

## CONSULTING AGREEMENT

**THIS CONSULTING AGREEMENT** (this “*Agreement*”) is dated as of \_\_\_\_\_, 2021 (the “*Effective Date*”) by and between \_\_\_\_\_, a (“*Client*”) with an address of \_\_\_\_\_, telephone number of \_\_\_\_\_, and email address of \_\_\_\_\_, and Starting Point Rehabilitation, Inc., a Colorado corporation (“*Consultant*”) with an address of 5480 W. 60<sup>th</sup> Avenue, Suite B, Arvada, CO 80003, telephone number of 303.202.9090, and email address of admin@startingpointrehab.com.

### RECITALS

A. Consultant is in the business of providing Functional Capacity Evaluations and related medico-legal services.

B. Client desires to retain Consultant to provide assistance and to utilize the skill and knowledge of the Consultant, and Consultant desires to render such services, all upon the terms and conditions hereinafter set forth.

### AGREEMENT

**NOW THEREFORE**, in consideration of the foregoing recitals and the mutual covenants herein contained, Client hereby engages Consultant to provide consulting and other specified services, and Consultant hereby accepts such engagement as follows:

1. **Duties of Consultant.** Consultant shall perform the tasks set forth on Exhibit A attached hereto and made a part hereof (the “*Work*”) during the term of this Agreement. Exhibit A contains a menu of Consultant’s available services, and the appropriate services desired by Client shall be checked on Exhibit A. Consultant shall report to \_\_\_\_\_ (the “*Client Representative*”) as its primary contact at Client. While Consultant may have contact and may take direction from other Client employees, only the Client Representative shall have the authority to (a) make any changes to Exhibit A by amending this Agreement in writing and (b) take the other actions expressly delegated to the Client Representative hereunder. Client may change the Client Representative by written notice to Consultant.

2. **Consulting Fee and Payment Terms.** In consideration of the performance of its duties hereunder, Consultant shall be entitled to receive and Client shall pay to Consultant the fee (the “*Fee*”) shown on Exhibit A. This signed Agreement and a **retainer of \$1000** (the “Retainer”) is due at least five days prior to the scheduling of any Work. Consultant shall prepare an invoice showing a reasonably detailed description of the Work performed for the previous month and send it to Client by the tenth (10<sup>th</sup>) calendar day of the following month. Other than the Retainer, all Fees for such month shall be payable net thirty (30) days after Client’s receipt of Consultant’s invoice. After thirty (30) days, all unpaid balance shall accrue interest at 18 percent (18%) per annum or the highest rate of interest allowed by law, whichever is less. In the event that the total cost of the Work is less than the Retainer, Consultant shall refund the unbilled amount of the Retainer within thirty 30 days of the termination of this Agreement.

3. **Standard of Performance.** During the term of this Agreement, Consultant shall use commercially reasonable efforts to provide services of a type and quality that are compatible with then-existing professional standards for services substantially similar to the services being rendered pursuant to this Agreement. Consultant shall comply with all applicable laws in providing the Work.

4. **Reimbursable Expenses.** In addition to the payment of the Fee, Client shall pay or reimburse Consultant for its costs and expenses incurred by Consultant for travel and other items. Mileage will be reimbursed at the then-current IRS rate. Travel to and from any location other than Consultant's office to carry out Consultant's Work hereunder (such as, for example, to Client's location and/or to a court to give testimony) is hereby deemed approved in advance and shall be billed as set forth in Exhibit A. Any other reimbursable expenses in excess of \$100 also require the advance written authorization of the Client Representative (email sufficient).

5. **Term and Termination.** This Agreement shall begin on the Effective Date and end on the date that all Work indicated on Exhibit A has been fully performed and paid for. Client shall have the right to terminate this Agreement at any time upon five (5) business days' notice to Consultant. If Consultant receives a termination notice, Consultant shall, subject to all of the other terms of this Agreement, use the ensuing five (5) business days to wrap up its then-current work and present it to Client in a reasonably complete manner under the circumstances existing as of the time of the termination notice. Consultant shall be entitled to such portion of the Fee as was earned prior to its receipt of the termination notice and with respect to the time necessary to wrap up its then-current work, as well as any applicable cancellation fees described in Exhibit A.

6. **No Warranties.** Other than those warranties set forth in Section 3, Client acknowledges and agrees that Consultant makes no additional warranty as to the results or outcome of the services to be provided by Consultant and that payment is due Consultant for services performed under this Agreement consistent with Section 2.

7. **Limitation on Consultant's Liability.** The liability of Consultant, if any, for damages hereunder, including, without limitation, liability arising out of contract (including, without limitation, Consultant's indemnity obligations hereunder), negligence or strict liability, shall not exceed the fees actually paid by Client for Consultant's services hereunder. All other damages are excluded. The parties agree to cooperate with each other in the event that any claim is made against a party in connection with the services provided by Consultant, provided that Consultant shall be entitled to compensation at its hourly rate per the Rate Schedule (as such term is defined in Exhibit A) for miscellaneous services for any time spent with respect to any such claim. The provisions contained in this paragraph shall survive any termination of this Agreement.

8. **Client's Responsibilities.** Client agrees to use its reasonable efforts to cooperate with Consultant so that Consultant may fulfill its obligations hereunder. Such cooperation includes, by way of example and not limitation, promptly returning phone calls and other requests for information.

9. **Default.** If the Fee payable by Client to Consultant pursuant to this Agreement is more than ten (10) days past due, or if Client otherwise breaches this Agreement and does not cure such breach within ten (10) days of its receipt of written notice from Consultant, then Consultant shall have the right to terminate this Agreement upon five (5) days' written notice to Client, and unless the default is cured prior thereto, this Agreement shall terminate upon the expiration of such five (5) day period, the entire Fee shall become immediately due and payable, and Consultant shall then be free to pursue all remedies available to Consultant under applicable law.

10. **Remedies Cumulative.** The remedies of Consultant and Client hereunder will be cumulative, and no one of them will be construed as exclusive of any other or of any remedy provided by law or in equity. The exercise of any one such right or remedy by Consultant or Client will not impair its standing to exercise any other such right or remedy.

11. **Assignment.** Neither party may assign its rights hereunder to any third party without the prior written consent of the other party, which may be granted or denied in the non-assigning party's sole discretion.

12. **Successors and Assigns.** Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns.

13. **Severability.** In the event any provision of this Agreement will be held to be invalid, illegal or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof, and such invalid, illegal or unenforceable provision will be deemed enforceable to the fullest extent permitted by law.

14. **Binding Effect.** This Agreement will inure to the benefit of, and will be binding upon, Client and Consultant and their respective successors and permitted assigns.

15. **Governing Law and Dispute Resolution.** This Agreement will be governed for all purposes by the laws of the State of Colorado without regards to conflicts of law principles. In the event of any dispute with respect to the subject matter hereof, the parties hereby agree to first seek to resolve any such dispute by mediation. The mediation shall be conducted by a mediator to be agreed upon by Consultant and Client. Either party may initiate a mediation process by giving written notice to the other party. If the parties cannot agree on a mediator within ten (10) days of the non-initiating party's receipt of a notice requesting mediation, Consultant shall appoint the mediator, and such appointment shall be binding on Client unless Client can reasonably demonstrate that the mediator's relationship to Consultant is such that there is a reasonable doubt as to the ability of the mediator to be impartial. Any such mediation shall take place in Jefferson County, Colorado. If such mediation does not resolve the dispute, the dispute shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association. If Consultant and Client cannot agree on an arbitrator, Consultant shall appoint the arbitrator, and such appointment shall be binding on Client unless Client can reasonably demonstrate that the arbitrator's relationship to Consultant is such that there is a reasonable doubt as to the ability of the arbitrator to be impartial. Any such arbitration shall take place in Jefferson County, Colorado. Consultant and Client each hereby agree that the provisions of this Section 15 shall apply to the resolution of all disputes related to the subject matter hereof other than (i) Consultant's efforts to collect funds due it from Client, which may be brought in any court of competent jurisdiction, and (ii) the enforcement of any arbitration award. Further, Consultant and Client each agree that if litigation is ever resorted to hereunder, all such claims shall be brought in Jefferson County, Colorado small claims court to the extent the amount of any claim is less than the then-current small claims court threshold.

16. **Execution by Counterparts or Email.** This Agreement may be executed in any number of counterparts with the same effect as if the parties hereto had signed the same document. All counterparts will be construed together and will constitute one agreement. Signatures transmitted by any electronic means (DocuSign, pdf files, or any other format of electronic signature) will have the same effect as original signatures.

17. **Notices.** All notices, demands, consents, approvals or other documents or instruments required or permitted to be served upon either of the parties ("*Notices*") shall be in writing and shall be deemed to have been given: (a) when personally delivered; (b) when sent by facsimile during business hours (or 8:00 a.m. the next business day if not sent during business hours); (c) one business day after being deposited with any nationally recognized overnight carrier which routinely issues receipts, addressed to the party at the address set forth above; or (d) three business days after being placed in the mails by certified mail, return receipt requested, postage prepaid, addressed to the party at the address set forth above. Any party or person entitled to receive Notice may change its address for Notices, by Notice to the other parties in writing. This Section 17 is intended to apply to material matters only and not to impede normal communications between Client and Consultant, and any electronic mail messages authorizing expenditures or other consent as set forth herein with the phrase "(email sufficient)" shall be considered conclusive proof with respect to any such matter and shall not require any further notices or other documentation.

18. **Miscellaneous.** Whenever the context so requires, the neuter gender includes the masculine and feminine, the single number includes the plural, and vice versa. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and references to Article, Section, Subsection, Paragraph, Schedule, Exhibit and like references are references to this Agreement unless otherwise specified. The word “including” shall be deemed to mean “including without limitation”. References in this Agreement to any party shall include such party’s successors and permitted assigns. In the event of any direct and irresolvable conflict between this Agreement and anything contained in the Exhibit A hereto, the provisions of Exhibit A shall govern. In the event either party to this Agreement commences any legal action in connection with the provisions hereof, or in order to obtain damages for the alleged breach of any of the provisions hereof, the prevailing party in such action shall be entitled to recover, in addition to any amounts of relief otherwise awarded, all reasonable costs incurred in connection therewith, including reasonable attorney’s fees. All previous oral or written promises and agreements relating to the subject matter of this Agreement are hereby superseded, it being expressly agreed that the terms and provisions of this Agreement shall constitute the full and complete agreement between Client and Consultant. Any changes or amendments to this Agreement must be set forth in a writing executed by both Client and Consultant. The failure of either party to enforce at any time or for any period of time any of the provisions of this Agreement shall not be construed as a waiver of such provisions or of the right of the party thereafter to enforce each and every such provision. Consultant shall at all times be an independent contractor and shall not, under any circumstances, be considered nor hold himself out to be an employee of Client or any affiliate. Consultant further agrees that no tax assessment or legal liability of Consultant or its agents or employees shall become an obligation of Client by reason of this Agreement. As such, Consultant shall be solely responsible for all federal, state, and local taxes assessed to Consultant in connection with the Work. Conversely, Consultant will not, by entering into and performing this Agreement, become liable for any of the existing or future obligations, liabilities, or debts of Client.

[Signatures Follow on Next Page]



## **EXHIBIT A-WORK AND PRICING**

### **Services for Starting Point Rehabilitation (As of January 2021 - Fees are Subject to Change at Any Time)**

#### **NO WORK IS DONE ON A LIEN OR OTHER CONTINGENT BASIS**

**Person to be Evaluated:** \_\_\_\_\_

#### **Functional Capacity Evaluation (FCE)**

**Check 1 or 3-day FCE option, then check physical abilities, cognitive abilities, or both to be evaluated.**

**3 Day FCE- Check Here If Desired:** \_\_\_\_\_

Client is evaluated over a 3-day period. THE THREE DAYS MUST BE CONSECUTIVE. 2 hours of medical records review and summary are included in the flat rate. Additional time on medical records review and summary will be billed per the hourly rate schedule at the end of this Exhibit A (“Rate Schedule”). A medical records protocol is provided to the referral source that outlines suggested records to be provided prior to the FCE. Consultant understands that each referral has their own philosophy on the provision of medical records and will accept those provided outside of the normal protocol. The FCE will be either limited to physical capacities for a fee of \$5000 or will also include cognitive abilities for an additional \$500, in addition to time spent on medical records review and summary in excess of two hours.

**\$5000 Physical capacities include some or all of the following tests as appropriate Check Here If Desired:** \_\_\_\_\_

- Level of effort
- Symptom exaggeration
- Activities of daily living
- Leisure abilities
- Lifting abilities
- Positional tolerances
- Work simulation (general and/or specific)
- Ability to perform repetitive work
- Ability to maintain work tasks
- Visual dysfunction
- Musculoskeletal evaluation
- Manual dexterity/strength
- Basic academic skills
- Cardio-vascular endurance
- Effects of medication, fatigue, and pain on performance
- Social skills, ability to work in a group setting

**\$5500 Cognitive abilities adds some or all of the following tests as appropriate: Check Here If Desired:** \_\_\_\_\_

- Memory (visual/auditory)
- Problem solving
- Multi-tasking
- Ability to follow directions
- Attention/Concentration
- Emotional control
- Visual-perceptual deficits
- Effects of medication, fatigue, and pain on performance
- Constructional abilities

#### **Late Cancellation Policy for 3-day FCE**

A late cancellation fee of \$2000 will be assessed if cancellation is less than 5 working days before the scheduled evaluation, \$3000 if less than 3 working days before the scheduled evaluation, **Full Fee is Due** if any portion of the FCE is not completed due to no show or cancellation for any reason of patient. When appropriate, missed evaluation time will be made up at a later date at the discretion of Starting Point Rehabilitation.

#### **Rush Report Fee**

**Cost: \$300.00**

If report must be completed before 15 business days following last day of any FCE.

This cost will be added to the invoice as an extra fee. Client must request in writing (email sufficient).

Client Initials: \_\_\_\_\_

**1-day FCE (including re-evaluations) Check Here If Desired:**

**Cost: \$225 Per Hour, Minimum Two Hours**

**Physical and/or cognitive skills are evaluated** at the request of the client. Charges are assessed per **total hours logged**. A medical records protocol is provided to the referral source that outlines suggested records to be provided prior to the FCE. Consultant understands that each referral has their own philosophy on the provision of medical records and will accept those provided outside of the normal protocol.

**Late Cancellation Fee for 1-Day FCE**

Late cancellation fee: \$1000 if cancellation is less than 5 working days before scheduled evaluation (Based on a One Day FCE of 4 hours or less. Consultant reserves the right to charge a cancellation fee of up to \$2000 if the planned One Day FCE was scheduled to be longer than four hours)

Client Initials:

**Rush Report Fee**

**Cost: \$300.00**

If report must be completed before 15 business days following last day of any FCE.

This cost will be added to the invoice as an extra fee. Client must request in writing (email sufficient).

**Medical Records Review/Report and Summary Services/Rebuttals/Research/Time Spent On Phone Calls and Emails/Travel Time/Miscellaneous Services Not Included In FCE Fees (collectively, (“Hourly Work”))**

Billed Hourly Per the Rate Schedule. A medical records protocol is provided to the referral source that outlines suggested records to be provided prior to the FCE. Consultant understands that each referral has their own philosophy on the provision of medical records and will accept those provided outside of the normal protocol.

In connection with any matter of Work performed under this Agreement, Consultant may, without Client’s written consent, bill up to ten (10) hours of Hourly Work, which shall be billed and due and payable in addition to any other amount billed. Additional Hourly Work must be approved in advance by Client (email sufficient). Any such writing shall be conclusive proof that Client ordered such additional Hourly Work.

Client Initials:

**Expert Witness Services- Check Here if Desired:**

- **\$450/hour for Testimony** (2 hour minimum).
- **\$225/hour Trial Preparation:** phone calls, report and medical records review, phone/face-to-face meeting with counsel, etc.
- **Travel Time Per the Rate Schedule**
- **\$1500 Late Cancellation Fee** will be assessed if the cancellation is received within less than 5 calendar days prior to the trial and all time for Work spent on preparation is still due and payable

**Hourly Rate Schedule:**

Per Hour Rate Performed By:

Sherry Young: \$225, Occupational Therapy Assistant: \$225, Medical Records Specialist: \$100

Consultant shall assign tasks to its own personnel in its sole discretion. Consultant may also recommend to Client that Consultant work with outside professionals to maximize Client’s potential for success. Any such arrangement with outside professionals shall be documented in either a separate written agreement and/or written amendment to this Agreement (email NOT sufficient) and may involve rates higher and/or different than the Hourly Rate Schedule and different billing arrangements (by way of example and not limitation, Client may pay such outside professional’s fees directly).

Client Initials:

Return to [admin@startingpointrehab.com](mailto:admin@startingpointrehab.com)