

**PROFESSIONAL SERVICES AGREEMENT
FOR
MEDICAL SERVICES PROVIDED BY RIGHTSITE HEALTH**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") acting by and through Valerie Frausto, Chief of the San Antonio Fire Department ("Chief") and RightSite Health Physicians PLLC by and through its affiliates ("RightSite"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

- 1.1. "City" is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2. "RightSite" is defined in the preamble of this Agreement and includes its successors.
- 1.3. "Chief" shall mean the Chief of City's Fire Department.

II. TERM

- 2.1. Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence upon execution by both parties and after the expiration of three (3) years. City shall have the option to renew this Agreement on the same terms and condition for two (2) additional one (1) year periods. Renewals shall be in writing and signed by the Chief, or designee, without further action by the San Antonio City Council.

III. SCOPE OF SERVICES

- 3.1. RightSite agrees to provide the following services: acute telemedicine services including wrap around services for 911 callers that are transferred to RightSite, telemedicine consultation for San Antonio Fire Department Mobile Integrated Healthcare patients, and any other services agreed to by both parties in writing. In addition, RightSite will at least monthly provide in a written report billing information to the San Antonio Fire Department and will provide follow-up documentation on disposition for any patient transferred to their service.
- 3.2. All work performed by RightSite hereunder shall be performed in a professional manner consistent with standards of care for the specific service(s) provided.

IV. COMPENSATION TO RIGHTSITE

- 4.1. City shall not be obligated or liable under this Agreement to RightSite or any party for the payment of any monies, fees or expenses, or the provision of any goods or services and no City resources will be used to provide financial support or payment to RightSite for services by RightSite under this Agreement.

- 4.2. RightSite may bill patient's insurance companies for services provided pursuant to this Agreement. RightSite agrees that this alternative billing/payment option is good and sufficient consideration for this Agreement between RightSite and City.

V. RESERVED

VI. RECORDS RETENTION

- 6.1. RightSite and its subcontractors, if any, shall accurately maintain all documents, papers, and records, and other evidence pertaining to the services rendered to patients pursuant to this Agreement (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times as City may deem necessary during the term of this Agreement.
- 6.2. RightSite shall retain any and all documents generated or produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of rendition of the specified services or termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning the documentation or the services provided hereunder, RightSite shall retain the records until the resolution of such litigation or such other questions. RightSite acknowledges and agrees that City shall have access to any and all such documents at any and all reasonable times, as deemed necessary by City, during said retention period. City may, at its election, require RightSite to return the documents to City at RightSite's expense prior to or at the conclusion of the retention period, and in such event, RightSite may retain a copy of the documents at City's sole cost and expense.
- 6.3. RightSite shall notify City, as soon as reasonably possible, in the event RightSite receives any requests for information from a third party that pertain to the services, documentation and/or records referenced herein. RightSite understands and agrees that City will process and handle all such requests. Notwithstanding the foregoing, City agrees to provide copies of all correspondence with and documents provided to such third party contemporaneously with the provision of same to said third party.

VII. TERMINATION

- 7.1. For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination by either party without cause upon thirty calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 7.2. Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the services herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.3. Upon the effective date of expiration or termination of this Agreement, RightSite shall cease all operations or work being performed by RightSite or any of its subcontractors pursuant to this Agreement.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service

(such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Fire Department
Public Safety Headquarters
315 S. Santa Rosa
San Antonio, TX 78207
Attn: Dr. Jamo Rubin

If intended for RightSite, to:

RightSite Health, Inc.
8700 Crown Hill Plaza
Suite 800
San Antonio, TX 78209
Attn: Kristeen Pierce

IX. NON-DISCRIMINATION

Non-Discrimination. As a party to this contract, RightSite understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X. of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

X. INSURANCE

10.1. No later than 30 days before the execution of this Agreement, RightSite must provide a completed Certificate(s) of Insurance to CITY's Fire Department. The certificate must be:

- clearly labeled with the legal name "RightSite Health PLLC" in the Description block;
- completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance);
- properly endorsed and have the agent's signature, and phone number,

Certificates may be mailed or sent via email, directly from the insurer's authorized representative. CITY shall have no duty to perform under this Agreement until such certificate and endorsements have been received and approved by CITY'S Fire Department. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.

If the City does not receive copies of insurance endorsement, then by executing this Agreement, RIGHTSITE certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for RightSite.

10.2. The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles as reasonably required during the effective period of this Agreement due to changes in statutory law, court decisions, and/or changes in the insurance market which presents an increased risk exposure.

10.3. LICENSEE/RIGHTSITE/VENDOR shall obtain and maintain in full force and effect for the duration of this Agreement, at RightSite's sole expense, insurance coverage, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the LICENSEE claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

<u>TYPE</u>	<u>AMOUNTS</u>

*1. Workers' Compensation *2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Consultants* c. Products/completed operations d. Personal/ Advertising Injury e.	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$500,000 per occurrence; \$1,000,000 General Aggregate, or its equivalent in Umbrella Liability Coverage
*4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$250,000 per occurrence
5. Professional Liability (Claims Made)	\$500,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

10.4. RightSite must require, by written contract, that all subContractors providing goods or services under this Agreement obtain the same insurance coverages required of RightSite and provide a certificate of insurance and endorsement that names RightSite and CITY as additional insureds. Respondent shall provide CITY with subContractors certificates and endorsements before the subContractor starts work.

10.5. If a loss results in litigation, then the CITY is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. RightSite must comply with such requests within 10 days by submitting the requested insurance documents to the CITY at the following address:

City of San Antonio
Attn: San Antonio Fire Department
P.O. Box 839966
San Antonio, Texas 78283-3966

10.6. RightSite's insurance policies must contain or be endorsed to contain the following provisions:

- Name CITY and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performing services under contract with CITY. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy. CITY's insurance is not applicable in the event of a claim.
- RightSite shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of CITY; and
- Provide 30 days advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

- 10.7. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, RightSite shall provide a replacement Certificate of Insurance and applicable endorsements to City. City and RightSite shall have the option to suspend performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 10.8. Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, RightSite shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend RightSite's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 10.9. In addition to any other remedies CITY may have upon RightSite's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, CITY may order RightSite to stop work under this Agreement until RightSite demonstrates compliance with requirements.
- 10.10. Nothing contained in this Agreement shall be construed as limiting the extent to which RightSite may be held responsible for payments of damages to persons or property resulting from RightSite's or its subContractors' performance of the work covered under this Agreement.
- 10.11. RightSite's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Agreement.
- 10.12. The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 10.13. RightSite and any subContractor are responsible for all damage to their own equipment and/or property result from their own negligence.

XI. INDEMNIFICATION

- 11.1. **RIGHTSITE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to RIGHTSITE'S activities under this Agreement, including any acts or omissions of RIGHTSITE, any agent, officer, director, representative, employee, [consultant or subcontractor] of RIGHTSITE, while in the exercise of performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT RIGHTSITE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 11.2. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. RIGHTSITE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or

RIGHTSITE known to RIGHTSITE related to or arising out of RIGHTSITE's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at RIGHTSITE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving RIGHTSITE of any of its obligations under this paragraph.

- 11.3. Defense Counsel - City shall have the right to approve defense counsel to be retained by RIGHTSITE in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. RIGHTSITE shall confer with City regarding selection of counsel and retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If RIGHTSITE fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and RIGHTSITE shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 11.4. Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of RightSite, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for RightSite or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

- 12.1. RightSite shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of RightSite. RightSite, its employees or its subcontractors shall perform all necessary services contemplated by this Agreement.
- 12.2. Except as otherwise stated herein, RightSite may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the Chief, which shall not be unreasonably withheld or denied.

XIII. INDEPENDENT CONTRACTOR

RightSite covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that RightSite shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of "respondeat superior" shall not apply as between City and RightSite, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and RightSite. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the RightSite under this Agreement and that RightSite has no authority to bind the City.

XIV. RESERVED

RightSite shall be required to sign the HIPAA Business Associates Agreement, **Attachment A**, prior to or contemporaneous with the signing of this Agreement.

XV. CONFLICT OF INTEREST

- 15.1. The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City

officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

15.2. Pursuant to the subsection above, RightSite warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, RightSite does not cause a City employee or officer to have a prohibited financial interest in the Contract. RightSite further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and RightSite. Chief shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

XVII. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

RightSite warrants and certifies that RightSite and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services.

XIX. COMPLIANCE

RightSite shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the

strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the Chief, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. FORCE MAJEURE

Neither Party will be responsible or in any way liable to the other party, and neither party will have any termination or other rights, arising out of or relating to any failure by the other party to perform or any hindrance in the performance of its obligations under this Agreement if such failure or hindrance is caused by events or circumstance beyond such nonperforming Party's control, including acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemies, wars, hurricanes or other severe tropical weather events, windstorms, lightning, earthquakes, epidemic and/or pandemic excluding COVID-19, fires, severe storms, floods, changes in any laws, regulations, ordinances, rules or requirements affecting or applicable to the services provided under this Agreement.

XXII. LAW APPLICABLE & LEGAL FEES

- 22.1. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 22.2. The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

XXIII. LEGAL AUTHORITY

The signer of this Agreement for RightSite represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of RightSite and to bind RightSite to all of the terms, conditions, provisions and obligations herein contained.

XXIV. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXV. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXVI. INCORPORATION OF ATTACHMENTS

The HIPAA Business Associates Agreement, **Attachment A**, is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted with this document taking priority **Attachment A**.

**XXVII. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN
BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION**

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. RightSite hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on RightSite's certification. If found to be false, or if RightSite is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.


EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

RIGHTSITE

(Signature)

Printed Name: **Valerie Frausto**
 Title: **Chief, San Antonio Fire Department**
 Date: _____



(Signature)

Printed Name: **James Rubin, MD**
 Title: **CEO**
 Date: **11/22/2024**

Approved as to Form:

Assistant City Attorney