**CONSULTING SERVICES AGREEMENT**

**BETWEEN**

**NATIONAL O&P APPEAL ADVOCATES**

**AND**

**[SUPPLIER]**

**NOVEMBER 2014**

**CONSULTING SERVICES AGREEMENT**

This **CONSULTING SERVICES AGREEMENT** (this “Agreement”) effective as of November 1, 2014 (the “Effective Date”), is made by and between **NATIONAL O&P APPEAL ADVOCATES**, with an address of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Company”) and **[NAME OF SUPPLIER]**, with an address of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Supplier”).

**BACKGROUND**

**WHEREAS,** Company is a consulting firm specializing in representing prosthetic and orthotic suppliers in the Medicare appeals process throughout the United States; and

**WHEREAS,** Supplier is a duly licensed prosthetic and orthotic supplier that participates in the Medicare program; and

**WHEREAS,** Supplier has or may have certain claims for services rendered to Medicare beneficiaries which have been denied or may be denied by the Medicare Administrative Contractor for the region in which Supplier does business; and

**WHEREAS,** Company has agreed to furnish certain consulting services, including without limitation, Medicare claims audit and appeal services to Supplier pursuant to the terms and conditions set forth herein.

**NOW, THEREFORE,** in consideration of the mutual covenants and promises contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

# **Incorporation of Background.**

The background provisions set forth above (including, without limitation, any defined terms set forth therein) are hereby incorporated by reference into this Agreement and made a part hereof as if set forth in their entirety in this Paragraph 1.

# **Consulting Services**.

Supplier shall provide those services to the Program as set forth in Exhibit A (collectively, the “Consulting Services”), which is hereby incorporated by reference and made a part hereof. In performing the Consulting Services, Company shall be under the direction of Supplier’s President & Chief Executive Officer, or his or her designee.

# **Representations and Warranties of Supplier**.

Supplier represents and warrants to Supplier the following:

a. **Authorization; Organization**. Supplier is a [form of entity] duly organized, validly existing and in good standing under the laws of the [Name of State], has all necessary corporate power and authority to carry on its business as presently conducted, and has full power and authority to execute and deliver and perform this Agreement in accordance with its terms.

## b. **No Restrictions**. There are no restrictions, agreements, or understandings, oral or written, to which Supplieris a party that would prevent or make unlawful its execution of this Agreement; and

## c. **No Breach**.

Supplier’s execution of this Agreement does not constitute a breach of any contract, agreement, or understanding, oral or written, to which Supplier is a party or by which is bound.

# **Compensation**.

Supplier shall compensate Company in consideration for the provision of the Services in the amount(s) set forth in Schedule 4 – Compensation, which is hereby incorporated by reference and made a part hereof. All such compensation shall be payable in advance of the provision of the Consulting Services hereunder, unless otherwise agreed upon in writing by the parties. To the extent Supplier terminates this Agreement for any reason or for no reason under Paragraph 5 hereof, there shall be no refund, rebate or other repayment from Company to Supplier in connection with any Consulting Services that may remain to be furnished.

# **Term; Termination**.

1. This Agreement shall commence on the date first written above and shall terminate one calendar year from said date, unless earlier terminated by either party hereto. Either party may terminate this Agreement upon thirty (30) days prior written notice.

# **Compliance with Regulations**.

Pursuant to Title 42 of the United States Code and applicable rules and regulations thereunder, until the expiration of four (4) years after the termination or expiration of this Agreement, Supplier shall make available, upon appropriate written request by the Secretary of the United States Department of Health and Human Services or the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the costs of the Services provided by Supplier under this Agreement.

# **Independent Contractor Status; Limitations**.

It is acknowledged and agreed that Company on the one hand and Supplier on the other hand are at all times acting and performing hereunder as independent contractors. Company shall have no authority to execute or terminate any contracts or agreements on behalf of Supplier without the prior written consent of Supplier with respect to such contract or agreement.

# **Assignment**.

This Agreement shall not be assigned or transferred by Supplier or by Company without the prior written consent of the other party, except that Company may assign and transfer this Agreement to any affiliate, subsidiary, parent, or successor-in-interest without the prior written consent of Supplier.

# **Notices**.

## **Form of Notices**.

All notices, requests, demands, and other communications required or permitted under this Agreement shall be sufficient if hand-delivered, sent by registered or certified mail, postage prepaid, return receipt requested, or delivered by national overnight delivery service, delivery charges prepaid and addressed as set forth below:

If to Supplier:

[Name]

[Address]

If to Company:

National O&P Appeal Advocates

PO Box 8091

Newark, DE 19714

Attention: Sarah Brase-Davis

President & Chief Executive Officer

With a copy to:

George W. Bodenger, Esquire

Saul Ewing LLP

Centre Square West

1500 Market Street

Philadelphia, PA 19102

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section for the giving of notice.

## **Deemed Delivery**.

Notices hand-delivered shall be deemed given on the day so hand delivered; notices given by registered or certified mail shall be deemed given on the fifth (5th) business day after mailing; and notices given by national overnight delivery service shall be deemed given on the next business day after delivery to such service.

# **Indemnification**.

Each party shall indemnify, hold harmless, and defend the other from any and all third party liability, loss, claims, lawsuits, damages and costs or expenses arising from the performance or nonperformance under this Agreement, excluding attorneys' fees.

# **Limitation of Liability**. Notwithstanding any other provision of this Agreement, and in recognition of the relative risks and benefits of this engagement to Supplier and to Company, the parties agree, to the fullest extent permitted by law, to limit the aggregate liability of each party (and its affiliates, directors, officers, employees, agents and representatives) to the total compensation paid to Company under this Agreement. This limitation of liability will apply to all suits, claims, actions, losses, damages and costs (including legal fees and expenses) arising from or related to this Agreement or the Consulting Services provided hereunder and without regard to the legal theory under which such liability may be imposed.

# **Exclusion of Certain Damages**. In no event will either party, its directors, officers, employees, and affiliates be liable for any indirect, consequential or (to the extent permitted by law) punitive damages relating to or arising out of this Agreement or the services provided hereunder, whether in contract, tort (including negligence), strict liability or otherwise, even if such party will have been advised of the possibility of such loss or damage.

# **Business Associate**. The parties acknowledge and agree that this Agreement creates a “Business Associate” relationship between the parties (as such term is defined in the Health Insurance Portability and Accountability Act of 1996, also known as “HIPAA”). Supplier, , for the purposes of this Paragraph, shall be deemed the “Covered Entity” and Company shall be deemed the “Business Associate” as such terms are defined under HIPAA. The parties shall, as a condition of this Agreement, execute the form of Business Associate Agreement that is attached to this Agreement as Exhibit B, which is hereby incorporated by reference and made a part hereof.

# **Miscellaneous**.

## **Change in Law**.

Notwithstanding any other provision of this Agreement, if during the term hereof, there is a Change of Law (as hereinafter defined) that results or is likely to result in an Adverse Consequence (as hereinafter defined), the parties shall, within thirty (30) days after one party’s written notification to the other party (“Notice”) of such Adverse Consequence, agree to reasonable revisions to this Agreement in the future that avoid or substantially ameliorate such Adverse Consequence, but to the extent legally permissible preserve the original intentions and economic and other terms agreed to by the parties herein. If the parties are unable to agree on reasonable revisions to this Agreement, then this Agreement shall be deemed to be terminated effective thirty (30) days after the date Notice was furnished.

As used herein, “Change of Law” shall mean: (i) any new legislation enacted by the federal or any state government; (ii) any new third party payer or governmental agency law, rule, regulation, or, in the case of Medicare, a guideline, or a published interpretation of a previously issued law, rule, regulation or guideline, or (iii) any judicial or administrative order or decree or institution of an enforcement action.

As used herein, “Adverse Consequence” shall mean (i) the rendering of this Agreement as illegal or (ii) a material legal and/or economic consequence or problem for any party hereto.

## **Choice of Law**.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without regard to any conflict of laws principles.

## **Confidentiality**.

As used in this Agreement, the term “Confidential Information” shall mean all information disclosed by one party to the other pursuant to this Agreement which is in written, graphic, machine readable or other tangible form, and is marked “Confidential,” “Proprietary,” or in some other manner. Confidential Information also includes information related to the above items disclosed orally by one Party to the other pursuant to this Agreement. Each party shall treat as confidential all Confidential Information of the other party and shall not use such Confidential Information, except as set forth herein, and shall not disclose such Confidential Information to any third party. Notwithstanding the above, no party shall have liability to the other party with regard to any Confidential Information of such other party which: (i) was in the public domain at the time it was disclosed or has become part of the public domain through no fault of the receiver; (ii) was known to the receiver, without restriction, at the time of the disclosure, as shown by the files of the receiver; (iii) was independently developed by the receiver without any use of the Confidential Information and by employees or other agents of the receiver who did not have access to the Confidential Information; or (iv) becomes known to the receiver, without restriction, from a source other than the other party, without breach of this Agreement by the receiver and otherwise not in violation of the disclosing party’s rights.

## **Benefit**.

This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

## **Waiver of Breach**.

The waiver by a party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver of any subsequent breach of the same or any other provision hereof or thereof.

## **Survival**.

All of the representations, warranties, covenants and agreements made by the parties in this Agreement, may be fully and completely relied upon by the parties hereto, notwithstanding any investigation heretofore or hereafter made by any of them or on behalf of any of them, and shall not be deemed merged into any other instrument, document or agreement.

## **Entire Agreement; Amendment**.

This Agreement supersedes all previous agreements and understandings among the parties with respect to the subject matter hereof, and constitutes the entire agreement of whatsoever kind or nature existing among the parties with respect to the subject matter hereof. No party shall be entitled to any rights or benefits, or shall have any obligations to the other, other than those specified herein. The parties specifically acknowledge that in entering into and executing this Agreement, the parties rely solely upon the representations and agreements contained in this Agreement and no others. All prior representations or agreements, whether written or oral, not expressly incorporated herein are superseded unless and until made in writing and signed by all parties, and no oral statement or prior written material not specifically incorporated herein shall be of any force and effect. This Agreement may not be amended or modified except by a written instrument executed by all of the parties hereto.

## **Counterparts**.

This Agreement, may be executed in several counterparts by only one of the undersigned and all such counterparts so executed shall together be deemed and constitute one final agreement, as if one document had been signed by all parties hereto or thereto; and each such counterpart shall be deemed an original, binding the parties subscribed hereto or thereto, and multiple signature pages affixed to a single copy of this Agreement shall be deemed to be a fully executed original agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;**

**SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date(s) set forth below.

**NATIONAL O&P APPEAL ADVOCATES**

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

Sarah Brase-Davis

President & Chief Executive Officer

**SUPPLIER**

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

[Name of Supplier]

**EXHIBIT A**

**NATIONAL O&P APPEAL ADVOCATES**

**CONSULTING SERVICES**

Phase I - Document Review. .Perform analytical review of clinical documentation to determine if an appeal is warranted and, if so, identify additional documentation requirements

Phase II - Denial Classification. Determine type of denial issued by Medicare Administrative Contractor, i.e., Additional Documentation Requests (ADR), Pre-Payment Probes, Comprehensive Error Rate Testing (CERT) Audit, Recovery Audit Contractor (RAC) Overpayments

Phase III – Redetermination and Reconsideration of Appeals.  Prepare and submit requisite documentation (including memoranda, position papers, etc.) for each level in the appeal process, including: (i) Initial and Pre-Determinations; (ii) formal Redetermination by Medicare Audit Contractor; (iii) Reconsideration by Qualified Independent Contractor; and (iv) Administrative Law Judge (ALJ) hearing. All such work will be performed in accordance with relevant appeal deadlines, etc. Phase III Services also include intercession with appropriate Medicare representative to effect stoppage of recoupment, set-off against other amounts due and owing.

Phase IV – Administrative Law Judge Hearing. Company will provide a regulatory advisor to attend the ALJ hearing. It is recommended that Supplier consider engaging qualified counsel for the purposes of the ALJ hearing.

\*Phase IV Services do *not* include representation in Federal District Court to challenge ALJ decision. A duly licensed attorney will be required for any such challenge.

**Schedule 4 – Compensation**

Phase I Services (Prosthetics and Orthotics)

$40.00 per case *OR* if amount in dispute is $1,000 or more, 5.0 percent of amount in dispute

Phase II Services (Prosthetics and Orthotics)

$40.00 per case *OR* if amount in dispute is $1,000 or more, 5.0 percent of amount in dispute

Phase III Services

Orthotics - $75.00 per case or $150.00 for every three (3) cases

Prosthetics - $200.00 per case or $500.00 for every three (3) cases

Phase IV Services

Orthotics - $200.00 per case or $500.00 for every three (3) cases

Prosthetics - $450.00 per case or $1,250.00 for every three (3) cases

**Exhibit B – Form of Business Associate Agreement**