

PROVIDER AGREEMENT

WISCONSIN

THIS AGREEMENT is made as of the _____ day of _____, 201_, by and between **City of Manitowoc**, a Wisconsin municipal corporation located at 900 Quay Street, Manitowoc, WI 54220 (“City”) and **SMART CHOICE MRI, LLC**, (“SCMRI”).

WITNESSETH

WHEREAS, the City is self-insured; and

WHEREAS, SCMRI provides magnetic resonance imaging services (“MRI Services”); and

WHEREAS, the City wishes to have SCMRI provide certain MRI Services to individuals covered under this agreement; and

WHEREAS, the City and SCMRI desire to set forth in this Agreement the terms and conditions under which SCMRI will provide such MRI Services to covered individuals.

NOW, THEREFORE, ^[A1]the parties hereby agree as follows:

**ARTICLE I
DEFINITIONS**

1.1 **“Benefits Plan”** shall mean the health benefits plan or program established by or at the direction of the City for providing or arranging for health benefits for Enrollees as identified on Exhibit B.

1.2 **“Covered Services”** shall mean MRI Services provided to an Enrollee that are covered under the Benefits Plan.

1.3 **“Enrollee”** shall mean any individual who, at the time that services are rendered, is eligible to receive Covered Services under the terms of the Benefits Plan.

1.4 **“Medically Necessary”** means MRI Services that are (a) appropriate and consistent for the symptoms, diagnosis or treatment of a medical condition, illness or injury; (b) compatible with the standards of acceptable medical practice in the United States; (c) not solely for the convenience of Enrollee or SCMRI; and (d) provided in a safe and appropriate setting.

**ARTICLE II
TERM AND TERMINATION**

2.1 **Term.** The term of this Agreement shall be for a period of one year commencing January 1, 2016, unless terminated earlier in accordance with the terms set forth herein.

2.2 **Renewal.** This Agreement shall be automatically renewed for additional terms of one year upon the expiration of the current term, unless terminated pursuant to the this Agreement or unless either party delivers to the other written notice of intent not to renew, no later than 90 days before the expiration of the current term.

2.3 **Termination Without Cause.** Either party may terminate this Agreement, for any reason, whether with or without cause, upon 30 days' prior written notice to the other party.

2.4 **Termination With Cause.**

- (a) If either party fails to comply with or perform when due any term or condition of this Agreement, the non-breaching party shall notify the breaching party of such breach in writing stating the specific nature of the breach and the breaching party shall have 30 days to cure the breach. If the breach is not cured to the reasonable satisfaction of the non-breaching party within such 30 day period, the non-breaching party may immediately terminate this Agreement by providing written notice of such termination to the other party.
- (b) This Agreement may be terminated automatically and immediately upon notice from one party to the other if the other party (i) makes an assignment for the benefit of creditors, files a petition in bankruptcy, or petitions or applies to any tribunal for the appointment of a custodian, receiver or trustee for it or a substantial portion of its assets; (ii) commences any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction; or (iii) has filed against it any such petition or application in which an order for relief is entered or which remains undismissed for 30 days or more.

2.5 **Rights on Termination.** Termination of this Agreement shall have no effect on the rights and obligations of the parties arising out of any transaction occurring prior to the date of such termination (including SCMRI's right to compensation for Covered Services rendered prior to the date of termination).

**ARTICLE III
SERVICES/OBLIGATIONS**

3.1 SCMRI shall provide Medically Necessary Covered Services to Enrollees as provided in this Agreement in exchange for the compensation set forth in this Agreement.

3.2 SCMRI shall comply with all applicable federal and state laws, rules and regulations governing Covered Services rendered pursuant to this Agreement.

3.3 SCMRI shall assure that individuals performing the Covered Services have any necessary licensing and are otherwise qualified to perform the Covered Services. SCMRI shall assure that all Covered Services are performed in accordance with generally accepted standards of medical practice.

3.4 SCMRI shall render Covered Services to Enrollees in the same manner provided to non-Enrollees and without regard to race, religion, gender, color, sexual orientation, national origin, geography, place of residence, age or on any other basis prohibited under applicable law. SCMRI may lawfully refuse to treat an Enrollee, so long as the basis for the refusal is lawful and the same as that applied to non-Enrollees. SCMRI shall not be required to provide any type or kind of MRI Service to Enrollees that it does not customarily provide to others.

3.5 SCMRI acknowledges and agrees that the City may contract with other businesses for the delivery of Covered Services to Enrollees.

3.6 The City shall provide a means of enabling SCMRI to identify Enrollees either by issuing a paper, plastic or other identification document to the Enrollee or by telephonic, paper or electronic communication to SCMRI. The City shall assure that such information includes the Enrollee's eligibility date, Enrollee's identification number, a telephone number where SCMRI can verify eligibility for an Enrollee and any certification information required to provide Covered Services to an Enrollee.

3.7 The City has provided to SCMRI a summary statement for the Benefits Plan identifying all copayments, deductibles or other charges or payments to be collected from Enrollees in connection with the provision of Covered Services, and all exclusions, limitations or conditions applicable to the Covered Services, which summary statement is attached hereto as Exhibit B. Such summary statement shall be relied upon by the parties in the interpretation and implementation of this Agreement. If the City requires SCMRI to comply with any policies or procedures established by the City with respect to the transactions contemplated herein, such policies or procedures are included in Exhibit B attached hereto.

3.8 If SCMRI contacts the City prior to providing a Covered Service to confirm Enrollee's eligibility or otherwise obtains pre-authorization from the Company to provide a Covered Service, the City shall not retroactively deny payment if the City later determines that an individual certified as eligible was not in fact an Enrollee, or that the MRI Service pre-authorized and rendered was not a Covered Service.

3.9 The City shall specifically identify SCMRI as a Company participating provider through its Benefit Plan marketing materials.

**ARTICLE IV
COMPENSATION AND BILLING**

4.1 **Compensation.** For Covered Services provided by SCMRI to Enrollees, the City shall pay to SCMRI the amounts set forth in Exhibit A. SCMRI agrees to be reimbursed in accordance with such Schedule for all Covered Services provided pursuant to this Agreement and agrees not to seek any payments or compensation from Enrollees; provided, however, that nothing contained herein shall prohibit SCMRI from collecting supplemental charges, copayments, coinsurance or payments for any MRI Service that does not constitute a Covered Service hereunder from Enrollee at the time of service.

4.2 **Claims Submission.** SCMRI agrees to submit payment claims on an HCFA-1500 Form or other format consistent with industry standards. SCMRI shall submit all claims for payment to:

City of Manitowoc
900 Quay Street
Manitowoc, WI 54220

4.3 **Payment for Services.** The City shall pay (or cause to be paid) all claims submitted by SCMRI to City for payment which contain all HCFA-1500 (or successor standard) data elements within 30 days after receipt by the City. SCMRI shall refund to Enrollee any funds that Enrollee overpaid or paid in error, promptly after SCMRI's discovery of the overpayment. SCMRI shall refund to the City any erroneous or excess payment received by SCMRI from the City promptly upon SCMRI's determination that such erroneous or excess payment was received.

4.4 **Medicare and Medicaid Assignment.** With respect to Covered Services provided to any Enrollee who is eligible for benefits under either the Medicare or Medicaid program, SCMRI shall accept assignment and not bill the City or Enrollee for any Covered Services (although SCMRI may bill the Enrollee for any copayments, coinsurance or deductibles permitted under the Medicare and Medicaid programs).

4.5 **Rate Changes.** SCMRI may, upon not less than 120 days' prior written notice to the City, modify the Schedule of Compensation attached as Exhibit A; provided, however, SCMRI may not give notice of any change to the compensation rates set forth on Exhibit A that would be effective during the initial one year term of this Agreement.

**ARTICLE V
RIGHT OF OWNERSHIP AND CONFIDENTIALITY**

5.1 **Confidential Information.** The City and SCMRI each acknowledge that during the performance of this Agreement, each may obtain or become aware of confidential or proprietary materials of the other party including, but not limited to, mailing lists, patient lists, product or service related information and structure, documents concerning the parties'

systems and operations, practice guidelines, report formats, customer databases and other information not in the public domain (collectively "Confidential Information"). Confidential Information shall not include information which is otherwise publicly available. Each party agrees that it shall not use or disclose Confidential Information of the other party except as required to implement the services contemplated by this Agreement or as may be required by law.

5.2 Medical Records Ownership and Authorization. SCMRI shall maintain medical, financial and administrative records with respect to Enrollees and such records shall be and remain the property of SCMRI. SCMRI and the City shall maintain the confidentiality of Enrollee information and records, including medical records of Enrollees and any records containing individually identifiable information of Enrollees, as required by state and federal laws and regulations and shall implement reasonable administrative and technical safeguards to ensure the integrity and confidentiality of Enrollee information. Enrollee medical records shall not be removed or transferred from SCMRI except in accordance with applicable law and SCMRI's policies. Upon enrollment and before requesting Enrollee medical records from SCMRI, the City shall obtain from Enrollee, or Enrollee's legal representative, written authorization for release of Enrollee's medical records in accordance with applicable state and federal law concerning the confidentiality of medical records and the City shall hold SCMRI harmless from any liability in connection with SCMRI's release of medical records to the City and any subsequent disclosure by the City.

5.3 Individually Identifiable Information. The City and SCMRI each agree to abide by all applicable state and federal laws regarding confidentiality of each Enrollee's individually identifiable information.

5.4 Survival of Obligations. The obligations of the parties set forth in this Article V shall survive termination of this Agreement.

ARTICLE VI INSURANCE

6.1 Professional Liability Insurance. SCMRI shall carry professional liability insurance covering SCMRI in minimum amounts of \$1,000,000 for each occurrence and \$3,000,000 in the annual aggregate or such greater amounts as may be required under applicable law.

6.2 General Liability Insurance. SCMRI shall also maintain a policy of comprehensive general liability insurance, covering acts or failure to act with minimum coverage of not less than \$1,000,000) per claim for bodily injury and a combined single limit bodily injury and/or property damage insurance coverage of not less than \$1,000,000.

6.3 Certificate. Certificates of insurance evidencing the above-described insurance shall be provided to the City upon execution of this contract, including an additional insured endorsement naming the City as an additional insured.

**ARTICLE VII
INDEMNIFICATION AND LIMITATION OF LIABILITY**

7.1 **Indemnification.** Each party hereto shall indemnify, defend and hold harmless the other party from and against any and all losses, claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees) arising from third party claims resulting from the indemnifying party's failure to perform its obligations under this Agreement and/or the indemnifying party's violation of any law, statute, ordinance or regulation. The obligation to provide indemnification under this Agreement shall be contingent upon the party seeking indemnification providing the indemnifying party with prompt written notice of any claim for which indemnification is sought, and allowing the indemnifying party to control the defense and settlement of such claim, provided that the indemnifying party agrees not to enter into any settlement or compromise of any claim or action in a manner that admits fault or imposes any restrictions or obligations on any indemnified party without the indemnified party's prior written consent (which consent shall not be unreasonably withheld).

7.2 **Limitation of Liability.** In no event shall either of the parties hereto be liable for any amounts representing loss of revenues, loss of profits, loss of business, incidental, indirect, consequential, special or punitive damages, whether arising in contract, tort (including negligence), or otherwise and regardless of whether the parties have been advised of the possibility of such damages, arising in any way out of or relating to this Agreement.

7.3 **Survival.** The obligations of the parties set forth in this Article VII shall survive termination of this Agreement.

**ARTICLE VIII
GENERAL PROVISIONS**

8.1 **Relationship of Parties.** For purposes of this Agreement, the City and SCMRI are and will act at all times as independent contractors. Nothing in this Agreement shall be construed, or be deemed to create, a relationship of employer or employee or principal and agent, or any relationship other than that of independent entities contracting with each other for purposes of effectuating this Agreement. Nothing in this Agreement is intended to allow the City to exercise control or direction over the manner or method by which SCMRI provides Covered Services.

8.2 **Entire Agreement.** This Agreement represents the entire understanding between the parties and supersedes all prior negotiations, representations, agreements and understandings between the parties, whether written or oral, regarding the subject matter hereof. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

8.3 **Intent of the Parties.** It is the intent of the parties that this Agreement is to be effective only in regards to the rights and obligations with respect to each other; it is expressly

not the intent of the parties to create any independent rights of any third party or to make any third party a third party beneficiary of this Agreement.

8.4 Severability. In case any one or more of the provisions of this Agreement shall be invalid, illegal or unenforceable in any respect, the remaining provisions shall be construed liberally in order to effectuate the purposes hereof, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. If one or more provisions of the Agreement are invalid, illegal or unenforceable, and an amendment to this Agreement is necessary to maintain its integrity, the parties shall make commercially reasonable efforts to negotiate such an amendment. If any invalid, illegal or unenforceable provision of this Agreement materially affects the parties' intent when this Agreement was executed, then the party affected thereby shall have the right to terminate this Agreement upon written notice to the other party.

8.5 Waiver. Neither the waiver by either party of a breach of any of the provisions of this Agreement, nor the failure of either party, on one or more occasion, to enforce any of the provisions of this Agreement, shall thereafter be construed as a waiver of any subsequent breach of any provision of this Agreement by the other party.

8.6 Amendment. Except as set forth in Section 4.5 regarding rate changes, this Agreement may be amended only by the written and signed agreement of the parties hereunder.

8.7 Assignment. The City acknowledges and agrees that SCMRI contracts with the Cleveland Clinic to read MRI results. Except as set forth in the immediately preceding sentence, neither party may assign any of its rights or obligations hereunder without the prior written consent of the other party.

8.8 Notices. All notices required under this Agreement shall be in writing and shall be deemed given and received in all respects (i) when personally delivered, (ii) when delivered via reputable overnight courier service, or (iii) five (5) days after deposited in the United States mail, certified mail, return receipt requested, in each case addressed to a party at its address as set forth below or to such other address as may be designated by notice to be given:

TO SCMRI: Smart Choice MRI, LLC
 10532 North Port Washington Road
 Mequon, WI 53092
 Attention: Christine Herbst, VP Operations

TO City: City of Manitowoc
 900 Quay Street
 Manitowoc, WI 54220

8.9 **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin both as to interpretation and performance notwithstanding the conflict of law provisions.

IN WITNESS WHEREOF, the parties have caused their duly authorized officers to execute this Agreement.

City of Manitowoc

SMART CHOICE MRI, LLC

By: _____
(Title)

By: _____
Christine Herbst, COO

EXHIBIT A

Schedule of Compensation

Smart Choice MRI

Any MRI/MRA with contrast	\$555.00
Any MRI/MRA without contrast	\$525.00

EXHIBIT B

City Summary Statement

The City will determine the additional incentive paid to employees who use Smart Choice MRI. The administration of the incentive will be the responsibility of the City.