conduct, action or omission that potentially exposes the Clinic to investigation and/or penalties related to Medicare or Medicaid reimbursements.
  - viii.** Violation of any HIPAA related laws or regulations.
  - ix.** Death of Medical Advisor.
  - x.** Upon any change in the funding of the Clinic, or loss of funding of the Clinic. The Medical Advisor acknowledges and agrees that the Municipality has no obligation to operate the Clinic or provide any funding to the Clinic, and the Municipality may choose to not fund the Clinic at any time at its sole discretion.

## **II. No Oral Modifications:**

- a. This agreement automatically terminates on February 24, 2024. The Medical Advisor understands and agrees that no Assembly Member, Municipal employee, Clinic Board Member, or Clinic employee or consultant has any actual or apparent authority or authorization to make any oral promises or guarantees to the Medical Advisor, nor any actual or apparent authority or authorization to modify this Agreement in any respect, nor any actual or apparent authority to extend this Agreement orally. Medical Advisor acknowledges and understands only the Borough Manager or the Assembly are authorized to approve this agreement in writing or to authorize any extension in writing. Notwithstanding this provision, this Agreement may be terminated as provided in Section I-Term, of this Agreement.

## **III. Compensation:**

- a. **Compensation Package:** For all services rendered by Medical Advisor under this Agreement, he Medical Advisor shall receive the total of \$600.00 (Six Hundred no/100 Dollars) per month. This amount shall be the total compensation to the Medical Advisor excluding Per Diem Expenses as mentioned in Section III-Compensation (b) of this Agreement. The Medical Advisor understands and agrees that they are not an employee of the Municipality of Skagway or the Clinic and they are not entitled to any benefits available to employees of the Municipality or the Clinic.
- b. **Per Diem:** Medical Advisor shall be reimbursed for actual expenses directly related to services provided to the Clinic. Invoices for travel shall be a direct billing to the Municipality of Skagway/Dahl Memorial Clinic, when practicable. Any expenses not directly invoiced to the Clinic that Medical Advisor pays out of pocket, shall be reimbursed based on itemized receipts submitted to Clinic. Expenses must be directly related to services provided to Clinic during the mutually agreed upon timeframe and shall be approved by the Clinic Executive Director.

## **IV. Qualifications and Performance:**

- a. **Services:** While performing duties for Clinic, Medical Advisor shall use their best efforts to provide the highest quality services to Clinic's patients. Medical Advisor further agrees that they shall provide services consistent with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities. The Medical Advisor agrees to perform such acts as set forth by the Executive Director or the Board of Directors of the Clinic. These Services shall include, but not be limited to, oversight and administration of clinic activities as they relate to the delivery of medical services; serving as primary collaborating physician for physician's assistants employed by the clinic; quarterly review of the records of individual medical providers for quality control and improvement purposes; discussions with Clinic staff, medical personnel providing services at the Clinic, Board of Directors, and members of the public over issues that relate to the delivery of medical services for individuals or the community; quarterly visits to the clinic to accomplish all of the above as appropriate. Medical Advisor shall provide an annual report to the Board of Directors, due during the first quarter of each calendar year.
- b. **Professional Service Collection:** Medical Advisor agrees to complete patient progress notes on each patient within the next business day in the electronic health records system. Any administrative paperwork will be completed within 48 hours of such notice. Medical Advisor agrees to work with the clinic staff for coding to ensure the highest level of reimbursement available for services provided by Medical Advisor. Medical Advisor assigns to the Clinic, all rights and title to all revenues generated by Medical Advisor with respect to patients of Clinic. Clinic shall have the exclusive right to bill and collect for Medical Advisor's services from such patients. Medical Advisor will not bill or collect individually for services performed with respect to such patients.

- c. **Patients and Billing:** The Parties agree that all patients served and overseen by the Medical Advisor, on behalf of DMC, are DMC's patients. Accordingly, DMC shall be responsible for all billing and collections from such patients and third-party payors (including Medicare and Medicaid) for services rendered to such patients. In addition, patients who qualify for the Sliding Fee Discount Program will be charged according to the appropriate Sliding Fee Schedule for all visits provided within this agreement. Additionally, the Medical Advisor shall cooperate with DMC's requirements regarding billing and collections as DMC may reasonably request. The Parties agree that all revenue generated by the provision of services provided by the Medical Advisor's pursuant to this Agreement will be retained by DMC. In the event that Medical Advisor directly receives payment from a third-party payor or a patient, Medical Advisor shall promptly submit the check/payment to DMC's Executive Director.
- d. **Administrative Services.** Medical Advisor shall complete patient care administrative functions including, but not limited to:
- i. Prompt and accurate preparation and completion of records and reports of all examinations, procedures, and other services rendered by Medical Advisor as DMC may reasonably request, including prompt placement of such information into patient charts in accordance with DMC's policies and procedures;
  - ii. All patient care visits provided within this agreement shall be documented in DMC's Electronic Health Record (EHR) as specified in provider training and related procedures.
  - iii. Conducting of other activities consistent with appropriate standard of patient care;
  - iv. Prompt preparation and filing of accurate and complete time records and reports hours worked; and
  - v. Prompt preparation of all other documentation, records, and reports required by DMC.

Except as otherwise specifically directed by DMC, all administrative tasks, including completion of records and reports, shall be performed at DMC's facilities and at no time shall Medical Advisor remove any records or reports (or copies thereof) from DMC's facilities without the express written permission of the Executive Director.

- e. **Licensure, Certification and Credentialing:** Medical Advisor shall, at all times, be properly licensed and/or certified to practice medicine in Alaska and shall meet all continuing education requirements necessary for such licensure. As applicable, Medical Advisor shall maintain his certification with the Drug Enforcement Administration (DEA) and under applicable laws of the State of Alaska, as well as be eligible to provide care under federal health care programs including, but not limited to, Medicare and Medicaid throughout the term of this Agreement. Medical Advisor shall promptly (within 24 hours) notify DMC of any changes in licensure/certification status or eligibility to provide services under a federal health program. Failure to fulfill any of the above requirements shall be grounds for immediate termination of this Agreement.

DMC will complete all credentialing and privileging for the initial granting and renewal of privileges that address:

- i. Verification of fitness for duty, immunization, and communicable disease status;
- ii. For initial privileging, verification of current clinical competence via training, education, and, as available, reference reviews;
- iii. For renewal of privileges, verification of current clinical competence via peer review or other comparable methods (for example, supervisory performance reviews); and
- iv. Process for denying, modifying, or removing privileges based on assessments of clinical competence and/or fitness for duty.

**V. Insurance**

- a. Malpractice Insurance:** Medical Advisor recognizes the importance of claim prevention and agrees to participate in and follow the risk management policies and procedures of the Clinic, the Clinic's current malpractice insurer, or any future malpractice insurer. For the period ending December 31, 2022, the Clinic is qualified for medical malpractice coverage under the Federal Torts Claims Act (FTCA). The Clinic is not aware of any reason why it would not continue to qualify for coverage under the FTCA for the term of this agreement. The Municipality is not providing separate or independent medical malpractice coverage for Rosenfeld. As a health care provider contractor credentialed to provide services including, but not limited to, those within the specialties of family medicine, general pediatrics, and general internal medicine, it is the intent of this agreement that the Medical Advisor be covered under FSHCAA and FTCA for clinical and medical advisor activities for the Clinic.
- b. Notification:** Medical Advisor agrees to participate in and follow the policies and procedures of Clinic, Clinic's current malpractice insurer, or any future malpractice insurer. Medical Advisor shall immediately notify the Clinic Executive Director, upon becoming aware of the initiation or commencement of any of the following events with respect to the Medical Advisor, and shall periodically thereafter report to the Clinic Executive Director regarding the status of each such event, which notification may redact any confidential patient information if required by HIPAA:
- i.** Any malpractice claim or lawsuit which is threatened or filed against Medical Advisor;
  - ii.** Suspension, revocation, termination, or restriction of Medical Advisor license to practice medicine in Alaska;
  - iii.** The initiation of a disciplinary proceeding or inquiry before, or investigation by the Board of Medical Examiners for the State of Alaska or similar body;
  - iv.** Any investigation, sanction, or similar action by a peer review organization;
  - v.** Any audit or similar proceeding by any federal, state, or local agency dealing with payment for medical services or any Medicare carrier or intermediary; or
  - vi.** Any criminal investigation or any civil investigation by any agency responsible for enforcement of health care related laws.

Medical Advisor shall comply with the Equal Employment Opportunity Policy, the Policy against Harassment, the Employee Conduct policy, and the Drug Free Workplace Notification Policy set out in the Municipality of Skagway Personnel Policy Manual.

Medical Advisor shall comply with all federal, state, local and clinic COVID-19 mandates and protocols, including but not limited to, any Vaccine Mandate policy adopted and implemented by the Clinic and Clinic Board in accordance with federal laws and regulations.

**VI. Confidentiality**

**a. Confidentiality of Patient Information**

- i.** The Parties (DMC and Medical Advisor), and their directors, officers, employees, agents and contractors shall maintain the privacy and confidentiality of all information regarding the personal facts and circumstances of the DMC patients, in accordance with all applicable federal and state laws and regulations (including, but not limited to, the Health Insurance Portability and Accountability Act and its implementing regulations set forth at 45C.F.R. Part 160 and Part 164) and DMC 's policies and procedures regarding the privacy and confidentiality of such information. The Parties (and their directors, officers, employees, agents and contractors) shall: (1) not use or disclose patient information, other than as

permitted or required by this Agreement for the proper performance of its duties and responsibilities hereunder (in a manner consistent with applicable DMC policies and procedures); (2) use appropriate safeguards to prevent use or disclosure of patient information, other than as provided for under this Agreement, and (3) notify the other immediately in the event the Party becomes aware of any use or disclosure of patient information that violates the terms and conditions of this Agreement or applicable federal and state laws or regulations.

**b. Business and Other Proprietary Information**

- i. Except as is necessary in the performance of this Agreement, or as authorized in writing by a Party or by law, neither Party (DMC and Medical Advisor) nor its directors, officers, employees, agents, and contractors shall disclose to any person, institution, entity, company, or any other party any information which is directly or indirectly related to the other Party that it (or its directors, officers, employees, agents, and contractors) receives in any form as a result of performing obligations under this Agreement, or of which it is otherwise aware. The Parties (and directors, officers, employees, agents, and contractors) also agree not to disclose, except to each other, any proprietary information, professional secrets or other information obtained in any form during the course of carrying out the responsibilities under this Agreement, unless the disclosing Party receives prior written authorization to do so from the other Party or as authorized by law.
- ii. Each Party shall retain title and all rights to the confidential and proprietary information that has been disclosed to the other Party. Upon expiration or termination of this Agreement, or upon request of a Party for any reason, each Party agrees to return promptly to the other Party all confidential and proprietary information and to not retain any copies, extracts, or other reproductions, in whole or in part, of such returned confidential or proprietary information or any memoranda, notes, records, and/or other documents related to such information.
- iii. The parties shall ensure that their respective directors, officers, employees, agents, and contractors are aware of and shall comply with the obligations set forth in this Section.
- iv. The parties agree that their obligations and representations regarding confidential and proprietary information (including the continued confidentiality of information transmitted orally), shall be in effect during the term of this Agreement and shall survive the expiration or termination of this Agreement.

**VII. Return of Clinic or Municipality Property**

**Records:** Upon termination of this Agreement for any reason whatsoever, Medical Advisor shall return to the Clinic all books, records, lists and other written, typed or printed materials, whether furnished by the Clinic or prepared by Medical Advisor, which contains any information related to the Clinic, its subsidiaries and affiliates, and it's or their business, activities, or existing or prospective customers or clients, and Medical Advisor shall neither make nor retain any copies of such materials after termination of this Agreement without the prior written consent of the Clinic Executive Director.

**VIII. No Ownership Interest**

Medical Advisor acknowledges that their employment does not confer upon them any ownership interest in or personal claim to Clinic's business, including patients, medical charts or records, x-rays, etc. Medical Advisor expressly agrees that the compensation and benefits received or payable to Medical Advisor is all the compensation due the Medical Advisor with respect to Medical Advisor services.

**IX. Assignment**

The services to be provided hereunder constitute personal service and therefore this Agreement shall not be assignable or assigned whether individually or by operation of law by either party hereto.

**X. Cooperation Regarding Claims and Litigation**

Medical Advisor shall fully cooperate in assisting the Clinic and its duly authorized agents, representative, and attorneys, in investigating, defending or prosecuting incidents involving potential claims or lawsuits arising out of or in connection with the services provided under this Agreement. This paragraph shall be without prejudice to the prosecution of any claims which the Clinic may have against Medical Advisor and shall not require cooperation in the event of such claims.

**XI. Agency**

Medical Advisor has no actual or apparent authority to impose any duty on the Clinic or bind the Clinic to any obligation, duty, or act without the prior written consent of the Clinic.

**XII. Governing Law**

This Agreement has been negotiated and executed in the State of Alaska, and the laws of Alaska shall govern its construction and validity. The Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska shall be the exclusive jurisdiction and venue for any action of any kind or any nature relating to any action or omission or dispute arising under this agreement. Consultant agrees that venue for trial in any such action shall be in Skagway, Alaska. The Consultant specifically waives any right or opportunity to request a change of venue for trial from Skagway, Alaska pursuant to A.S. 22.10.040.

**XIII. Severability**

Should any provision(s) of this Agreement be held invalid, unlawful or unenforceable, the validity of any other provision(s) of this Agreement or the Agreement as a whole shall remain in full force and effect.

**XIV. Entire Agreement**

This Agreement contains the final and entire agreement between the parties, and they shall not be bound by any terms, conditions, statements or representations, oral or written, not herein contained, or contained in a written amendment of this Agreement executed by the parties hereto. This Agreement may be amended only by written agreement executed by the parties. This Agreement supersedes any and all previous and existing agreements.

**XV. Headings**

Headings used in this Agreement are solely for the convenience of the parties and shall be given no effect in the construction or interpretation of this Agreement.

**XVI. Waiver**

No waiver of any breach shall be valid or binding unless approved in writing by the non-reaching party. Forbearance or indulgence by the non-reaching party shall not constitute a waiver of the covenant or condition to be performed by the breaching party or of any remedy available to the non-reaching party. No waiver of any breach of this Agreement shall constitute or be deemed a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative to every other remedy provided hereby or at law.

**XVII. Change in Laws**

In the event there are changes to or clarification of federal, state or local statues, regulations or rules, or any Medical Staff Bylaws, Rules and Regulations which would materially affect the operation of the Clinic, including but not limited to third party reimbursement or the tax-exempt status of the Clinic, the parties agree to fulfill their obligations under this Agreement in accordance with the changes in law, regulations, rules, and by-laws.

**XVIII. ACKNOWLEDGEMENT OF REPRESENTATION**

Medical Advisor acknowledges that they have had a full opportunity to consult with attorneys of their choice before signing this Agreement. Medical Advisor acknowledges that they are not relying on any statements or representations made by any employees, representatives, officers, consultants, or Board members of the Clinic, the Mayor, or Assembly members of the Clinic and Municipality in entering this Agreement. They further acknowledge that they have not received and is not relying on any legal advice or representations by the Municipality’s attorneys.

**IN WITNESS WHEREOF**, the Clinic and Medical Advisor have caused this Agreement to be executed in their respective behalf as of the date first above written.

WITNESS:

\_\_\_\_\_

Municipality of Skagway  
Dahl Memorial Clinic:

By: \_\_\_\_\_  
Andrew Cremata, Mayor

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

WITNESS:

\_\_\_\_\_

Medical Advisor

By: \_\_\_\_\_  
Nicholas Rosenfeld, MD

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