

EDUCATIONAL and DAY TREATMENT SERVICES AGREEMENT

This Educational and Day Treatment Services Agreement is made and entered into this 1st day of July 2019 by and between Intermountain Deaconess Children's Services (referred to herein as "Intermountain") and Bigfork School District #38 (referred to herein as "School District").

RECITALS

WHEREAS, School District is a Montana public school district organized and operated pursuant to Montana law; and

WHEREAS, School District wishes to retain Intermountain to perform Educational and Therapeutic "Day Treatment" services, as defined in the Administrative Rules of Montana (ARM), Chapter 37.106.1936, to students enrolled in school districts authorized to receive Day Treatment Services, and

WHEREAS, Intermountain is willing and able to render said services, including satisfying all federal and state health care licensure requirements for the provision of rendered services.

AGREEMENTS

NOW THEREFORE, in consideration of the mutual terms, conditions and covenants set forth herein, the parties agree as follows:

1. This Agreement will be effective as of the 1st day of July 2019, pending School Board approval, and shall continue in effect through the 30th day of June 2020, unless earlier terminated as provided in paragraph 13 below.
2. Intermountain shall render Day Treatment Services to School District for a minimum of six (6) and a maximum of twelve (12) students. Students in the Bigfork School District will be given priority. Out-of-district referrals will be approved by Bigfork Superintendent and Intermountain staff.
3. Intermountain will provide Day Treatment Services for 210 school days in the educational year.
4. All students in the program will be enrolled in the Bigfork School District and will be referred by said School District. Any referral requests of students from outside the School District must be approved by both the School District and Intermountain.
5. Intermountain will provide the School District with an agreement outlining the implementation of Day Treatment Services. This agreement will be discussed and agreed upon by Intermountain and the School District. Any and all activities conducted in accordance with this Agreement shall conform and comply with all School District policies as well as all federal, state, and local laws, ordinances and

regulations, including all non-discrimination laws. District Policies will be provided upon request. Intermountain agrees further to keep the premises utilized in a clean, safe, and sanitary condition.

6. Intermountain requires that each referred student be clinically appropriate for the Day Treatment Program, as outlined in Intermountain's implementation agreement and as regulated by ARM 37.87.702, 703, and 705 for Serious Emotional Disturbance covered services, and that each student have the financial means to pay for the cost of ancillary services rendered in the Day Treatment Program (e.g. Individual Therapy, Case Management). Financial means may be through insurance (e.g. Medicaid or Private Insurance) or through alternative means (e.g. private pay).
7. All employees of Intermountain will successfully complete a criminal background check prior to service on school premises. Documentation of successful completion of the background check will be provided to the School District upon request. Intermountain will employ the following staff to provide Day Treatment Services as part of their obligations under this Agreement and as part of ARM regulations for licensed Mental Health Centers:
 - a. Administrator
 - b. Medical Director
 - c. Clinical Supervisor
 - d. Psychotherapist / Site Supervisor — Qualifications: Full-time equivalent mental health professional who may be a licensed or in-training mental health professional. A Psychotherapist has a Master's Level Graduate Degree in Clinical Mental Health Counseling or Clinical Social Work.
 - e. Mental Health Support Specialist — Qualifications: Full-time equivalent mental health worker/behavioral aide who works under the clinical oversight of a licensed mental health professional and provide services for which they have received training that do not duplicate the services of the licensed or in-training mental health professional. The Mental Health Support Specialist has a Bachelor's degree in a mental health field or, at the minimum, a high school diploma or a General Equivalency Diploma and at least two years' experience working with emotionally disturbed youth; providing direct services in a human services field, or post-secondary education in human services. The number of hired mental health support specialists may vary depending on student census and the overall emotional disturbance of the program attendees. At a minimum, Intermountain will hire one (1) mental health support specialist, and at a maximum, Intermountain will hire three (3) mental health support specialists.
 - f. Special Education Teacher – Qualifications: Current and in good standing certification with the State of Montana

8. As students in the Day Treatment Program still reside in the School District and the School District is still ultimately responsible for the educational needs of each student, any services required under a student's Individualized Education Program (IEP) not provided by Intermountain with the staff listed above will be arranged and provided by the School District. This includes, but is not limited to, Art/Music Instruction, Physical Education Instruction, Occupational Therapy and Speech Therapy services. Services arranged and provided by the School District will coordinate with Intermountain to provide direct supervision where it is determined appropriate and not outside of school hours.
9. School District shall provide Intermountain with classroom space, office space, phones, three (3) computers, printer, Internet and e-mail access, clerical support, reasonable school and office supplies, and any curriculum and assessment material used in classrooms K-9 to support the provision of Day Treatment Services in School District.
 - a. As Intermountain's Day Treatment Program provides educational and therapeutic services for 210 school days from 9 a.m. to 3 p.m. and continues to provide services into and through the summer off-school months, the School District shall provide continued access to classroom and office space and all equipment needed to operate the program during summer months. Additionally, School District will provide adequate bussing or other transportation services and lunches to program students, unless other arrangements have been made and agreed to by all parties.
 - b. the School District shall allow access to Intermountain computer programs to be installed and used by Intermountain staff on School District computers and Intermountain computers used in the program. Programs include but are not limited to Outlook, SharePoint Extranet, Skype for Business, Direct Access, and Print Services. School District staff accessing Intermountain computer programs shall adhere to Intermountain IT policies and procedures at all times and on any computer.
10. School District will pay Intermountain \$68.19 per school day per student for every student in the Day Treatment Program and for the full duration of the student's admittance in the program, up to a full school year of 210 days.
 - a. School District will pay for a minimum of six slots at all times, regardless of number of students in the program, to ensure the program's financial sustainability. School District will continue to pay for 6 slots until the total program enrollment reaches 8, at which time the District will pay the \$68.19 per school per day rate for each student enrolled by the district.
 - b. School District gives permission to Intermountain to bill the patient for ancillary clinical treatment provided in the Day Treatment Program, including, but not

limited to, family, individual, and group therapies.

- c. At the end of each fiscal year, Intermountain will conduct a financial analysis. If Intermountain Day Treatment has a net surplus higher than 10 percent, Intermountain and the School District may utilize those funds as needed for program improvement.
11. School District shall pay Intermountain monthly within fifteen (15) days of its receipt of an invoice for the six guaranteed student slots. Any charges accrued by the School District for additional students will be billed to the district retroactively at the end of the school year.
12. Status as Independent Contractors. This Agreement shall not constitute, create or otherwise imply an employment, joint venture, partnership, agency or similar arrangement, and nothing contained herein shall be construed as providing for the sharing of profits or losses arising from the efforts of either or both of the parties. Each party to this Agreement shall act as an independent contractor, and neither party shall have the power to act for or bind the other party except as expressly provided for herein.
 - a. Ineligible for Employee Benefits: Intermountain and its employees shall not be eligible for any benefit available to employees of School District, including but not limited to, Worker's Compensation Insurance, State Disability Insurance, Unemployment Insurance, Group Health and Life Insurance, Vacation Pay, Sick Pay, Severance Pay, Bonus Plans, Pension Plans, Savings Plans and the like.
 - b. Payroll Taxes: No income, social security, state disability, or other federal or state payroll tax will be deducted from payments made to Intermountain under this Agreement. Intermountain agrees to pay all state and federal taxes and other levies and charges as they become due on account of monies paid to Intermountain hereunder, and to defend, indemnify and hold School District harmless from and against any and all liability resulting from any failure to do so.
13. Either party shall have the right to terminate this Agreement if the other party is in default of any obligation hereunder and such default is not cured within thirty (30) days of receipt of a notice from the non defaulting party specifying such default. This Agreement may also be terminated by School District without prior notice if:
 - a. Intermountain does not meet state Mental Health Center licensure and service requirements. School District shall compensate Intermountain for services performed up to the termination date less any amounts that are the subject of a good faith dispute. In no event, however, shall the amount payable to Intermountain in connection with a termination exceed the total value of this Agreement as set forth in item 10.
 - b. At the end of a fiscal year by providing written notice to Intermountain by no later than April 1st.

14. Upon the expiration or earlier termination of this Agreement, Intermountain shall immediately terminate the Day Treatment Services hereunder, and shall deliver promptly to School District all property relating to the business and work of School District. Such property may include, but not be limited to, all non-clinical student records, office space, phone, computer, printer, Internet and e-mail access and reasonable office supplies.
15. School District may, at any time by valid contract modification, make changes to this agreement. If any change under this section causes an increase or decrease in Intermountain cost of or time required for the performance of any part of the work, the parties shall negotiate an equitable adjustment to the compensation payable hereunder, and this Agreement shall be modified in writing accordingly. In addition, the parties agree to negotiate in good faith to revise this Agreement in the event of:
 - a. Legislation or court action that affects this Agreement.
 - b. Changes in the funds available that affect this Agreement.
 - c. Other changes reasonable requested by School District necessary to make this Agreement consistent with State and Federal law.
16. Intermountain represents that it possesses the special skill and professional competence, licensure, expertise and experience to undertake the obligations imposed by this Agreement. Intermountain agrees to perform in a diligent, efficient, competent and skillful manner commensurate with the highest standards of the profession and to devote such time as is necessary to perform the Day Treatment Services required under this Agreement.
17. Intermountain agrees to defend, indemnify and hold School District harmless from and against any and all claims, losses, liabilities or expenses (including without limitation attorneys' fees) which may arise, in whole or in part, out of:
 - a. The negligence or willful misconduct of Intermountain, its employees or agents; and/or
 - b. A breach by Intermountain of its obligations under this Agreement.

The indemnity required herein shall not be limited by reason of the specification of any particular insurance coverage.

School District agrees to defend, indemnify and hold Intermountain harmless from and against any and all claims, losses, liabilities or expenses (including without limitation attorneys' fees) which may arise, in whole or in part out of:

- a. The negligence or willful misconduct of School District, its employees or agents;

and/or

- b. A breach by School District of its obligations under this Agreement.

The indemnity required herein shall not be limited by reason of the specification of any particular insurance coverage.

- 18. Intermountain will carry, for the term of this Agreement, the following insurance in the amounts indicated with insurance carriers that are licensed in the state(s) where services will be performed and that have an A.M. Best rating of at least a Standard and Poor's rating of at least AA, or a Moody's rating of at least Aa2:
 - a. COMMERCIAL GENERAL LIABILITY INSURANCE FOR BODILY INJURY AND PROPERTY DAMAGE: For limits not less than \$1,000,000 per occurrence / \$2,000,000 aggregate, including coverage for Subcontractor's obligations, operations, premises, independent contractors, products/completed operations, personal injury and advertising injury on a per-project basis.
 - b. BUSINESS AUTOMOBILE LIABILITY INSURANCE: With a combined single limit of not less than \$1,000,000 for Bodily Injury and Property Damage for all owned, non-owned and hired vehicles.
 - c. WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY: Insurance in state(s) where the work will be performed whether or not required by with statutory limits for workers' compensation and limits not less than \$500,000 each accident; \$500,000 each disease, including occupational disease.
 - d. PROFESSIONAL LIABILITY in the amount of \$2,000,000: A combination of primary and UMBRELLA/EXCESS liability policies will be acceptable in order to meet the required limits.

Upon the request of School District, Intermountain will submit a standard Association for Cooperative Operations Research and Development (ACORD) Certificate of Insurance signed by an authorized agent or representative of the insurance companies evidencing that the above required policies and limits are in effect. No reduction in coverage or cancellation of policies shall be affected without first giving School District thirty (30) days written notice. The policies (except for Worker's Compensation) shall name School District as additional insureds.

- 19. Intermountain represents that it is not presently suspended or debarred or proposed for suspension or debarment by any government agency or regulatory agency. Intermountain will comply with all federal, state and local statutes, and regulations, ordinances and rules, as well as any and all School District policies and procedures relating directly or indirectly to Intermountain performance hereunder, including, but not limited to, all applicable laws pertaining to equal employment opportunity and procurement integrity.

20. Miscellaneous.

- a. **Survival:** The obligations assumed by Intermountain pursuant to item 17 hereof shall survive the expiration or earlier termination of this Agreement.
- b. **Attorney's Fees:** In the event that a suit is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of the costs of the suit, and not as damages, reasonable attorneys' fees to be fixed by the Court.
- c. **Waiver, Modification and Amendment:** No provision of this Agreement may be waived unless in writing, signed by all of the parties hereto. Waiver of any one provision of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other provision. This Agreement may be modified or amended only by a written agreement executed by all of the parties hereto.
- d. **Governing Law; Venue:** This Agreement shall be governed and construed in accordance with the laws of the State of Montana, without regard to choice of law principles. The parties agree that the sole venue for legal actions related to this Agreement shall be the state and U.S. Federal Courts for the State of Montana in or reasonably near the county in which School District's central office is located.
- e. **Assignment; Subcontracting:** Neither this Agreement nor any duties or obligations hereunder shall be assigned, transferred or subcontracted by Intermountain without the prior written approval of School District, which approval may be withheld in the sole and absolute discretion of School District.
- f. **Notices:** All notices under this Agreement will be in writing and will be delivered by personal service, facsimile or certified mail, postage prepaid, or overnight courier to such address as may be designated from time to time by the relevant party, which initially shall be the address set forth on the signature page to this Agreement. Any notice sent by certified mail will be deemed to have been given five (5) days after the date on which it is mailed. All other notices will be deemed given when received. No objection may be made to the manner of delivery of any notice actually received in writing by an authorized agent of a party.
- g. **Records; Inspection:** Intermountain shall maintain books, records and documents in accordance with federal and state medical documentation requirements, accounting procedures and practices which sufficiently and properly reflect the services rendered and funds expended in connection with this Agreement. All service/program notes, books, medical records, documents or other materials associated with this Agreement shall be subject to within allowable regulations inspection, review or audit by School District and the Montana Department of Health and Human Services (DPHHS) and/or the Centers for Medicare and Medicaid Services (CMS) and their designees, during Intermountain's usual

business hours and upon prior notice.

Intermountain shall retain all medical service progress notes, student case files/medical records, financial and other records pertaining to its work under this Agreement for a minimum of five (5) years after the termination or expiration of this Agreement or the conclusion of any audit pertaining to this Agreement, whichever is later. Intermountain will ensure the right of privacy to all clients, in accordance with HIPAA (Health Insurance Portability and Accountability Act) Privacy Regulations and Montana State & Federal Guidelines.

- h. Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any manner.
- i. Entire Agreement: This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior discussions, representations and understandings, whether oral or written.

IN WITNESS THEREOF, Intermountain has caused its name to be hereunto subscribed by its Representative and School District has caused its name to be hereunto subscribed by the Superintendent of School District and the Chairman of its Board and attested by its Clerk on the dates recorded below.

For Bigfork School District

For Intermountain

Superintendent of School District

Chief Executive Officer

Board Chair

Date

Date

Attest: _____