

# MINUTES

## BOARD OF EDUCATION VALLEY STREAM SCHOOL DISTRICT 24

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BUSINESS MEETING

WILLIAM L. BUCK SCHOOL  
May 25, 2022

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Members Present: President Pellicane, Vice-President Maier, Trustees Hernandez, Herrera, LaRocco, Wheeler and Wilson.

Others Present: Superintendent Dr. Don Sturz, Assistant Superintendents Dr. Jack Mitchell, Dr. Lisa Conte, Principals Johanne Gaddy, Rosario Iacono and Dr. Scott Comis. School District Attorney Joe Lilly. Director of Pupil Services Dr. Robert Mueller and Director of Technology Mark Onorato. Also present were several Teachers, Staff, Retirees and their families and students from the William L Buck, Robert Carbonaro and Brooklyn Avenue Schools. Presenters of the night were Board President of Friends of Bridge, Mary Ann Norton and also presenting were Brian Stecker and Anitra Butler from Elks.

Absent With Prior Notice: None

### **I. CALL TO ORDER**

The Business Meeting was called to order at 6:45 PM, at the William L. Buck School, by President Pellicane.

Motion to enter Executive Session at 6:45 PM was made by Vice-President Maier, seconded by President Pellicane, to discuss Personnel and Contractual obligations. Motion unanimously carried.

Motion to adjourn Executive Session at 7:30 PM was made by Trustee Hernandez, seconded by Vice-President Maier. Motion unanimously carried.

The Business Meeting was reconvened at 7:30 PM, at the William L. Buck School by President Pellicane.

## **II. – VI. INFORMATIONAL ITEMS:**

Welcome to Visitors: President Pellicane welcomed all in attendance to the Business Meeting and further specified conditions of public comment/questions within Policy 9400.

Motion made by Trustee Hernandez, seconded by Vice-President Maier, to approve the Minutes of April 26 Special Meeting, April 26, May 4, 2022 and Special Meeting May 17<sup>th</sup>, 2022, Special Meetings Budget Vote May 17, 2022. Motion unanimously carried.

Correspondence Report from the District Clerk: The District Clerk received the following correspondences –

April 26, 2022 – I received an email from Ms. Arroyo regarding School Board Elections and a response was sent.

April 27, 2022 – I received an additional email from Mrs. Simone regarding graduation.

April 27, 2022 – I received an email from Mr. and Mrs. Cohen in regard to their son and a response was sent.

April 28, 2022 – I received an email from Ms. Arroyo regarding Candidate Expenditure Instructions and a response was sent.

May 4, 2022 – I received an email from Ms. Arroyo regarding DEI.

May 9, 2022 – I received a FOIL request from Mr. Herbsman regarding ZE Creative and a response was sent

May 17, 2022 – I received an email from Ms. Arroyo regarding the Budget Vote and Election and a response was sent

May 20, 2022 – I received a FOIL request from Mrs. Simone regarding ESSER/EAN

May 20, 2022 – I received a FOIL request from Ms. Demartino regarding clerical employees

Superintendents Report: Dr. Sturz opened the meeting sending our thoughts, prayers and condolences to the Uvalde, Texas community and the families of the innocent lives that were senselessly and so violently taken. The district's foremost priority is the safety, security and wellbeing of our students, staff, and community. Dr Sturz closed his report with an acknowledgment of the 6<sup>th</sup> grade outdoor education trip, thanking administration and teachers for supporting our students. A special thank you was extended to Dr. Comis for all his effort organizing the trip for all three buildings.

**PROGRAM:**

- RECOGNITION OF RETIREES
- RECOGNITION OF FRIENDS OF BRIDGE CONTEST WINNERS
- RECOGNITION OF ELKS CONTEST WINNERS

Dr. Sturz welcomed teachers

Dr. Sturz welcomed Principal, Dr. Comis who recognized retiree Marie Malkiewicz

Dr. Sturz welcomed Principal, Joanne Gaddy who recognized retiree Dave LaWinter

Dr. Sturz welcomed Dr. Lisa Conte who presented to Our Friends of Bridge winners with Maryann Norton who gave out awards.

Dr. Sturz welcomed Dr. Comis who presented to the Elks, Brian Steckler and Anitra Butler who gave out awards.

**VII. LIST OF ITEMS FOR ACTION:**

**A. PERSONNEL – MARKUS WILSON**

Motion made by Trustee Wilson, seconded by Vice-President Maier, to move item A.1 as listed. Motion unanimously carried.

**1. BE IT RESOLVED**, upon the recommendation of the Superintendent of Schools, the Board of Education hereby approves Tara Brady, a probationary Elementary Classroom Teacher in this District, in compliance with the provisions of Education Law Section #3012 and Part 30-1 of the Rules of the Board of Regents, having been appointed to such position by resolution of this Board effective September 1, 2018, be appointed on tenure to the Early Childhood Education (Birth-Grade 2), and Elementary Classroom Teacher (Childhood Education Grades 1-6) and, it having been shown that she holds a valid New York State Public School Teacher Certificate in Early Childhood Education (Birth-Grade 2), and Childhood Education (Grades 1-6), and permitting service as indicated in the public schools of the State of New York, and it further having been shown that her probationary service, which will expire on August 31, 2022 was competent, efficient and satisfactory, the Board of Education of Valley Stream Union Free School District Twenty-four does hereby grant and appoint Tara Brady to tenure, effective September 1, 2022, as an Elementary Classroom Teacher in Early Childhood Education (Birth-Grades 2) and Childhood Education (Grades 1-6).

Motion made by Trustee Wilson, seconded by Trustee Hernandez, to move item A.2 as listed. Motion unanimously carried.

**2. BE IT RESOLVED**, upon the recommendation of the Superintendent of Schools, the Board of Education hereby approves Jessica Wolfsdorf, a probationary Elementary Classroom Teacher in this District, in compliance with the provisions of Education Law Section #3012 and Part 30-1 of the Rules of the Board of Regents, having been appointed to such position by resolution of this Board effective September 1, 2018, be appointed on tenure to the Elementary Classroom Teacher Early Childhood Education (Birth-Grade 2) and (Childhood Education Grades 1-6), it having been shown that she holds a valid New York State Public School Teacher Certificate in Early Childhood Education (Birth – Grade 2) and in Childhood Education (Grades 1-6), permitting service as indicated in the public schools of the State of New York, and it further having been shown that her probationary service, which will expire on August 31, 2022 was competent, efficient and satisfactory, the Board of Education of Valley Stream Union Free School District Twenty-four does hereby grant and appoint Jessica Wolfsdorf to tenure, effective September 1, 2022, as an Elementary Classroom

Teacher in Early Childhood Education (Birth – Grade 2) and Childhood Education (Grades 1-6).

Motion made by Trustee Wilson, seconded by Trustee Herrera, to table items A.3 and A.4. Motion unanimously carried.

**3. BE IT RESOLVED**, upon the recommendation of the Superintendent of Schools, the Board of Education hereby appoints Ashleigh Jones, effective August 31, 2022, as an Elementary Classroom Teacher holding a Certificate for Early Childhood Education (Grades 1-6), and Literacy (Birth-Grade 6) for a 4-year probationary period. Her probation expiration will be August 30, 2026\*. Compensation will be at Step 1 MA+30 in accordance with the current negotiated agreement between the Valley Stream Teachers' Association and the Board of Education.

\*To be eligible to receive tenure, the probationer must receive composite or overall APPR ratings of either effective or highly effective in at least three of the four preceding years, and if the probationer receives an ineffective composite or overall APPR rating in the final year of the probationary period she will not be eligible for tenure at that time.

**4. BE IT RESOLVED**, upon the recommendation of the Superintendent of Schools, the Board of Education hereby appoints Brooke Martins, effective August 31, 2022, as an Elementary Classroom Teacher holding a Certificate for Early Childhood Education (Birth-Grade 2), and Childhood Education (Grades 1-6) for a 4-year probationary period. Her probation expiration will be August 30, 2026\*. Compensation will be at Step 1 MA in accordance with the current negotiated agreement between the Valley Stream Teachers' Association and the Board of Education.

\*To be eligible to receive tenure, the probationer must receive composite or overall APPR ratings of either effective or highly effective in at least three of the four preceding years, and if the probationer receives an ineffective composite or overall APPR rating in the final year of the probationary period she will not be eligible for tenure at that time.

Motion made by Trustee Wilson, seconded by Trustee Wheeler, to move item A.5 as listed. Motion unanimously carried.

**5. BE IT RESOLVED**, upon the recommendation of the Superintendent of Schools, the Board of Education approves the following additions to the per diem substitute list for the 2021-2022 School Year:

**TEACHER:**

Taylor Froelich  
Kayla Giarriputo  
Kayla Gonsalves  
Tenesha Johnson  
Janet Marrero  
Marisa Pollock (Retroactive to May 16, 2022)  
Victoria Scelzo

**B. EDUCATION – MELISSA HERRERA**

Motion made by Trustee Herrera, seconded by Vice-President Maier, to move items B.1 and B.2 as listed. Motion unanimously carried.

**1. BE IT RESOLVED**, upon the recommendation of the Superintendent of Schools, that the Board of Education accepts the confidential recommendations of the Committee on Special Education previously approved by the Committee on Special Education on 3/23/22, 4/1/22, 4/1/22, 4/1/22, 4/4/22, 4/5/22, 4/5/22, 4/5/22, 4/6/22, 4/6/22, 4/6/22, 4/7/22, 4/7/22, 4/7/22, 4/8/22, 4/8/22, 4/11/22, 4/11/22, 4/11/22, 4/11/22, 4/11/22, 4/11/22, 4/11/22, 4/11/22, 4/12/22, 4/12/22, 4/12/22, 4/13/22, 4/14/22, 4/14/22, 4/14/22, 4/14/22, 4/14/22, 4/25/22, 4/27/22, 4/28/22, 4/28/22, 4/28/22, 4/29/22, 4/29/22, 4/29/22, 4/29/22, 4/29/22, 4/29/22, 5/6/22, 5/9/22 and 5/12/22, pertaining to students being considered for pre-school special education services as set forth in a schedule provided to the Board of Education and the Board of Education hereby approves and ratifies said recommendations of the Committee on Pre-School Special Education.

**2. BE IT RESOLVED**, upon the recommendation of the Superintendent of Schools, that the Board of Education accepts the confidential recommendations of the Committee on Pre-School Special Education previously approved by the Committee on Pre-School Special Education on 3/29/22, 4/6/22, 4/6/22, 4/6/22, 4/8/22, 4/8/22, 4/14/22, 4/14/22, 4/26/22, 4/28/22, 4/28/22, 4/28/22, 5/5/22 and 5/5/22, pertaining to students being considered for pre-school special education services as set forth in a schedule provided to the Board of Education and the

Board of Education hereby approves and ratifies said recommendations of the Committee on Pre-School Special Education.

### **C. FINANCE – MR. JOHN MAIER**

Motion made by Vice-President Maier, seconded by Trustee Hernandez, to move item C.1 as listed. Motion unanimously carried.

**1. BE IT RESOLVED**, upon the recommendation of the Superintendent of Schools, the Board hereby accepts the Treasurer’s Report, Collateral Report, Claims Auditor’s Report, Appropriation Status Report, Revenue Status Report, Trial Balance for March 2022.

### **VIII. OTHER REPORTS**

#### **A. VALLEY STREAM CENTRAL HIGH SCHOOL DISTRICT**

There are three delegates from Valley Stream UFSD Twenty-Four on the Central High School Board of Education, Mr. Hernandez, Mr. Maier, and Mr. Wilson.

Central High School District – Next meeting will be held on June 7, 2022 and the next business meeting will be on June 14, 2022.

#### **Residency Hotlines:**

Valley Stream School District	516-872-5677
Village of Valley Stream	516-592-5140
Town of Hempstead	516-584-5000

**B. LEGAL REPORT** – Representative from the law firm, Frazer & Feldman, LLP – No Report

**C. LEGISLATION REPORT – MR. ARMANDO HERNANDEZ** – No Report

**D. POLICY COMMITTEE – MRS. KIMBERLY WHEELER** – No Report

**IX. UNFINISHED BUSINESS, IF ANY:** - None

**X. NEW BUSINESS:**

Motion made by Vice-President Maier, seconded by Trustee LaRocco, to move items # 1 - # 8 as listed. Motion unanimously carried.

**1. BE IT RESOLVED**, that the Board of Education of the Valley Stream UFSD 24 hereby approves the Agreement between the District and the Floral Park-Bellerose Union Free School District for student health and welfare services for 2021-2022,

**BE IT FURTHER RESOLVED** that the Board of Education hereby authorizes the President of the Board of Education to execute the necessary documents to effectuate said Agreement on behalf of the Board of Education.

**2. WHEREAS**, the Valley Stream Union Free School District 24 intends to participate in the Town of Hempstead School Bus Stop Arm Enforcement Program (hereinafter the “Stop Arm Program”).

**WHEREAS**, the Stop Arm Program is authorized under New York State Vehicle and Traffic Law §1174-a;

**WHEREAS**, pursuant to NYS VTL §1174-a, in order to participate in the Program, the Valley Stream Union Free School District 24 must enter into an agreement with the Town.

**WHEREAS**, the Valley Stream Union Free School District 24 intends to execute the School Bus Stop Arm Enforcement Program Opt-In Agreement, attached hereto as Exhibit 1, and enroll in the Stop Arm Program.

**NOW THEREFORE, BE IT RESOLVED**, the Board of Education hereby approves the School Bus Stop Arm Enforcement Program Opt-In Agreement made between the Town of Hempstead, School District and Bus Patrol America LLC, and agrees to be bound by its terms, and authorizes the Board of Education President to execute same.

**3. BE IT RESOLVED**, upon the recommendation of the Superintendent of Schools, the Board of Education hereby authorizes the District to enter into an agreement with Marion K. Salomon and Associates (MKSA) – related services and evaluations for the 2022-2023 school year, and further authorizes the President of the Board of Education to execute the necessary documents to effectuate said Agreement.



**4. BE IT RESOLVED**, upon the recommendation of the Superintendent of Schools, the Board of Education hereby authorizes the District to enter into an agreement with Trusting Hands Homecare Agency for the 2022-2023 school year, and further authorizes the President of the Board of Education to execute the necessary documents to effectuate said Agreement.

**5. BE IT RESOLVED**, upon the recommendation of the Superintendent of Schools, the Board of Education accepts the recommendation from the Cooperative Pest Control Bid 2022-23, awarding said bid to Yankee Exterminating.

**6. BE IT RESOLVED**, upon the recommendation of the Superintendent of Schools, the Board of Education accepts the recommendation from the Cooperative Blinds, Shades, Motorized Drapes Restoration of Stage Curtains Bid 2022-23, awarding said bid to Master Carrier Window/Acme Window Treatments.

**7. IT IS HEREBY AGREED** that the Board of Education of the Valley Stream Union Free School District #24 (“Board”) retains the firm Guercio & Guercio, LLP as its attorneys for the period of July 1, 2022 through June 30, 2027, subject to annual renewals by the Board. The annual retainer, hourly rates, and monthly installments for each of the five years of this agreement are listed within the Retainer Agreement.

**8. BE IT RESOLVED**, upon the recommendation of the Superintendent of Schools, that the Board of Education hereby authorizes the following Budget Transfer for the 2021-2022 School year:

<b>BUDGET TRANSFER FOR BOARD APPROVAL</b>			
<b>DATE: May 25, 2022</b>			
<b>CODE</b>	<b>DESCRIPTION</b>	<b>FROM</b>	<b>TO</b>
A9030.8	Social Security	\$ 80,000.00	
A9060.85	Dental Insurance	\$ 50,000.00	
A2110.120-3	Teachers 1-6 Salaries-WLB	\$ 37,444.54	
A2110.124-3	Support Services Salaries-WLB	\$ 15,174.00	
A2815.160-1	School Nurses Salaries-BAS	\$ 15,000.00	
A2110.121-1	Kindergarten Teachers Salaries-BAS	\$ 11,000.00	
A2250.150-1	RR/SPEECH/CID Salaries-BAS	\$ 10,800.00	
A2110.456	District Workbooks	\$ 7,000.00	
A2110.473	Charter School Tuition	\$ 6,700.00	
A1620.161-3	Custodial Overtime-WLB	\$ 5,700.00	
A2815.160-2	School Nurses Salaries-RWC	\$ 5,000.00	
A2815.160-3	School Nurses Salaries-WLB	\$ 5,000.00	
A1620.406-23	Water Expenses-WLB	\$ 2,598.02	
A1620.160-3	Custodial Salaries-WLB	\$ 2,200.00	
A2110.120-1	Teachers 1-6 Salaries-BAS	\$ 1,700.00	
A1240.16	Central Office Salaries		\$ 5,890.50
A1310.16	Business Office Salaries		\$ 13,703.37
A1620.160-1	Custodial Salaries-BAS		\$ 9,700.00
A 1620.160-2	Custodial Salaries-RWC		\$ 5,400.00
A1620.162-1	Security Aide Salary-BAS		\$ 5,800.00
A1620.162-2	Security Aide Salary-RWC		\$ 3,400.00
A1620.162-3	Security Aide Salary-WLB		\$ 2,700.00
A1621.161	Maintenance Overtime Salaries		\$ 1,400.00
A2020.160-1	Buildg Office Salaries-BAS		\$ 1,794.42
A2020.160-2	Buildg Office Salaries-RWC		\$ 1,536.51
A2020.160-3	Buildg Office Salaries-WLB		\$ 1,143.73
A2110.120-2	Teachers 1-6 Salaries-RWC		\$ 3,086.43
A2110.123	After School Programs		\$ 1,000.00
A2110.123-3	After School Programs-WLB		\$ 1,000.00
A2110.129-2	Extra Duties/Services-RWC		\$ 2,000.00
A2110.140-1	SUB Teachers Salaries-BAS		\$ 30,000.00
A2110.140-2	SUB Teachers Salaries-RWC		\$ 11,000.00
A2110.160-1	LCH/CRM/CPY Aides-BAS		\$ 47,000.00
A2110.455-01	BAS-Supplemental		\$ 0.03
A2110.492-9	ESL		\$ 14,600.00
A2250.161-3	Inclusion Aides Salaries-WLB		\$ 9,398.17
A2630.49	BOCES E-RATE Services		\$ 69,000.00
A2815.16	School Nurses Salaries		\$ 14,763.40
<b>Transfers needed to reconcile Negative Balances for the 2021-22 School Year.</b>			
A2250.151-1	Inclusion Teachers Salaries-BAS	\$ 227,000.00	
A2250.151-2	Inclusion Teachers Salaries-RWC	\$ 87,000.00	
A2110.16	LCH/CRM/CPY Aides	\$ 75,000.00	
A2110.124-3	Support Services Salaries-WLB	\$ 57,826.00	
A2250.49	BOCES Services		\$ 446,826.00
<b>Special Education Expenses</b>			
A2110.120-3	Teachers 1-6 Salaries-WLB	\$ 27,555.46	
A1680.490-1	BOCES Data Warehousing		\$ 13,300.00
A2330.49	BOCES Summer School		\$ 13,455.46
A2815.49	BOCES-Health Serv		\$ 800.00
<b>BOCES Expenses</b>			
<b>TOTALS</b>		<b>\$ 729,698.02</b>	<b>\$ 729,698.02</b>

**XI. DISCUSSION**

**XII. AUDIENCE TO VISITORS**

**XIII. ADJOURNMENT**

Motion to adjourn the Business Meeting at 8:05 PM was made by Vice-President Maier, seconded by Trustee Hernandez. Motion unanimously carried.

Respectfully Submitted,

*Jennifer Biscardi*

Jennifer Biscardi  
District Clerk

# MINUTES

## BOARD OF EDUCATION VALLEY STREAM SCHOOL DISTRICT 24

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WORK SESSION  
7:30 PM

WILLIAM L. BUCK SCHOOL  
JUNE 1, 2022

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Members Present: President Pellicane, Vice-President Maier, Trustees Hernandez, Herrera, LaRocco, Wilson and Wheeler

Others Present: Superintendent Dr. Don Sturz, Assistant Superintendents Dr. Jack Mitchell and School District Attorney, Joe Lilly.

Absent With Prior Notice: None

### I. CALL TO ORDER

The Work Session was called to order at 6:44 PM, at the William L. Buck School, by President Pellicane.

Motion to enter Executive Session at 6:44 PM was made by Vice-President Maier, seconded by Trustee Hernandez, to discuss Personnel and Contractual obligations. Motion unanimously carried.

Motion made to adjourn Executive Session at 7:39 PM was made by Vice-President Maier, seconded by Trustee Hernandez. Motion unanimously carried.

The Work Session was reconvened at 7:39 PM at the William L. Buck School by President Pellicane.

### II. INFORMATIONAL ITEMS:

Tonights meeting discussed the following topics:

- Music Program
- Communication

- DEI

### III. ADJOURNMENT

Motion to enter back into Executive Session at 8:16 PM was made by Trustee Wheeler, seconded by Vice-President Maier, to discuss Personnel and Contractual obligations. Motion unanimously carried.

Motion made to adjourn Executive Session at 8:48 PM was made by Vice-President Maier, seconded by Trustee Hernandez. Motion unanimously carried.

Motion to adjourn the Work Session at 8:49 PM was made by Trustee Wheeler, seconded by Trustee Hernandez. Motion unanimously carried.

Respectfully Submitted,

*Jennifer Biscardi*

Jennifer Biscardi  
District Clerk

# MINUTES

**BOARD OF EDUCATION  
VALLEY STREAM SCHOOL DISTRICT 24**  

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SPECIAL MEETING

VIRTUAL  
JUNE 6, 2022

8:30 PM It is anticipated that the Board of Education will immediately entertain a motion to enter executive session for purposes of discussing personnel and contractual matters.

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Member Present: President Pellicane, Vice-President Maier, Trustees Hernandez, Herrera, LaRocco Wheeler and Wilson.

Others Present: Superintendent Don Sturz

Absent With Prior Notice: District Clerk, Jennifer Biscardi

The Special Meeting was called to order at 8:30 PM, at the William L. Buck School, by President Pellicane.

Motion to enter Executive Session at 8:30 PM by Vice-President Maier, seconded by Trustee Wheeler to discuss Personnel and Contractual obligations. Motion unanimously carried.

Executive Session concluded at 9:20 PM by Trustee Hernandez, seconded by Vice-President Maier. Motion unanimously carried.

Motion to adjourn The Special Meeting at 9:21 PM by Vice-President Maier, seconded by Trustee Hernandez. Motion unanimously carried.

*Respectfully Submitted*

*Jennifer Biscardi  
District Clerk*

**BOE DRAFT STATEMENT:**

*The tragedy in Uvalde Texas has made it abundantly clear that attackers armed with military grade weaponry are no match for students, teachers, school staff, school safety officers, or even armed law enforcement officers. The Board of Education Trustees of the Valley Stream Union Free School District 24 call on our legislative representatives at the local, state, and federal levels to do more to protect American citizens from future tragedies. We call on our representatives to do their part in ensuring our public's safety. We call on our representatives to not only work on a single-minded approach. We call on our representatives to work together, regardless of political affiliation, to address all the issues that have created this national epidemic of gun violence. We call on our representatives to help mitigate this gun violence epidemic by increasing funding for mental health initiatives, increasing funding for sensible school safety measures, and passing legislation for sensible gun reforms such as universal background checks and the banning of the ownership of military grade weapons and large capacity magazines. An all-in bipartisan approach is required to protect our children, and all citizens. We understand that gun violence will unfortunately exist regardless of any efforts put forward, however we cannot consider the current pace at which they occur in the greatest nation on Earth to be acceptable. Anything short of true bipartisan legislative collaboration is negligent on the part of our representatives and will continue to put American lives, like the lives of our children in schools, at risk day after day.*

AGREEMENT

THIS AGREEMENT made this 24<sup>th</sup> day of MAY, 2022 by and between VALLEY STREAM UNION FREE SCHOOL DISTRICT 24 (hereinafter referred to as "SCHOOL DISTRICT"), as the party of the first part, having its principal place of business located at 75 Horton Avenue, valley Stream, New York 11581, and NICOLE GUTTMAN, SLP P.C. (hereinafter referred to as "SERVICE PROVIDER"), as the party of the second part, having its principal place of business for purposes of this Agreement at 66 Rowe Avenue, Lynbrook, New York 11563.

WITNESSETH:

**WHEREAS**, SCHOOL DISTRICT is authorized by law to contract with independent contractors for related services; and

**WHEREAS**, SERVICE PROVIDER is in the business of providing related services; and

**WHEREAS**, SCHOOL DISTRICT desires that SERVICE PROVIDER provide related services to designated special education students pursuant to the Individualized Education Program(s) ("IEP") developed for the student(s) by the CSE; and

**WHEREAS**, SERVICE PROVIDER warrants that it has reviewed the individualized education program ("IEP") and/or the 504 accommodation plan of each pupil serviced by it, and represents that it will provide the level of services identified in the IEP to meet the needs of such children with handicapping conditions; and

**WHEREAS**, SERVICE PROVIDER is ready, willing, and able to provide services to SCHOOL DISTRICT.

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto mutually agree as follows:

1. **TERM OF AGREEMENT**: Agreement shall be in effect for the period July 1, 2022 through June 30, 2023, unless terminated earlier, as set forth herein.
2. **SCOPE OF SERVICES**: SERVICE PROVIDER shall provide the following services, consisting of, but not limited to the following:
  - a. **Feeding Therapy**
  - b. **Speech-Language Therapy**
  - c. **Evaluations**
  - d. SERVICE PROVIDER shall provide the services above during the school year for those children covered by the terms of this Agreement. The services provided by SERVICE PROVIDER shall be appropriate to the mental ability and physical



condition of the children, and in accordance with the Commissioner's Regulations, currently approved methods and practices of the profession. In addition, SERVICE PROVIDER shall provide the following services unless otherwise indicated, consisting of, but not limited to, the following:

- i. The completion of progress reports regarding student achievement of objectives as per report card schedules;
    - ii. Provide the Committee on Special Education ("CSE") with annual progress reports for each individual student receiving service to be reviewed at each student's CSE meeting;
    - iii. Complete evaluations as per the request of the Director of Special Education on an as needed basis, according to the fees in paragraph 3.
  - e. It is understood and agreed that all services provided pursuant to this Agreement shall be in coordination with classroom teachers of such students and/or at the direction of the CSE.
  - f. SCHOOL DISTRICT shall be responsible for appropriate staff orientation and training for all her educational and supporting personnel, including, but not limited to, in-service training related to the provision of educational services to handicapped children.
  - g. All services shall be provided in strict compliance with the student's IEP
3. **PAYMENT SCHEDULE:** In full consideration for the services to be rendered by SERVICE PROVIDER to SCHOOL DISTRICT for the period of Agreement, SCHOOL DISTRICT will pay SERVICE PROVIDER the rates set forth in Appendix A.
4. **INVOICE DUE ON MONTHLY BASIS:** SERVICE PROVIDER will submit an invoice for services rendered on a monthly basis, and payment to SERVICE PROVIDER shall be made within thirty (30) days from receipt of invoice from SERVICE PROVIDER. The invoice shall include time sheets and attendance, types of services rendered and fees payable and, if required by SCHOOL DISTRICT, shall identify the names of the students who received services. SCHOOL DISTRICT shall give SERVICE PROVIDER notice of any invoice dispute within twenty (20) days of its receipt and reserves the right to withhold payment pending the resolution of this dispute. Failure to dispute any invoice shall not be deemed as an acceptance and does not act as a waiver of SCHOOL DISTRICT's rights or prevent SCHOOL DISTRICT from availing itself of any remedy or course of action it has at law or in equity at a later date.
5. **INDEPENDENT CONTRACTOR:** All employees of SERVICE PROVIDER shall be deemed employees of SERVICE PROVIDER for all purposes and SERVICE PROVIDER alone shall be responsible for their work, personal conduct, direction, and compensation. SERVICE PROVIDER acknowledges that it will not hold itself, its officers, employees and/or agents out as employees of SCHOOL DISTRICT. SERVICE PROVIDER is retained by SCHOOL DISTRICT only for the purposes and to the extent set forth in this Agreement,

and its relationship to SCHOOL DISTRICT shall, during the periods of its services hereunder, be that of an independent contractor. SERVICE PROVIDER shall not be considered as having employee status and shall not be entitled to participate in any of SCHOOL DISTRICT's workers' compensation, retirement, fringe benefits, unemployment insurance, liability insurance, disability insurance, or other similar employee benefit programs. Similarly, SERVICE PROVIDER, its officers, its employees and/or agents shall not be considered as having employee status for the purposes of any other rights, privileges or benefits derived from employment by SCHOOL DISTRICT. SERVICE PROVIDER agrees that this Agreement does not confer benefits of any nature whatsoever upon it other than payment for services provided herein. SERVICE PROVIDER shall not assert any claim for additional benefits of any nature, including, but not limited to, unemployment compensation benefits, by reason of the services to be performed pursuant to this Agreement. SERVICE PROVIDER shall not be entitled to assert any claim to entitlements pursuant to any collective bargaining agreement now or hereafter in effect between SCHOOL DISTRICT and its employees.

6. **EXPENSES OF SERVICE PROVIDER:** SERVICE PROVIDER shall be responsible for all costs and expenses incurred by SERVICE PROVIDER that are incident to the performance of services for SCHOOL DISTRICT, including, but not limited to, all tools, vehicles, or other equipment to be provided by SERVICE PROVIDER, all fees, fines, Licenses, bonds or taxes required of or imposed against SERVICE PROVIDER and all other of SERVICE PROVIDER's costs of doing business. SCHOOL DISTRICT shall not be responsible for any expenses incurred by SERVICE PROVIDER in performing services for SCHOOL DISTRICT.
7. **INCOME TAX DESIGNATION AND INDEMNIFICATION:** SCHOOL DISTRICT shall not withhold from sums payable to SERVICE PROVIDER under this Agreement any amounts for Federal, State, or local taxes including Federal or State income taxes, employment taxes (including Social Security and Medicare taxes), and unemployment taxes. SERVICE PROVIDER agrees that any tax obligation of SERVICE PROVIDER arising from the payments made under this Agreement will be SERVICE PROVIDER's sole responsibility. SERVICE PROVIDER will indemnify SCHOOL DISTRICT for any tax liability, interest, and/or penalties imposed upon SCHOOL DISTRICT by any taxing authority based upon SCHOOL DISTRICT's failure to withhold any amount from the payments for tax purposes.
8. **RESPONSIBILITY FOR PAYMENT OF SERVICES:**
  - a. No parent or guardian or any other person shall be required to make any payment for services on behalf of any child covered by this Agreement. SERVICE PROVIDER and its employees shall not share or accept any fee or gratuity from the student or student's family for services provided pursuant to this Agreement.
  - b. SCHOOL DISTRICT shall not incur any charges should SERVICE PROVIDER, its employees, and/or agents fail to attend a session for any reason whatsoever. Should an individual student be absent or unable to attend a session, for any reason whatsoever, SCHOOL DISTRICT shall not be responsible for payment of the fee(s)

associated with such services. SCHOOL DISTRICT will endeavor to notify SERVICE PROVIDER of a student's absence whenever practicable.

9. **SCHOOL DISTRICT'S RIGHT TO EXAMINE ACCOUNTING RECORDS:** SCHOOL DISTRICT shall have the right to examine any and all accounting records as they pertain to the services to be performed pursuant to this Agreement.
10. **LICENSE AND AUTHORIZATION:** SERVICE PROVIDER warrants that it is duly licensed and authorized to perform the services as described herein. SERVICE PROVIDER warrants that it will provide SCHOOL DISTRICT with licensed and qualified individuals. SERVICE PROVIDER further represents that such services shall be performed by individuals that are licensed under the laws of the State of New York, inclusive of the State Education Department Licensing requirements. SERVICE PROVIDER shall certify that all such individuals possess documentation evidencing such license qualifications as required by Federal, State or local statutes, rules, regulations and orders. Where applicable, SERVICE PROVIDER agrees to submit to SCHOOL DISTRICT proof of certification and/or professional licensing of all individuals providing services to Medicaid eligible school aged students, 5-21 years old, classified with a disability or suspected of having a disability for Medicaid reimbursement purposes. SERVICE PROVIDER further agrees to complete and submit, upon the request of SCHOOL DISTRICT, all forms to document the evaluation and services provided to Medicaid eligible school aged students, 5-21 years old, classified with a disability or suspected of having a disability for Medicaid reimbursement purposes. The individuals who are furnishing services hereunder shall be subject to the approval of SCHOOL DISTRICT. SCHOOL DISTRICT reserves the right to reject the placement of any individual.
11. **PROVIDER AGREEMENT & STATEMENT OF REASSIGNMENT:** SERVICE PROVIDER represents and warrants that it has executed a Provider Agreement Form and a Statement of Reassignment with the New York State Department of Health, and shall submit copies of said documents to the SCHOOL DISTRICT.
12. **COMPLIANCE WITH LAW:** SERVICE PROVIDER understands and agrees that it is responsible for complying with all applicable Federal, State, local statutes, rules, and ordinances including the New York State Safe Schools Against Violence in Education (SAVE) legislation. SERVICE PROVIDER shall adhere to all requirements and protocols as established by SCHOOL DISTRICT and the State Education Department of New York: to wit, but not limited to, fingerprinting. SERVICE PROVIDER further agrees and understands that all individuals providing services under this Agreement must be cleared by the New York State Education Department in accordance with the provisions contained in the SAVE legislation prior to providing services to SCHOOL DISTRICT. SERVICE PROVIDER must submit a complete roster of names and social security numbers for all individuals who will be or may be providing services to SCHOOL DISTRICT pursuant to this Agreement, for SCHOOL DISTRICT's verification of such individual's clearance status. In the event that SERVICE PROVIDER utilizes an individual who has not obtained fingerprinting clearance with the State Education Department, SCHOOL DISTRICT shall have the right to immediately terminate the within contract.

13. **REPORTS OF STUDENTS:** SERVICE PROVIDER will obtain whatever releases or other legal documents that are necessary in order that SERVICE PROVIDER may render full and complete reports concerning the progress of the pupil(s) covered by the terms of this Agreement. The full responsibility for obtaining such clearances rests on SERVICE PROVIDER. Any failure to carry out such responsibility shall permit the Commissioner of Education to withdraw approval for the placement of such child in such program, in which event this Agreement shall be canceled forthwith in regard to such child for whom such releases are not submitted.
14. **REPORTS TO SCHOOL DISTRICT:** SERVICE PROVIDER hereby agrees to furnish written reports of each pupil's progress to SCHOOL DISTRICT. SERVICE PROVIDER will render such reports to SCHOOL DISTRICT at any time that such reports are made to the parents of the pupil(s) covered by the terms of this Agreement, and will render such additional reports as may be required by SCHOOL DISTRICT. At a minimum, all reports shall be furnished at the end of each semester, i.e., January 31st and June 30th. Any and all reports shall be furnished upon termination of the Agreement. SERVICE PROVIDER shall provide such additional information concerning the pupil's progress as may be required by SCHOOL DISTRICT.
15. **COMMISSIONER VISITS:** SERVICE PROVIDER shall be subject to the visitation of the Commissioner of Education or his/her designated representative(s).
16. **AUTHORIZATION OF SCHOOL DISTRICT:** SERVICE PROVIDER shall coordinate all instruction through the Pupil Personnel Services Office or any other authorized office of SCHOOL DISTRICT.
17. **SCHOOL GROUNDS & RULES:** It is understood and agreed that while on school grounds, SERVICE PROVIDER, its employees and/or agents shall obey all SCHOOL DISTRICT rules and regulations and must follow all reasonable directives of SCHOOL DISTRICT's administrators and employees.
18. **PHOTO I.D.:** SERVICE PROVIDER shall furnish each individual providing services hereunder with a photo identification badge to be worn at all times while the individual is onsite providing services to SCHOOL DISTRICT.
19. **STUDENT REMOVAL:** SCHOOL DISTRICT shall have the right to add or remove a child from the program/ services at any time during the school year. Payment for children added or removed shall be prorated for the period of time services were provided to the child.
20. **STUDENT PRESCRIPTIONS:** Where applicable, SCHOOL DISTRICT shall obtain all medical prescriptions from the parent/ guardian of students referred to SERVICE PROVIDER. SCHOOL DISTRICT shall forward copies of these prescriptions to SERVICE PROVIDER upon its written request.
21. **ATTENDANCE RECORDS:** SERVICE PROVIDER shall maintain monthly attendance records which shall be submitted to SCHOOL DISTRICT at the end of each month. If a child has been absent for a period of five (5) or more consecutive days, the attendance record shall indicate the reason for that absence.

24. **CONFIDENTIALITY and DATA SECURITY AND PRIVACY STANDARDS:**

- a. SERVICE PROVIDER, its employees, and/or agents agree that information obtained in connection with the services provided for in this Agreement is deemed confidential information. SERVICE PROVIDER, its employees, and/ or agents shall not use, publish, discuss, disclose or communicate the contents of such information, directly or indirectly with third parties, except as provided for in this Agreement. SERVICE PROVIDER further agrees that any information received by SERVICE PROVIDER, its employees, and/or agents during the course of the services provided pursuant to this Agreement which concerns the personal, financial, or other affairs of SCHOOL DISTRICT, its employees, agents, clients, and/or students will be treated by SERVICE PROVIDER, its employees, and/or agents in full confidence and will not be revealed to any other persons, firms, or organizations.
- b. SERVICE PROVIDER acknowledges that it may receive and/ or come into contact with personally identifiable information, as defined by New York Education Law Section 2-d, from records maintained by SCHOOL DISTRICT that directly relate to a student(s) (hereinafter referred to as "education record"). SERVICE PROVIDER understands and acknowledges that it shall have place sufficient protections and internal controls to ensure that information is safeguarded in accordance with applicable laws and regulations, and understands and agrees that it is responsible for complying with state data security and privacy standards for all personally identifiable information from education records, and it shall:
  - i. limit internal access to education records to those individuals that are determined to have legitimate educational interests;
  - ii. not use the education records for any purposes other than those explicitly authorized in this Agreement;
  - iii. maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of education records in its custody; and
  - iv. use encryption technology to protect data while in motion or in its custody from unauthorized disclosure using a technology or methodology specified by the secretary of the United States Department of Health and Human Services in guidance issued under Section 13402(H)(2) of Public Law 111-5 and the National Institute of Standards and Technology Cyber Security Framework Version 1.1.
- c. SERVICE PROVIDER further understands and agrees that it is responsible for submitting a data security and privacy plan to SCHOOL DISTRICT prior to the start of the term of this Agreement. Such plan shall outline how all state, federal and local data security and privacy contract requirements will be implemented over the life of the contract consistent with SCHOOL DISTRICT's policy on data security and privacy, as adopted. Further, such plan shall include a signed copy of SCHOOL DISTRICT's Parents' Bill of Rights and the training requirement

22. **TERMINATION:**

- a. This Agreement may be terminated by SCHOOL DISTRICT upon seven (7) days' written notice to the SERVICE PROVIDER. In the event of such termination, the parties will adjust the accounts due and payable to SERVICE PROVIDER for services rendered. SERVICE PROVIDER will not incur any additional expenses upon receipt of SCHOOL DISTRICT's notification that SERVICE PROVIDER's services have been terminated. Upon any such termination, the parties shall endeavor in an orderly manner to wind down activities hereunder. In the event of termination, all reports and services due to SCHOOL DISTRICT must be completed by SERVICE PROVIDER within thirty (30) days of the termination date.
- b. This Agreement may be terminated by SCHOOL DISTRICT in the event of a material breach by SERVICE PROVIDER, upon three (3) days' written notice from SCHOOL DISTRICT to SERVICE PROVIDER.

23. **NON-EXCLUSION FROM PROGRAM PARTICIPATION:** SERVICE PROVIDER represents and warrants that it, its employees and/or its contractors are not excluded from participation, and is not otherwise ineligible to participate, in a "federal health care program" as defined in 42 U.S.C. S 1320 a-7b(f) or in any other government payment program.

In the event SERVICE PROVIDER is excluded from participation or becomes otherwise ineligible to participate in any such program during the term of the within agreement, SERVICE PROVIDER will notify SCHOOL DISTRICT in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to SERVICE PROVIDER, SCHOOL DISTRICT reserves the right to immediately cease contracting with SERVICE PROVIDER.

SERVICE PROVIDER further represents and warrants it will, at a minimum, check monthly all of its employees and contractors against:

- The General Services Administration's Federal Excluded Party List System (or any successor system),
- The United States Department of Health and Human Services Office of the Inspector General's Lists of Excluded Individuals and Entities or any successor list, and
- The New York State Department of Health's Office of the Medicaid Inspector General's List of Restricted, Terminated or Excluded Individuals or Entities.

In the event an excluded party is discovered, SERVICE PROVIDER will notify SCHOOL DISTRICT in writing within three (3) days after such event.

Any employee or contractor found to be ineligible to participate in any such program during the term of this Agreement will immediately cease services and be replaced with an eligible individual.

established by SERVICE PROVIDER for all employees who will receive personally identifiable information from student records (hereinafter referred to as "student data").

- d. SERVICE PROVIDER understands that as part of SCHOOL DISTRICT's obligations under New York Education Law Section 2-d, SERVICE PROVIDER is responsible for providing SCHOOL DISTRICT with supplemental information to be included in SCHOOL DISTRICT's Parents' Bill of Rights. Such supplemental information shall be provided to SCHOOL DISTRICT within ten (10) days of execution of this Agreement and shall include:
  - i. the exclusive purposes for which the student data will be used;
  - ii. how SERVICE PROVIDER will ensure that subcontractors, persons or entities that SERVICE PROVIDER will share the student data with, if any, will abide by data protection and security requirements;
  - iii. that student data will be returned or destroyed upon expiration of the Agreement;
  - iv. if and how a parent, student, or eligible student may challenge the accuracy of the student data that is collected; and
  - v. where the student data will be stored (described in such a manner as to protect data security), and the security protections taken to ensure such data will be protected, including whether such data will be encrypted.
- e. In the event of a breach of the within confidentiality and data security and privacy standards provision and authorized release of student data, SERVICE PROVIDER shall immediately notify SCHOOL DISTRICT and advise it as to the nature of the breach and steps SERVICE PROVIDER has taken to minimize said breach. Said notification must be made within seven (7) days of the breach. In the case of required notification to a parent or eligible student, SERVICE PROVIDER shall promptly reimburse SCHOOL DISTRICT for the full cost of such notification.
- f. In the event that SERVICE PROVIDER fails to notify SCHOOL DISTRICT of a breach, said failure shall be punishable by a civil penalty of the greater of \$5,000 or up to \$10 per student, teacher and principal whose data was released, provided that the maximum penalty imposed shall not exceed the maximum penalty imposed under General Business Law, section 899-aa(6)(a).
- g. Except as set forth in paragraph (f) above, in the event SERVICE PROVIDER violates Education Law 2-d, said violation shall be punishable by a civil penalty of up to \$1,000. A second violation involving the same data shall be punishable by a civil penalty of up to \$5,000. Any subsequent violation involving the same data shall be punishable by a civil penalty of up to \$10,000. Each violation shall be considered a separate violation for purposes of civil penalties and the total penalty shall not exceed the maximum penalty imposed under General Business Law section 899-aa(6) (a).

- h. SERVICE PROVIDER shall indemnify and hold SCHOOL DISTRICT harmless from any claims arising from its breach of the within confidentiality and data security and privacy standards provision.

Upon termination of this Agreement, SERVICE PROVIDER shall return or destroy all confidential information obtained in connection with the services provided herein and/or student data. Destruction of the confidential information and/or student data shall be accomplished utilizing an approved method of confidential destruction, including, shredding, burning or certified/ witnessed destruction of physical materials and verified erasure of magnetic media using approved methods of electronic file destruction. The parties further agree that the terms and conditions set forth herein shall survive the expiration and/ or termination of this Agreement.

24. **HIPAA and FERPA ACKNOWLEDGMENT:** Both parties to this Agreement understand that they may receive and/ or come into contact with protected health information as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and information protected by the Family Educational Rights and Privacy Act ("FERPA"). The parties hereby acknowledge their respective responsibilities pursuant to HIPAA and FERPA and, if necessary, shall execute a Business Associate Agreement in connection with such responsibilities.

25. **INDEMNIFICATION and HOLD HARMLESS:** To the fullest extent permitted by law, SERVICE PROVIDER agrees to defend, indemnify and hold harmless SCHOOL DISTRICT, its officers, directors, agents, or employees against all claims, demands, actions, lawsuits, costs, damages and expenses, including attorneys' fees, judgments, fines and amounts, arising from any act, omission, error, recklessness or negligence of SERVICE PROVIDER, its officers, directors, agents or employees in connection with the performance of services pursuant to this Agreement. The obligations pursuant to this provision shall survive the termination of this Agreement.

26. **INSURANCE:**

- a. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, SERVICE PROVIDER hereby agrees to effectuate the naming of SCHOOL DISTRICT as an additional insured on SERVICE PROVIDER's commercial general liability and excess liability insurance policies. If the policy is written on a claims-made basis, the retroactive date must precede the date of the contract.
- b. The policy naming SCHOOL DISTRICT as an additional insured shall:
  - i. be an insurance policy from an A.M. Best rated "Secure" insurer, Licensed in New York State.
  - ii. state that SERVICE PROVIDER's coverage shall be primary and noncontributory coverage for SCHOOL DISTRICT, its Board, employees and volunteers.
- c. SCHOOL DISTRICT shall be listed as an additional insured by using endorsement CG 2026 or equivalent. The decision to accept an alternative endorsement rests solely with



SCHOOL DISTRICT. A completed copy of the endorsement must be attached to the certificate of insurance.

- d. The certificate of insurance must describe the specific services provided by SERVICE PROVIDER that are covered by the liability policies.
- e. At SCHOOL DISTRICT's request, SERVICE PROVIDER shall provide a copy of the declaration page of the liability and umbrella policies with a List of endorsements and forms. If so requested, SERVICE PROVIDER will provide a copy of the policy endorsements and forms.
- f. SERVICE PROVIDER agrees to indemnify SCHOOL DISTRICT for any applicable deductibles and self-insured retentions.
- g. Required Insurance:

- i. **Commercial General Liability Insurance:**

- \$1,000,000 per occurrence/ \$2,000,000 aggregate.

- ii. **Automobile Liability:**

- \$1,000,000 combined single limit for owned, hired, borrowed and non-owned motor vehicles.

- iii. **Workers' Compensation, Employers' Liability/N.Y.S. Disability/N.Y.S. Paid Family Leave:**

- Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits/ N.Y.S. Paid Family Leave Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.

- A self-employed person and certain partners and corporate officers are excluded from the definition of "employee" pursuant to Workers' Compensation Law Section 2 (4). As such, individuals in such capacity are excluded from Workers' Compensation Law coverage requirements. A person seeking an exemption must file a CE-200 form with the state. The form can be completed and submitted directly to the WC Board online.

- iv. **Professional Errors and Omissions Insurance:**

- \$2,000,000 per occurrence/ \$2,000,000 aggregate for the professional acts of SERVICE PROVIDER performed under the contract for SCHOOL DISTRICT. If written on a "claims-made" basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for two years following the completion of work.

v. **Excess Insurance:**

\$1,000,000 each occurrence and aggregate. Excess coverage shall be on a follow-form basis.

h. SERVICE PROVIDER acknowledges that failure to obtain such insurance on behalf of SCHOOL DISTRICT constitutes a material breach of contract. SERVICE PROVIDER is to provide SCHOOL DISTRICT with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of SCHOOL DISTRICT to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by SCHOOL DISTRICT.

i. SCHOOL DISTRICT is a member/ owner of the NY Schools Insurance Reciprocal (NYSIR). SERVICE PROVIDER further acknowledges that the procurement of such insurance as required herein is intended to benefit not only SCHOOL DISTRICT but also NYSIR, as SCHOOL DISTRICT's insurer.

27. **NOTICES:** Any notices to be given under this Agreement by either party to the other may be effected by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested- Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing. Notice shall be delivered or mailed to:

Nicole Guttman, SLP P.C.  
66 Rowe Avenue  
Lynbrook, New York 11563

Valley Stream Union Free School District 24  
75 Horton Avenue  
Valley Stream, New York 11581  
Attn: Director of Pupil Services

28. **ASSIGNMENT OF AGREEMENT:** SERVICE PROVIDER shall not assign, transfer or convey any of its respective rights or obligations under this Agreement without the prior written consent of SCHOOL DISTRICT.

29. **DISCRIMINATION PROHIBITED:** Neither SCHOOL DISTRICT nor SERVICE PROVIDER will discriminate against any individual because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, reproductive health decisions, disability, predisposing genetic characteristics or marital status and will take affirmative action to ensure that each individual is afforded equal opportunities without discrimination because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, reproductive health decisions, disability, predisposing genetic characteristics or marital status.

30. **GOVERNING LAW:** This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of New York without regard to conflicts or choice of law provisions that would defer to the substantive laws of another jurisdiction. Each of the parties hereto consents to the jurisdiction of any state court located within the County of Nassau, State of New York, or federal court in Federal District Court for the Eastern District of New York located in the County of Suffolk, State of New York, and irrevocably agrees that all actions or proceedings relating to this Agreement must be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of and proceeding in any such court.
31. **SEVERABILITY:** If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.
32. **NO PRIOR AGREEMENTS:** This Agreement constitutes the full and complete Agreement between SCHOOL DISTRICT and SERVICE PROVIDER, and supersedes all prior written and oral agreements, commitments or understandings with respect thereto. This Agreement may not be altered, changed, added to, deleted from or modified except through the mutual written consent of the parties.
33. **AGREEMENT CONSTRUCTION:** This Agreement has been arrived at mutually and is not to be construed against any party hereto as being the drafter hereof or causing the same to be drafted.
34. **REPRESENTATIONS AND WARRANTIES:** SERVICE PROVIDER represents and warrants: 1) that SERVICE PROVIDER has no obligations, legal or otherwise, inconsistent with the terms of this Agreement; 2) that the performance of the services to be provided in this Agreement does not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party; and 3) that SERVICE PROVIDER has not entered into or will not enter into any Agreement (whether oral or written) in conflict with this Agreement.
35. **AMENDMENT:** This Agreement maybe amended only in writing and signed by the parties.
36. **NON-WAIVER:** No course of dealing of any party hereto, no omission, failure or delay on the part of any party hereto in asserting or exercising any right hereunder, and no partial or single exercise of any right hereunder by any party hereto shall constitute or operate as a waiver of any such right or any other right hereunder. No waiver of any provision hereof shall be effective unless in writing and signed by or on behalf of the party to be charged therewith. No waiver of any provision hereof shall be deemed or construed as a continuing waiver, as a waiver in respect of any other or subsequent breach or default of such provision, or as a waiver of any other provision hereof unless expressly so stated in writing and signed by or on behalf of the party to be charged therewith.
37. **AUTHORIZATION TO ENTER AGREEMENT:** The undersigned representative of

SERVICE PROVIDER hereby represents and warrants that the undersigned is an officer, director, or of SERVICE PROVIDER with full legal rights, power and authority to enter into this Agreement on behalf of SERVICE PROVIDER and bind SERVICE PROVIDER with respect to the obligations enforceable against SERVICE PROVIDER in accordance with terms

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

VALLEY STREAM UNION FREE SCHOOL  
DISTRICT 24

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

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

NICOLE GUTTMAN, SLP P.C.

Date: 5/24/22

By: *Nicole Guttman*

## SERVICE AGREEMENT

**THIS AGREEMENT** made this 24 day of May, 2022 by and between **VALLEY STREAM UNION FREE SCHOOL DISTRICT 24** (“SCHOOL DISTRICT”), at 75 Horton Ave, Valley Stream, NY 11581, and Michele Tritschler, M.S., CCC-SLP (“SERVICE PROVIDER”), at 67 Avondale Street, Valley Stream, NY 11581.

**WHEREAS**, the SCHOOL DISTRICT is authorized to contract with independent contractors for the provision of related services and other educational services including consulting services and/or professional development services; and

**WHEREAS**, SERVICE PROVIDER is in the business of providing services of licensed and qualified speech-language therapists, and other duly licensed and/or certified professionals qualified to deliver special education services, including speech therapy; and

**WHEREAS**, SERVICE PROVIDER warrants that it has reviewed the individualized education program (“IEP”) and/or the 504 accommodation plan of each pupil serviced by it, and represents that it will provide the level of services identified in the IEP or plan to meet the needs of such students with disabilities; and

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto mutually agree as follows:

1. **TERM OF AGREEMENT**: This Agreement shall be in effect for the period July 1, 2022 to June 30, 2023, unless terminated earlier, as set forth herein.
2. **SCOPE OF SERVICES**: SERVICE PROVIDER shall provide the following services as requested by the SCHOOL DISTRICT:
  - a. Services as set forth in Exhibit A, attached hereto and made part hereof. In the event that any of the terms of Exhibit A conflict with the terms of this Agreement, the terms of this Agreement shall govern, supersede and take precedence over any such conflicting term(s).
  - b. SERVICE PROVIDER shall provide the services above during the school year for those children covered by the terms of this Agreement. The services provided by SERVICE PROVIDER shall be appropriate to the mental ability and physical condition of the children, and in accordance with the Commissioner’s Regulations, currently approved methods and practices of the profession. In addition, SERVICE PROVIDER shall provide the following services at no additional charge unless otherwise indicated, consisting of, but not limited to, the following:
    - i. The completion of progress reports regarding student achievement of objectives as per report card schedules;

- ii. Provide the Committee on Special Education (“CSE”) with annual progress reports for each individual student receiving service to be reviewed at each student’s CSE meeting;
    - iii. Attend all such CSE meetings as needed; iv. Complete evaluations as per the request of the Director of Special Education on an as needed basis.
  - c. All services shall be provided in strict compliance with the student’s IEP. It is understood and agreed that all services provided pursuant to this Agreement shall be in coordination with classroom teachers of such students and/or at the direction of the CSE.
  - d. Other services as directed by the Director of Special Education or his designee.
3. **PAYMENT:** In full consideration for the services to be rendered by SERVICE PROVIDER to SCHOOL DISTRICT for the term of this Agreement, SCHOOL DISTRICT agrees to pay SERVICE PROVIDER at the rates as set in Appendix A for services actually and satisfactorily rendered.
4. **PAYMENT SCHEDULE:** SERVICE PROVIDER will submit an invoice for services rendered on a monthly basis, and payment to SERVICE PROVIDER shall be made within thirty (30) days from receipt of invoice from SERVICE PROVIDER. The invoice shall include time sheets and attendance, types of services rendered and fees payable and, if required by SCHOOL DISTRICT, shall identify the names of the students who received services. SCHOOL DISTRICT shall give SERVICE PROVIDER notice of any invoice dispute within twenty (20) days of its receipt and reserves the right to withhold payment pending the resolution of this dispute. Failure to dispute any invoice shall not be deemed as an acceptance and does not act as a waiver of SCHOOL DISTRICT’s rights or prevent SCHOOL DISTRICT from availing itself of any remedy or course of action it has at law or in equity at a later date.
5. **INDEPENDENT CONTRACTOR:** All employees of SERVICE PROVIDER, if any, shall be deemed employees of SERVICE PROVIDER for all purposes and SERVICE PROVIDER alone shall be responsible for their work, personal conduct, direction, and compensation. SERVICE PROVIDER acknowledges that it will not hold itself, its officers, employees and/or agents out as employees of SCHOOL DISTRICT. SERVICE PROVIDER is retained by SCHOOL DISTRICT only for the purposes and to the extent set forth in this Agreement, and its relationship to SCHOOL DISTRICT shall, during the periods of its services hereunder, be that of an independent contractor. SERVICE PROVIDER shall not be considered as having employee status and shall not be entitled to participate in any of SCHOOL DISTRICT’s workers’ compensation, retirement, fringe benefits, unemployment insurance, liability insurance, disability insurance, or other similar employee benefit programs. Similarly, SERVICE PROVIDER, its officers, employees and/or agents shall not be considered as having employee status for the purposes of any other rights, privileges or benefits derived from employment by SCHOOL DISTRICT. SERVICE PROVIDER agrees that this Agreement does not confer benefits of any nature whatsoever upon it other than payment for

services provided herein. SERVICE PROVIDER shall not assert any claim for additional benefits of any nature, including, but not limited to, unemployment compensation benefits by reason of the services to be performed pursuant to this Agreement. SERVICE PROVIDER shall not be entitled to assert any claim to entitlements pursuant to any collective bargaining agreement now or hereafter in effect between SCHOOL DISTRICT and its employees.

6. **EXPENSES OF SERVICE PROVIDER:** SERVICE PROVIDER shall be responsible for all costs and expenses incurred by SERVICE PROVIDER that are incident to the performance of services for SCHOOL DISTRICT, including, but not limited to, all tools, vehicles, or other equipment to be provided by SERVICE PROVIDER, all fees, fines, licenses, bonds or taxes required of or imposed against SERVICE PROVIDER and all other of SERVICE PROVIDER's costs of doing business. SCHOOL DISTRICT shall not be responsible for any expenses incurred by SERVICE PROVIDER in performing services for SCHOOL DISTRICT.
7. **INCOME TAX DESIGNATION AND INDEMNIFICATION:** SCHOOL DISTRICT shall not withhold from sums payable to SERVICE PROVIDER under this Agreement any amounts for Federal, State, or local taxes including Federal or State income taxes, employment taxes (including Social Security and Medicare taxes), and unemployment taxes. SERVICE PROVIDER agrees that any tax obligation of SERVICE PROVIDER arising from the payments made under this Agreement will be SERVICE PROVIDER's sole responsibility. SERVICE PROVIDER will indemnify SCHOOL DISTRICT for any tax liability, interest, and/or penalties imposed upon SCHOOL DISTRICT by any taxing authority based upon SCHOOL DISTRICT's failure to withhold any amount from the payments for tax purposes.
8. **RESPONSIBILITY FOR PAYMENT OF SERVICES:**
  - a. No parent or guardian or any other person shall be required to make any payment for services on behalf of any child covered by this Agreement. SERVICE PROVIDER and its employees shall not share or accept any fee or gratuity from the student or student's family for service provided pursuant to this Agreement.
  - b. SCHOOL DISTRICT shall not incur any charges should SERVICE PROVIDER, its employees, and/or agents fail to attend a session for any reason whatsoever. Should an individual student be absent or unable to attend a session, for any reason whatsoever, the SCHOOL DISTRICT shall not be responsible for payment of the fee(s) associated with such services. SCHOOL DISTRICT will endeavor to notify SERVICE PROVIDER of a student's absence whenever practicable.
9. **SCHOOL DISTRICT'S RIGHT TO EXAMINE ACCOUNTING RECORDS:** SCHOOL DISTRICT shall have the right to examine any and all accounting records as they pertain to the services performed pursuant to this Agreement.
10. **LICENSE AND AUTHORIZATION:** SERVICE PROVIDER warrants that it is duly licensed and authorized to perform the services as described herein. SERVICE PROVIDER warrants that it will provide SCHOOL DISTRICT with licensed and qualified individuals.

SERVICE PROVIDER further represents that such services shall be performed by individuals that are licensed under the laws of the State of New York, inclusive of the State Education Department Licensing requirements. SERVICE PROVIDER shall certify that all such individuals possess documentation evidencing such license qualifications as required by Federal, State or local statutes, rules, regulations and orders. Where applicable, SERVICE PROVIDER agrees to submit to SCHOOL DISTRICT proof of certification and/or professional licensing of all individuals providing services to Medicaid eligible school aged students, 5-21 years old, classified with a disability or suspected of having a disability for Medicaid reimbursement purposes. SERVICE PROVIDER further agrees to complete and submit, upon the request of SCHOOL DISTRICT, all forms to document the evaluation and services provided to Medicaid eligible school aged students, 5-21 years old, classified with a disability or suspected of having a disability for Medicaid reimbursement purposes. The individuals who are furnishing services hereunder shall be subject to the approval of SCHOOL DISTRICT. SCHOOL DISTRICT reserves the right to reject the placement of any individual.

11. **PROVIDER AGREEMENT & STATEMENT OF REASSIGNMENT:** SERVICE PROVIDER represents and warrants that it has executed a Provider Agreement Form and a Statement of Reassignment with the New York State Department of Health, and shall submit copies of said documents to the SCHOOL DISTRICT.
12. **SAVE LEGISLATION:** SERVICE PROVIDER understands and agrees that it is responsible for complying with all applicable Federal, State, local statutes, rules, and ordinances including the New York State Safe Schools Against Violence in Education (SAVE) legislation. SERVICE PROVIDER shall adhere to all requirements and protocols as established by SCHOOL DISTRICT and the State Education Department of New York: to wit, but not limited to, fingerprinting. SERVICE PROVIDER further agrees and understands that all individuals providing services under this Agreement must be cleared by the New York State Education Department in accordance with the provisions contained in the SAVE Legislation prior to providing services to SCHOOL DISTRICT. SERVICE PROVIDER must submit a complete roster of names and social security numbers for all individuals who will be or may be providing services to the SCHOOL DISTRICT pursuant to this Agreement, for SCHOOL DISTRICT's verification of such individual's clearance status. In the event that SERVICE PROVIDER utilizes an individual who has not obtained fingerprinting clearance with the State Education Department, SCHOOL DISTRICT shall have the right to immediately terminate the within contract. The SERVICE PROVIDER shall be responsible for notifying the school district in writing in the event of a change in service providers and shall provide the school district with updated certification of compliance with fingerprint clearance.
13. **REPORTS OF STUDENTS:** SERVICE PROVIDER will obtain whatever releases or other legal documents that are necessary in order that SERVICE PROVIDER may render full and complete reports concerning the education and progress of the pupil(s) covered by the terms of this Agreement. The full responsibility for obtaining such clearances rests on SERVICE PROVIDER. Any failure to carry out such responsibility shall permit the Commissioner of Education to withdraw approval for the placement of such child in such program, in which



event this Agreement shall be canceled forthwith in regard to such child for whom such releases are not submitted.

14. **REPORTS TO SCHOOL DISTRICT:** SERVICE PROVIDER hereby agrees to furnish written reports of each pupil's educational progress to SCHOOL DISTRICT. SERVICE PROVIDER will render such reports to SCHOOL DISTRICT at any time that such reports are made to the parents of the pupil(s) covered by the terms of this Agreement, and will render such additional reports as may be required by the SCHOOL DISTRICT. At a minimum, all reports shall be furnished in accordance with the student's IEP. Any and all reports shall be furnished upon termination of the Agreement. SERVICE PROVIDER shall provide such additional information concerning the pupil's progress as may be required by SCHOOL DISTRICT.
15. **AUTHORIZATION OF SCHOOL DISTRICT:** SERVICE PROVIDER shall coordinate all services through the Pupil Personnel Services Office or any other authorized office of SCHOOL DISTRICT.
16. **SCHOOL GROUNDS & RULES:** It is understood and agreed that while on school grounds, SERVICE PROVIDER, its employees and/or agents shall obey all SCHOOL DISTRICT rules and regulations and must follow all reasonable directives of SCHOOL DISTRICT's administrators and employees.
17. **PHOTO I.D.:** SERVICE PROVIDER shall furnish each individual providing services hereunder with a photo identification badge to be worn at all times while the individual is on-site providing services to SCHOOL DISTRICT.
18. **CHANGE IN ROSTER OF STUDENTS:** SCHOOL DISTRICT shall have the right to add or remove a child from the program/services at any time during the school year. Payment for children added or removed shall be prorated for the period of time services were provided to the child.
19. **TERMINATION:**
  - a. This Agreement may be terminated by the SCHOOL DISTRICT upon seven (7) days' written notice to the SERVICE PROVIDER. In the event of such termination, the parties will adjust the accounts due and payable to SERVICE PROVIDER for services rendered. SERVICE PROVIDER will not incur any additional expenses upon receipt of SCHOOL DISTRICT's notification that SERVICE PROVIDER's services have been terminated. Upon any such termination, the parties shall endeavor in an orderly manner to wind down activities hereunder. In the event of termination, all reports and services due to SCHOOL DISTRICT must be completed by SERVICE PROVIDER within thirty (30) days of the termination date.
  - b. This Agreement may be terminated by the SCHOOL DISTRICT in the event of a material breach by SERVICE PROVIDER, upon three (3) days' written notice from the SCHOOL DISTRICT to SERVICE PROVIDER.

c. Notwithstanding anything to the contrary contained in the Agreement, the SCHOOL DISTRICT expressly reserves the right to immediately suspend, cancel or terminate the SERVICE PROVIDER's services under this Agreement in the event that the SCHOOL DISTRICT's schools are closed and/or it becomes illegal, impossible or impracticable to continue the SERVICE PROVIDER's services due to any reason, including but not limited to any force majeure event, and upon the SCHOOL DISTRICT's notice to the SERVICE PROVIDER that it intends to exercise such right, the SERVICE PROVIDER, its officers, employees and/or agents shall not be entitled to further compensation, payments, cancellation fees, charges or any other benefits pursuant to this Agreement for the duration of such closure, unless otherwise agreed to in writing between the SERVICE PROVIDER and the SCHOOL DISTRICT. Force majeure events shall include any condition beyond the SCHOOL DISTRICT's reasonable control including, without limitation, acts of God, accident, riots, civil commotion, wars, terrorist act, epidemic, pandemic including COVID-19 or similar epidemic or outbreak, quarantine, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental or quasi-governmental acts or omissions, changes in laws or regulations, national strikes, fire, and explosion. In the event of such suspension, cancellation or termination of SERVICE PROVIDER's services, SERVICE PROVIDER shall be entitled to payment only for services actually rendered in accordance with this provision, and shall not otherwise be entitled to payment, cancellation fees or charges for any previously scheduled services that were not actually rendered prior to the date of said notice.

20. **NON-EXCLUSION FROM PROGRAM PARTICIPATION:** SERVICE PROVIDER represents and warrants that it, its employees and/or its contractors are not excluded from participation, and is not otherwise ineligible to participate, in a "federal health care program" as defined in 42 U.S.C. § 1320 a-7b(f) or in any other government payment program. In the event SERVICE PROVIDER is excluded from participation or becomes otherwise ineligible to participate in any such program during the term of the within agreement, SERVICE PROVIDER will notify SCHOOL DISTRICT in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to SERVICE PROVIDER, SCHOOL DISTRICT reserves the right to immediately cease contracting with SERVICE PROVIDER. SERVICE PROVIDER further represents and warrants it will, at a minimum, check monthly all of its employees and contractors against: (i) the General Services Administration's Federal Excluded Party List System (or any successor system); (ii) the United States Department of Health and Human Services Office of the Inspector General's Lists of Excluded Individuals and Entities or any successor list; and (iii) the New York State Department of Health's Office of the Medicaid Inspector General's List of Restricted, Terminated or Excluded Individuals or Entities. In the event an excluded party is discovered, SERVICE PROVIDER will notify SCHOOL DISTRICT in writing within three (3) days after such event. Any employee or contractor found to be ineligible to participate in any such program during the term of this Agreement will immediately cease services and be replaced with an eligible individual.

21. **CONFIDENTIALITY and DATA SECURITY AND PRIVACY STANDARDS:**

- a. SERVICE PROVIDER, its employees, and/or agents agree that all information obtained in connection with the services provided for in this Agreement is deemed confidential information. SERVICE PROVIDER, its employees, and/or agents shall not use, publish, discuss, disclose or communicate the contents of such information, directly or indirectly with third parties, except as provided for in this Agreement. SERVICE PROVIDER further agrees that any information received by SERVICE PROVIDER, its employees, and/or agents during the course of the services provided pursuant to this Agreement which concerns the personal, financial, or other affairs of SCHOOL DISTRICT, its employees, agents, clients, and/or students will be treated by SERVICE PROVIDER, its employees, and/or agents in full confidence and will not be revealed to any other persons, firms, or organizations.
- b. SERVICE PROVIDER acknowledges that it may receive and/or come into contact with personally identifiable information, as defined by New York Education Law Section 2-d and its implementing regulations, from records maintained by SCHOOL DISTRICT that directly relate to a student(s) (hereinafter referred to as “education record”). SERVICE PROVIDER understands and acknowledges that it shall have in place sufficient protections and internal controls to ensure that information is safeguarded in accordance with applicable laws and regulations, and understands and agrees that it is responsible for complying with state data security and privacy standards for all personally identifiable information from education records, and it shall:
  - i. limit internal access to education records to those individuals that are determined to have legitimate educational interests;
  - ii. not use the education records for any purposes other than those explicitly authorized in this Agreement;
  - iii. maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of education records in its custody; and
  - iv. use encryption technology to protect data while in motion or in its custody from unauthorized disclosure using a technology or methodology that align with the United States Department of Commerce National Institute for Standards and Technology (NIST) Cybersecurity Framework (CSF).
- c. SERVICE PROVIDER further understands and agrees that it is responsible for submitting a data security and privacy plan to SCHOOL DISTRICT prior to the start of the term of this Agreement. Such plan shall outline how all state, federal and local

data security and privacy contract requirements will be implemented over the life of the contract consistent with SCHOOL DISTRICT's policy on data security and privacy, as adopted. Further, such plan shall include a signed copy of SCHOOL DISTRICT's Parents' Bill of Rights and the training requirement established by SERVICE PROVIDER for all employees who will receive personally identifiable information from student records (hereinafter referred to as "student data").

- d. SERVICE PROVIDER understands that as part of SCHOOL DISTRICT's obligations under New York Education Law Section 2-d and its implementing regulations, SERVICE PROVIDER is responsible for providing SCHOOL DISTRICT with supplemental information to be included in SCHOOL DISTRICT's Parents' Bill of Rights. Such supplemental information shall be provided to SCHOOL DISTRICT within ten (10) days of execution of this Agreement and shall include:
  - i. the exclusive purposes for which the student data will be used;
  - ii. how SERVICE PROVIDER will ensure that subcontractors, persons or entities that SERVICE PROVIDER will share the student data with, if any, will abide by data protection and security requirements;
  - iii. that student data will be returned or destroyed upon expiration of the Agreement;
  - iv. if and how a parent, student, or eligible student may challenge the accuracy of the student data that is collected; and
  - v. where the student data will be stored (described in such a manner as to protect data security), and the security protections taken to ensure such data will be protected, including whether such data will be encrypted.
- e. Upon termination of this Agreement, SERVICE PROVIDER shall return or destroy all confidential information obtained in connection with the services provided herein and/or student data. Destruction of the confidential information and/or student data shall be accomplished utilizing an approved method of confidential destruction, including, shredding, burning or certified/witnessed destruction of physical materials and verified erasure of magnetic media using approved methods of electronic file destruction. The parties further agree that the terms and conditions set forth herein shall survive the expiration and/or termination of this Agreement.

22. **HIPAA and FERPA ACKNOWLEDGMENT:** Both parties to this Agreement understand that they may receive and/or come into contact with *protected health information* as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and information protected by the Family Educational Rights and Privacy Act

(“FERPA”). The Parties hereby acknowledge their respective responsibilities pursuant to HIPAA and FERPA and, if necessary, shall execute a Business Associate Agreement in connection with such responsibilities.

23. **DEFENSE, INDEMNIFICATION and HOLD HARMLESS PROVISION:** To the fullest extent permitted by law, the SERVICE PROVIDER agrees to defend, indemnify and hold harmless SCHOOL DISTRICT, the Board of Education, their officers, directors, agents and employees from and against all loss, costs, damages and expenses, including attorneys’ fees, judgments, fines and amounts paid in settlement (collectively, “Damages”) in connection with any action, suit or proceeding arising from any act, error or omission, misstatement, misleading statement, neglect or breach of duties by SERVICE PROVIDER or any of its officers, directors, agents or employees taken or made with respect to this Agreement, except to the extent such Damages arise out of the gross negligence, misconduct or breach of this Agreement by SCHOOL DISTRICT.

24. **INSURANCE REQUIREMENTS:**

- a. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, SERVICE PROVIDER hereby agrees to effectuate the naming of SCHOOL DISTRICT as a certificate holder on SERVICE PROVIDER’s commercial general liability and excess liability insurance policies. If the policy is written on a claims-made basis, the retroactive date must precede the date of the contract.
- b. The policy naming SCHOOL DISTRICT as a certificate holder shall:
  - i. Be an insurance policy from an A.M. Best rated "Secure" insurer, licensed in New York State.
- c. The certificate of insurance must describe the specific services provided by SERVICE PROVIDER that are covered by the liability policies.
- d. At SCHOOL DISTRICT's request, SERVICE PROVIDER shall provide a copy of the declaration page of the liability and umbrella policies with a list of endorsements and forms. If so requested, SERVICE PROVIDER will provide a copy of the policy endorsements and forms.
- e. The SERVICE PROVIDER agrees to indemnify SCHOOL DISTRICT for any applicable deductibles and self-insured retentions.
- f. Required Insurance:
  - i. **Commercial General Liability Insurance:**  
\$1,000,000 per occurrence/ \$2,000,000 aggregate.

- ii. **Workers' Compensation and N.Y.S. Disability:** Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.

A self-employed person and certain partners and corporate officers are excluded from the definition of "employee" pursuant to Workers' Compensation Law Section 2 (4). As such, individuals in such capacity are excluded from Workers' Compensation Law coverage requirements. A person seeking an exemption must file a CE-200 form with the state.

- iii. **Professional Errors and Omissions Insurance:** \$1,000,000 per occurrence/ \$2,000,000 aggregate for the professional acts of SERVICE PROVIDER performed under the contract for SCHOOL DISTRICT. If written on a "claims-made" basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for two years following the completion of work.

- iv. **Excess Insurance** \$1,000,000 each occurrence and aggregate. Excess coverage shall be on a follow-form basis.

g. SERVICE PROVIDER acknowledges that failure to obtain such insurance on behalf of SCHOOL DISTRICT constitutes a material breach of contract. SERVICE PROVIDER is to provide SCHOOL DISTRICT with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of SCHOOL DISTRICT to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by SCHOOL DISTRICT.

h. SCHOOL DISTRICT is a member/owner of the NY Schools Insurance Reciprocal (NYSIR). SERVICE PROVIDER further acknowledges that the procurement of such insurance as required herein is intended to benefit not only SCHOOL DISTRICT but also NYSIR, as SCHOOL DISTRICT's insurer.

25. **NOTICES:** Any notices to be given under this Agreement by either party to the other may be effected by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two days after mailing. Notice shall be delivered or mailed to the party's address listed above.

26. **ASSIGNMENT OF AGREEMENT:** SERVICE PROVIDER shall not assign, transfer or convey any of its respective rights or obligations under this Agreement without the prior written consent of SCHOOL DISTRICT.
27. **GOVERNING LAW:** This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of New York without regard to conflicts or choice of law provisions that would defer to the substantive laws of another jurisdiction. Each of the parties hereto consents to the jurisdiction of any state court located within the County of Nassau, State of New York, or federal court located in the Eastern District of New York, and agrees that all actions or proceedings relating to this Agreement must be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of and proceeding in any such court.
28. **SEVERABILITY:** If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.
29. **NO PRIOR AGREEMENTS:** This Agreement constitutes the full and complete Agreement between SCHOOL DISTRICT and SERVICE PROVIDER, and supersedes all prior written and oral agreements, commitments or understandings with respect thereto. This Agreement may not be altered, changed, added to, deleted from or modified except through the mutual written consent of the parties.
30. **AGREEMENT CONSTRUCTION:** This Agreement has been arrived at mutually and is not to be construed against any party hereto as being the drafter hereof or causing the same to be drafted.
31. **REPRESENTATIONS AND WARRANTIES:** SERVICE PROVIDER represents and warrants: 1) that SERVICE PROVIDER has no obligations, legal or otherwise, inconsistent with the terms of this Agreement; 2) that the performance of the services to be provided in this Agreement does not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party; and 3) that SERVICE PROVIDER has not entered into or will not enter into any Agreement (whether oral or written) in conflict with this Agreement.
32. **NONWAIVER:** No action or failure to act by SERVICE PROVIDER or SCHOOL DISTRICT shall constitute a waiver of a right or duty afforded them under the Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
33. **AUTHORIZATION TO ENTER AGREEMENT:** The undersigned representatives of the SERVICE PROVIDER and the SCHOOL DISTRICT hereby represent and warrant

that they have full legal authority to enter this Agreement and bind the respective parties thereto.

34. **EXECUTION IN COUNTERPARTS:** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same instrument. Facsimile and electronic signatures shall have the same force and effect as originals thereof.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement the day and year first above written.

VALLEY STREAM UNION FREE SCHOOL DISTRICT 24:

By: \_\_\_\_\_  
Board President

Date: \_\_\_\_\_, 2022

Michele Tritschler, M.S., CCC-SLP:

By: Michele Tritschler M.S. CCC SLP  
Name: Michele Tritschler, M.S., CCC-SLP  
Title: Owner

Date: May 24, 2022



AGREEMENT

THIS AGREEMENT made 31 day of May 2022 by and between VALLEY STREAM UNION FREE SCHOOL DISTRICT 24 (hereinafter referred to as the "DISTRICT"), as the party of the first part, having principal place of business located at 75 Horton Avenue, Valley Stream, New York 11581, and VARIETY CHILD LEARNING CENTER (hereinafter referred to as "SERVICE PROVIDER"), as the party of the second part, having its principal place of business for purposes of this Agreement at 47 Humphrey Drive, Syosset, New York 11791.

**WITNESSETH:**

**WHEREAS**, SCHOOL DISTRICT is authorized by law to contract with independent contractors for providing related services; and

**WHEREAS**, SERVICE PROVIDER is in the business of providing related services; and

**WHEREAS**, SCHOOL DISTRICT desires that SERVICE PROVIDER provide related services to designated students pursuant to the Individualized Education Program(s) ("IEP") developed for the student(s) by the CSE; and

**WHEREAS**, SERVICE PROVIDER warrants that it has reviewed the individualized education program ("IEP") and/ or the 504 accommodation plan of each pupil serviced by it, and represents that it will provide the level of services identified in the IEP to meet the needs of such children with handicapping conditions; and

**WHEREAS**, SERVICE PROVIDER is ready, willing, and able to provide services to SCHOOL DISTRICT;

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto mutually agree as follows:

1. TERM OF AGREEMENT: Agreement shall be in effect for the period July 1, 2022 to June 30, 2023, unless terminated earlier, as set forth herein.
2. SCOPE OF SERVICES: SERVICE PROVIDER shall provide the following services, consisting of, but not limited to the following:
  - a. Speech and Language Therapy
  - b. Occupational Therapy
  - c. Physical Therapy
  - d. Vision Services
  - e. Staff Development
  - f. Evaluations (including written report)

g. ABA Services as follows:

i. **Consultation Services** based on student IEPs. Consultations shall include, but not be limited to, the following areas:

1. Functional Behavior Assessments;
2. Behavior Intervention Plans;
3. Behavior Modification Systems;
4. Curriculum Modification;
5. Material Modification;
6. Evaluations;
7. Staff Development; and
8. SERVICE PROVIDER's role with respect to the above-mentioned services shall be to provide model for these services to classroom staff and to initiate the model's implementation, making adjustments where necessary. SERVICE PROVIDER shall provide quarterly narrative and written reports to SCHOOL DISTRICT.

ii. **Home Program Services** as determined by CSE. Such services shall include, but not be limited to, the areas of.

1. Discrete Trial Teaching;
2. Independent Living Skills;
3. Implementation of Behavior Plans;
4. Incidental Teaching Situations;
5. Verbal Behavior Techniques;
6. Generalization Programming; and
7. SERVICE PROVIDER's role with respect to the above-mentioned services shall be to provide complete and accurate program data as required by the program and to implement the program as modified by the Supervisor. SERVICE PROVIDER's role shall not include the modification of programs. In addition, all home services require the presence of a parent or guardian at the time of service implementation. Such services shall not be provided without the presence of such individuals.

iii. **Supervision of Home Staff** provided by a certified special education teacher specializing in ABA as designated by the CSE. Supervisory visits shall include, but not be limited to:

1. Functional Behavior Assessments;
2. Behavior Intervention Plans;
3. Behavior Modification Systems;
4. Activities of Daily Living Protocols;
5. Discrete Trial teaching program creation and modification;
6. Curriculum Modification;

7. Material Modification;
8. Evaluations;
9. Teaching parents how to implement programs; and
10. SERVICE PROVIDER's role with respect to the above-mentioned services shall be to provide the models for these services to the home program families and staff, initiate the model's implementation, and make adjustments where necessary. SERVICE PROVIDER's shall provide quarterly narrative and written reports to SCHOOL DISTRICT.

iv. **Parent Training Services** for families provided by a certified special education teacher or certified social worker specializing in Autism Spectrum Disorders when requested by CSE. These parental training services, include, but shall not be Limited to:

1. Activities of Daily Living Protocols;
2. Social Skill Protocols;
3. Generalization Skills; and
4. Behavior Protocols.

h. SERVICE PROVIDER shall provide the services above during the school year for those children covered by the terms of this Agreement. The services provided by SERVICE PROVIDER shall be appropriate to the mental ability and physical condition of the children, and in accordance with the Commissioner's Regulations, currently approved methods and practices of the profession. In addition, SERVICE PROVIDER shall provide the following services unless otherwise indicated, consisting of, but not limited to, the following:

- i. The completion of progress reports regarding student achievement of objectives as per report card schedules;
- ii. Provide the Committee on Special Education ("CSE") with annual progress reports for each individual student receiving service to be reviewed at each student's CSE meeting;

i. It is understood and agreed that all services provided pursuant to this Agreement shall be in coordination with classroom teachers of such students and/or at the direction of the CSE.

j. All services shall be provided in strict compliance with the student's IEP.

3. PAYMENT SCHEDULE: In full consideration for the services to be rendered by SERVICE PROVIDER to SCHOOL DISTRICT for the term of this Agreement, SCHOOL DISTRICT agrees to pay SERVICE PROVIDER the rates set forth in Appendix A.

4. INVOICE DUE ON MONTHLY BASIS: SERVICE PROVIDER will submit an invoice for services rendered on a monthly basis, and payment to SERVICE PROVIDER shall be made within thirty (30) days from receipt of invoice from SERVICE PROVIDER. The invoice shall

include time sheets and attendance, types of services rendered and fees payable and, if required by SCHOOL DISTRICT, shall identify the names of the students who received services. SCHOOL DISTRICT shall give SERVICE PROVIDER notice of any invoice dispute within twenty (20) days of its receipt and reserves the right to withhold payment pending the resolution of this dispute. Failure to dispute any invoice shall not be deemed as an acceptance and does not act as a waiver of SCHOOL DISTRICT's rights or prevent SCHOOL DISTRICT from availing itself of any remedy or course of action it has at law or in equity at a later date.

5. INDEPENDENT CONTRACTOR: All employees of SERVICE PROVIDER shall be deemed employees of SERVICE PROVIDER for all purposes and SERVICE PROVIDER alone shall be responsible for their work, personal conduct, direction, and compensation. SERVICE PROVIDER acknowledges that it will not hold itself, its officers, employees and/or agents out as employees of SCHOOL DISTRICT. SERVICE PROVIDER is retained by SCHOOL DISTRICT only for the purposes and to the extent set forth in this Agreement, and its relationship to SCHOOL DISTRICT shall, during the periods of its services hereunder, be that of an independent contractor. SERVICE PROVIDER shall not be considered as having employee status and shall not be entitled to participate in any of SCHOOL DISTRICT's workers' compensation, retirement, fringe benefits, unemployment insurance, liability insurance, disability insurance, or other similar employee benefit programs. Similarly, SERVICE PROVIDER, its officers, its employees and/ or agents shall not be considered as having employee status for the purposes of any other rights, privileges or benefits derived from employment by SCHOOL DISTRICT. SERVICE PROVIDER agrees that this Agreement does not confer benefits of any nature whatsoever upon it other than payment for services provided herein. SERVICE PROVIDER shall not assert any claim for additional benefits of any nature, including, but not limited to, unemployment compensation benefits, by reason of the services to be performed pursuant to this Agreement. SERVICE PROVIDER shall not be entitled to assert any claim to entitlements pursuant to any collective bargaining agreement now or hereafter in effect between SCHOOL DISTRICT and its employees.
6. EXPENSES OF SERVICE PROVIDER: SERVICE PROVIDER shall be responsible for all costs and expenses incurred by SERVICE PROVIDER that are incident to the performance of services for SCHOOL DISTRICT, including, but not limited to, all tools, vehicles, or other equipment to be provided by SERVICE PROVIDER, all fees, fines, licenses, bonds or taxes required of or imposed against SERVICE PROVIDER and all other of SERVICE PROVIDER's costs of doing business. SCHOOL DISTRICT shall not be responsible for any expenses incurred by SERVICE PROVIDER in performing services for SCHOOL DISTRICT.
7. INCOME TAX DESIGNATION AND INDEMNIFICATION: SCHOOL DISTRICT shall not withhold from sums payable to SERVICE PROVIDER under this Agreement any amounts for Federal, State, or local taxes including Federal or State income taxes, employment taxes (including Social Security and Medicare taxes), and unemployment taxes. SERVICE PROVIDER agrees that any tax obligation of SERVICE PROVIDER arising from the payments made under this Agreement will be SERVICE PROVIDER's sole responsibility. SERVICE PROVIDER will indemnify SCHOOL DISTRICT for any tax liability, interest, and/or penalties imposed upon SCHOOL DISTRICT by any taxing authority based upon SCHOOL DISTRICT's failure to withhold any amount from the payments for tax purposes.

8. RESPONSIBILITY FOR PAYMENT OF SERVICES:
- a. No parent or guardian or any other person shall be required to make any payment for services on behalf of any child covered by this Agreement SERVICE PROVIDER and its employees shall not share or accept any fee or gratuity from the student or student's family for services provided pursuant to this Agreement.
  - b. SCHOOL DISTRICT shall not incur any charges should SERVICE PROVIDER fail to attend a session for any reason whatsoever. Should SCHOOL DISTRICT cancel a session, for any reason whatsoever, and SCHOOL DISTRICT provides at least twenty-four (24) hours' notice of such cancellation to services provider, SCHOOL DISTRICT shall not be responsible for payment of the fee(s) associated with such services. In the event SCHOOL DISTRICT does not provide twenty-four (24) hours' notice of the cancellation, SERVICE PROVIDER may change for one (1) hour of service for the cancellation. SERVICE PROVIDER agrees to use the canceled session's time to do required paperwork or other student-related work for SCHOOL DISTRICT.
9. SCHOOL DISTRICT'S RIGHT TO EXAMINE ACCOUNTING RECORDS: SCHOOL DISTRICT shall have the right to examine any and all accounting records as they pertain to the services to be provided pursuant to this Agreement.
10. LICENSE AND AUTHORIZATION: SERVICE PROVIDER warrants that it is duly licensed and authorized to perform the services as described herein. SERVICE PROVIDER warrants that it will provide SCHOOL DISTRICT with licensed and qualified individuals. SERVICE PROVIDER further represents that such services shall be performed by individuals that are licensed under the laws of the State of New York, inclusive of the State Education Department Licensing requirements. SERVICE PROVIDER shall certify that all such individuals possess documentation evidencing such license qualifications as required by Federal, State or local statutes, rules, regulations and orders. Where applicable, SERVICE PROVIDER agrees to submit to SCHOOL DISTRICT proof of certification and/or professional licensing of all individuals providing services to Medicaid eligible school aged students, 5-21 years old, classified with a disability or suspected of having a disability for Medicaid reimbursement purposes. SERVICE PROVIDER further agrees to complete and submit, upon the request of SCHOOL DISTRICT, all forms to document the evaluation and services provided to Medicaid eligible school aged students, 5-21 years old, classified with a disability or suspected of having a disability for Medicaid reimbursement purposes. The individuals who are furnishing services hereunder shall be subject to the approval of SCHOOL DISTRICT. SCHOOL DISTRICT reserves the right to reject the placement of any individual.
11. COMPLIANCE WITH LAW: SERVICE PROVIDER understands and agrees that it is responsible for complying with all applicable Federal, State, local statutes, rules, and ordinances including the New York State Safe Schools Against Violence in Education (SAVE) legislation. SERVICE PROVIDER shall adhere to all requirements and protocols as established by SCHOOL DISTRICT and the State Education Department of New York: to wit, but not limited to, fingerprinting. SERVICE PROVIDER further agrees and understands that all individuals providing services under this Agreement must be cleared by the New York State Education Department in accordance with the provisions contained in the SAVE Legislation prior to

providing services to SCHOOL DISTRICT. SERVICE PROVIDER must submit a complete roster of names and social security numbers for all individuals who will be or may be providing services to the SCHOOL DISTRICT pursuant to Agreement, for SCHOOL DISTRICT's verification of such individual's clearance status. In the event that SERVICE PROVIDER utilizes an individual who has not obtained fingerprinting clearance with the State Education Department, SCHOOL DISTRICT shall have the right to immediately terminate the within contract.

12. REPORTS OF STUDENTS: SERVICE PROVIDER will obtain whatever releases or other legal documents that are necessary in order that SERVICE PROVIDER may render full and complete reports concerning the progress of the pupil(s) covered by the terms of this Agreement. The full responsibility for obtaining such clearances rests on SERVICE PROVIDER. Any failure to carry out such responsibility shall permit the Commissioner of Education to withdraw approval for the placement of such child in such program, in which event this Agreement shall be canceled forthwith in regard to such child for whom such releases are not submitted.
13. REPORTS TO SCHOOL DISTRICT: SERVICE PROVIDER hereby agrees to furnish written reports of each pupil's progress to SCHOOL DISTRICT. SERVICE PROVIDER will render such reports to SCHOOL DISTRICT at any time that such reports are made to the parents of the pupil(s) covered by the terms of this Agreement, and will render such additional reports as may be required by the SCHOOL DISTRICT. At a minimum, all reports shall be furnished at the end of each semester, i.e., January 31st and June 30th. Any and all reports shall be furnished upon termination of the Agreement. SERVICE PROVIDER shall provide such additional information concerning the pupil's progress as may be required by SCHOOL DISTRICT.
14. COMMISSIONER VISITS: SERVICE PROVIDER shall be subject to the visitation of the Commissioner of Education or his/her designated representative(s).
15. AUTHORIZATION OF SCHOOL DISTRICT: SERVICE PROVIDER shall coordinate all instruction through the Pupil Personnel Services Office or any other authorized office of SCHOOL DISTRICT.
16. SCHOOL GROUNDS & RULES: It is understood and agreed that while on school grounds, SERVICE PROVIDER, its employees and/or agents shall obey SCHOOL DISTRICT rules and regulations and must follow all reasonable directives of SCHOOL DISTRICT's administrators and employees.
17. PHOTO I.D.: SERVICE PROVIDER shall furnish each individual providing services hereunder with a photo identification badge to be worn at all times while the individual is onsite providing services to SCHOOL DISTRICT.
18. STUDENT REMOVAL: SCHOOL DISTRICT shall have the right to add or remove a child from the program/ services at any time during the school year. Payment for children added or removed shall be prorated for the period of time services were provided to the child.
19. STUDENT PRESCRIPTIONS: Where applicable, SCHOOL DISTRICT shall obtain all medical prescriptions from the parent/guardian of referred to SERVICE PROVIDER. SCHOOL

DISTRICT shall forward copies of these prescriptions to SERVICE PROVIDER upon its written request.

20. ATTENDANCE RECORDS: SERVICE PROVIDER shall maintain monthly attendance records which shall be submitted to SCHOOL DISTRICT at the end of each month. If a child has been absent for a period of five (5) or more consecutive days, the attendance record shall indicate the reason for that absence.
21. TERMINATION:
  - a. This Agreement may be terminated by the SCHOOL DISTRICT upon seven (7) days' written notice to the SERVICE PROVIDER. In the event of such termination, the parties will adjust the accounts due and payable to SERVICE PROVIDER for services rendered. SERVICE PROVIDER will not incur any additional expenses upon receipt of SCHOOL DISTRICT's notification that SERVICE PROVIDER's services have been terminated. Upon any such termination, the parties shall endeavor in an orderly manner to wind down activities hereunder. In the event of termination, all and services due to SCHOOL DISTRICT must be completed by SERVICE PROVIDER within thirty (30) days of the termination date.
  - b. This Agreement may be terminated by the SCHOOL DISTRICT in the event of a material breach by the SERVICE PROVIDER, upon three (3) days' written notice from the SCHOOL DISTRICT to SERVICE PROVIDER.
22. NON-EXCLUSION FROM PROGRAM PARTICIPATION: SERVICE PROVIDER represents and warrants that it, its employees and/or its contractors are not excluded from participation, and is not otherwise ineligible to participate, in a "federal health care program" as defined in 42 U.S.C. § 1320 a-7b(f) or in any other government payment program.

In the event SERVICE PROVIDER is excluded from participation or becomes otherwise ineligible to participate in any such program during the term of the within agreement, SERVICE PROVIDER will notify the SCHOOL DISTRICT in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to SERVICE PROVIDER, the SCHOOL DISTRICT reserves the right to immediately cease contracting with SERVICE PROVIDER.

SERVICE PROVIDER further represents and warrants it will, at a minimum, check monthly all of its employees and contractors against:

- The General Services Administration's Federal Excluded Party List System (or any successor system),
- The United States Department of Health and Human Services Office of the Inspector General's Lists of Excluded Individuals and Entities or any successor list, and

- The New York State Department of Health's Office of the Medicaid Inspector General's List of Restricted, Terminated or Excluded Individuals or Entities.

In the event an excluded party is discovered, SERVICE PROVIDER will notify the SCHOOL DISTRICT in writing within three (3) days after such event.

Any employee or contractor found to be ineligible to participate in any such program during the term of this Agreement will immediately cease services and be replaced with an eligible Service Provider.

23. CONFIDENTIALITY and DATA SECURITY AND PRIVACY STANDARDS:

- a. SERVICE PROVIDER, its employees, and/or agents agree that all information obtained in connection with the services provided for in this Agreement is deemed confidential information. SERVICE PROVIDER, its employees, and/or agents shall not use, publish, discuss, disclose or communicate the contents of such information, directly or indirectly with third parties, except as provided for in this Agreement. SERVICE PROVIDER further agrees that any information received by SERVICE PROVIDER, its employees, and/or agents during the course of the services provided pursuant to this Agreement which concerns the personal, financial, or other affairs of SCHOOL DISTRICT, its employees, agents, clients, and/or students will be treated by SERVICE PROVIDER, its employees, and/or agents in full confidence and will not be revealed to any other persons, firms, or organizations.
- b. SERVICE PROVIDER acknowledges that it may receive and/or come into contact with personally identifiable information, as defined by New York Education Law Section 2-d, from records maintained by SCHOOL DISTRICT that directly relate to a student(s) (hereinafter referred to as "education record"). SERVICE PROVIDER understands and acknowledges that it shall have in place sufficient protections and internal controls to ensure that information is safeguarded in accordance with applicable laws and regulations, and understands and agrees that it is responsible for complying with state data security and privacy standards for all personally identifiable information from education records, and it shall:
  - i. limit internal access to education records to those individuals that are determined to have legitimate educational interests;
  - ii. not use the education records for any purposes other than those explicitly authorized in this Agreement;
  - iii. maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of education records in its custody; and
  - iv. use encryption technology to protect data while in motion or custody from unauthorized disclosure using a technology or methodology specified by the secretary of the United States Department of Health and Human Services in guidance issued under Section 13402(H)(2) of Public Law 111-5 and the



National Institute of Standards and Technology Cyber Security Framework  
Version 1.1.

- c. SERVICE PROVIDER further understands and agrees that it is responsible for submitting a data security and privacy plan to SCHOOL DISTRICT prior to the start of the term of this Agreement. Such plan shall outline how all state, federal and local data security and privacy contract requirements will be implemented over the life of the contract consistent with SCHOOL DISTRICT's policy on data security and privacy, as adopted. Further, such plan shall include a signed copy of SCHOOL DISTRICT's Bill of Rights and the training requirement established by SERVICE PROVIDER for all employees who will receive personally identifiable information from student records (hereinafter referred to as "student data").
- d. SERVICE PROVIDER further understands that as part of SCHOOL DISTRICT's obligations under New York Education Law Section 2-d, SERVICE PROVIDER is responsible for providing SCHOOL DISTRICT with supplemental information to be included in SCHOOL DISTRICT's Parents' Bill of Rights. Such supplemental information shall be provided to SCHOOL DISTRICT within ten (10) days of execution of this Agreement and shall include:
  - i. the exclusive purposes for which the student data will be used;
  - ii. how SERVICE PROVIDER will ensure that subcontractors, persons or entities that SERVICE PROVIDER will share the student data with, if any, will abide by data protection and security requirements;
  - iii. that student data will be returned or destroyed upon expiration of the Agreement;
  - iv. if and how a parent, student, or eligible student may challenge the accuracy of the student data that is collected; and
  - v. where the student data will be stored (described in such a manner as to protect data security), and security protections taken to ensure such data will be protected, including whether such will be encrypted.
- e. In the event of a breach of the within confidentiality and data security and privacy standards provision and unauthorized release of student data, SERVICE PROVIDER shall immediately notify SCHOOL DISTRICT and advise it as to the nature of the breach and steps SERVICE PROVIDER has taken to minimize said breach. Said notification must be made within seven (7) days of the breach. In the case of required notification to a parent or eligible student, SERVICE PROVIDER shall promptly reimburse SCHOOL DISTRICT for the full cost of such notification.
- f. In the event that SERVICE PROVIDER fails to notify SCHOOL DISTRICT of a breach, said failure shall be punishable by a civil penalty of the greater of \$5,000 or up to \$20 per student, teacher and principal whose data was released, provided that the

maximum penalty imposed shall not exceed the maximum penalty imposed under General Business Law, section 899-aa(6)(a).

- g. Except as set forth in paragraph (f) above, in the event SERVICE PROVIDER violates Education Law 2-d, said violation shall be punishable by a civil penalty of up to \$1,000. A second violation involving the same data shall be punishable by a civil penalty of up to \$5,000. Any subsequent violation involving the same data shall be punishable by a civil penalty of up to \$10,000. Each violation shall be considered a separate violation for purposes of civil penalties and the total penalty shall not exceed the maximum penalty imposed under General Business Law section 899-aa(6)(a).
- h. SERVICE PROVIDER shall indemnify and hold SCHOOL DISTRICT harmless from any claims arising from its breach of the within confidentiality and data security and privacy standards provision.

Upon termination of this Agreement, SERVICE PROVIDER shall return or destroy all confidential information obtained in connection with the services provided herein and/or student data. Destruction of the confidential information and/or student data shall be accomplished utilizing an approved method of confidential destruction, including, shredding, burning or certified/witnessed destruction of physical materials and verified erasure of magnetic media using approved methods of electronic file destruction. The parties further agree that the terms and conditions set forth herein shall survive the expiration and/or termination of this Agreement

- 24. HIPAA and FERPA ACKNOWLEDGMENT: Both parties to this Agreement understand that they may receive and/or come into contact with protected health information as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and information protected by the Family Educational Rights and Privacy Act ("FERPA"). The parties hereby acknowledge their respective responsibilities pursuant to HIPAA and, if necessary, shall execute a Business Associate Agreement in connection with such responsibilities.

25. HIPAA COMPLIANCE:

- a. Definitions: Terms used, but not otherwise defined in this Agreement, shall have the same meaning as those terms in 45 C.F.R. sections 160.103 and 164.501.
  - i. Business Associate. "Business Associate" shall mean SCHOOL DISTRICT.
  - ii. Covered Entity. "Covered Entity" shall mean SERVICE PROVIDER.
  - iii. De-identify/De-identified. "De-identify/ De-identified" means to remove, encode, encrypt, or otherwise eliminate or conceal data that identifies an individual, or modifies information so that there is no reasonable basis to believe that the information can be used to identify an individual.
  - iv. Designated Record Set. "Designated Record Set" shall mean the enrollment, payment, claims adjudication and case or medical management record maintained by or for a health plan.

- v. Disclose. The release, transfer or provision of access to PHI, whether oral or recorded in any form or medium.
- vi. Disclosing Party. "Disclosing Party" means the party that is disclosing information to another party pursuant to this Agreement
- vii. HHS. "HHS" shall mean the United States Department of Health and Human Services.
- viii. HIPAA. "HIPAA" shall mean Title II, subtitle F ("Administrative Simplification") of the Health and Insurance Portability and Accountability Act of 1996, Pub. L. 104-191 (Aug. 21, 1996), enacting sections 1171-1179 of the Social Security Act, as well as implementing regulations adopted by HHS pursuant to HIPAA.
- ix. Identifying Characteristic. Includes, but is not limited to, all of the following, as well as any other unique information: name, address; names of relatives; name of employers; all elements of dates, including birth date, admission date, discharge date, etc.; telephone numbers; fax numbers; electronic mail address; social security number; medical record number; Medicaid and Medicare numbers health plan beneficiary number; account number; certificate/ license number; serial number of a vehicle or other device; internet URL; internet protocol ("IP") address, biometric identifiers, including voice prints and photographic images.
- x. Individual. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. section 164.502(g).
- xi. Minimum Necessary Information. "Minimum Necessary Information" means (i) in the case of routine and recurring types of disclosures, the set of data or records which the disclosing party's policies and procedures have established as reasonably necessary to achieve the purpose of such disclosures; and (ii) in the case of non-routine and non-recurring disclosures, the set of data or records which the Disclosing Party determines is reasonably necessary to accomplish the purpose of the disclosure, upon review of each disclosure according to criteria developed by the Disclosing Party; provided that in the case of disclosure (A) to a Covered Entity, (B) to a professional for purposes of providing professional services to the Disclosing Party, or (C) to a public official for disclosures which are permitted by law without Individual consent, the Minimum Necessary Information shall be the set of data or records requested by that party, upon the party's reasonable representation that the request is for the minimum necessary given the purpose of disclosure(s).
- xii. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- xiii. Protected Health Information. "Protected Health Information" or "PHI" means any information which identifies or could reasonably be believed to identify an individual, which in any way concerns that individual's health status, healthcare, or payments for his or her healthcare, or which a party is otherwise legally required to protect under an

information privacy and protection law applicable to that party, and includes as well any information derived by the processing of such information which is not de-identified with respect to any individual who is the subject of the information, limited to the information created or received by Business Associate from or on behalf Covered Entity.

- xiv. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- xv. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- xvi. Treatment, Payment, and Healthcare Operations. "Treatment, Payment and Healthcare Operations" shall have the same meaning as in 45 CFR § 164.501.
- xvii. Use. The sharing, employment, application, utilization, examination, or analysis, in any form or medium, of information within the Contractor organization.

b. Obligations of SCHOOL DISTRICT:

- i. SCHOOL DISTRICT agrees to disclose PHI to SERVICE PROVIDER upon its own volition, upon SERVICE PROVIDER's request, or upon the request of a third party if such disclosure is permissible by law, so that SERVICE PROVIDER may provide the agreed to services to or on behalf of SCHOOL DISTRICT, unless SCHOOL DISTRICT otherwise objects to the disclosure, or SERVICE PROVIDER is no longer providing the services to SCHOOL DISTRICT.
- ii. SCHOOL DISTRICT shall not disclose and shall ensure that its directors, officers, employees contractors and agents do not use PHI received from SERVICE PROVIDER in any manner that would constitute a violation of the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164 ("Privacy Standards") if used by SERVICE PROVIDER, except that SCHOOL DISTRICT may use PHI (a) for SCHOOL DISTRICT's proper management and administrative services, or (b) to carry out the legal responsibilities of SCHOOL DISTRICT.
- iii. SCHOOL DISTRICT shall not disclose and shall ensure that its directors, officers, employees, contractors, and agents do not disclose PHI received from SERVICE PROVIDER in any manner that would constitute a violation of the Privacy Standards if disclosed by SERVICE PROVIDER, except that SCHOOL DISTRICT may disclose PHI in a manner permitted pursuant to this Agreement or as required by law. To the extent SCHOOL DISTRICT discloses PHI to a third party, SCHOOL DISTRICT must obtain, prior to making any such disclosure: (a) reasonable assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement, and only disclosed as Required by Law or for the purposes for which it was disclosed to such third party; and (b) an agreement for such third party to immediately notify

SCHOOL DISTRICT of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.

- iv. SCHOOL DISTRICT agrees that it will implement the necessary safeguards required by law to prevent the use of disclosure of PHI.
- v. SCHOOL DISTRICT shall, within ten (10) days of becoming aware of a disclosure of PHI in violation of this Agreement by SCHOOL DISTRICT, its officers, directors, employees, contractors, or agents, or by a third party to which SCHOOL DISTRICT disclosed PHI pursuant to paragraph "4" above, (i) report any such disclosure to SERVICE PROVIDER and (ii) mitigate to the extent practicable any harmful effect that is known to SCHOOL DISTRICT or a use or disclosure of PHI by SCHOOL DISTRICT in violation of the requirements of this Agreement
- vi. In the event that SCHOOL DISTRICT shall enter into an Agreement with any agent or subcontractor that will have access to PHI that is received from, or created or received by SCHOOL DISTRICT on behalf of SERVICE PROVIDER, SCHOOL DISTRICT agrees to include in the terms and provisions of such Agreement that such Agreement or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to SCHOOL DISTRICT pursuant to this Agreement with respect to such PHI.
- vii. Within ten (10) days of a request by a Practice for access to PHI about an individual contained in a Designated Record Set, SCHOOL DISTRICT shall make available to SERVICE PROVIDER such PHI for so long as such information is maintained in the Designated Record Set. In the event any individual requests access to PHI directly from SCHOOL DISTRICT, SCHOOL DISTRICT shall, within five (5) days, forward such request to SERVICE PROVIDER. Any denials of access to the PHI requested shall be the responsibility of SERVICE PROVIDER.
- viii. Within ten (10) days of receipt of a request from SERVICE PROVIDER for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record set), SCHOOL DISTRICT shall provide such information to SERVICE PROVIDER for amendment and incorporate any such amendments in the PHI as required.
- ix. Within ten (10) days of notice by SERVICE PROVIDER to SCHOOL DISTRICT that it has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, SCHOOL DISTRICT shall make available to SERVICE PROVIDER such information as is in SCHOOL DISTRICT's possession that SERVICE PROVIDER is required to provide in such an accounting. At a minimum, SCHOOL DISTRICT shall provide SERVICE PROVIDER with the following information: (a) the date of the disclosure; (b) the name of the entity or person who received the PHI, and if known, disclosed; and (c) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event that the request for an accounting is delivered directly to SCHOOL DISTRICT, SCHOOL DISTRICT shall,

within five (5) days, forward such request to SERVICE PROVIDER. It shall be SERVICE PROVIDER's responsibility to prepare and deliver any such accounting requested. SCHOOL DISTRICT hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this paragraph.

- x. SCHOOL DISTRICT hereby agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by SCHOOL DISTRICT on behalf of SERVICE PROVIDER available to the Secretary of Department of Health and Human Services for purposes of determining SERVICE PROVIDER's and SCHOOL DISTRICT's compliance with the Privacy Standards.
- c. Obligations of Service Provider:
  - i. SERVICE PROVIDER agrees to maintain the confidentiality of any PHI provided to it by SCHOOL DISTRICT in accordance with all applicable Federal, State, and local laws, rules and regulations in addition to the following. Nothing in this provision shall be construed as limiting or prohibiting SERVICE PROVIDER from releasing PHI regarding the student treated to the student and/ or the student's guardian.
  - ii. SERVICE PROVIDER represents and warrants that it will not use, disclose, release, reveal, show, sell, rent, lease, loan, publish, or otherwise grant access to PHI in any manner that is prohibited by law or regulation, or in any manner that would be a violation of any law or regulation if it were to have been done by the SCHOOL DISTRICT.
  - iii. SERVICE PROVIDER represents and warrants that if it uses, discloses, releases, reveals, shows, sells, rents, leases, loans, publishes, or otherwise grants access to PHI or an element of PHI, it will do so only in an amount that is the minimum necessary and only to the minimum number of individuals necessary to obtain the purpose of the services being rendered to or on behalf of SCHOOL DISTRICT.
  - iv. SERVICE PROVIDER agrees that no finding, listing, or information derived from the PHI, with or without identifiers, may be released if such finding, listing, or information contains any combination of data elements that might allow the deduction of the individual's identity without first obtaining written authorization from SCHOOL DISTRICT.
  - v. SERVICE PROVIDER shall establish appropriate administrative, technical, and physical safeguards to protect the confidentiality of PHI that it receives from SCHOOL DISTRICT and to prevent individuals not involved in performing the services that it provides to SCHOOL DISTRICT from using or accessing the PHI.
  - vi. SERVICE PROVIDER may use the PHI as necessary for the proper management and administration of SERVICE PROVIDER and/ or permitted by law to carry out its legal responsibilities, if: (a) disclosure is required by law.

- vii. SERVICE PROVIDER shall not request SCHOOL DISTRICT to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by SERVICE PROVIDER.
- d. Relationship to Individuals Who Are Subject of Information:
- i. SERVICE PROVIDER agrees that SCHOOL DISTRICT and the applicable individual retain all ownership rights to the PHI and SERVICE PROVIDER does not obtain any right, title or interest to the PHI furnished by SCHOOL DISTRICT, except as SERVICE PROVIDER is required to maintain records in accordance with the laws and standards that govern its profession.
  - ii. SERVICE PROVIDER agrees to comply with all lawful requests of individuals, who are subjects of the PHI, to permit access to inspect and obtain a copy of the PHI about the individual that is subject to this Agreement, as required by law, within thirty (30) days of such request.
  - iii. SERVICE PROVIDER agrees to make PHI available for amendment and to incorporate any amendments or corrections to an individual's PHI upon request by SCHOOL DISTRICT in accordance with applicable law.
  - iv. SERVICE PROVIDER agrees to make available the information required to provide an accounting of disclosures in accordance with applicable law.
- e. Request for Information: SERVICE PROVIDER agrees that it will use reasonable efforts to limit its request for PHI to the minimum amount necessary to achieve the purpose for which the request is being made. In addition, SERVICE PROVIDER agrees to make its internal practices, books, records and information related to the use and disclosure of information available to the Department of Health and Human Services for review, upon request of the Secretary of that Department, to the extent that such is required by law.
- f. Chain of Trust: If any information is transmitted electronically between SERVICE PROVIDER and SCHOOL DISTRICT, they agree to electronically exchange information and to protect the transmitted information as required by HIPAA. The parties acknowledge that they are required to, and depend upon each other to maintain the integrity and confidentiality of the transmitted information.
26. INDEMNIFICATION and HOLD HARMLESS: To the fullest extent permitted by law, SERVICE PROVIDER agrees to defend, indemnify and hold harmless SCHOOL DISTRICT, its officers, directors, agents or employees against all claims, demands, actions, lawsuits, costs, damages and expenses, including attorneys' fees, judgments, fines and amounts, arising from any act, omission, error, recklessness or negligence of SERVICE PROVIDER, its officers, directors, agents or employees in connection with the performance of services pursuant to this Agreement. The obligations pursuant to this provision shall survive the termination of this Agreement.

27. INSURANCE:

- a. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, SERVICE PROVIDER hereby agrees to effectuate the naming of SCHOOL DISTRICT as an additional insured on SERVICE PROVIDER's commercial general liability and excess liability policies. If the policy is written on a claims-made basis, the retroactive date must precede the date of the contract.
- b. The policy naming SCHOOL DISTRICT as an additional insured shall:
  - i. be an insurance policy from an A.M. Best rated "Secure" insurer, licensed in New York State.
  - ii. state that SERVICE PROVIDER's coverage shall be primary and non-contributory coverage for SCHOOL DISTRICT, its Board, employees and volunteers.
- c. SCHOOL DISTRICT shall be listed as an additional insured by using endorsement CG 2026 or equivalent. The decision to accept an alternative endorsement rests solely with SCHOOL DISTRICT. A completed copy of the endorsement must be attached to the certificate of insurance.
- d. The certificate of insurance must describe the specific services provided by SERVICE PROVIDER that are covered by the liability policies.
- e. At SCHOOL DISTRICT's request, SERVICE PROVIDER shall provide a copy of the declaration page of the liability and umbrella policies with a list of endorsements and forms. If so requested, SERVICE PROVIDER provide a copy of the policy endorsements and forms.
- f. SERVICE PROVIDER agrees to indemnify SCHOOL DISTRICT for any applicable deductibles and self-insured retentions.
- g. Required Insurance:
  - i. **Commercial General Liability Insurance:**  
\$1,000,000 per occurrence/ \$2,000,000 aggregate with coverage for sexual misconduct.
  - ii. **Automobile Liability:**  
\$1,000,000 combined single limit for owned, hired, borrowed and non-owned motor vehicles.



iii. **Workers' Compensation, Employers' Liability/N.Y.S. Disability/N.Y.S. Paid Family Leave:**

Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits/ N.Y.S. Paid Family Leave Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.

A self-employed person and certain partners and corporate officers are excluded from the definition of "employee" pursuant to Workers' Compensation Law Section 2 (4). As such, individuals in such capacity are excluded from Workers' Compensation Law coverage requirements. A person seeking an exemption must file a CE-200 form with the state. The form can be completed and submitted directly to the WC Board online.

iv. **Professional Errors and Omissions Insurance:**

\$2,000,000 per occurrence/ \$2,000,000 aggregate for the professional acts of SERVICE PROVIDER performed under the for SCHOOL DISTRICT. If written on a "claims-made" basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for two years following the completion of work.

v. **Umbrella/Excess Insurance:**

\$3,000,000 each occurrence and aggregate. Umbrella/ Excess coverage shall be on a follow-form basis over the required General Liability and Professional Liability coverage.

h. SERVICE PROVIDER acknowledges that failure to obtain such insurance on behalf of SCHOOL DISTRICT constitutes a material breach of contract. SERVICE PROVIDER is to provide SCHOOL DISTRICT with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of SCHOOL DISTRICT to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by SCHOOL DISTRICT.

i. SCHOOL DISTRICT is a member/ owner of the NY Schools Insurance Reciprocal (NYSIR). SERVICE PROVIDER further acknowledges that the procurement of such insurance as required herein is intended to benefit not only SCHOOL DISTRICT but also NYSIR, as SCHOOL DISTRICT's insurer.

28. **NOTICES:** Any notices to be given under this Agreement by either party to the other may be effected by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing. Notice shall be delivered or mailed to:

Variety Child Learning Center  
47 Humphrey Drive  
Syosset, New York 11791

Valley Stream Union Free School District 24  
75 Horton Avenue  
Valley Stream, New York 11581  
Attn: Director of Pupil Services

29. ASSIGNMENT OF AGREEMENT: SERVICE PROVIDER shall not assign, transfer or convey any of its respective rights or obligations under this Agreement without the prior written consent of SCHOOL DISTRICT.
30. DISCRIMINATION PROHIBITED: Neither SCHOOL DISTRICT nor SERVICE PROVIDER will discriminate against any individual because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, disability, reproductive health decisions, predisposing genetic characteristics or marital status and will take affirmative action to ensure that each individual is afforded equal opportunities without discrimination because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, disability, reproductive health decisions, predisposing genetic characteristics or marital status.
31. GOVERNING LAW: This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of New York without regard to conflicts or choice of law provisions that would defer to the substantive laws of another jurisdiction. Each of the parties hereto consents to the jurisdiction of any state court located within the County of Nassau, State of New York, or federal court in Federal District Court for the Eastern District of New York located in the County of Suffolk, State of New York, and irrevocably agrees that all actions or proceedings relating to this Agreement must be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of and proceeding in any such court.
32. SEVERABILITY: If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.
33. NO PRIOR AGREEMENTS: This Agreement constitutes the full and complete Agreement between SCHOOL DISTRICT and SERVICE PROVIDER, and supersedes all prior written and oral agreements, commitments or understandings with respect thereto. This Agreement may not be altered, changed, added to, deleted from or modified except through the mutual written consent of the parties.
34. AGREEMENT CONSTRUCTION: This Agreement has been arrived at mutually and is not to be construed against any party hereto as being the drafter hereof or causing the same to be drafted.

35. REPRESENTATIONS AND WARRANTIES: SERVICE PROVIDER represents and warrants: 1) that SERVICE PROVIDER has no obligations, legal or otherwise, inconsistent with the terms of this Agreement; and 2) that the performance of the services to be provided in this Agreement does not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party.
36. AMENDMENT: This Agreement may be amended only in writing and signed by the parties.
37. NON-WAIVER: No course of dealing of any party hereto, no omission, failure or delay on the part of any party hereto in asserting or exercising any right hereunder, and no partial or single exercise of any right hereunder by any party hereto shall constitute or operate as a waiver of any such right or any other right hereunder. No waiver of any provision hereof shall be effective unless in writing and signed by or on behalf of the party to be charged therewith. No waiver of any provision hereof shall be deemed or construed as a continuing waiver, as a waiver in respect of any other or subsequent breach or default of such provision, or as a waiver of any other provision hereof unless expressly so stated in writing and signed by or on behalf of the party to be charged therewith.
38. AUTHORIZATION TO ENTER AGREEMENT: The undersigned representative of SERVICE PROVIDER hereby represents and warrants that the undersigned is an officer, director, or agent of SERVICE PROVIDER with full legal rights, power and authority to enter into this Agreement on behalf of SERVICE PROVIDER and bind SERVICE PROVIDER with respect to the obligations enforceable against SERVICE PROVIDER in accordance with its terms.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement the day and year first above written.

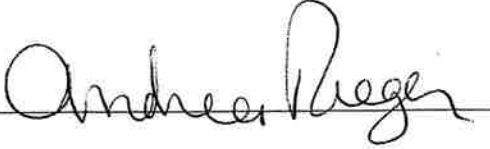
VALLEY STREAM UNION FREE SCHOOL DISTRICT 24

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

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

VARIETY CHILD LEARNING CENTER

Date: 5/31/2022

By: 

AGREEMENT

**THIS AGREEMENT** made this 31 day of May 2022 by and between VALLEY STREAM UNION FREE SCHOOL DISTRICT 24 (hereinafter referred to as the "SCHOOL DISTRICT"), as the party of the first part, having its principal place of business located at 75 Horton Avenue, Valley Stream, New York 11581, and VARIETY CHILD LEARNING CENTER (hereinafter referred to as "SERVICE PROVIDER"), as the party of the second part, having its principal place of business for purposes of this Agreement at 47 Humphrey Drive, Syosset, New York 11791.

**WITNESSETH:**

**WHEREAS**, pursuant to Education Law, SCHOOL DISTRICT is authorized by law to contract with institutions within the State of New York for the instruction of handicapped children in those situations where SCHOOL DISTRICT is unable to provide for the education of handicapped children in special classes in the public schools; and

**WHEREAS**, SERVICE PROVIDER represents that it will provide the level of services required to meet the needs of such children; and

**WHEREAS**, SERVICE PROVIDER is a registered non-public school chartered by the Board of Regents of the University of the State of New York as a non-profit education corporation authorized to establish, conduct, operate and maintain an educational program; and

**WHEREAS**, SCHOOL DISTRICT desires that SERVICE PROVIDER provide instruction to the enrolled in the program operated by SERVICE PROVIDER; and

**WHEREAS**, SERVICE PROVIDER warrants that it has reviewed the individualized education program ("IEP") and/or the 504 accommodation plan of each pupil serviced by it, and represents that it will provide the level of services identified in the IEP to meet the needs of such children with handicapping conditions; and

**WHEREAS**, SERVICE PROVIDER is ready and willing to provide SCHOOL DISTRICT's students with instruction as more fully described herein.

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto mutually agree as follows:

1. **TERM OF AGREEMENT:** This Agreement shall be in effect for the period July 1, 2022 to June 30, 2023, unless terminated earlier, as set forth herein.
2. **SCOPE OF SERVICES:** SERVICE PROVIDER shall provide adequate instruction, related services and/or a facility to the students from SCHOOL DISTRICT receiving services from SERVICE PROVIDER during the school year. The education provided by SERVICE PROVIDER shall be appropriate to the mental ability and physical condition of the children, and in accordance with Commissioner's Regulations, all applicable Federal, State and local statutes, rules and ordinances. SERVICE PROVIDER agrees to provide services in accordance with the State Education Department's regulations, using only professionals/ service providers certified by the New York State Education Department. All services shall be provided in strict compliance with the student's IEP. SERVICE PROVIDER shall receive the approved IEP within 60 days of any CSE meeting conducted by SCHOOL DISTRICT during the Term of Agreement. SERVICE PROVIDER further agrees that all disciplinary measures for disabled students will be conducted in accordance with

applicable Federal, State and local laws, rules and regulations. SERVICE PROVIDER shall provide the following additional services, consisting of, but not limited to, the following:

- i. Services based on individual student IEPs;
- ii. The implementation of goals and objectives for the educational services provided as per each individual student's IEP;
- iii. The completion of progress reports regarding student achievement of objectives as per report card schedules;
- iv. Provide the Committee on Special Education ("CSE") with annual progress reports for each individual student receiving service to be reviewed at each student's CSE meeting;
- v. Attend all such CSE meetings. SERVICE PROVIDER requires at least one month notification of CSE/Annual Review meetings in which a Certified School Psychologist's attendance is requested.
- vi. Comply with any testing requirements upon notification of such review dates.
- vii. Under the direction of the licensed professional, SERVICE PROVIDER will complete a Psychoeducational Evaluation for SCHOOL DISTRICT and student RP of SCHOOL DISTRICT. Psychoeducational Evaluations include: administration of assessments, staff interviews, classroom observation, and the development of a written report.

3. PAYMENT SCHEDULE:

- a. In full consideration for the services above to be rendered by SERVICE PROVIDER to SCHOOL DISTRICT for the period of this Agreement, SCHOOL DISTRICT will pay to SERVICE PROVIDER, for each child, the tuition rate set by the State Education Department. If the tuition rates for this school year are not available at the beginning of that school year, SCHOOL DISTRICT shall pay the rates applicable to the previous school year until new rates are set, at which time the parties shall adjust future tuition payments so that SERVICE PROVIDER will be paid in accordance with the rates applicable to that current school year. Any overpayments will be reimbursed by SERVICE PROVIDER to SCHOOL DISTRICT.
- b. SCHOOL DISTRICT shall be responsible for payment of the tuition as provided for in this Agreement as long as the child is enrolled in SERVICE PROVIDER's program. SCHOOL DISTRICT reserves the right to add or delete a child from the list of the children covered by this Agreement at any time during the school term. Enrollment for any period less than one (1) month shall be prorated.

4. INVOICE DUE ON MONTHLY BASIS: SERVICE PROVIDER will submit an invoice for services rendered on a monthly basis, and payment to SERVICE PROVIDER shall be made within thirty (30) days from receipt of invoice from SERVICE PROVIDER. The invoice shall include time sheets and attendance, types of services rendered and fees payable and, if required by SCHOOL DISTRICT, shall identify the names of the students who received services. SCHOOL DISTRICT

shall give SERVICE PROVIDER notice of any invoice dispute within twenty (20) days of its receipt and reserves the right to withhold payment pending the resolution of this dispute. Failure to dispute any invoice shall not be deemed as an acceptance and does not act as a waiver of SCHOOL DISTRICT's rights or prevent SCHOOL DISTRICT from availing itself of any remedy or course of action it has at law or in equity at a later date.

5. INDEPENDENT CONTRACTOR: All employees of SERVICE PROVIDER shall be deemed employees of SERVICE PROVIDER for all purposes and SERVICE PROVIDER alone shall be responsible for their work, personal conduct, direction, and compensation. SERVICE PROVIDER acknowledges that it will not hold itself, its officers, employees and/or agents out as employees of SCHOOL DISTRICT. SERVICE PROVIDER is retained by SCHOOL DISTRICT only for the purposes and to the extent set forth in this Agreement, and its relationship to SCHOOL DISTRICT shall, during the periods of its services hereunder, be that of an independent contractor. SERVICE PROVIDER shall not be considered as having employee status and shall not be entitled to participate in any of SCHOOL DISTRICT's workers' compensation, retirement, fringe benefits, unemployment insurance, liability insurance, disability insurance, or other similar employee benefit programs. Similarly, SERVICE PROVIDER, its officers, its employees and/ or agents shall not be considered as having employee status for the purposes of any other rights, privileges or benefits derived from employment by SCHOOL DISTRICT. SERVICE PROVIDER agrees that this Agreement does not confer benefits of any nature whatsoever upon it other than payment for services provided herein. SERVICE PROVIDER shall not assert any claim for additional benefits of any nature, including, but not limited to, unemployment compensation benefits, by reason of the services to be performed pursuant to this Agreement. SERVICE PROVIDER shall not be entitled to assert any claim to entitlements pursuant to any collective bargaining agreement now or hereafter in effect between SCHOOL DISTRICT and its employees.
6. EXPENSES OF SERVICE PROVIDER: SERVICE PROVIDER shall be responsible for all costs and expenses incurred by SERVICE PROVIDER that are incident to the performance of services for SCHOOL DISTRICT, including, but not limited to, all tools, vehicles, or other equipment to be provided by SERVICE PROVIDER, all fees, fines, licenses, bonds or taxes required of or imposed against SERVICE PROVIDER and all other of SERVICE PROVIDER's costs of doing business. SCHOOL DISTRICT shall not be responsible for any expenses incurred by SERVICE PROVIDER in performing services for SCHOOL DISTRICT.
7. INCOME TAX DESIGNATION AND INDEMNIFICATION: SCHOOL DISTRICT shall not withhold from sums payable to SERVICE PROVIDER under this Agreement any for Federal, State, or local taxes including Federal or State income taxes, employment taxes (including Social Security and Medicare taxes), and unemployment taxes. SERVICE PROVIDER agrees that any tax obligation of SERVICE PROVIDER arising from the payments made under this Agreement will be SERVICE PROVIDER's sole responsibility. SERVICE PROVIDER will indemnify SCHOOL DISTRICT for any tax liability, interest, and/or penalties imposed upon SCHOOL DISTRICT by any taxing authority based upon SCHOOL DISTRICT's failure to withhold any amount from the payments for tax purposes.
8. RESPONSIBILITY FOR PAYMENT OF SERVICES:
  - a. No parent or guardian or any other person shall be required to make any payment for services on behalf of any child covered by this Agreement. SERVICE PROVIDER and its employees shall not share or accept any fee or gratuity from the student or student's family for services provided pursuant to this Agreement.

- b. In the event the performance of SERVICE PROVIDER's services is rendered impossible or delayed by events beyond the control of parties, including but not limited to: war, social unrest, labor dispute, act of God, public health emergency, epidemic, pandemic, weather conditions, or regulations or restrictions imposed by any government or governmental agency, SCHOOL DISTRICT shall not be liable for the payment of tuition to SERVICE PROVIDER in the event SERVICE PROVIDER does not provide services to the student(s).
9. SCHOOL DISTRICT'S RIGHT TO EXAMINE ACCOUNTING RECORDS: SCHOOL DISTRICT shall have the right to examine any and all accounting records as they pertain to tuition and related service costs. For purposes of this Agreement, the definition and calculation of enrollment and attendance shall be determined by SCHOOL DISTRICT, in accordance with section 175.6 of the Regulations of the Commissioner of Education.
10. LICENSE AND AUTHORIZATION: SERVICE PROVIDER warrants that it is duly licensed and authorized to perform the services as described herein. SERVICE PROVIDER warrants that it will provide SCHOOL DISTRICT with licensed and qualified individuals. SERVICE PROVIDER further represents that such services shall be performed by individuals that are licensed under the laws of the State of New York, inclusive of the State Education Department Licensing requirements. SERVICE PROVIDER shall certify that all such individuals possess documentation evidencing such license qualifications as required by Federal, State or local statutes, rules, regulations and orders. Where applicable, SERVICE PROVIDER agrees to submit to SCHOOL DISTRICT proof of certification and/or professional licensing of all individuals providing services to Medicaid eligible school aged students, 5-21 years old, classified with a disability or suspected of having a disability for Medicaid reimbursement purposes. SERVICE PROVIDER further agrees to complete and submit, upon the request of SCHOOL DISTRICT, all forms to document the evaluation and services provided to Medicaid eligible school aged students, 5-21 years old, classified with a disability or suspected of having a disability for Medicaid reimbursement purposes. The individuals who are furnishing services hereunder shall be subject to the approval of SCHOOL DISTRICT. SCHOOL DISTRICT reserves the right to reject the placement of any individual.
11. COMPLIANCE WITH LAW: SERVICE PROVIDER understands and agrees that it is responsible for complying with all applicable Federal, State, local statutes, rules, and ordinances including the New York State Safe Schools Against Violence in Education (SAVE) legislation. SERVICE PROVIDER shall adhere to all requirements and protocols as established by SCHOOL DISTRICT and the State Education Department of New York: to wit, but not limited to, fingerprinting. SERVICE PROVIDER further agrees and understands that all individuals providing services under this Agreement must be cleared by the New York State Education Department in accordance with the provisions contained in the SAVE legislation prior to providing services to SCHOOL DISTRICT. Appropriate written proof of such clearance shall be provided to SCHOOL DISTRICT prior to such individuals providing services to SCHOOL DISTRICT. In the event that SERVICE PROVIDER utilizes an individual who has not obtained fingerprinting clearance with the State Education Department, SCHOOL DISTRICT shall have the right to immediately terminate the within contract.
12. REPORTS OF STUDENTS: SERVICE PROVIDER will obtain whatever releases or other legal documents that are necessary in order that SERVICE PROVIDER may render full and complete reports concerning the progress of the pupil(s) covered by the terms of this Agreement. The full responsibility for obtaining such clearances rests on SERVICE PROVIDER. Any failure to carry out such responsibility shall permit the Commissioner of Education to withdraw approval for the placement of such child in such program, in which event this Agreement shall be canceled forthwith in regard to such child for whom such releases are not submitted.

13. REPORTS TO STATE: SERVICE PROVIDER hereby agrees to furnish to the State reports, audits, etc. required to make determinations as to eligibility under the provisions of the Regulations of the Commissioner of Education. Such materials shall be furnished at such times as are required by the State. SERVICE PROVIDER agrees to provide the State access to all relevant records which the State requires to determine SERVICE PROVIDER's compliance with applicable Federal or State statutes or regulations with the effect of law, which regulate either the execution of the Agreement or the performance of obligations under the Agreement. SERVICE PROVIDER agrees to retain all materials and records relevant to the execution or performance of the Agreement in accordance with the provision of section 74.21 of volume 34 of the Code of Federal Regulations, but in no event less than six (6) years from the date of this Agreement.
14. REPORTS TO SCHOOL DISTRICT: SERVICE PROVIDER hereby agrees to furnish written reports of each pupil's progress to SCHOOL DISTRICT. SERVICE PROVIDER will render such reports to SCHOOL DISTRICT at any time that such reports are made to the parents of the pupil(s) covered by the terms of this Agreement, and will render such additional as may be required by SCHOOL DISTRICT. At a minimum, all reports shall be furnished at the end of each semester, i.e., January 31st and June 30th. Any and all reports shall be furnished upon termination of the Agreement. SERVICE PROVIDER shall provide such additional information concerning the pupil's progress as may be required by SCHOOL DISTRICT.
15. COMMISSIONER VISITS: SERVICE PROVIDER shall be subject to the visitation of the Commissioner of Education or his/her designated representative(s).
16. AUTHORIZATION OF SCHOOL DISTRICT: SERVICE PROVIDER shall coordinate all instruction through the Pupil Personnel Services Office or any other authorized office of SCHOOL DISTRICT.
17. STUDENT REMOVAL: SCHOOL DISTRICT reserves the right to add or remove a child from the list of the children covered by this Agreement at any time during the year in accordance with the students' IEP and all applicable Federal and State laws and regulations. Payment for children added or removed shall be prorated for the period of time services were provided to the child. All appropriate statutory and regulatory notifications will be made by SCHOOL DISTRICT, including, but not limited to, the New York State Education Department. In the event that a student's continued presence poses a danger to the health or safety of the students or others, SERVICE PROVIDER may remove the student from the educational setting in accordance with law. In such event SCHOOL DISTRICT shall convene a CPSE or CSE as soon as possible to review the student's placement.
18. STUDENT PRESCRIPTIONS: applicable, SCHOOL DISTRICT shall obtain all medical prescriptions from the parent/ guardian of students referred to SERVICE PROVIDER. SCHOOL DISTRICT shall forward copies of these prescriptions to SERVICE PROVIDER upon its written request.
19. ATTENDANCE RECORDS: SERVICE PROVIDER shall maintain monthly attendance records which shall be submitted to SCHOOL DISTRICT at the end of each month. If a child has been absent for a period of five (5) or more consecutive days, the attendance record shall indicate the reason for that absence.
20. TERMINATION:
  - a. This Agreement may be terminated by SCHOOL DISTRICT upon seven (7) days' written notice to SERVICE PROVIDER. In the event of such termination, the parties



will adjust the accounts due and payable to SERVICE PROVIDER for services rendered. SERVICE PROVIDER will not incur any additional expenses upon receipt of SCHOOL DISTRICT's notification that SERVICE PROVIDER's services have been terminated. Upon any such termination, the parties shall endeavor in an orderly manner to wind down activities hereunder. In the event of termination, all reports and services due to SCHOOL DISTRICT must be completed by SERVICE PROVIDER within thirty (30) days of the termination date.

- b. This Agreement may be terminated by SCHOOL DISTRICT in the event of a material breach by SERVICE PROVIDER, upon three (3) days' written notice from SCHOOL DISTRICT to SERVICE PROVIDER.

21. NON-EXCLUSION FROM PROGRAM PARTICIPATION: SERVICE PROVIDER represents and warrants that it, its employees and/or its contractors are not excluded from participation, and is not otherwise ineligible to participate, in a "federal health care program" as defined in 42 U.S.C. § 1320 a-7b(f) or in any other government payment program.

In the event SERVICE PROVIDER is excluded from participation or becomes otherwise ineligible to participate in any such program during the term of the within agreement, SERVICE PROVIDER will notify SCHOOL DISTRICT in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to SERVICE PROVIDER, SCHOOL DISTRICT reserves the right to immediately cease contracting with SERVICE PROVIDER.

SERVICE PROVIDER further represents and warrants it will, at a minimum, check monthly all of its employees and contractors against:

- The General Services Administration's Federal Excluded Party List System (or any successor system),
- The United States Department of Health and Human Services Office of the Inspector General's Lists of Excluded Individuals and Entities or any successor list, and
- The New York State Department of Health's Office of the Medicaid Inspector General's List of Restricted, Terminated or Excluded Individuals or Entities.

In the event an excluded party is discovered, SERVICE PROVIDER will notify SCHOOL DISTRICT in writing within three (3) days after such event.

Any employee or contractor found to be ineligible to participate in any such program during the term of this Agreement will immediately cease services and be replaced with an eligible individual.

## 22. CONFIDENTIALITY and DATA SECURITY AND PRIVACY STANDARDS:

- a. SERVICE PROVIDER, employees, and/or agents agree that all information obtained in connection with the services provided for in Agreement is deemed confidential information. SERVICE PROVIDER, its employees, and/or agents shall not use, publish, discuss, disclose or communicate the contents of such information, directly or indirectly with third parties, except as provided for in this Agreement. SERVICE PROVIDER further agrees that any information received by SERVICE PROVIDER, its employees, and/or agents during the course of the services provided pursuant to this Agreement which concerns the personal, financial, or other affairs of SCHOOL DISTRICT, its employees, agents, clients, and/or students will be treated by SERVICE PROVIDER, its

employees, and/ or agents in full confidence and will not be revealed to any other persons, firms, or organizations.

- b. SERVICE PROVIDER acknowledges that it may receive and/ or come into contact with personally identifiable information, as defined by New York Education Law Section 2-d, from records maintained by SCHOOL DISTRICT that directly relate to a student(s) (hereinafter referred to as "education record").

SERVICE PROVIDER understands and acknowledges that it shall have in place sufficient protections and internal controls to ensure that information is safeguarded in accordance with applicable laws and regulations, and understands and agrees that it is responsible for complying with state data security and privacy standards for all personally identifiable information from education records, and it shall:

- i. limit internal access to education records to those individuals that are determined to have legitimate educational interests;
  - ii. not use the education records for any purposes other than those explicitly authorized in this Agreement;
  - iii. maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of education records in its custody; and
  - iv. use encryption technology to protect data while in motion or in its custody from unauthorized disclosure using a technology or methodology specified by the secretary of the United States Department of Health and Human Services in guidance issued under Section 13402(H)(2) of Public Law 111-5 and the National Institute of Standards and Technology Cyber Security Framework Version 1.1.
- c. SERVICE PROVIDER further understands and agrees that it is responsible for submitting a data security and privacy plan to SCHOOL DISTRICT prior to the start of the term of this Agreement. Such plan shall outline how all state, federal and local data security and privacy contract requirements will be implemented over the life of the contract consistent with SCHOOL DISTRICT's policy on data security and privacy, as adopted. Further, such plan shall include a signed copy of SCHOOL DISTRICT's Parents' Bill of Rights and the training requirement established by SERVICE PROVIDER for all employees who will receive personally identifiable information from student records (hereinafter referred to as "student data").
  - d. SERVICE PROVIDER understands that as part of SCHOOL DISTRICT's obligations under New York Education Law Section 2-d, SERVICE PROVIDER is responsible for providing SCHOOL DISTRICT with supplemental information to be included in SCHOOL DISTRICT's Parents' Bill of Rights. Such supplemental information shall be provided to SCHOOL DISTRICT within ten (10) days of execution of this Agreement and shall include:
    - i. the exclusive purposes for which the student data will be used;
    - ii. how SERVICE PROVIDER will ensure that subcontractors, persons or entities that SERVICE PROVIDER will share the student data with, if any, will abide by data protection and security requirements;

- iii. that student data will be returned or destroyed upon expiration of the Agreement;
  - iv. if and how a parent, student, or eligible student may challenge the accuracy of the student data that is collected; and
  - v. where the student data will be stored (described in such a manner as to protect data security), and the security protections taken to ensure such data will be protected, including whether such data will be encrypted.
- e. In the event of a breach of the within confidentiality and data security and privacy standards provision and unauthorized release of student data, SERVICE PROVIDER shall immediately notify SCHOOL DISTRICT and advise it as to the nature of the breach and steps SERVICE PROVIDER has taken to minimize said breach. Said notification must be made within seven (7) days of the breach. In the case of required notification to a parent or eligible student, SERVICE PROVIDER shall promptly reimburse SCHOOL DISTRICT for the full cost of such notification.
  - f. In the event that SERVICE PROVIDER fails to notify SCHOOL DISTRICT of a breach, said failure shall be punishable by a civil penalty of the greater of \$5,000 or up to \$10 per student, teacher and principal whose data was released, provided that the maximum penalty imposed shall not exceed the maximum penalty imposed under General Business Law, section 899-aa(6)(a).
  - g. Except as set forth in paragraph (f) above, in the event SERVICE PROVIDER violates Education Law 2-d, said violation shall be punishable by a civil penalty of up to \$1,000. A second violation involving the same data shall be punishable by a civil penalty of up to \$5,000. Any subsequent violation involving the same data shall be punishable by a civil penalty of up to \$10,000. Each violation shall be considered a separate violation for purposes of civil penalties and the total penalty shall not exceed the maximum penalty imposed under General Business Law section 899-aa(6)(a).
  - h. SERVICE PROVIDER shall indemnify and hold SCHOOL DISTRICT harmless from any claims arising from its breach of the within confidentiality and data security and privacy standards provision.

Upon termination of this Agreement, SERVICE PROVIDER shall return or destroy all confidential information obtained in connection with the services provided herein and/or student data. Destruction of the confidential information and/or student data shall be accomplished utilizing an approved method of confidential destruction, including, shredding, burning or certified/ witnessed destruction of physical materials and verified erasure of magnetic media using approved methods of electronic file destruction. The parties further agree that the terms and conditions set forth herein shall survive the expiration and/or termination of this Agreement.

23. HIPAA and FERPA ACKNOWLEDGMENT: Both parties to this Agreement understand that they may receive and/ or come into contact with *protected health information* as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and information protected by the Family Education Rights and Privacy Act ("FERPA"). The parties hereby acknowledge their respective responsibilities pursuant to HPAA and FERPA and, if necessary, shall execute a Business Associate Agreement in connection with such responsibilities.

24. INDEMNIFICATION and HOLD HARMLESS: To the fullest extent permitted by law, SERVICE PROVIDER agrees to defend, indemnify and hold harmless SCHOOL DISTRICT, its officers, directors, agents, or employees against all claims, demands, actions, lawsuits, costs, damages and expenses, including attorneys' fees, judgments, fines and amounts, arising from any act, omission, error, recklessness or negligence of SERVICE PROVIDER, its officers, directors, agents or employees in connection with the performance of services pursuant to this Agreement. The obligations pursuant to this provision shall survive the termination of this Agreement.

25. INSURANCE:

- a. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, SERVICE PROVIDER hereby agrees to effectuate the naming of SCHOOL DISTRICT as an additional insured on SERVICE PROVIDER's commercial general liability and excess liability insurance policies. If the policy is written on a claims-made basis, the retroactive date must precede the date of the contract.
- b. The policy naming SCHOOL DISTRICT as an additional insured shall:
  - i. be an insurance policy from an A.M. Best rated 'Secure' insurer, licensed in New York State.
  - ii. state that SERVICE PROVIDER's coverage shall be primary and noncontributory coverage for SCHOOL DISTRICT, its Board, employees and volunteers.
- c. SCHOOL DISTRICT shall be listed as an additional insured by using endorsement CG 2026 or equivalent. The decision to accept an alternative endorsement solely with SCHOOL DISTRICT. A completed copy of the endorsement must be attached to the certificate of insurance.
- d. The certificate of insurance must describe the specific services provided by SERVICE PROVIDER that are covered by the liability policies.
- e. At SCHOOL DISTRICT's request, SERVICE PROVIDER shall provide a copy of the declaration page of the liability and umbrella policies with a list of endorsements and forms. If so requested, SERVICE PROVIDER will provide a copy of the policy endorsements and forms.
- f. SERVICE PROVIDER agrees to indemnify SCHOOL DISTRICT for any applicable deductibles and self-insured retentions.
- g. Required Insurance:
  - i. **Commercial General Liability Insurance:**  
\$1,000,000 per occurrence/ \$2,000,000 aggregate with coverage for sexual misconduct.
  - ii. **Automobile Liability:**  
\$1,000,000 combined single limit for owned, borrowed and non-owned motor vehicles.

- iii. **Workers' Compensation, Employers' Liability/N.Y.S. Disability/N.Y.S. Paid Family Leave:**  
Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits/ N.Y.S. Paid Family Leave Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.

A self-employed person and certain partners and corporate officers are excluded from the definition of "employee" pursuant to Workers' Compensation Law Section 2 (4). As such, individuals in such capacity are excluded from Workers' Compensation Law coverage requirements. A person seeking an exemption must file a CE-200 form with the state. The form can be completed and submitted directly to the WC Board online.

- iv. **Professional Errors and Omissions Insurance:**  
\$2,000,000 per occurrence/ \$2,000,000 aggregate for the professional acts of SERVICE PROVIDER performed under the contract for SCHOOL DISTRICT. If written on a "claims-made" basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for two years following the completion of work.

- v. **Umbrella/Excess Insurance:**  
\$3,000,000 each occurrence and aggregate. Umbrella/ Excess coverage shall be on a follow-form basis over the required General Liability and Professional Liability coverage.

- h. SERVICE PROVIDER acknowledges that failure to obtain such insurance on behalf of SCHOOL DISTRICT constitutes a material breach of contract. SERVICE PROVIDER is to provide SCHOOL DISTRICT with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of SCHOOL DISTRICT to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by SCHOOL DISTRICT.

- i. SCHOOL DISTRICT is a member/ owner of the NY Schools Insurance Reciprocal (NYSIR). SERVICE PROVIDER further acknowledges that the procurement of such insurance as required herein is intended to benefit not only SCHOOL DISTRICT but also NYSIR, as SCHOOL DISTRICT's insurer.

26. **NOTICES:** Any notices to be given under this Agreement by either party to the other may be effected by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing. Notice shall be delivered or mailed to:

Variety Child Learning Center  
47 Humphrey Drive  
Syosset, New York 11791

Valley Stream Union Free School District 24  
75 Horton Avenue  
Valley Stream, New York 11581  
Attn: Director of Pupil Services

27. ASSIGNMENT OF AGREEMENT: SERVICE PROVIDER shall not assign, transfer or convey any of its respective rights or obligations under this Agreement without the prior written consent of SCHOOL DISTRICT.
28. DISCRIMINATION PROHIBITED: Neither SCHOOL DISTRICT nor SERVICE PROVIDER will discriminate against any individual because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, reproductive health decisions, disability, predisposing genetic characteristics or marital status and will take affirmative action to ensure that each individual is afforded equal opportunities without discrimination because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, reproductive health decisions, disability, predisposing genetic characteristics or marital status.
29. GOVERNING LAW: This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of New York without regard to conflicts or choice of law provisions that would defer to the substantive laws of another jurisdiction. Each of the parties hereto consents to the jurisdiction of any state court located within the County of Nassau, State of New York, or federal court in Federal District Court for the Eastern District of New York located in the County of Suffolk, State of New York, and irrevocably agrees that all actions or proceedings relating to this Agreement must be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of and proceeding in any such court.
30. SEVERABILITY: If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.
31. NO PRIOR AGREEMENTS: This Agreement constitutes the full and complete Agreement between SCHOOL DISTRICT and SERVICE PROVIDER, and supersedes all prior written and oral agreements, commitments or understandings with respect thereto. This Agreement may not be altered, changed, added to, deleted from or modified except through the mutual written consent of the parties.
32. AGREEMENT CONSTRUCTION: This Agreement has been arrived at mutually and is not to be construed against any party hereto as being the drafter hereof or causing the same to be drafted.
33. REPRESENTATIONS AND WARRANTIES: SERVICE PROVIDER represents and warrants: 1) that SERVICE PROVIDER has no obligations, legal or otherwise, inconsistent with the terms of this Agreement; 2) that the performance of the services to be provided in this Agreement does not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party; and 3) that SERVICE PROVIDER has not entered into or will not enter into any Agreement (whether oral or written) in conflict with this Agreement.
34. AMENDMENT: This Agreement may be amended only in writing and signed by the parties.
35. NON-WAIVER: No action or failure to act by SERVICE PROVIDER or SCHOOL DISTRICT shall constitute a waiver of a right or duty afforded them under the Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
36. CHARTER: SERVICE PROVIDER shall maintain its charter as an approved educational program from the Regents of the University of the State of New York. It is understood and agreed by the

parties that failure to do so shall render this Agreement void, in which case SERVICE PROVIDER shall be entitled to no compensation for the portion of the school year in which the charter ceases to be maintained and shall reimburse SCHOOL DISTRICT any amounts already received for that portion of the school year. SERVICE PROVIDER shall be responsible for appropriate staff orientation and training for all its educational and supporting personnel, including, but not limited to, in-service training related to provision of educational services to disabled children.

37. AUTHORIZATION TO ENTER AGREEMENT: The undersigned representative of SERVICE PROVIDER hereby represents and warrants that the undersigned is an officer, director, or agent of SERVICE PROVIDER with full legal rights, power and authority to enter into this Agreement on behalf of SERVICE PROVIDER and bind SERVICE PROVIDER with respect to the obligations enforceable against SERVICE PROVIDER in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

VALLEY STREAM UNION FREE SCHOOL DISTRICT 24

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

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

VARIETY CHILD LEARNING CENTER

Date: 5/31/2022

By: 

**AGREEMENT**

**THIS AGREEMENT** made as of the \_\_\_\_ day of \_\_\_\_\_, 2022 between VALLEY STREAM UNION FREE SCHOOL DISTRICT 24 (hereinafter referred to as the “DISTRICT”), as the party of the first part, having its principal place of business located at 75 Horton Avenue, Valley Stream, NY 11581, (hereinafter referred to as the “SCHOOL DISTRICT”) and MANAGEMENT ADVISORY GROUP SPECIAL SERVICES, INC., with offices for the transaction of business located at 385 Main Street, Catskill, New York 12414 (hereinafter referred to as the “CONSULTANT”).

**WITNESSETH**

**WHEREAS**, SCHOOL DISTRICT is desirous of engaging a consultant for completing currently due STAC, AVL and HSCAR forms and reviewing and amending its filings for years in which the reimbursement it receives may be re-computed, resulting in supplemental reimbursements to SCHOOL DISTRICT; and

**WHEREAS**, CONSULTANT has experience and an expertise in reviewing and fulfilling the requirements for such filings on behalf of school districts; and

**WHEREAS**, SCHOOL DISTRICT is desirous of retaining the services of CONSULTANT for the purpose of completing current and amending its past STAC, AVL and HSCAR forms with the State Education Department;

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto mutually agree as follows:

1. **TERM OF AGREEMENT**: THIS Agreement shall be in effect for the period of July 1, 2022 Through June 30, 2023, unless terminated earlier, as set forth herein. SCHOOL DISTRICT shall have the option to renew this agreement for an additional one year term upon the adoption of a resolution by SCHOOL DISTRICT authorizing such renewal.

2. **SCOPE OF SERVICES**:

- a. CONSULTANT shall meet with designated administrative staff in SCHOOL DISTRICT for the purpose of obtaining data concerning SCHOOL DISTRICT’s filings. In connection therewith, CONSULTANT shall review and amend SCHOOL DISTRICT’s prior STAC forms, as needed; complete prospective STACs, AVLS and HSCARS; cost out new entrants to the system periodically through the school year; make on-site visits periodically; and work with SCHOOL DISTRICT to obtain approvals for private high cost and residential students. CONSULTANT shall review any and all relevant documentation maintained by SCHOOL DISTRICT in connection with its obligations hereunder.
- b. CONSULTANT shall review all applicable statutes, regulations and/or local laws which might affect the amount of reimbursements to be paid or already paid to SCHOOL DISTRICT.



- c. CONSULTANT shall review any other pertinent information necessary for it to present SCHOOL DISTRICT with a comprehensive analysis, in auditable form, of the STAC re-filing(s) it recommends that SCHOOL DISTRICT pursue.
- d. Upon approval by SCHOOL DISTRICT of the proposed re-filings, CONSULTANT shall submit the proposed re-filings electronically via the STAC system, as required by the State Education Department. In the event the State Education Department requires supplemental information from SCHOOL DISTRICT, CONSULTANT shall compile such supplemental information and present it to the State Education Department on SCHOOL DISTRICT's behalf.
- e. After CONSULTANT has completed the re-filings with the State Education Department, it will periodically review the status of such re-filings and apprise SCHOOL DISTRICT of same.

3. **PAYMENT SCHEDULE:** In full consideration for the services to be rendered by CONSULTANT to SCHOOL DISTRICT for the period of this Agreement, SCHOOL DISTRICT will pay CONSULTANT the following rates:

- a. SCHOOL DISTRICT shall pay CONSULTANT an annual consulting fee of \$6,030.00 per year for the services set forth herein. CONSULTANT shall invoice SCHOOL DISTRICT on a monthly basis in twelve (12) equal installments of \$502.50.
- b. If the number of homeless students exceeds (10), a \$50.00 per student annual fee will be assessed.
- c. Payment pursuant to this agreement shall be paid to CONSULTANT within thirty (30) days of receipt of invoice.

4. **INVOICE DUE ON MONTHLY BASIS:** CONSULTANT will submit an invoice for services rendered on a monthly basis, and payment to CONSULTANT shall be made within thirty (30) days from receipt of invoice from CONSULTANT. The invoice shall include time sheets and shall identify the names of the students who received services. SCHOOL DISTRICT shall give CONSULTANT notice of any invoice dispute within twenty (20) days of its receipt and reserves the right to withhold payment pending the resolution of this dispute. Failure to dispute any invoice shall not be deemed as an acceptance and does not act as a waiver of SCHOOL DISTRICT's rights or prevent SCHOOL DISTRICT from availing itself of any remedy or course of action it has at law or in equity at a later date.

5. **CONSULTANT'S RESPONSIBILITIES:**

- a. CONSULTANT's services shall be performed as expeditiously as is consistent with professional skill and care. Any filings with the State Education Department shall be made in a timely manner so as to maximize the amount of reimbursement, supplemental or otherwise recoverable by SCHOOL DISTRICT.

- b. CONSULTANT shall submit for SCHOOL DISTRICT's approval a proposed schedule for the performance of CONSULTANT's services, which shall include allowances for periods of time required for SCHOOL DISTRICT's review. Time limits established by this schedule as approved by SCHOOL DISTRICT shall not, except for circumstances beyond CONSULTANT's control, be exceeded by CONSULTANT.
- c. CONSULTANT represents and warrants the following to SCHOOL DISTRICT as an inducement to SCHOOL DISTRICT's execution of this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work:
  - i. that it and its Sub-consultants are financially solvent, able to pay all debts as they mature and are possessed of sufficient working capital to perform all of the obligations it has assumed pursuant to this agreement;
  - ii. that it is able to furnish the materials and labor required to perform the obligations it has assumed pursuant to this agreement;
  - iii. that it is authorized to do business in the State of New York and the United States;
  - iv. that its execution of this Agreement and its performance thereof is within its duly authorized powers;
  - v. that it possesses a high level of experience and expertise in the area of filing for reimbursement with the New York State Education Department and that it will exercise such expertise in fulfilling the obligations it has assumed in this agreement.
- d. CONSULTANT agrees to keep the information given to it by SCHOOL DISTRICT confidential and shall not release and/or publish said information to third parties without the prior consent of SCHOOL DISTRICT and/or by reason of a lawful order by a court of competent jurisdiction. Nothing contained in this paragraph shall prevent CONSULTANT from releasing information to the New York State Education Department in connection with the services to be rendered hereunder.

6. **SCHOOL DISTRICT'S RESPONSIBILITIES:**

- a. SCHOOL DISTRICT will provide the necessary information and documents as needed for the delivery of service, including but not limited to: password and user name for the STAC website with authorization to add, amend and withdraw STACs and complete online AVLs; password and user name for SCHOOL DISTRICT's special education software with authorization to create and save reports, view related services and demographics; special education staff salaries and benefits in order to cost out in-District students.

b. For visits exceeding two times per year, travel expenses to include mileage reimbursement at the IRS rate, tolls and meals, if applicable.

7. **INDEPENDENT CONTRACTOR:** All employees of CONSULTANT shall be deemed employees of CONSULTANT for all purposes and CONSULTANT alone shall be responsible for their work, personal conduct, direction, and compensation. CONSULTANT acknowledges that it will not hold itself, its employees and/or agents out as employees of SCHOOL DISTRICT. CONSULTANT is retained by SCHOOL DISTRICT only for the purposes and to the extent set forth in this Agreement, and its relationship to SCHOOL DISTRICT shall, during the periods of its services hereunder, be that of an independent contractor. CONSULTANT shall not be considered as having employee status and shall not be entitled to participate in any of SCHOOL DISTRICT's workers' compensation, retirement, fringe benefits, unemployment insurance, liability insurance, disability insurance or other similar employee benefit programs. Similarly, CONSULTANT, its employees and/or agents shall not be considered as having employee status for the purposes of any other rights, privileges or benefits derived from employment by SCHOOL DISTRICT. CONSULTANT agrees that this Agreement does not confer benefits of any nature whatsoever upon it other than payment for services provided herein. CONSULTANT shall not assert any claim for additional benefits of any nature, including, but not limited to, unemployment compensation benefits, by reason of the services to be performed pursuant to this Agreement. CONSULTANT shall not be entitled to assert any claim to entitlements pursuant to any collective bargaining agreement now or hereafter in effect between SCHOOL DISTRICT and its employees.
8. **EXPENSES OF CONSULTANT:** CONSULTANT shall be responsible for all costs and expenses incurred by CONSULTANT that are incident to the performance of services for SCHOOL DISTRICT, including, but not limited to, all tools, vehicles, or other equipment to be provided by CONSULTANT, all fees, fines, licenses, bonds or taxes required of or imposed against CONSULTANT and all other of CONSULTANT's costs of doing business. SCHOOL DISTRICT shall not be responsible for any expenses incurred by CONSULTANT in performing services for SCHOOL DISTRICT.
9. **INCOME TAX DESIGNATION AND INDEMNIFICATION:** SCHOOL DISTRICT shall not withhold from sums payable to CONSULTANT under this Agreement any amounts for Federal, State, or local taxes including Federal or State income taxes, employment taxes (including Social Security and Medicare taxes), and unemployment taxes. CONSULTANT agrees that any tax obligation of CONSULTANT arising from the payments made under this Agreement will be CONSULTANT's sole responsibility. CONSULTANT will indemnify SCHOOL DISTRICT for any tax liability, interest, and/or penalties imposed upon SCHOOL DISTRICT by any taxing authority based upon SCHOOL DISTRICT's failure to withhold any amount from the payments for tax purposes.
10. **SCHOOL DISTRICT'S RIGHT TO EXAMINE ACCOUNTING RECORDS:** SCHOOL DISTRICT shall have the right to examine any and all accounting records as they pertain to the services to be performed pursuant to this Agreement.

11. **COMPLIANCE WITH LAW:** CONSULTANT understands and agrees that it is responsible for complying with all applicable Federal, State, local statutes, rules, and ordinances including the New York State Safe Schools Against Violence in Education (SAVE) legislation. CONSULTANT shall adhere to all requirements and protocols as established by SCHOOL DISTRICT and the State Education Department of New York: to wit, but not limited to, fingerprinting, CONSULTANT further agrees and understands that all individuals providing services under this Agreement must be cleared by the New York State Education Department in accordance with the provisions contained in the SAVE Legislation prior to providing services to SCHOOL DISTRICT. CONSULTANT must submit a complete roster of names and social security numbers for all individuals who will be or may be providing services to SCHOOL DISTRICT pursuant to this Agreement, for SCHOOL DISTRICT's verification of such individual's clearance status. In the event that CONSULTANT utilizes an individual who has not obtained fingerprinting clearance with the State Education Department, SCHOOL DISTRICT shall have the right to immediately terminate the within contract.
12. **COMMISSIONER VISITS:** CONSULTANT shall be subject to the visitation of the Commissioner of Education or his/her designated representative(s).
13. **AUTHORIZATION OF SCHOOL DISTRICT:** CONSULTANT shall coordinate all instruction through the Pupil Personnel Services Office or any other authorized office of SCHOOL DISTRICT.
14. **SCHOOL GROUNDS & RULES:** It is understood and agreed that while on school grounds, CONSULTANT, its employees and/or agents shall obey all SCHOOL DISTRICT rules and regulations and must follow all reasonable directives of SCHOOL DISTRICT's administrators and employees.
15. **PHOTO I.D.:** CONSULTANT shall furnish each individual providing services hereunder with a photo identification badge to be worn at all times while the individual is on-site providing services to SCHOOL DISTRICT.
16. **TERMINATION:**
  - a. SCHOOL DISTRICT hereby reserves the right to terminate this agreement upon sixty (60) days' notice of termination. In such event, CONSULTANT shall only be entitled to payment for services rendered up to the effective date of termination.
  - b. SCHOOL DISTRICT hereby reserves the right to terminate this agreement in the event CONSULTANT materially breaches the terms of this Agreement. In such event, SCHOOL DISTRICT shall notify CONSULTANT within three (3) days of its intention to terminate this agreement.
17. **NON-EXCLUSION FROM PROGRAM PARTICIPATION:** CONSULTANT represents and warrants that it, its employees and/or its contractors are not excluded from participation, and is not otherwise ineligible to participate, in a "federal health care program" as defined in 42 U.S.C. § 1320 a-7b(f) or in any other government payment program.

In the event CONSULTANT is excluded from participation or becomes otherwise ineligible to participate in any such program during the term of the within agreement, CONSULTANT will notify SCHOOL DISTRICT in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to CONSULTANT, SCHOOL DISTRICT reserves the right to immediately cease contracting with CONSULTANT.

CONSULTANT further represents and warrants it will, at a minimum, check monthly all of its employees and contractors against:

- The General Services Administration's Federal Excluded Party List System (or any successor system),
- The United States Department of Health and Human Services Office of the Inspector General's Lists of Excluded Individual and Entities or any successor list, and
- The New York State Department of Health's Office of the Medicaid Inspector General's List of Restricted, Terminated or Excluded Individuals or Entities.

In the event an excluded party is discovered, CONSULTANT will notify SCHOOL DISTRICT in writing within three (3) days after such event.

Any employee or contractor found to be ineligible to participate in any such program during the term of this Agreement will immediately cease services and be replaced with an eligible individual.

#### **18. CONFIDENTIALITY AND DATA SECURITY AND PRIVACY STANDARDS:**

- a. CONSULTANT, its employees, and/or agents agree that all information obtained in connection with the services provided for in this Agreement is deemed confidential information. CONSULTANT, its employees, and/or agents shall not use, publish, discuss, disclose or communicate the contents of such information, directly or indirectly with third parties, except as provided for in this Agreement. CONSULTANT further agrees that any information received by CONSULTANT, its employees, and/or agents during the course of the services provided pursuant to this Agreement which concerns the personal, financial, or other affairs of SCHOOL DISTRICT, its employees, agents, clients, and/or students will be treated by CONSULTANT, its employees, and/or agents in full confidence and will not be revealed to any other persons, firms, or organizations.
- b. CONSULTANT acknowledges that it may receive and/or come into contact with personally identifiable information, as defined by New York Education Law Section 2-d, from records maintained by SCHOOL DISTRICT that directly relate to a student(s) (hereinafter referred to as "education record"). CONSULTANT understands and acknowledges that it shall have in place sufficient protections and internal controls to ensure that information is safeguarded in accordance with applicable laws and regulations, and understands and agrees that it is responsible for complying with state

data security and privacy standards for all personally identifiable information from education records, and it shall:

- i. limit internal access to education records to those individuals that are determined to have legitimate educational interests;
  - ii. not use the education records for any purposes other than those explicitly authorized in this Agreement;
  - iii. maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of education records in its custody; and
  - iv. use encryption technology to protect data while in motion or in its custody from unauthorized disclosure using a technology or methodology specified by the secretary of the United States Department of Health and Human Services in guidance issued under Section 13402(H)(2) of Public Law 111-5 and the National Institute of Standards and Technology Cyber Security Framework Version 1.1.
- c. CONSULTANT further understands and agrees that it is responsible for submitting a data security and privacy plan to SCHOOL DISTRICT prior to the start of the term of this Agreement. Such plan shall outline how all state, federal and local data security and privacy contract requirements will be implemented over the life of the contract consistent with SCHOOL DISTRICT's policy on data security and privacy, as adopted. Further, such plan shall include a signed copy of SCHOOL DISTRICT's Parents' Bill of Rights and the training requirement established by CONSULTANT for all employees who will receive personally identifiable information from student records(hereinafter referred to as "student data").
- d. CONSULTANT understands that as part of SCHOOL DISTRICT's obligations under New York Education Law Section 2-3, CONSULTANT is responsible for providing SCHOOL DISTRICT with supplemental information to be included in SCHOOL DISTRICT's Parents' Bill of Rights. Such supplemental information shall be provided to SCHOOL DISTRICT within (10) days of execution of this Agreement and shall include:
- i. the exclusive purposes for which the student data will be used;
  - ii. how CONSULTANT will ensure that subcontractors, persons or entities that CONSULTANT will share the student data with, if any, will abide by data protection and security requirements;
  - iii. that student data will be returned or destroyed upon expiration of the Agreement;

- iv. if and how a parent, student, or eligible student may challenge the accuracy of the student data that is collected; and
  - v. where the student data will be stored (described in such a manner as to protect data security), and the security protections taken to ensure such data will be protected, including whether such data will be encrypted.
- e. In the event of a breach of the within confidentiality and data security and privacy standards provision and unauthorized release of student data, CONSULTANT shall immediately notify SCHOOL DISTRICT and advise it as to the nature of the breach and steps CONSULTANT has taken to minimize said breach. Said notification must be made within seven (7) days of the breach. In the case of required notification to a parent or eligible student, CONSULTANT shall promptly reimburse SCHOOL DISTRICT for the full cost of such notification.
- f. In the event that CONSULTANT fails to notify SCHOOL DISTRICT of a breach, said failure shall be punishable by a civil penalty of the greater of \$5,000 or up to \$10 per student, teacher and principal whose data was released, provided that the maximum penalty imposed shall not exceed the maximum penalty imposed under General Business Law, section 899-aa(6)(a).
- g. Except as set forth in paragraph (f) above, in the event CONSULTANT violates Education Law 2-d, said violation shall be punishable by a civil penalty of up to \$1,000. A second violation involving the same data shall be punishable by a civil penalty of up to \$5,000. Any subsequent violation involving the same data shall be punishable by a civil penalty of up to \$10,000. Each violation shall be considered a separate violation for purposes of civil penalties and the total penalty shall not exceed the maximum penalty imposed under General Business Law section 899-aa(6)(a).
- h. CONSULTANT shall indemnify and hold SCHOOL DISTRICT harmless from any claims arising from its breach of the within confidentiality and data security and privacy standards provision.

Upon termination of this Agreement CONSULTANT shall return or destroy all confidential information obtained in connection with the services provided herein and/or student data. Destruction of the confidential information and/or student data shall be accomplished utilizing an approved method of confidential destruction, including, shredding, burning or certified/witnessed destruction of physical materials and verified erasure of magnetic media using approved methods of electronic file destruction. The parties further agree that the terms and conditions set forth herein shall survive the expiration and/or termination of this Agreement.

19. **HIPAA AND FERPA ACKNOWLEDGMENT:** Both parties to this Agreement understand that they may receive and/or come into contact with *protected health information* as defined by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and information protected by the Family Educational Rights and Privacy Act (“FERPA”). The parties hereby

acknowledge their respective responsibilities pursuant to HIPAA and FERPA, and, if necessary, shall execute a Business Associate Agreement in connection with such responsibilities.

20. **INDEMNIFICATION AND HOLD HARMLESS:** To the fullest extent permitted by law, CONSULTANT agrees to defend, indemnify and hold harmless SCHOOL DISTRICT, its officers, directors, agents, or employees against all claims, demands, actions, lawsuits, costs, damages and expenses, including attorneys' fees, judgments, fines and amounts, arising from any act, omission, error, recklessness or negligence of CONSULTANT, its officers, directors, agents or employees in connection with the performance of services pursuant to this Agreement. The obligations pursuant to this provision shall survive the termination of this Agreement.

21. **INSURANCE:**

- a. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, CONSULTANT hereby agrees to effectuate the naming of SCHOOL DISTRICT as an Additional Insured on CONSULTANT's insurance policies, except for workers' compensation and N.Y. State Disability insurance.
- b. The policy naming SCHOOL DISTRICT AS AN Additional Insured shall:
  - i. Be an insurance policy from an A.M. Best A-rated or better insurer, licensed and admitted to conduct business in New York State.
  - ii. State that the organization's coverage shall be primary and non-contributory coverage for SCHOOL DISTRICT, its Board, employees and volunteers.
  - iii. Additional insured status shall be provided by standard or other endorsements that extend coverage to SCHOOL DISTRICT (CG 20 26) or equivalent. The decision to accept an endorsement rest solely with SCHOOL DISTRICT. A completed copy of the endorsements must be attached to the Certificate of Insurance.
  - iv. The certificate of insurance must describe the services provided by CONSULTANT that are covered by the liability policies.
  - v. At SCHOOL DISTRICT's request, CONSULTANT shall provide a copy of the declaration page of the liability and umbrella/excess policies with a list of endorsements and forms. If requested, CONSULTANT will provide a copy of the policy endorsements and forms.
- c. CONSULTANT agrees to indemnify SCHOOL DISTRICT for applicable deductibles and self-insured retentions.



d. **Minimum Required Insurance:**

i. **Commercial General Liability Insurance**

\$1,000,000 per occurrence/\$2,000,000 aggregate. The general aggregate shall apply on a per-project basis (where applicable).

ii. **Automobile Liability**

\$1,000,000 combined single limit for owned, hired, borrowed and non-owned motor vehicles.

iii. **Workers' Compensation/NYS Disability Insurance/NYS Paid Family Leave**

Statutory Workers' Compensation (C-105.2 or U-26.3); and NYS Disability Insurance/NYS Paid Family Leave (DB-120.1) for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable. A person seeking an exemption must file a CD-200 Form with the state. The form can be completed and submitted directly to the WC Board online.

iv. **Professional Errors and Omissions Insurance**

\$2,000,000 per occurrence/\$2,000,000 aggregate for the professional acts of the consultant performed under the contract for the district. If written on a "claims-made" basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for two years following completion of work.

v. **Umbrella/Excess Insurance**

\$3,000,000 million per occurrence/\$3,000,000 aggregate. Umbrella/Excess coverage shall be on a follow-form basis over the required General Liability and Professional Liability coverage.

- e. CONSULTANT acknowledges that failure to obtain such insurance on behalf of SCHOOL DISTRICT constitutes a material breach of contract. CONSULTANT is to provide SCHOOL DISTRICT with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work.

22. **NOTICES:** Any notices to be given under this Agreement by either party to the other may be effected by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (w) days after mailing. Notice shall be delivered or mailed to:

Management Advisory Group Special Services, Inc.  
385 Main Street  
Catskill, New York, 12414

Valley Stream Union Free School District 24  
75 Horton Avenue  
Valley Stream, New York 11581  
Attn: Director of Pupil Services

23. **ASSIGNMENT OF AGREEMENT:** CONSULTANT shall not assign, transfer or convey any of its respective rights or obligations under this Agreement without the prior written consent of SCHOOL DISTRICT.
24. **DISCRIMINATION PROHIBITED:** Neither SCHOOL DISTRICT nor CONSULTANT will discriminate against any individual because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, reproductive health decisions, disability, predisposing genetic characteristics or marital status and will take affirmative action to ensure that each individual is afforded equal opportunities without discrimination because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, reproductive health decisions, disability, predisposing genetic characteristics or marital status.
25. **GOVERNING LAW:** This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of New York without regard to conflicts or choice of law provisions that would defer to the substantive laws of another jurisdiction. Each of the parties hereto consents to the jurisdiction of any state court located within the County of Nassau, State of New York, or federal court in Federal District Court for the Eastern District of New York located in the County of Suffolk, State of New York located in the County of Suffolk, State of New York, and irrevocably agrees that all actions or proceedings relating to this Agreement must be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of and proceeding in any such court.
26. **SEVERABILITY:** If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such term, provision, covenant, or condition as applied to other persons, places and circumstances shall remain in full force and effect.
27. **NO PRIOR AGREEMENTS:** This Agreement constitutes the full and complete Agreement between SCHOOL DISTRICT and CONSULTANT, and supersedes all prior written and oral agreements, commitments, or understandings with respect thereto. This Agreement may not be altered, changed, added to, deleted from or modified except through the mutual written consent of the parties.

28. **AGREEMENT CONSTRUCTION:** This Agreement has been arrived at mutually and is not to be construed against any party hereto as being the drafter hereof or causing the same to be drafted.
29. **REPRESENTATIONS AND WARRANTIES:** CONSULTANT represents and warrants: 1) that CONSULTANT has no obligations, legal or otherwise, inconsistent with the terms of this Agreement; 2) that the performance of the services to be provided in this Agreement does not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party; and 3) that CONSULTANT has not entered into or will not enter into any Agreement (whether oral or written) in conflict with this Agreement.
30. **AMENDMENT:** This Agreement may be amended only in writing and signed by the parties.
31. **NON-WAIVER:** No course of dealing of any party hereto, no omission, failure or delay on the part of any party hereto in asserting or exercising any right hereunder, and no partial or single exercise of any right hereunder by any party hereto shall constitute or operate as a waiver of any such right or any other right hereunder. No waiver of any provision hereof shall be effective unless in writing and signed by or on behalf of the party to be charged therewith. No waiver of any provision hereof shall be deemed or construed as a continuing waiver, as a waiver in respect of any other or subsequent breach or default of such provision, or as a waiver of any other provision hereof unless expressly so stated in writing and signed by or on behalf of the party to be charged therewith.
32. **AUTHORIZATION TO ENTER AGREEMENT:** The undersigned representative of CONSULTANT hereby represents and warrants that the undersigned is an officer, director, or agent of CONSULTANT with full legal rights, power and authority to enter into this Agreement on behalf of CONSULTANT and bind CONSULTANT with respect to the obligations enforceable against CONSULTANT in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

VALLEY STREAM UNION SCHOOL DISTRICT 24

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

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

MANAGEMENT ADVISORY GROUP SPECIAL  
SERVICES, INC.

Date: 6/3/2022

By: *Aimee Sliff*

AGREEMENT

THIS AGREEMENT made \_\_\_\_ day of \_\_\_\_\_ 2022 by and between VALLEY STREAM UNION FREE SCHOOL DISTRICT 24 (hereinafter referred to as the "DISTRICT"), as the party of the first part, having principal place of business located at 75 Horton Avenue, Valley Stream, New York 11581, and NEW YORK THERAPY PLACEMENT SERVICES, INC. (hereinafter referred to as "SERVICE PROVIDER"), as the party of the second part, having principal place of business for purposes of this Agreement at 299 Hallock Avenue, Port Jefferson Station, New York 11776.

WITNESSETH:

**WHEREAS**, SCHOOL DISTRICT is authorized by law to contract with independent contractors for providing related services; and

**WHEREAS**, SERVICE PROVIDER is in the business of providing related services; and

**WHEREAS**, SCHOOL DISTRICT desires that SERVICE PROVIDER provide related services to designated students pursuant to the Individualized Education Program(s) ("IEP") developed for the student(s) by the CSE; and

**WHEREAS**, SERVICE PROVIDER warrants that it has reviewed the individualized education program ("IEP") and/ or the 504 accommodation plan of each pupil serviced by it, and represents that it will provide the level of services identified in the IEP to meet the needs of such children with handicapping conditions; and

**WHEREAS**, SERVICE PROVIDER is ready, willing, and able to provide services to SCHOOL DISTRICT:

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto mutually agree as follows:

1. **TERM OF AGREEMENT:** Agreement shall be in effect for the period July 1, 2022 to June 30, 2023, unless terminated earlier, as set forth herein.
2. **SCOPE OF SERVICES:** SERVICE PROVIDER shall provide the following services, consisting of, but not limited to the following:
  - a. Speech and Language Therapy
  - b. Occupational Therapy
  - c. Physical Therapy
  - d. Home Tutoring/Instruction
  - e. Resource Room Services
  - f. Evaluations (including written report)

g. ABA Services as follows:

i. **Consultation Services** based on student IEPs. Consultations shall include, but not be Limited to, the following areas:

1. Functional Behavior Assessments;
2. Behavior Intervention Plans;
3. Behavior Modification Systems;
4. Curriculum Modification;
5. Material Modification;
6. Evaluations;
7. Staff Development; and
8. SERVICE PROVIDER's role with respect to the above-mentioned services shall be to provide model for these services to classroom staff and to initiate the model's implementation, making adjustments where necessary. SERVICE PROVIDER shall provide quarterly narrative and written reports to SCHOOL DISTRICT.

ii. **Home Program Services** as determined by CSE. Such services shall include, but not be limited to, the areas of.

1. Discrete Trial Teaching;
2. Independent Living Skills;
3. Implementation of Behavior Plans;
4. Incidental Teaching Situations;
5. Verbal Behavior Techniques;
6. Generalization Programming; and
7. SERVICE PROVIDER's role with respect to the above-mentioned services shall be to provide complete and accurate program data as required by the program and to implement the program as modified by the Supervisor. SERVICE PROVIDER's role shall not include the modification of programs. In addition, all home services require the presence of a parent or guardian at the time of service implementation. Such services shall not be provided without the presence of such individuals.

iii. **Supervision of Home Staff** provided by a certified special education teacher specializing in ABA as designated by the CSE. Supervisory visits shall include, but not be limited to:

1. Functional Behavior Assessments;
2. Behavior Intervention Plans;
3. Behavior Modification Systems;
4. Activities of Daily Living Protocols;
5. Discrete Trial teaching program creation and modification;
6. Curriculum Modification;

7. Material Modification;
8. Evaluations;
9. Teaching parents how to implement programs; and
10. SERVICE PROVIDER's role with respect to the above-mentioned services shall be to provide the models for these services to the home program families and staff, initiate the model's implementation, and make adjustments where necessary. SERVICE PROVIDER's shall provide quarterly narrative and written reports to SCHOOL DISTRICT.

iv. **Parent Training Services** for families provided by a certified special education teacher or certified social worker specializing in Autism Spectrum Disorders when requested by CSE. These parental training services, include, but shall not be Limited to:

1. Activities of Daily Living Protocols;
2. Social Skill Protocols;
3. Generalization Skills; and
4. Behavior Protocols.

h. SERVICE PROVIDER shall provide the services above during the school year for those children covered by the terms of this Agreement. The services provided by SERVICE PROVIDER shall be appropriate to the mental ability and physical condition of the children, and in accordance with the Commissioner's Regulations, currently approved methods and practices of the profession. In addition, SERVICE PROVIDER shall provide the following services unless otherwise indicated, consisting of, but not limited to, the following:

- i. The completion of progress reports regarding student achievement of objectives as per report card schedules;
- ii. Provide the Committee on Special Education ("CSE") with annual progress reports for each individual student receiving service to be reviewed at each student's CSE meeting;
- iii. Complete evaluations as per the request of the Director of Special Education on an as needed basis.

i. It is understood and agreed that all services provided pursuant to this Agreement shall be in coordination with classroom teachers of such students and/or at the direction of the CSE.

j. All services shall be provided in strict compliance with the student's IEP.

3. **PAYMENT SCHEDULE:** In full consideration for the services to be rendered by SERVICE PROVIDER to SCHOOL DISTRICT for the term of this Agreement, SCHOOL DISTRICT agrees to pay SERVICE PROVIDER the rates set forth in Appendix A.

4. INVOICE DUE ON MONTHLY BASIS: SERVICE PROVIDER will submit an invoice for services rendered on a monthly basis, and payment to SERVICE PROVIDER shall be made within thirty (30) days from receipt of invoice from SERVICE PROVIDER. The invoice shall include time sheets and attendance, types of services rendered and fees payable and, if required by SCHOOL DISTRICT, shall identify the names of the students who received services. SCHOOL DISTRICT shall give SERVICE PROVIDER notice of any invoice dispute within twenty (20) days of its receipt and reserves the right to withhold payment pending the resolution of this dispute. Failure to dispute any invoice shall not be deemed as an acceptance and does not act as a waiver of SCHOOL DISTRICT's rights or prevent SCHOOL DISTRICT from availing itself of any remedy or course of action it has at law or in equity at a later date.
5. INDEPENDENT CONTRACTOR: All employees of SERVICE PROVIDER shall be deemed employees of SERVICE PROVIDER for all purposes and SERVICE PROVIDER alone shall be responsible for their work, personal conduct, direction, and compensation. SERVICE PROVIDER acknowledges that it will not hold itself, its officers, employees and/or agents out as employees of SCHOOL DISTRICT. SERVICE PROVIDER is retained by SCHOOL DISTRICT only for the purposes and to the extent set forth in this Agreement, and its relationship to SCHOOL DISTRICT shall, during the periods of its services hereunder, be that of an independent contractor. SERVICE PROVIDER shall not be considered as having employee status and shall not be entitled to participate in any of SCHOOL DISTRICT's workers' compensation, retirement, fringe benefits, unemployment insurance, liability insurance, disability insurance, or other similar employee benefit programs. Similarly, SERVICE PROVIDER, its officers, its employees and/ or agents shall not be considered as having employee status for the purposes of any other rights, privileges or benefits derived from employment by SCHOOL DISTRICT. SERVICE PROVIDER agrees that this Agreement does not confer benefits of any nature whatsoever upon it other than payment for services provided herein. SERVICE PROVIDER shall not assert any claim for additional benefits of any nature, including, but not limited to, unemployment compensation benefits, by reason of the services to be performed pursuant to this Agreement. SERVICE PROVIDER shall not be entitled to assert any claim to entitlements pursuant to any collective bargaining agreement now or hereafter in effect between SCHOOL DISTRICT and its employees.
6. EXPENSES OF SERVICE PROVIDER: SERVICE PROVIDER shall be responsible for all costs and expenses incurred by SERVICE PROVIDER that are incident to the performance of services for SCHOOL DISTRICT, including, but not limited to, all tools, vehicles, or other equipment to be provided by SERVICE PROVIDER, all fees, fines, licenses, bonds or taxes required of or imposed against SERVICE PROVIDER and all other of SERVICE PROVIDER's costs of doing business. SCHOOL DISTRICT shall not be responsible for any expenses incurred by SERVICE PROVIDER in performing services for SCHOOL DISTRICT.
7. INCOME TAX DESIGNATION AND INDENNIFICATION: SCHOOL DISTRICT shall not withhold from sums payable to SERVICE PROVIDER under this Agreement any amounts for Federal, State, or local taxes including Federal or State income taxes, employment taxes (including Social Security and Medicare taxes), and unemployment taxes. SERVICE PROVIDER agrees that any tax obligation of SERVICE PROVIDER arising from the payments made under this Agreement will be SERVICE PROVIDER's sole responsibility. SERVICE PROVIDER will indemnify SCHOOL DISTRICT for any tax liability, interest, and/or penalties

imposed upon SCHOOL DISTRICT by any taxing authority based upon SCHOOL DISTRICT's failure to withhold any amount from the payments for tax purposes.

8. RESPONSIBILITY FOR PAYMENT OF SERVICES:

- a. No parent or guardian or any other person shall be required to make any payment for services on behalf of any child covered by this Agreement SERVICE PROVIDER and its employees shall not share or accept any fee or gratuity from the student or student's family for services provided pursuant to this Agreement.
- b. SCHOOL DISTRICT shall not incur any charges should SERVICE PROVIDER, its employees, and/or agents fail to attend a session for any reason whatsoever. Should an individual student be absent or unable to attend a session, for any reason whatsoever, the SCHOOL DISTRICT shall not be responsible for payment of the fee(s) associated with such services. SCHOOL DISTRICT will endeavor to notify SERVICE PROVIDER of a student's absence whenever practicable.

9. SCHOOL DISTRICT'S RIGHT TO EXAMINE ACCOUNTING RECORDS: SCHOOL DISTRICT shall have the right to examine any and all accounting records as they pertain to the services to be provided pursuant to this Agreement.

10. LICENSE AND AUTHORIZATION: SERVICE PROVIDER warrants that it is duly licensed and authorized to perform the services as described herein. SERVICE PROVIDER warrants that it will provide SCHOOL DISTRICT with licensed and qualified individuals. SERVICE PROVIDER further represents that such services shall be performed by individuals that are licensed under the laws of the State of New York, inclusive of the State Education Department Licensing requirements. SERVICE PROVIDER shall certify that all such individuals possess documentation evidencing such license qualifications as required by Federal, State or local statutes, rules, regulations and orders. Where applicable, SERVICE PROVIDER agrees to submit to SCHOOL DISTRICT proof of certification and/or professional licensing of all individuals providing services to Medicaid eligible school aged students, 5-21 years old, classified with a disability or suspected of having a disability for Medicaid reimbursement purposes. SERVICE PROVIDER further agrees to complete and submit, upon the request of SCHOOL DISTRICT, all forms to document the evaluation and services provided to Medicaid eligible school aged students, 5-21 years old, classified with a disability or suspected of having a disability for Medicaid reimbursement purposes. The individuals who are furnishing services hereunder shall be subject to the approval of SCHOOL DISTRICT. SCHOOL DISTRICT reserves the right to reject the placement of any individual.

11. COMPLIANCE WITH LAW: SERVICE PROVIDER understands and agrees that it is responsible for complying with all applicable Federal, State, local statutes, rules, and ordinances including the New York State Safe Schools Against Violence in Education (SAVE) legislation. SERVICE PROVIDER shall adhere to all requirements and protocols as established by SCHOOL DISTRICT and the State Education Department of New York: to wit, but not limited to, fingerprinting. SERVICE PROVIDER further agrees and understands that all individuals providing services under this Agreement must be cleared by the New York State Education Department in accordance with the provisions contained in the SAVE Legislation prior to



providing services to SCHOOL DISTRICT. SERVICE PROVIDER must submit a complete roster of names and social security numbers for all individuals who will be or may be providing services to the SCHOOL DISTRICT pursuant to Agreement, for SCHOOL DISTRICT's verification of such individual's clearance status. In the event that SERVICE PROVIDER utilizes an individual who has not obtained fingerprinting clearance with the State Education Department, SCHOOL DISTRICT shall have the right to immediately terminate the within contract.

12. REPORTS OF STUDENTS: SERVICE PROVIDER will obtain whatever releases or other legal documents that are necessary in order that SERVICE PROVIDER may render full and complete reports concerning the progress of the pupil(s) covered by the terms of this Agreement. The full responsibility for obtaining such clearances rests on SERVICE PROVIDER. Any failure to carry out such responsibility shall permit the Commissioner of Education to withdraw approval for the placement of such child in such program, in which event this Agreement shall be canceled forthwith in regard to such child for whom such releases are not submitted.
13. REPORTS TO SCHOOL DISTRICT: SERVICE PROVIDER hereby agrees to furnish written reports of each pupil's progress to SCHOOL DISTRICT. SERVICE PROVIDER will render such reports to SCHOOL DISTRICT at any time that such reports are made to the parents of the pupil(s) covered by the terms of this Agreement, and will render such additional reports as may be required by the SCHOOL DISTRICT. At a minimum, all reports shall be furnished at the end of each semester, i.e., January 31st and June 30th. Any and all reports shall be furnished upon termination of the Agreement. SERVICE PROVIDER shall provide such additional information concerning the pupil's progress as may be required by SCHOOL DISTRICT.
14. COMMISSIONER VISITS: SERVICE PROVIDER shall be subject to the visitation of the Commissioner of Education or his/her designated representative(s).
15. AUTHORIZATION OF SCHOOL DISTRICT: SERVICE PROVIDER shall coordinate all instruction through the Pupil Personnel Services Office or any other authorized office of SCHOOL DISTRICT.
16. SCHOOL GROUNDS & RULES: It is understood and agreed that while on school grounds, SERVICE PROVIDER, its employees and/or agents shall obey SCHOOL DISTRICT rules and regulations and must follow all reasonable directives of SCHOOL DISTRICT's administrators and employees.
17. PHOTO I.D.: SERVICE PROVIDER shall furnish each individual providing services hereunder with a photo identification badge to be worn at all times while the individual is onsite providing services to SCHOOL DISTRICT.
18. STUDENT REMOVAL: SCHOOL DISTRICT shall have the right to add or remove a child from the program/ services at any time during the school year. Payment for children added or removed shall be prorated for the period of time services were provided to the child.
19. STUDENT PRESCRIPTIONS: Where applicable, SCHOOL DISTRICT shall obtain all medical prescriptions from the parent/guardian of referred to SERVICE PROVIDER. SCHOOL

DISTRICT shall forward copies of these prescriptions to SERVICE PROVIDER upon its written request.

20. ATTENDANCE RECORDS: SERVICE PROVIDER shall maintain monthly attendance records which shall be submitted to SCHOOL DISTRICT at the end of each month. If a child has been absent for a period of five (5) or more consecutive days, the attendance record shall indicate the reason for that absence.
21. TERMINATION:
  - a. This Agreement may be terminated by the SCHOOL DISTRICT upon seven (7) days' written notice to the SERVICE PROVIDER. In the event of such termination, the parties will adjust the accounts due and payable to SERVICE PROVIDER for services rendered. SERVICE PROVIDER will not incur any additional expenses upon receipt of SCHOOL DISTRICT's notification that SERVICE PROVIDER's services have been terminated. Upon any such termination, the parties shall endeavor in an orderly manner to wind down activities hereunder. In the event of termination, all and services due to SCHOOL DISTRICT must be completed by SERVICE PROVIDER within thirty (30) days of the termination date.
  - b. This Agreement may be terminated by the SCHOOL DISTRICT in the event of a material breach by the SERVICE PROVIDER, upon three (3) days' written notice from the SCHOOL DISTRICT to SERVICE PROVIDER.
22. NON-EXCLUSION FROM PROGRAM PARTICIPATION: SERVICE PROVIDER represents and warrants that it, its employees and/or its contractors are not excluded from participation, and is not otherwise ineligible to participate, in a "federal health care program" as defined in 42 U.S.C. S 1320 a-7b(f) or in any other government payment program.

In the event SERVICE PROVIDER is excluded from participation or becomes otherwise ineligible to participate in any such program during the term of the within agreement, SERVICE PROVIDER will notify the SCHOOL DISTRICT in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to SERVICE PROVIDER, the SCHOOL DISTRICT reserves the right to immediately cease contracting with SERVICE PROVIDER.

SERVICE PROVIDER further represents and warrants it will, at a minimum, check monthly all of its employees and contractors against:

- The General Services Administration's Federal Excluded Party List System (or any successor system),
- The United States Department of Health and Human Services Office of the Inspector General's Lists of Excluded Individuals and Entities or any successor list, and

- The New York State Department of Health's Office of the Medicaid Inspector General's List of Restricted, Terminated or Excluded Individuals or Entities.

In the event an excluded party is discovered, SERVICE PROVIDER will notify the SCHOOL DISTRICT in writing within three (3) days after such event.

Any employee or contractor found to be ineligible to participate in any such program during the term of this Agreement will immediately cease services and be replaced with an eligible Service Provider.

23. CONFIDENTIALITY and DATA SECURITY AND PRIVACY STANDARDS:

- a. SERVICE PROVIDER, its employees, and/or agents agree that all information obtained in connection with the services provided for in this Agreement is deemed confidential information. SERVICE PROVIDER, its employees, and/or agents shall not use, publish, discuss, disclose or communicate the contents of such information, directly or indirectly with third parties, except as provided for in this Agreement. SERVICE PROVIDER further agrees that any information received by SERVICE PROVIDER, its employees, and/or agents during the course of the services provided pursuant to this Agreement which concerns the personal, financial, or other affairs of SCHOOL DISTRICT, its employees, agents, clients, and/or students will be treated by SERVICE PROVIDER, its employees, and/or agents in full confidence and will not be revealed to any other persons, firms, or organizations.
- b. SERVICE PROVIDER acknowledges that it may receive and/or come into contact with personally identifiable information, as defined by New York Education Law Section 2-d, from records maintained by SCHOOL DISTRICT that directly relate to a student(s) (hereinafter referred to as "education record"). SERVICE PROVIDER understands and acknowledges that it shall have in place sufficient protections and internal controls to ensure that information is safeguarded in accordance with applicable laws and regulations, and understands and agrees that it is responsible for complying with state data security and privacy standards for all personally identifiable information from education records, and it shall:
  - i. limit internal access to education records to those individuals that are determined to have legitimate educational interests;
  - ii. not use the education records for any purposes other than those explicitly authorized in this Agreement;
  - iii. maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of education records in its custody; and
  - iv. use encryption technology to protect data while in motion or custody from unauthorized disclosure using a technology or methodology specified by the secretary of the United States Department of Health and Human Services in guidance issued under Section 13402(H)(2) of Public Law 111-5 and the

maximum penalty imposed shall not exceed the maximum penalty imposed under General Business Law, section 899-aa(6)(a).

- g. Except as set forth in paragraph (f) above, in the event SERVICE PROVIDER violates Education Law 2-d, said violation shall be punishable by a civil penalty of up to \$1,000. A second violation involving the same data shall be punishable by a civil penalty of up to \$5,000. Any subsequent violation involving the same data shall be punishable by a civil penalty of up to \$10,000. Each violation shall be considered a separate violation for purposes of civil penalties and the total penalty shall not exceed the maximum penalty imposed under General Business Law section 899-aa(6)(a).
- h. SERVICE PROVIDER shall indemnify and hold SCHOOL DISTRICT harmless from any claims arising from its breach of the within confidentiality and data security and privacy standards provision.

Upon termination of this Agreement, SERVICE PROVIDER shall return or destroy all confidential information obtained in connection with the services provided herein and/or student data. Destruction of the confidential information and/or student data shall be accomplished utilizing an approved method of confidential destruction, including, shredding, burning or certified/witnessed destruction of physical materials and verified erasure of magnetic media using approved methods of electronic file destruction. The parties further agree that the terms and conditions set forth herein shall survive the expiration and/or termination of this Agreement

- 24. HIPAA and FERPA ACKNOWLEDGMENT: Both parties to this Agreement understand that they may receive and/or come into contact with protected health information as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and information protected by the Family Educational Rights and Privacy Act ("FERPA"). The parties hereby acknowledge their respective responsibilities pursuant to HIPAA and, if necessary, shall execute a Business Associate Agreement in connection with such responsibilities.
- 25. INDEMNIFICATION and HOLD HARMLESS: To the fullest extent permitted by law, SERVICE PROVIDER agrees to defend, indemnify and hold harmless SCHOOL DISTRICT, its officers, directors, agents or employees against all claims, demands, actions, lawsuits, costs, damages and expenses, including attorneys' fees, judgments, fines and amounts, arising from any act, omission, error, recklessness or negligence of SERVICE PROVIDER, its officers, directors, agents or employees in connection with the performance of services pursuant to this Agreement. The obligations pursuant to this provision shall survive the termination of this Agreement.
- 26. INSURANCE:
  - a. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, SERVICE PROVIDER hereby agrees to effectuate the naming of SCHOOL DISTRICT as an additional insured on SERVICE PROVIDER's commercial general liability and excess liability policies. If the policy is written on a claims-made basis, the retroactive date must precede the date of the contract.
  - b. The policy naming SCHOOL DISTRICT as an additional insured shall:

National Institute of Standards and Technology Cyber Security Framework  
Version 1.1.

- c. SERVICE PROVIDER further understands and agrees that it is responsible for submitting a data security and privacy plan to SCHOOL DISTRICT prior to the start of the term of this Agreement. Such plan shall outline how all state, federal and local data security and privacy contract requirements will be implemented over the life of the contract consistent with SCHOOL DISTRICT's policy on data security and privacy, as adopted. Further, such plan shall include a signed copy of SCHOOL DISTRICT's Bill of Rights and the training requirement established by SERVICE PROVIDER for all employees who will receive personally identifiable information from student records (hereinafter referred to as "student data").
- d. SERVICE PROVIDER further understands that as part of SCHOOL DISTRICT's obligations under New York Education Law Section 2-d, SERVICE PROVIDER is responsible for providing SCHOOL DISTRICT with supplemental information to be included in SCHOOL DISTRICT's Parents' Bill of Rights. Such supplemental information shall be provided to SCHOOL DISTRICT within ten (10) days of execution of this Agreement and shall include:
  - i. the exclusive purposes for which the student data will be used;
  - ii. how SERVICE PROVIDER will ensure that subcontractors, persons or entities that SERVICE PROVIDER will share the student data with, if any, will abide by data protection and security requirements;
  - iii. that student data will be returned or destroyed upon expiration of the Agreement;
  - iv. if and how a parent, student, or eligible student may challenge the accuracy of the student data that is collected; and
  - v. where the student data will be stored (described in such a manner as to protect data security), and security protections taken to ensure such data will be protected, including whether such will be encrypted.
- e. In the event of a breach of the within confidentiality and data security and privacy standards provision and unauthorized release of student data, SERVICE PROVIDER shall immediately notify SCHOOL DISTRICT and advise it as to the nature of the breach and steps SERVICE PROVIDER has taken to minimize said breach. Said notification must be made within seven (7) days of the breach. In the case of required notification to a parent or eligible student, SERVICE PROVIDER shall promptly reimburse SCHOOL DISTRICT for the full cost of such notification.
- f. In the event that SERVICE PROVIDER fails to notify SCHOOL DISTRICT of a breach, said failure shall be punishable by a civil penalty of the greater of \$5,000 or up to \$20 per student, teacher and principal whose data was released, provided that the

seeking an exemption must file a CE-200 form with the state. The form can be completed and submitted directly to the WC Board online.

- iv. **Professional Errors and Omissions Insurance:**  
\$2,000,000 per occurrence/ \$2,000,000 aggregate for the professional acts of SERVICE PROVIDER performed under the for SCHOOL DISTRICT. If written on a "claims-made" basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for two years following the completion of work.
- v. **Umbrella/Excess Insurance:**  
\$3,000,000 each occurrence and aggregate. Umbrella/ Excess coverage shall be on a follow-form basis over the required General Liability and Professional Liability coverage.

h. SERVICE PROVIDER acknowledges that failure to obtain such insurance on behalf of SCHOOL DISTRICT constitutes a material breach of contract. SERVICE PROVIDER is to provide SCHOOL DISTRICT with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of SCHOOL DISTRICT to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by SCHOOL DISTRICT.

i. SCHOOL DISTRICT is a member/ owner of the NY Schools Insurance Reciprocal (NYSIR). SERVICE PROVIDER further acknowledges that the procurement of such insurance as required herein is intended to benefit not only SCHOOL DISTRICT but also NYSIR, as SCHOOL DISTRICT's insurer.

27. **NOTICES:** Any notices to be given under this Agreement by either party to the other may be effected by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing. Notice shall be delivered or mailed to:

New York Therapy Placement Services, Inc.  
299 Hallock Avenue  
Port Jefferson Station, New York 11776

Valley Stream Union Free School District 24  
75 Horton Avenue  
Valley Stream, New York 11581  
Attn: Director of Pupil Services

28. **ASSIGNMENT OF AGREEMENT:** SERVICE PROVIDER shall not assign, transfer or convey any of its respective rights or obligations under this Agreement without the prior written consent of SCHOOL DISTRICT.

- i. be an insurance policy from an A.M. Best rated "Secure" insurer, licensed in New York State.
  - ii. state that SERVICE PROVIDER's coverage shall be primary and non-contributory coverage for SCHOOL DISTRICT, its Board, employees and volunteers.
- c. SCHOOL DISTRICT shall be listed as an additional insured by using endorsement CG 2026 or equivalent. The decision to accept an alternative endorsement rests solely with SCHOOL DISTRICT. A completed copy of the endorsement must be attached to the certificate of insurance.
- d. The certificate of insurance must describe the specific services provided by SERVICE PROVIDER that are covered by the liability policies.
- e. At SCHOOL DISTRICT's request, SERVICE PROVIDER shall provide a copy of the declaration page of the liability and umbrella policies with a list of endorsements and forms. If so requested, SERVICE PROVIDER provide a copy of the policy endorsements and forms.
- f. SERVICE PROVIDER agrees to indemnify SCHOOL DISTRICT for any applicable deductibles and self-insured retentions.
- g. Required Insurance:
- i. **Commercial General Liability Insurance:**  
\$1,000,000 per occurrence/ \$2,000,000 aggregate with coverage for sexual misconduct.
  - ii. **Automobile Liability:**  
\$1,000,000 combined single limit for owned, hired, borrowed and non-owned motor vehicles.
  - iii. **Workers' Compensation, Employers' Liability/N.Y.S. Disability/N.Y.S. Paid Family Leave:**

Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits/ N.Y.S. Paid Family Leave Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.

A self-employed person and certain partners and corporate officers are excluded from the definition of "employee" pursuant to Workers' Compensation Law Section 2 (4). As such, individuals in such capacity are excluded from Workers' Compensation Law coverage requirements. A person

29. DISCRIMINATION PROHIBITED: Neither SCHOOL DISTRICT nor SERVICE PROVIDER will discriminate against any individual because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, disability, reproductive health decisions, predisposing genetic characteristics or marital status and will take affirmative action to ensure that each individual is afforded equal opportunities without discrimination because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, disability, reproductive health decisions, predisposing genetic characteristics or marital status.
30. GOVERNING LAW: This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of New York without regard to conflicts or choice of law provisions that would defer to the substantive laws of another jurisdiction. Each of the parties hereto consents to the jurisdiction of any state court located within the County of Nassau, State of New York, or federal court in Federal District Court for the Eastern District of New York located in the County of Suffolk, State of New York, and irrevocably agrees that all actions or proceedings relating to this Agreement must be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of and proceeding in any such court.
31. SEVERABILITY: If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.
32. NO PRIOR AGREEMENTS: This Agreement constitutes the full and complete Agreement between SCHOOL DISTRICT and SERVICE PROVIDER, and supersedes all prior written and oral agreements, commitments or understandings with respect thereto. This Agreement may not be altered, changed, added to, deleted from or modified except through the mutual written consent of the parties.
33. AGREEMENT CONSTRUCTION: This Agreement has been arrived at mutually and is not to be construed against any party hereto as being the drafter hereof or causing the same to be drafted.
34. REPRESENTATIONS AND WARRANTIES: SERVICE PROVIDER represents and warrants: 1) that SERVICE PROVIDER has no obligations, legal or otherwise, inconsistent with the terms of this Agreement; 2) that the performance of the services to be provided in this Agreement does not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party; and 3) that SERVICE PROVIDER has not entered into or will not enter into any Agreement (whether oral or written) in conflict with this Agreement.
35. AMENDMENT: This Agreement may be amended only in writing and signed by the parties.
36. NON-WAIVER: No course of dealing of any party hereto, no omission, failure or delay on the part of any party hereto in asserting or exercising any right hereunder, and no partial or single exercise of any right hereunder by any party hereto shall constitute or operate as a waiver of any such right or any other right hereunder. No waiver of any provision hereof shall be effective unless in writing and signed by or on behalf of the party to be charged therewith. No waiver of any



provision hereof shall be deemed or construed as a continuing waiver, as a waiver in respect of any other or subsequent breach or default of such provision, or as a waiver of any other provision hereof unless expressly so stated in writing and signed by or on behalf of the party to be charged therewith.

37. AUTHORIZATION TO ENTER AGREEMENT: The undersigned representative of SERVICE PROVIDER hereby represents and warrants that the undersigned is an officer, director, or agent of SERVICE PROVIDER with full legal rights, power and authority to enter into this Agreement on behalf of SERVICE PROVIDER and bind SERVICE PROVIDER with respect to the obligations enforceable against SERVICE PROVIDER in accordance with its terms.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement the day and year first above written.

VALLEY STREAM UNION FREE SCHOOL DISTRICT 24

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

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

NEW YORK THERAPY PLACEMENT SERVICES, INC.

Date: 5/26/22

By: Barbara L. Paul

**SERVICE AGREEMENT**

**THIS AGREEMENT** made this 21 day of May, 2022 by and between **VALLEY STREAM UNION FREE SCHOOL DISTRICT 24** ("SCHOOL DISTRICT"), at 75 Horton Ave, Valley Stream, NY 11581, and The 13th Child Autism & Behavioral Coaching, inc. ("SERVICE PROVIDER"), at 31 Woodruff Avenue, Suite 7T, Brooklyn, NY 11226.

**WHEREAS**, the SCHOOL DISTRICT is authorized to contract with independent contractors for the provision of related services and other educational services including consulting services and/or professional development services; and

**WHEREAS**, SERVICE PROVIDER is in the business of providing services of licensed and qualified occupational therapists, physical therapists, physical therapy assistants, speech-language therapists, and other duly licensed and/or certified professionals qualified to deliver special education services, including ABA services; and

**WHEREAS**, SERVICE PROVIDER warrants that it has reviewed the individualized education program ("IEP") and/or the 504 accommodation plan of each pupil serviced by it, and represents that it will provide the level of services identified in the IEP or plan to meet the needs of such students with disabilities; and

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto mutually agree as follows:

1. **TERM OF AGREEMENT:** This Agreement shall be in effect for the period July 1, 2022 to June 30, 2023, unless terminated earlier, as set forth herein.
2. **SCOPE OF SERVICES:** SERVICE PROVIDER shall provide the following services as requested by the SCHOOL DISTRICT:
  - a. Services as set forth in Exhibit A, attached hereto and made part hereof. In the event that any of the terms of Exhibit A conflict with the terms of this Agreement, the terms of this Agreement shall govern, supersede and take precedence over any such conflicting term(s).
  - b. SERVICE PROVIDER shall provide the services above during the school year for those children covered by the terms of this Agreement. The services provided by SERVICE PROVIDER shall be appropriate to the mental ability and physical condition of the children, and in accordance with the Commissioner's Regulations, currently approved methods and practices of the profession. In addition, SERVICE PROVIDER shall provide the following services at no additional charge unless otherwise indicated, consisting of, but not limited to, the following:
    - i. The completion of progress reports regarding student achievement of objectives as per report card schedules;

- ii. Provide the Committee on Special Education ("CSE") with annual progress reports for each individual student receiving service to be reviewed at each student's CSE meeting;
    - iii. Attend all such CSE meetings as needed; iv. Complete evaluations as per the request of the Director of Special Education on an as needed basis.
  - c. All services shall be provided in strict compliance with the student's IEP. It is understood and agreed that all services provided pursuant to this Agreement shall be in coordination with classroom teachers of such students and/or at the direction of the CSE.
  - d. Other services as directed by the Director of Special Education or his designee.
3. **PAYMENT:** In full consideration for the services to be rendered by SERVICE PROVIDER to SCHOOL DISTRICT for the term of this Agreement, SCHOOL DISTRICT agrees to pay SERVICE PROVIDER at the rates as set in Appendix A for services actually and satisfactorily rendered.
4. **PAYMENT SCHEDULE:** SERVICE PROVIDER will submit an invoice for services rendered on a monthly basis, and payment to SERVICE PROVIDER shall be made within thirty (30) days from receipt of invoice from SERVICE PROVIDER. The invoice shall include time sheets and attendance, types of services rendered and fees payable and, if required by SCHOOL DISTRICT, shall identify the names of the students who received services. SCHOOL DISTRICT shall give SERVICE PROVIDER notice of any invoice dispute within twenty (20) days of its receipt and reserves the right to withhold payment pending the resolution of this dispute. Failure to dispute any invoice shall not be deemed as an acceptance and does not act as a waiver of SCHOOL DISTRICT's rights or prevent SCHOOL DISTRICT from availing itself of any remedy or course of action it has at law or in equity at a later date.
5. **INDEPENDENT CONTRACTOR:** All employees of SERVICE PROVIDER, if any, shall be deemed employees of SERVICE PROVIDER for all purposes and SERVICE PROVIDER alone shall be responsible for their work, personal conduct, direction, and compensation. SERVICE PROVIDER acknowledges that it will not hold itself, its officers, employees and/or agents out as employees of SCHOOL DISTRICT. SERVICE PROVIDER is retained by SCHOOL DISTRICT only for the purposes and to the extent set forth in this Agreement, and its relationship to SCHOOL DISTRICT shall, during the periods of its services hereunder, be that of an independent contractor. SERVICE PROVIDER shall not be considered as having employee status and shall not be entitled to participate in any of SCHOOL DISTRICT's workers' compensation, retirement, fringe benefits, unemployment insurance, liability insurance, disability insurance, or other similar employee benefit programs. Similarly, SERVICE PROVIDER, its officers, employees and/or agents shall not be considered as having employee status for the purposes of any other rights, privileges or benefits derived from employment by SCHOOL DISTRICT. SERVICE PROVIDER agrees that this Agreement does not confer benefits of any nature whatsoever upon it other than payment for

services provided herein. SERVICE PROVIDER shall not assert any claim for additional benefits of any nature, including, but not limited to, unemployment compensation benefits by reason of the services to be performed pursuant to this Agreement. SERVICE PROVIDER shall not be entitled to assert any claim to entitlements pursuant to any collective bargaining agreement now or hereafter in effect between SCHOOL DISTRICT and its employees.

6. **EXPENSES OF SERVICE PROVIDER:** SERVICE PROVIDER shall be responsible for all costs and expenses incurred by SERVICE PROVIDER that are incident to the performance of services for SCHOOL DISTRICT, including, but not limited to, all tools, vehicles, or other equipment to be provided by SERVICE PROVIDER, all fees, fines, licenses, bonds or taxes required of or imposed against SERVICE PROVIDER and all other of SERVICE PROVIDER's costs of doing business. SCHOOL DISTRICT shall not be responsible for any expenses incurred by SERVICE PROVIDER in performing services for SCHOOL DISTRICT.
7. **INCOME TAX DESIGNATION AND INDEMNIFICATION:** SCHOOL DISTRICT shall not withhold from sums payable to SERVICE PROVIDER under this Agreement any amounts for Federal, State, or local taxes including Federal or State income taxes, employment taxes (including Social Security and Medicare taxes), and unemployment taxes. SERVICE PROVIDER agrees that any tax obligation of SERVICE PROVIDER arising from the payments made under this Agreement will be SERVICE PROVIDER's sole responsibility. SERVICE PROVIDER will indemnify SCHOOL DISTRICT for any tax liability, interest, and/or penalties imposed upon SCHOOL DISTRICT by any taxing authority based upon SCHOOL DISTRICT's failure to withhold any amount from the payments for tax purposes.
8. **RESPONSIBILITY FOR PAYMENT OF SERVICES:**
  - a. No parent or guardian or any other person shall be required to make any payment for services on behalf of any child covered by this Agreement. SERVICE PROVIDER and its employees shall not share or accept any fee or gratuity from the student or student's family for service provided pursuant to this Agreement.
  - b. SCHOOL DISTRICT shall not incur any charges should SERVICE PROVIDER, its employees, and/or agents fail to attend a session for any reason whatsoever. Should an individual student be absent or unable to attend a session, for any reason whatsoever, the SCHOOL DISTRICT shall not be responsible for payment of the fee(s) associated with such services. SCHOOL DISTRICT will endeavor to notify SERVICE PROVIDER of a student's absence whenever practicable.
9. **SCHOOL DISTRICT'S RIGHT TO EXAMINE ACCOUNTING RECORDS:** SCHOOL DISTRICT shall have the right to examine any and all accounting records as they pertain to the services performed pursuant to this Agreement.
10. **LICENSE AND AUTHORIZATION:** SERVICE PROVIDER warrants that it is duly licensed and authorized to perform the services as described herein. SERVICE PROVIDER warrants that it will provide SCHOOL DISTRICT with licensed and qualified individuals.

SERVICE PROVIDER further represents that such services shall be performed by individuals that are licensed under the laws of the State of New York, inclusive of the State Education Department Licensing requirements. SERVICE PROVIDER shall certify that all such individuals possess documentation evidencing such license qualifications as required by Federal, State or local statutes, rules, regulations and orders. Where applicable, SERVICE PROVIDER agrees to submit to SCHOOL DISTRICT proof of certification and/or professional licensing of all individuals providing services to Medicaid eligible school aged students, 5-21 years old, classified with a disability or suspected of having a disability for Medicaid reimbursement purposes. SERVICE PROVIDER further agrees to complete and submit, upon the request of SCHOOL DISTRICT, all forms to document the evaluation and services provided to Medicaid eligible school aged students, 5-21 years old, classified with a disability or suspected of having a disability for Medicaid reimbursement purposes. The individuals who are furnishing services hereunder shall be subject to the approval of SCHOOL DISTRICT. SCHOOL DISTRICT reserves the right to reject the placement of any individual.

11. **PROVIDER AGREEMENT & STATEMENT OF REASSIGNMENT:** SERVICE PROVIDER represents and warrants that it has executed a Provider Agreement Form and a Statement of Reassignment with the New York State Department of Health, and shall submit copies of said documents to the SCHOOL DISTRICT.
12. **SAVE LEGISLATION:** SERVICE PROVIDER understands and agrees that it is responsible for complying with all applicable Federal, State, local statutes, rules, and ordinances including the New York State Safe Schools Against Violence in Education (SAVE) legislation. SERVICE PROVIDER shall adhere to all requirements and protocols as established by SCHOOL DISTRICT and the State Education Department of New York: to wit, but not limited to, fingerprinting. SERVICE PROVIDER further agrees and understands that all individuals providing services under this Agreement must be cleared by the New York State Education Department in accordance with the provisions contained in the SAVE Legislation prior to providing services to SCHOOL DISTRICT. SERVICE PROVIDER must submit a complete roster of names and social security numbers for all individuals who will be or may be providing services to the SCHOOL DISTRICT pursuant to this Agreement, for SCHOOL DISTRICT's verification of such individual's clearance status. In the event that SERVICE PROVIDER utilizes an individual who has not obtained fingerprinting clearance with the State Education Department, SCHOOL DISTRICT shall have the right to immediately terminate the within contract. The SERVICE PROVIDER shall be responsible for notifying the school district in writing in the event of a change in service providers and shall provide the school district with updated certification of compliance with fingerprint clearance.
13. **REPORTS OF STUDENTS:** SERVICE PROVIDER will obtain whatever releases or other legal documents that are necessary in order that SERVICE PROVIDER may render full and complete reports concerning the education and progress of the pupil(s) covered by the terms of this Agreement. The full responsibility for obtaining such clearances rests on SERVICE PROVIDER. Any failure to carry out such responsibility shall permit the Commissioner of Education to withdraw approval for the placement of such child in such program, in which

event this Agreement shall be canceled forthwith in regard to such child for whom such releases are not submitted.

14. **REPORTS TO SCHOOL DISTRICT:** SERVICE PROVIDER hereby agrees to furnish written reports of each pupil's educational progress to SCHOOL DISTRICT. SERVICE PROVIDER will render such reports to SCHOOL DISTRICT at any time that such reports are made to the parents of the pupil(s) covered by the terms of this Agreement, and will render such additional reports as may be required by the SCHOOL DISTRICT. At a minimum, all reports shall be furnished in accordance with the student's IEP. Any and all reports shall be furnished upon termination of the Agreement. SERVICE PROVIDER shall provide such additional information concerning the pupil's progress as may be required by SCHOOL DISTRICT.
15. **AUTHORIZATION OF SCHOOL DISTRICT:** SERVICE PROVIDER shall coordinate all services through the Pupil Personnel Services Office or any other authorized office of SCHOOL DISTRICT.
16. **SCHOOL GROUNDS & RULES:** It is understood and agreed that while on school grounds, SERVICE PROVIDER, its employees and/or agents shall obey all SCHOOL DISTRICT rules and regulations and must follow all reasonable directives of SCHOOL DISTRICT's administrators and employees.
17. **PHOTO I.D.:** SERVICE PROVIDER shall furnish each individual providing services hereunder with a photo identification badge to be worn at all times while the individual is on-site providing services to SCHOOL DISTRICT.
18. **CHANGE IN ROSTER OF STUDENTS:** SCHOOL DISTRICT shall have the right to add or remove a child from the program/services at any time during the school year. Payment for children added or removed shall be prorated for the period of time services were provided to the child.
19. **TERMINATION:**
  - a. This Agreement may be terminated by the SCHOOL DISTRICT upon seven (7) days' written notice to the SERVICE PROVIDER. In the event of such termination, the parties will adjust the accounts due and payable to SERVICE PROVIDER for services rendered. SERVICE PROVIDER will not incur any additional expenses upon receipt of SCHOOL DISTRICT's notification that SERVICE PROVIDER's services have been terminated. Upon any such termination, the parties shall endeavor in an orderly manner to wind down activities hereunder. In the event of termination, all reports and services due to SCHOOL DISTRICT must be completed by SERVICE PROVIDER within thirty (30) days of the termination date.
  - b. This Agreement may be terminated by the SCHOOL DISTRICT in the event of a material breach by SERVICE PROVIDER, upon three (3) days' written notice from the SCHOOL DISTRICT to SERVICE PROVIDER.

c. Notwithstanding anything to the contrary contained in the Agreement, the SCHOOL DISTRICT expressly reserves the right to immediately suspend, cancel or terminate the SERVICE PROVIDER's services under this Agreement in the event that the SCHOOL DISTRICT's schools are closed and/or it becomes illegal, impossible or impracticable to continue the SERVICE PROVIDER's services due to any reason, including but not limited to any force majeure event, and upon the SCHOOL DISTRICT's notice to the SERVICE PROVIDER that it intends to exercise such right, the SERVICE PROVIDER, its officers, employees and/or agents shall not be entitled to further compensation, payments, cancellation fees, charges or any other benefits pursuant to this Agreement for the duration of such closure, unless otherwise agreed to in writing between the SERVICE PROVIDER and the SCHOOL DISTRICT. Force majeure events shall include any condition beyond the SCHOOL DISTRICT's reasonable control including, without limitation, acts of God, accident, riots, civil commotion, wars, terrorist act, epidemic, pandemic including COVID-19 or similar epidemic or outbreak, quarantine, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental or quasi-governmental acts or omissions, changes in laws or regulations, national strikes, fire, and explosion. In the event of such suspension, cancellation or termination of SERVICE PROVIDER's services, SERVICE PROVIDER shall be entitled to payment only for services actually rendered in accordance with this provision, and shall not otherwise be entitled to payment, cancellation fees or charges for any previously scheduled services that were not actually rendered prior to the date of said notice.

20. **NON-EXCLUSION FROM PROGRAM PARTICIPATION:** SERVICE PROVIDER represents and warrants that it, its employees and/or its contractors are not excluded from participation, and is not otherwise ineligible to participate, in a "federal health care program" as defined in 42 U.S.C. § 1320 a-7b(f) or in any other government payment program. In the event SERVICE PROVIDER is excluded from participation or becomes otherwise ineligible to participate in any such program during the term of the within agreement, SERVICE PROVIDER will notify SCHOOL DISTRICT in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to SERVICE PROVIDER, SCHOOL DISTRICT reserves the right to immediately cease contracting with SERVICE PROVIDER. SERVICE PROVIDER further represents and warrants it will, at a minimum, check monthly all of its employees and contractors against: (i) the General Services Administration's Federal Excluded Party List System (or any successor system); (ii) the United States Department of Health and Human Services Office of the Inspector General's Lists of Excluded Individuals and Entities or any successor list; and (iii) the New York State Department of Health's Office of the Medicaid Inspector General's List of Restricted, Terminated or Excluded Individuals or Entities. In the event an excluded party is discovered, SERVICE PROVIDER will notify SCHOOL DISTRICT in writing within three (3) days after such event. Any employee or contractor found to be ineligible to participate in any such program during the term of this Agreement will immediately cease services and be replaced with an eligible individual.

21. **CONFIDENTIALITY and DATA SECURITY AND PRIVACY STANDARDS:**

- a. SERVICE PROVIDER, its employees, and/or agents agree that all information obtained in connection with the services provided for in this Agreement is deemed confidential information. SERVICE PROVIDER, its employees, and/or agents shall not use, publish, discuss, disclose or communicate the contents of such information, directly or indirectly with third parties, except as provided for in this Agreement. SERVICE PROVIDER further agrees that any information received by SERVICE PROVIDER, its employees, and/or agents during the course of the services provided pursuant to this Agreement which concerns the personal, financial, or other affairs of SCHOOL DISTRICT, its employees, agents, clients, and/or students will be treated by SERVICE PROVIDER, its employees, and/or agents in full confidence and will not be revealed to any other persons, firms, or organizations.
  
- b. SERVICE PROVIDER acknowledges that it may receive and/or come into contact with personally identifiable information, as defined by New York Education Law Section 2-d and its implementing regulations, from records maintained by SCHOOL DISTRICT that directly relate to a student(s) (hereinafter referred to as "education record"). SERVICE PROVIDER understands and acknowledges that it shall have in place sufficient protections and internal controls to ensure that information is safeguarded in accordance with applicable laws and regulations, and understands and agrees that it is responsible for complying with state data security and privacy standards for all personally identifiable information from education records, and it shall:
  - i. limit internal access to education records to those individuals that are determined to have legitimate educational interests;
  - ii. not use the education records for any purposes other than those explicitly authorized in this Agreement;
  - iii. maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of education records in its custody; and
  - iv. use encryption technology to protect data while in motion or in its custody from unauthorized disclosure using a technology or methodology that align with the United States Department of Commerce National Institute for Standards and Technology (NIST) Cybersecurity Framework (CSF).
  
- c. SERVICE PROVIDER further understands and agrees that it is responsible for submitting a data security and privacy plan to SCHOOL DISTRICT prior to the start of the term of this Agreement. Such plan shall outline how all state, federal and local



data security and privacy contract requirements will be implemented over the life of the contract consistent with SCHOOL DISTRICT's policy on data security and privacy, as adopted. Further, such plan shall include a signed copy of SCHOOL DISTRICT's Parents' Bill of Rights and the training requirement established by SERVICE PROVIDER for all employees who will receive personally identifiable information from student records (hereinafter referred to as "student data").

- d. SERVICE PROVIDER understands that as part of SCHOOL DISTRICT's obligations under New York Education Law Section 2-d and its implementing regulations, SERVICE PROVIDER is responsible for providing SCHOOL DISTRICT with supplemental information to be included in SCHOOL DISTRICT's Parents' Bill of Rights. Such supplemental information shall be provided to SCHOOL DISTRICT within ten (10) days of execution of this Agreement and shall include:
- i. the exclusive purposes for which the student data will be used;
  - ii. how SERVICE PROVIDER will ensure that subcontractors, persons or entities that SERVICE PROVIDER will share the student data with, if any, will abide by data protection and security requirements;
  - iii. that student data will be returned or destroyed upon expiration of the Agreement;
  - iv. if and how a parent, student, or eligible student may challenge the accuracy of the student data that is collected; and
  - v. where the student data will be stored (described in such a manner as to protect data security), and the security protections taken to ensure such data will be protected, including whether such data will be encrypted.
- e. Upon termination of this Agreement, SERVICE PROVIDER shall return or destroy all confidential information obtained in connection with the services provided herein and/or student data. Destruction of the confidential information and/or student data shall be accomplished utilizing an approved method of confidential destruction, including shredding, burning or certified/witnessed destruction of physical materials and verified erasure of magnetic media using approved methods of electronic file destruction. The parties further agree that the terms and conditions set forth herein shall survive the expiration and/or termination of this Agreement.

22. **HIPAA and FERPA ACKNOWLEDGMENT:** Both parties to this Agreement understand that they may receive and/or come into contact with *protected health information* as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and information protected by the Family Educational Rights and Privacy Act

("FERPA"). The Parties hereby acknowledge their respective responsibilities pursuant to HIPAA and FERPA and, if necessary, shall execute a Business Associate Agreement in connection with such responsibilities.

23. **DEFENSE, INDEMNIFICATION and HOLD HARMLESS PROVISION:** To the fullest extent permitted by law, the SERVICE PROVIDER agrees to defend, indemnify and hold harmless SCHOOL DISTRICT, the Board of Education, their officers, directors, agents and employees from and against all loss, costs, damages and expenses, including attorneys' fees, judgments, fines and amounts paid in settlement (collectively, "Damages") in connection with any action, suit or proceeding arising from any act, error or omission, misstatement, misleading statement, neglect or breach of duties by SERVICE PROVIDER or any of its officers, directors, agents or employees taken or made with respect to this Agreement, except to the extent such Damages arise out of the gross negligence, misconduct or breach of this Agreement by SCHOOL DISTRICT.

24. **INSURANCE REQUIREMENTS:**

- a. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, SERVICE PROVIDER hereby agrees to effectuate the naming of SCHOOL DISTRICT as an additional insured on SERVICE PROVIDER's commercial general liability and excess liability insurance policies. If the policy is written on a claims-made basis, the retroactive date must precede the date of the contract.
- b. The policy naming SCHOOL DISTRICT as an additional insured shall:
  - i. Be an insurance policy from an A.M. Best rated "Secure" insurer, licensed in New York State.
  - ii. State that SERVICE PROVIDER's coverage shall be primary and non-contributory coverage for SCHOOL DISTRICT, its Board, employees and volunteers.
- c. SCHOOL DISTRICT shall be listed as an additional insured by using endorsement CG 2026 or equivalent. The decision to accept an alternative endorsement rests solely with SCHOOL DISTRICT. A completed copy of the endorsement must be attached to the certificate of insurance.
- d. The certificate of insurance must describe the specific services provided by SERVICE PROVIDER that are covered by the liability policies.
- e. At SCHOOL DISTRICT's request, SERVICE PROVIDER shall provide a copy of the declaration page of the liability and umbrella policies with a list of endorsements and forms. If so requested, SERVICE PROVIDER will provide a copy of the policy endorsements and forms.

- f. The SERVICE PROVIDER agrees to indemnify SCHOOL DISTRICT for any applicable deductibles and self-insured retentions.
- g. Required Insurance:
- i. **Commercial General Liability Insurance:**  
\$1,000,000 per occurrence/ \$2,000,000 aggregate, with coverage for sexual misconduct.
  - ii. **Workers' Compensation and N.Y.S. Disability:**  
Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.  
  
A self-employed person and certain partners and corporate officers are excluded from the definition of "employee" pursuant to Workers' Compensation Law Section 2 (4). As such, individuals in such capacity are excluded from Workers' Compensation Law coverage requirements. A person seeking an exemption must file a CE-200 form with the state.
  - iii. **Professional Errors and Omissions Insurance:**  
\$2,000,000 per occurrence/ \$2,000,000 aggregate for the professional acts of SERVICE PROVIDER performed under the contract for SCHOOL DISTRICT. If written on a "claims-made" basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for two years following the completion of work.
  - iv. **Excess Insurance**  
\$1,000,000 each occurrence and aggregate. Excess coverage shall be on a follow-form basis.
- h. SERVICE PROVIDER acknowledges that failure to obtain such insurance on behalf of SCHOOL DISTRICT constitutes a material breach of contract. SERVICE PROVIDER is to provide SCHOOL DISTRICT with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of SCHOOL DISTRICT to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by SCHOOL DISTRICT.
- i. SCHOOL DISTRICT is a member/owner of the NY Schools Insurance Reciprocal (NYSIR). SERVICE PROVIDER further acknowledges that the procurement of such

insurance as required herein is intended to benefit not only SCHOOL DISTRICT but also NYSIR, as SCHOOL DISTRICT's insurer.

25. **NOTICES:** Any notices to be given under this Agreement by either party to the other may be effected by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two days after mailing. Notice shall be delivered or mailed to the party's address listed above.
26. **ASSIGNMENT OF AGREEMENT:** SERVICE PROVIDER shall not assign, transfer or convey any of its respective rights or obligations under this Agreement without the prior written consent of SCHOOL DISTRICT.
27. **GOVERNING LAW:** This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of New York without regard to conflicts or choice of law provisions that would defer to the substantive laws of another jurisdiction. Each of the parties hereto consents to the jurisdiction of any state court located within the County of Nassau, State of New York, or federal court located in the Eastern District of New York, and agrees that all actions or proceedings relating to this Agreement must be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of and proceeding in any such court.
28. **SEVERABILITY:** If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.
29. **NO PRIOR AGREEMENTS:** This Agreement constitutes the full and complete Agreement between SCHOOL DISTRICT and SERVICE PROVIDER, and supersedes all prior written and oral agreements, commitments or understandings with respect thereto. This Agreement may not be altered, changed, added to, deleted from or modified except through the mutual written consent of the parties.
30. **AGREEMENT CONSTRUCTION:** This Agreement has been arrived at mutually and is not to be construed against any party hereto as being the drafter hereof or causing the same to be drafted.
31. **REPRESENTATIONS AND WARRANTIES:** SERVICE PROVIDER represents and warrants: 1) that SERVICE PROVIDER has no obligations, legal or otherwise, inconsistent with the terms of this Agreement; 2) that the performance of the services to be provided in this Agreement does not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party; and 3) that SERVICE PROVIDER has not entered

into or will not enter into any Agreement (whether oral or written) in conflict with this Agreement.

32. **NONWAIVER:** No action or failure to act by SERVICE PROVIDER or SCHOOL DISTRICT shall constitute a waiver of a right or duty afforded them under the Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
33. **AUTHORIZATION TO ENTER AGREEMENT:** The undersigned representatives of the SERVICE PROVIDER and the SCHOOL DISTRICT hereby represent and warrant that they have full legal authority to enter this Agreement and bind the respective parties thereto.
34. **EXECUTION IN COUNTERPARTS:** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same instrument. Facsimile and electronic signatures shall have the same force and effect as originals thereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

VALLEY STREAM UNION FREE SCHOOL DISTRICT 24:

By: \_\_\_\_\_  
Board President

Date: \_\_\_\_\_, 2022

The 13th Child Autism & Behavioral Coaching, inc.:

By:  \_\_\_\_\_  
Name: Rebecca McKee, MSED, BCBA  
Title: CEO

Date: 05/24, 2022



## Placement, Consulting & Professional Development Provider Service Agreement

**THIS AGREEMENT** made this 1<sup>st</sup> day of July, 2022 by and between the BOARD OF EDUCATION, VALLEY STREAM UNION FREE SCHOOL DISTRICT NO. 24 (hereinafter referred to as the "School District"), as the party of the first part, having its principal place of business located 75 Horton Avenue, Valley Stream, New York, 11581. BLUE SEA EDUCATIONAL CONSULTING INC. (hereinafter referred to as the "SERVICE PROVIDER"), as the party of the second part, having its principal place of business for purposes of this Agreement at 1038 W. Jericho turnpike, Smithtown New York, 11787.

### WITNESSETH:

**WHEREAS**, the SCHOOL DISTRICT is authorized by law to contract for the provision of related services for its students with handicapping conditions; and **WHEREAS**, SERVICE PROVIDER is in the business of providing general and special education consulting services, professional development, and placement services of licensed and qualified occupational therapists, physical therapists, speech pathologists, social workers, behavior therapists, translators, general and special educators and psychologists; and

**WHEREAS**, SERVICE PROVIDER warrants that CONSULTING, PLACEMENT and PROFESSIONAL DEVELOPMENT assignments and services will be performed on an as needed basis pursuant to agreed upon goals and objectives, and that for PLACEMENT purposes the SERVICE PROVIDER warrants that it will have reviewed the individualized education program ("IEP") of each pupil serviced by it, and represents that it will provide the level of services identified in the IEP to meet the needs of such children with handicapping conditions; and

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto mutually agree as follows:

1. **TERM OF AGREEMENT:** This Agreement shall be in effect for the period July 1, 2022 to June 30, 2023, unless terminated earlier, as set forth herein.

2. **SCOPE OF SERVICES:**

a. SERVICE PROVIDER shall provide services during the school year for those children covered by the terms of this Agreement. The services provided by the SERVICE PROVIDER shall be appropriate to the mental ability and physical condition of the children, and in accordance with the Commissioner's Regulations, currently approved methods and practices of the profession. SERVICE PROVIDER shall provide the following services at no additional charge unless otherwise indicated, consisting of, but not limited to, the following:

i. Services based on individual student IEPs;



- ii. The implementation of goals and objectives for the educational services provided as per each individual student’s IEP;
  - iii. The completion of progress reports regarding student achievement of objectives as per report card schedules;
  - iv. Provide the Committee on Special Education (CSE) with annual progress reports for each individual student receiving service to be reviewed at each student’s CSE meeting;
  - v. Attend all such CSE meetings, except that a fee shall be paid by the school district for such attendance as provided for in paragraph 3 below; and
  - vi. Complete evaluations as per the request of the Director of Special Education on an as needed basis, except that a fee shall be paid by the school district for such evaluations as provided for in paragraph 3 below.
- b. All services shall be provided in strict compliance with the student’s IEP.

3. **PAYMENT SCHEDULE & PROFESSIONAL SERVICE RATES:** In full consideration for the services to be rendered by SERVICE PROVIDER to SCHOOL DISTRICT for the term of this Agreement, SCHOOL DISTRICT agrees to pay SERVICE PROVIDER at the following rates:

**PLACEMENT SERVICES**

**Behavior Intervention Services**

60 Min Paraprofessional-School	\$35
60 Minute Health Aide-School	\$35
60 Min 2:1 Paraprofessional-School	\$50
60 Min Individual	\$95
60 Min Individual Counseling	\$105
60 Min Parent Train & Counseling	\$105
60 Min Case Supervision	\$125
60 Min BIS In District Consulting	\$130
60 Min BIS FBA/BIP	\$125
60 Min LBA/BCBA	\$150
60 Min PhD BIS	\$150
30 Min Group A-B-C Smart	\$100

**Social Work & Counseling**

60 Min Individual Social Work	\$90
60 Min Group Social Work	\$125
60 Min Individual-Home/Private	\$90
Social History Evaluation	\$200/\$250



**Psychology**

Evaluation (Mono/Bilingual)	\$550/\$650
Psychoed. Eval (Mono/Bilingual)	\$1050/\$1350
Social History Evaluation	\$200/\$250
School Psychologist	\$150 per hour/\$750 Per Day

**Home Instruction & Tutoring Individual Instruction**

60 Min Home Instruct General Education	\$70
60 Min Home Instruct Special Education	\$80
60 Min Home Tutoring General Education	\$70
60 Min Home Tutoring Special Education	\$80
60 Min Priv. School/Out of Dist. General Education	\$75
60 Min Priv. School/Out of Dist. Special Education	\$85
60 Min Extended Day/ After School Program	\$150
60 Min Home/School Certified Reading Specialist	\$125
60 Min Group Certified Reading Specialist	\$200
60 Min Education and Literacy Consulting	\$200
60 Min Home/School Educational Therapist	\$125
60 Min Group Educational Therapist	\$200

**Resource Room Individual & Group Instruction\***

60 Min Individual Special Education	\$80
60 Min Group/Class Instruct Special Education	\$125

\* Group = Up to Five Students

**Educational Evaluations & Screening**

Educational Evaluation – Monolingual	\$500
Educational Evaluation – Bilingual	\$650
Screening (Flat Rate)	\$75

**Nursing Services**

60 Min C.N.A	\$100
60 Min L.P.N	\$125
60 Min R.N	\$140

**Occupational Therapy**

30 Min Individual	\$45
30 Min Group (Flat Rate Per Group)	\$85
30 Min Individual (Home/Private)	\$65





Evaluation (Monolingual)	\$200
Evaluation (Bilingual)	\$250
Screening (Flat Rate)	\$55
30 Min OT Consultation	\$65
30 Min OT Programmatic Consulting	\$65
30 Min Group A-B-C Smart	\$80

**Physical Therapy**

30 Min Individual	\$55
30 Min Group (Flat Rate Per Group)	\$95
30 Min Individual (Home/Private)	\$75
Evaluation (Monolingual)	\$250
Evaluation (Bilingual)	\$300
30 Min PT Consultation	\$75
30 Min PT Programmatic Consulting	\$75
Screening (Flat Rate)	\$60

**Speech Language Therapy**

30 Min Individual	\$50
30 Min SLP Teletherapy	\$50
30 Min PROMPT Therapy	\$60
30 Min Group (Flat Rate Per Group)	\$80
30 Min Individual (Home/Private)	\$60
Evaluation Monolingual/Bilingual	\$300/\$400
Feeding Evaluation Monolingual/Bilingual	\$350/\$450
PROMPT Evaluation Monolingual/Bilingual	\$350/\$450
30 Min SLP Programmatic Consulting	\$65
Screening (Flat Rate)	\$100
30 Min Speech Feeding Therapy	\$60
30 Min SLP Consultation (Monolingual)	\$60
30 Min SLP Consultation (Bilingual)	\$75
30 Min Group A-B-C Smart	\$80

\* OT, PT & Speech Groups = Up to Five Students

**Augmentative/Alternative Communication & Assistive Technology**

60 Min AAC/AT Evaluation Services	\$125
60 Min AAC/AT Consulting & Train	\$150

**Translation/Interpreting Services\***

60 Min Spanish	\$50
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60 Min Creole	\$50
60 Min Cantonese/Mandarin	\$60
60 Min Most Other Languages	\$60
<i>*1 hour minimum on all Translation/Interpreting Services</i>	

**Additional Services**

60 Min Credit Recovery	\$125
60 Min Diversity Consulting	\$150
60 Min Job Coaching	\$125
60 Min Music Therapy	\$125
60 Min Legal Consulting	\$250
60 Min Transition & Planning	\$125

**CSE & Team Meetings**

Flat Rate CSE per Attendee	\$75
60 Min Team Meetings per Attendee	\$90

**EDUCATIONAL CONSULTING**

Educational Consulting rates are determined based on such factors as nature of consulting assignment, consultant availability, experience and expertise, scope of assignment, and other requirements. Budget proposals are determined on a case-by-case basis. Consulting rates are **\$250, \$200, \$150, \$125, \$75, \$50 and \$30** per 60 minutes plus any out of pocket expenses.\*

**(1) PROFESSIONAL DEVELOPMENT**

Professional Development, Training, Conference are determined based on such factors as nature of professional development assignment, presenter availability, experience and expertise, length and location of event, and other requirements. Professional Development

**Additional Services**

60 Credit Recovery	\$125
60 Min Diversity Consulting	\$150
60 Min Job Coaching	\$125
60 Min Music Therapy	\$125
60 Min Legal Consulting	\$250



Event proposals are determined on a case-by-case basis. Professional Development rates are **\$250, \$200, \$150, \$125, \$75, and \$30 per 60 minutes**, plus any out of pocket expenses.\*

\* Out of Pocket Expenses. The School District shall reimburse in full Blue Sea Educational Consulting for any out-of-pocket expenses incurred pursuant to any agreed upon consulting or professional development assignment provided the School District has approved any such expense in advance. Proof of any out-of-pocket expenses shall be furnished by Blue Sea Educational Consulting to the School District in a form compliant with School District requirements.

4. **INVOICE DUE ON MONTHLY BASIS**: SERVICE PROVIDER will submit an invoice for services rendered on a monthly basis, and payment to SERVICE PROVIDER shall be made within thirty (30) days from receipt of invoice from SERVICE PROVIDER. The invoice shall include time sheets and attendance, types of services rendered and fees payable and, if required by SCHOOL DISTRICT, shall identify the names of the students who received services. SCHOOL DISTRICT shall give SERVICE PROVIDER notice of any invoice dispute within twenty (20) days of its receipt and reserves the right to withhold payment pending the resolution of this dispute. Failure to dispute any invoice shall not be deemed as an acceptance and does not act as a waiver of SCHOOL DISTRICT's rights or prevent SCHOOL DISTRICT from availing itself of any remedy or course of action it has at law or in equity at a later date.

5. **INDEPENDENT CONTRACTOR**: All employees and independent contractors of SERVICE PROVIDER shall be deemed employees and independent contractors of SERVICE PROVIDER for all purposes and SERVICE PROVIDER alone shall be responsible for their work, personal conduct, direction, and compensation. SERVICE PROVIDER acknowledges that it will not hold itself, its officers, employees and/or agents out as employees of SCHOOL DISTRICT. SERVICE PROVIDER is retained by SCHOOL DISTRICT only for the purposes and to the extent set forth in this Agreement, and its relationship to SCHOOL DISTRICT shall, during the periods of its services hereunder, be that of an independent contractor. SERVICE PROVIDER shall not be considered as having employee status and shall not be entitled to participate in any of SCHOOL DISTRICT's workers' compensation, retirement, fringe benefits, unemployment insurance, liability insurance, disability insurance, or other similar employee benefit programs. Similarly, SERVICE PROVIDER, its officers, its employees and/or agents shall not be considered as having employee status for the purposes of any other rights, privileges or benefits derived from employment by SCHOOL DISTRICT. SERVICE PROVIDER agrees that this Agreement does not confer benefits of any nature whatsoever upon it other than payment for services provided herein. SERVICE PROVIDER shall not assert any claim for additional benefits of any nature, including, but not limited to, unemployment compensation benefits, by reason of the services to be performed pursuant to this Agreement. SERVICE PROVIDER shall not be entitled to assert any claim to entitlements pursuant to any collective bargaining agreement now or hereafter in effect between SCHOOL DISTRICT and its employees.



6. **EXPENSES OF SERVICE PROVIDER:** SERVICE PROVIDER shall be responsible for all costs and expenses incurred by SERVICE PROVIDER that are incident to the performance of services for SCHOOL DISTRICT, including, but not limited to, all tools, vehicles, or other equipment to be provided by SERVICE PROVIDER, all fees, fines, licenses, bonds or taxes required of or imposed against SERVICE PROVIDER and all other of SERVICE PROVIDER's costs of doing business. SCHOOL DISTRICT shall not be responsible for any expenses incurred by SERVICE PROVIDER in performing services for SCHOOL DISTRICT.

7. **INCOME TAX DESIGNATION AND INDEMNIFICATION:** SCHOOL DISTRICT shall not withhold from sums payable to SERVICE PROVIDER under this Agreement any amounts for Federal, State, or local taxes including Federal or State income taxes, employment taxes (including Social Security and Medicare taxes), and unemployment taxes. SERVICE PROVIDER agrees that any tax obligation of SERVICE PROVIDER arising from the payments made under this Agreement will be SERVICE PROVIDER's sole responsibility.

8. **RESPONSIBILITY FOR PAYMENT OF SERVICES:**

a. **PAYMENTS BY PARENTS/GRATUITIES.** No parent or guardian or any other person shall be required to make any payment for services on behalf of any child covered by this Agreement. SERVICE PROVIDER and its employees shall not share or accept any fee or gratuity from the student or student's family for service provided pursuant to this Agreement.

b. **STUDENT ABSENCES.** Should a student, individually or in a group, be absent or unable to attend a session and reasonable notice is given to the related service provider (the 'Provider'), then the School District shall NOT be responsible for payment of the fee associated with such session. Reasonable notice shall mean notice given to the provider at least 24 hours before a regularly scheduled session. Otherwise, where no such notice is given of the student's absence or unavailability to receive services, then the fee charged to the school district shall be that as provided for in the fee schedule contained in paragraph 3 of this agreement, and that session shall not be made up.

c. **PROVIDER ABSENCES.** Should a Provider be absent or unable to attend a session for any reason whatsoever, whether or not notice is given by such Provider, then the School District shall NOT be responsible for payment of any fee associated with such session, except that the provider may attempt to reschedule such services within a reasonable period of time of the missed date. If and when such services are subsequently rendered then the School District shall be responsible for payment of the fee associated with such service as provided for in Paragraph 3 of this agreement.

d. **PRIVATE SCHOOL.** In the case where the Provider renders service to a student in a Private School geographically located within the public school district that is party to this contract, then the Provider may render reimbursable services during those times when the private school is



open irrespective of whether the public school is otherwise open. The Provider may NOT render services when the Private School is closed.

e. **HOME—BASED SERVICES.** Where the Provider renders service to a student in a Home-Based setting, the Provider may render reimbursable services when the public school is open. The Provider may not render reimbursable services when the public school is closed except in the case where services rendered are Applied Behavior Analysis (ABA) services.

9. **SCHOOL DISTRICT’S RIGHT TO EXAMINE ACCOUNTING RECORDS:** SCHOOL DISTRICT shall have the right to examine any and all accounting records as they pertain to the services to be provided pursuant to this Agreement.

10. **LICENSE AND AUTHORIZATION:** SERVICE PROVIDER warrants that it is duly licensed and authorized to perform the services as described herein. SERVICE PROVIDER warrants that it will provide SCHOOL DISTRICT with licensed and qualified individuals. SERVICE PROVIDER further represents that such services shall be performed by individuals that are licensed under the laws of the State of New York, inclusive of the State Education Department Licensing requirements. SERVICE PROVIDER shall certify that all such individuals possess documentation evidencing such license qualifications as required by Federal, State or local statutes, rules, regulations and orders. Where applicable, SERVICE PROVIDER agrees to submit to SCHOOL DISTRICT proof of certification and/or professional licensing of all individuals providing services to Medicaid eligible school aged students, 5-21 years old, classified with a disability or suspected of having a disability for Medicaid reimbursement purposes. SERVICE PROVIDER further agrees to complete and submit, upon the request of SCHOOL DISTRICT, all forms to document the evaluation and services provided to Medicaid eligible school aged students, 5-21 years old, classified with a disability or suspected of having a disability for Medicaid reimbursement purposes. The individuals who are furnishing services hereunder shall be subject to the approval of SCHOOL DISTRICT. SCHOOL DISTRICT reserves the right to reject the placement of any individual.

11. **SAVE LEGISLATION:** SERVICE PROVIDER understands and agrees that it is responsible for complying with all applicable Federal, State, local statutes, rules, and ordinances including the New York State Safe Schools Against Violence in Education (SAVE) legislation. SERVICE PROVIDER shall adhere to all requirements and protocols as established by SCHOOL DISTRICT and the State Education Department of New York: to wit, but not limited to, fingerprinting. SERVICE PROVIDER further agrees and understands that all individuals providing services under this Agreement must be cleared by the New York State Education Department in accordance with the provisions contained in the SAVE Legislation prior to providing services to SCHOOL DISTRICT. SERVICE PROVIDER must submit a complete roster of names and social security numbers for all service providers who will be or may be providing services to the SCHOOL DISTRICT pursuant to this Agreement, for SCHOOL DISTRICT’s verification of such providers’ clearance status. In the event that SERVICE PROVIDER utilizes a provider who has not obtained



fingerprinting clearance with the State Education Department, SCHOOL DISTRICT shall have the right to immediately terminate the within contract.

12. **ATTENDANCE RECORDS:** SERVICE PROVIDER shall maintain monthly attendance records which shall be submitted to SCHOOL DISTRICT at the end of each month. If a child has been absent for a period of five (5) or more consecutive days, the attendance record shall indicate the reason for that absence.

13. **REPORTS OF STUDENTS:** SERVICE PROVIDER will obtain whatever releases or other legal documents that are necessary in order that SERVICE PROVIDER may render full and complete reports concerning the education and progress of the pupil(s) covered by the terms of this Agreement. The full responsibility for obtaining such clearances rests on SERVICE PROVIDER. Any failure to carry out such responsibility shall permit the Commissioner of Education to withdraw approval for the placement of such child in such program, in which event this Agreement shall be canceled forthwith in regard to such child for whom such releases are not submitted.

14. **REPORTS TO STATE:** SERVICE PROVIDER hereby agrees to furnish to the State all reports, audits, etc. required to make determinations as to eligibility under the provisions of the Regulations of the Commissioner of Education. Such materials shall be furnished at such times as are required by the State. Failure to submit required materials within ten (10) days of demand or as required by regulations shall constitute grounds for the SCHOOL DISTRICT to terminate this Agreement. SERVICE PROVIDER agrees to provide the State access to all relevant records which the State requires to determine either SERVICE PROVIDER's or SCHOOL DISTRICT's compliance with applicable Federal or State statutes or regulations with the effect of law, which regulate either the execution of the Agreement or the performance of obligations under the Agreement. SERVICE PROVIDER agrees to retain all materials and records relevant to the execution or performance of the Agreement in accordance with the provision of section 74.21 of volume 34 of the Code of Federal Regulations, but in no event less than six (6) years from the date of this Agreement.

15. **REPORTS TO SCHOOL DISTRICT:** SERVICE PROVIDER hereby agrees to furnish written reports of each pupil's educational progress to SCHOOL DISTRICT. SERVICE PROVIDER will render such reports to SCHOOL DISTRICT at any time that such reports are made to the parents of the pupil(s) covered by the terms of this Agreement, and will render such additional reports as may be required by the SCHOOL DISTRICT. At a minimum, all reports shall be furnished at the end of each semester, i.e., January 31st and June 30th. Any and all reports shall be furnished upon termination of the Agreement. SERVICE PROVIDER shall provide such additional information concerning the pupil's progress as may be required by SCHOOL DISTRICT.

16. **COMMISSIONER VISITS:** SERVICE PROVIDER shall be subject to the visitation of the Commissioner of Education or his/her designated representative(s).



17. **AUTHORIZATION OF SCHOOL DISTRICT:** SERVICE PROVIDER shall coordinate all instruction through the Pupil Personnel Services Office or any other authorized office of SCHOOL DISTRICT.

18. **SCHOOL GROUNDS & RULES:** It is understood and agreed that while on school grounds, SERVICE PROVIDER, its employees and/or agents shall obey all SCHOOL DISTRICT rules and regulations and must follow all reasonable directives of SCHOOL DISTRICT's administrators and employees.

19. **PHOTO IDENTIFICATION.:** SERVICE PROVIDER shall furnish each individual providing services hereunder with a photo identification badge to be worn at all times while the individual is on-site providing services to SCHOOL DISTRICT.

20. **STUDENT REMOVAL:** SCHOOL DISTRICT shall have the right to add or remove a child from the program/services at any time during the school year. Payment for children added or removed shall be prorated for the period of time services were provided to the child.

21. **STUDENT PRESCRIPTIONS:** Where applicable, SCHOOL DISTRICT shall obtain all medical prescriptions from the parent/guardian of students referred to SERVICE PROVIDER. SCHOOL DISTRICT shall forward copies of these prescriptions to SERVICE PROVIDER upon its written request.

22. **TERMINATION NOTICE:**

- a. This Agreement may be terminated by either party upon seven (7) days written notice to the other party. In the event of such termination, the parties will adjust the accounts due and payable to SERVICE PROVIDER for services rendered. SERVICE PROVIDER will not incur any additional expenses upon receipt of SCHOOL DISTRICT's notification that SERVICE PROVIDER's services have been terminated. Upon any such termination, the parties shall endeavor in an orderly manner to wind down activities hereunder. In the event of termination, all reports and services due to SCHOOL DISTRICT must be completed by SERVICE PROVIDER within thirty (30) days of the termination date.
- b. This Agreement may be terminated by the SCHOOL DISTRICT in the event of a material breach by SERVICE PROVIDER, upon three (3) days' written notice from the SCHOOL DISTRICT to SERVICE PROVIDER.

23. **CONFIDENTIALITY:** SERVICE PROVIDER, its employees, and/or agents agree that all information obtained in connection with the services provided for in this Agreement is deemed confidential information. SERVICE PROVIDER, its employees, and/or agents shall not use, publish, discuss, disclose or communicate the contents of such information, directly or indirectly with third parties, except as provided for in this Agreement. SERVICE PROVIDER further agrees that any information received by SERVICE PROVIDER, its employees, and/or



agents during the course of the services provided pursuant to this Agreement which concerns the personal, financial, or other affairs of SCHOOL DISTRICT, its employees, agents, clients, and/or students will be treated by SERVICE PROVIDER, its employees, and/or agents in full confidence and will not be revealed to any other persons, firms, or organizations. The parties further agree that the terms and conditions set forth herein shall survive the expiration and/or termination of this Agreement.

24. **HIPAA:** Both parties to this Agreement understand that they may receive and/or come into contact with *protected health information and protected student information* as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Family Educational Rights and Privacy Act (FERPA). The Parties hereby acknowledge their respective responsibilities pursuant to HIPAA and FERPA and, if necessary, shall execute a Business Associate Agreement in connection with such responsibilities.

25. **INDEMNIFICATION and HOLD HARMLESS PROVISION:** Both parties agrees that they shall defend, indemnify and hold each other and all their officers, directors, agents, independent contractors and employees harmless for all loss, costs, damages and expenses, including attorneys' fees, judgments, fines and amounts paid in settlement in connection with a terminated, pending or completed action, suit or proceeding arising from any negligent act or breach of duties taken or made by each party hereunder with respect to this Agreement.

26. **INSURANCE PROVISION:** SERVICE PROVIDER shall, at its sole expense, procure and maintain such policies of comprehensive general liability as shall be necessary to insure the School District as an additional insured, with the exception of workers' compensation and professional liability, against any claim for liability, personal injury, or death occasioned directly or indirectly by Service Provider in connection with the performance of Service Provider's responsibilities under this Agreement. Each such policy shall provide a minimum coverage of One Million (\$1,000,000) Dollars in the event of injury or death to one person, and Three Million (\$3,000,000) Dollars in the event of injury or death to more than one person as the result of the same incident. Service provider shall provide School District with a copy of said policy upon execution of this agreement.

27. **NOTICES:** Any notices to be given under this Agreement by either party to the other may be effected by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing. Notice shall be delivered or mailed to:

**Blue Sea Educational Consulting, Inc.**  
**25 Fenimore Lane**  
**Huntington, New York 11743**





**Attn: Nicholas Mortati, President**

SCHOOL DISTRICT: Valley Stream UFSD #24  
ADDRESS 75 Horton Avenue  
CITY/TOWN/ZIP CODE: Valley Stream, New York, 11581

28. **ASSIGNMENT OF AGREEMENT:** SERVICE PROVIDER shall not assign, transfer or convey any of its respective rights or obligations under this Agreement without the prior written consent of SCHOOL DISTRICT.

29. **DISCRIMINATION:** Services provided pursuant to this Agreement shall be provided without regard to race, creed, color, sex, sexual orientation, national origin, religion, age or disability.

30. **GOVERNING LAW:** This Agreement shall be governed by the laws of the State of New York.

31. **SEVERABILITY:** If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.

32. **NO PRIOR AGREEMENTS:** This Agreement constitutes the full and complete Agreement between SCHOOL DISTRICT and SERVICE PROVIDER, and supersedes all prior written and oral agreements, commitments or understandings with respect thereto. This Agreement may not be altered, changed, added to, deleted from or modified except through the mutual written consent of the parties.

33. **AGREEMENT CONSTRUCTION:** This Agreement has been arrived at mutually and is not to be construed against any party hereto as being the drafter hereof or causing the same to be drafted.

34. **REPRESENTATIONS AND WARRANTIES:** SERVICE PROVIDER represents and warrants: 1) that SERVICE PROVIDER has no obligations, legal or otherwise, inconsistent with the terms of this Agreement; 2) that the performance of the services to be provided in this Agreement does not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party; and 3) that SERVICE PROVIDER has not entered into or will not enter into any Agreement (whether oral or written) in conflict with this Agreement.

35. **AMENDMENT:** This Agreement may be amended only in writing and signed by the parties.

36. **NON-WAIVER:** No action or failure to act by SERVICE PROVIDER or SCHOOL DISTRICT shall constitute a waiver of a right or duty afforded them under the Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.



37. **AUTHORIZATION TO ENTER AGREEMENT:** The undersigned representative of SERVICE PROVIDER hereby represents and warrants that the undersigned is an officer, director, or agent of SERVICE PROVIDER with full legal rights, power and authority to enter into this Agreement on behalf of SERVICE PROVIDER and bind SERVICE PROVIDER with respect to the obligations enforceable against SERVICE PROVIDER in accordance with its terms. IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

38. **REFERRAL FEE:** The School District shall not enter into a separate agreement or employment with any Consultant and/or Provider working with the School District hereunder for the duration of this agreement plus an additional period of two years thereafter. Should the School District enter into any such agreement or employment then the School District agrees to pay Service Provider a referral fee of Five-Thousand (\$5,000) Dollars. School District and Service Provider agree that the fee set forth herein is reasonable and not a penalty, based on all the facts and circumstances at the time of entering into this Agreement, and with due regard to future expectations.

Date: \_\_\_\_\_ By: \_\_\_\_\_  
PRESIDENT  
BOARD OF EDUCATION,

\_\_\_\_\_ SCHOOL DISTRICT

Date: May 25, 2022 By: *Nicholas Mortati*  
NICHOLAS MORTATI, PRESIDENT  
BLUE SEA EDUCATIONAL CONSULTING, INC.



## ADDENDUM

### **Blue Sea Data Security & Privacy Plan**

Blue Sea Educational Consulting is committed to protecting the privacy and security of each and every student's personally identifiable information and data. Employees and subcontractors of Blue Sea should be aware of policies and procedures, and Parents' Bill of Rights for Data Privacy and Security currently in effect for client school districts for which Blue Sea provides educational services. Blue Sea employees who will receive personally identifiable information from student records shall receive periodic training to ensure compliance with federal and state privacy laws, and overall compliance with this Data Security and Privacy Plan. For purposes of this plan "District Data" means all information obtained by Blue Sea from a client school district in connection with services provided by Blue Sea pursuant to an agreement by and between Blue Sea and a client school district. The term "District Data" does not include any information made publically known by a client school district.

1. District Data received by Blue Sea will be used only to perform Blue Sea's obligations pursuant to a professional services agreement and for no other purposes.
2. Blue Sea will store and process District Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure District Data from unauthorized access, disclosure, alteration and use. Blue Sea will use industry-standard and up-to-date security tools and technologies such as anti-virus protections encryption, firewalls, password protection and intrusion detection methods in providing services pursuant to a professional services agreement. Blue Sea will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.
3. Blue Sea will only share District Data with entities or persons authorized by the professional services agreement. To the extent that District Data will be shared by Blue Sea with other authorized entities or persons not employed by Blue Sea, then Blue Sea will ensure those persons or entities will be required to agree in writing that it/they will comply with all terms of this and all related agreements relating to confidentiality of records and data security and privacy.
4. Upon termination of this agreement for any reason, Blue Sea, as directed by a client school district in writing, agrees to securely destroy (take actions that render data written on physical (e.g., hard copy) or electronic media unrecoverable by both ordinary and extraordinary means, or return all District Data received by Blue Sea as soon as reasonably possible.



5. Pursuant to New York Education Law §2-d Blue Sea will store and protect district data by a combination of storage/security methods including but not limited to:
  - a) Storage of Electronic Data: Blue Sea's Operating System ("BOS") as an application is authored in enterprise level, Microsoft ASP.NET 4.5.1 server-side programming languages, leveraging HTML5/CSS3 for presentation on desktop/mobile/responsive platforms. Webserver is hosted at top tier rack host, in a secure NOC, in Dallas, TX. Data is stored within a MySQL/MariaDB v5 database, hosted on an enterprise cloud rack, with redundant backup, in a secure NOC, in Dallas TX. Communication between server and client is encrypted with SSL (Secure Socket Layer), with 256bit AES encryption. All sensitive data is accessible strictly to users behind user account login credentials, leveraging Microsoft ASP.NET authentication, with strong password schemas.
  - b) Storage of Non-Electronic Data: Files are stored in locked filing cabinets in a secure physical location;
  - c) Employee Security Measures: employees are required to adhere to company policies and procedures that protect the security and privacy of personally identifiable student data. These policies and procedures include periodic training, coaching and monitoring. Employees sign confidentiality agreements with respect to maintaining confidential records that are in full force and affect during and upon an employee's separation from employment from Blue Sea;
  - d) Account Management & Access Control: Employees are required to maintain confidential passwords and unique user identifications. Passwords are regularly and frequently updated. Blue Sea's Operating System provides for automatic termination of sessions that provide access to confidential information.
  - e) Physical Security Measures: Confidential information is maintained in secured areas within the facilities of Blue Sea, and visitors are excluded from these same areas. These areas are secured by lock and key, and electronic alarm system.
6. Student data will be used for the exclusive purpose of providing educational/related services and/or evaluations to the student as per school district request.
7. Blue Sea will ensure that employees, contractors, persons or entities with whom it shares student data will abide by data protection and security requirements.
8. Upon expiration of the agreement between Blue Sea and a client school district, and Blue Sea and a subcontractor, student data will be saved and maintained in a secure format



for a period of seven (7) years, or a statutory required mandated minimum period of time, whichever is longer.

9. The parent or guardian, student or other individual may challenge the accuracy of the data received by Blue Sea by following applicable law (e.g., Family Educational Rights and Privacy Act), employment agreements, and policies, rules and regulations. If Blue Sea receives a challenge to the accuracy of data from a parent or guardian, student, or other individual, then Blue Sea will notify the client school district in writing. Blue Sea will not amend any data without a written request from the client school district. Complaints pertaining to the State Education Department or one of its third party vendors should be directed in writing to the Chief Privacy Officer, New York state Education Department, 89 Washington Avenue, Albany, NY 12234, or email to [CPO@mail.nysed.gov](mailto:CPO@mail.nysed.gov). The complain process is under development and will be established through regulations to be proposed by the State Education Department's Chief Privacy Officer.
10. A student's personally identifiable information shall not be sold or released for any commercial purposes.
11. A complete list of all student data elements collected by the State Education Department is available for public review at <http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx>. The State Education Department's Chief Privacy Officer will develop additional elements for this Parents' Bill of Rights, which will be prescribed in Regulations of the Commissioner of and updated by Blue Sea accordingly.
12. Upon the adoption of regulations and guidance from the State Education Department, as required by Education Law §2-d(3) and §2-d(5)(a-b), if a client school district enters into a contract with Blue Sea in which student, teacher, or principal data is shared with, supplemental information for each such contract will be appended to this Parents' Bill of Rights.
13. Individuals may access the State Education Department's Parents' Bill of Rights at: <http://www.p12.nysed.gov/docs/parents-bill-of-rights.pdf>.

Acknowledged by: Nicholas Mortati Date: May 25, 2022

Name/Title: Nicholas Mortati, President

AGREEMENT

THIS AGREEMENT made \_\_\_\_ day of \_\_\_\_\_ 2022 by and between VALLEY STREAM UNION FREE SCHOOL DISTRICT 24 (hereinafter referred to as the "DISTRICT"), as the party of the first part, having principal place of business located at 75 Horton Avenue, Valley Stream, New York 11581, and KIDZ EDUCATIONAL SERVICES SLP, OT, PT, LMSW, PSYCHOLOGY, AUDIOLOGY, PLLC (hereinafter referred to as "SERVICE PROVIDER"), as the party of the second part, having principal place of business for purposes of this Agreement at 1400 Old Country Road, Suite C103N, Westbury, New York 11590.

WITNESSETH:

**WHEREAS**, SCHOOL DISTRICT is authorized by law to contract with independent contractors for providing related services; and

**WHEREAS**, SERVICE PROVIDER is in the business of providing related services; and

**WHEREAS**, SCHOOL DISTRICT desires that SERVICE PROVIDER provide related services to designated students pursuant to the Individualized Education Program(s) ("IEP") developed for the student(s) by the CSE; and

**WHEREAS**, SERVICE PROVIDER warrants that it has reviewed the individualized education program ("IEP") and/ or the 504 accommodation plan of each pupil serviced by it, and represents that it will provide the level of services identified in the IEP to meet the needs of such children with handicapping conditions; and

**WHEREAS**, SERVICE PROVIDER is ready, willing, and able to provide services to SCHOOL DISTRICT;

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto mutually agree as follows:

1. TERM OF AGREEMENT: Agreement shall be in effect for the period July 1, 2022 to June 30, 2023, unless terminated earlier, as set forth herein.
2. SCOPE OF SERVICES: SERVICE PROVIDER shall provide the following services, consisting of, but not limited to the following:
  - a. Speech and Language Therapy
  - b. Occupational Therapy
  - c. Physical Therapy
  - d. Vision Services
  - e. Orientation and Mobility Services

- f. Special Education Services (Resource Room, Consultant Teacher)
- g. Teacher of the Deaf
- h. Assistive Technology Consultation
- i. Evaluations (including written report)
- j. Translation Services
- k. ABA Services as follows:
  - i. **Consultation Services** based on student IEPs. Consultations shall include, but not be Limited to, the following areas:
    - 1. Functional Behavior Assessments;
    - 2. Behavior Intervention Plans;
    - 3. Behavior Modification Systems;
    - 4. Curriculum Modification;
    - 5. Material Modification;
    - 6. Evaluations;
    - 7. Staff Development; and
    - 8. SERVICE PROVIDER's role with respect to the above-mentioned services shall be to provide model for these services to classroom staff and to initiate the model's implementation, making adjustments where necessary. SERVICE PROVIDER shall provide quarterly narrative and written reports to SCHOOL DISTRICT.
  - ii. **Home Program Services** as determined by CSE. Such services shall include, but not be limited to, the areas of.
    - 1. Discrete Trial Teaching;
    - 2. Independent Living Skills;
    - 3. Implementation of Behavior Plans;
    - 4. Incidental Teaching Situations;
    - 5. Verbal Behavior Techniques;
    - 6. Generalization Programming; and
    - 7. SERVICE PROVIDER's role with respect to the above-mentioned services shall be to provide complete and accurate program data as required by the program and to implement the program as modified by the Supervisor. SERVICE PROVIDER's role shall not include the modification of programs. In addition, all home services require the presence of a parent or guardian at the time of service implementation. Such services shall not be provided without the presence of such individuals.

iii. **Supervision of Home Staff** provided by a certified special education teacher specializing in ABA as designated by the CSE. Supervisory visits shall include, but not be limited to:

1. Functional Behavior Assessments;
2. Behavior Intervention Plans;
3. Behavior Modification Systems;
4. Activities of Daily Living Protocols;
5. Discrete Trial teaching program creation and modification;
6. Curriculum Modification;
7. Material Modification;
8. Evaluations;
9. Teaching parents how to implement programs; and
10. SERVICE PROVIDER's role with respect to the above-mentioned services shall be to provide the models for these services to the home program families and staff, initiate the model's implementation, and make adjustments where necessary. SERVICE PROVIDER's shall provide quarterly narrative and written reports to SCHOOL DISTRICT.

iv. **Parent Training Services** for families provided by a certified special education teacher or certified social worker specializing in Autism Spectrum Disorders when requested by CSE. These parental training services, include, but shall not be Limited to:

1. Activities of Daily Living Protocols;
2. Social Skill Protocols;
3. Generalization Skills; and
4. Behavior Protocols.

1. SERVICE PROVIDER shall provide the services above during the school year for those children covered by the terms of this Agreement. The services provided by SERVICE PROVIDER shall be appropriate to the mental ability and physical condition of the children, and in accordance with the Commissioner's Regulations, currently approved methods and practices of the profession. In addition, SERVICE PROVIDER shall provide the following services unless otherwise indicated, consisting of, but not limited to, the following:

- i. The completion of progress reports regarding student achievement of objectives as per report card schedules;
- ii. Provide the Committee on Special Education ("CSE") with annual progress reports for each individual student receiving service to be reviewed at each student's CSE meeting;

m. It is understood and agreed that all services provided pursuant to this Agreement shall be in coordination with classroom teachers of such students and/or at the direction of the CSE.



- n. All services shall be provided in strict compliance with the student's IEP.
3. PAYMENT SCHEDULE: In full consideration for the services to be rendered by SERVICE PROVIDER to SCHOOL DISTRICT for the term of this Agreement, SCHOOL DISTRICT agrees to pay SERVICE PROVIDER the rates set forth in the attached Addendum 22-23 and Appendix A, which are made part hereof.
  4. INVOICE DUE ON MONTHLY BASIS: SERVICE PROVIDER will submit an invoice for services rendered on a monthly basis, and payment to SERVICE PROVIDER shall be made within thirty (30) days from receipt of invoice from SERVICE PROVIDER. The invoice shall include time sheets and attendance, types of services rendered and fees payable and, if required by SCHOOL DISTRICT, shall identify the names of the students who received services. SCHOOL DISTRICT shall give SERVICE PROVIDER notice of any invoice dispute within twenty (20) days of its receipt and reserves the right to withhold payment pending the resolution of this dispute. Failure to dispute any invoice shall not be deemed as an acceptance and does not act as a waiver of SCHOOL DISTRICT's rights or prevent SCHOOL DISTRICT from availing itself of any remedy or course of action it has at law or in equity at a later date.
  5. INDEPENDENT CONTRACTOR: All employees of SERVICE PROVIDER shall be deemed employees of SERVICE PROVIDER for all purposes and SERVICE PROVIDER alone shall be responsible for their work, personal conduct, direction, and compensation. SERVICE PROVIDER acknowledges that it will not hold itself, its officers, employees and/or agents out as employees of SCHOOL DISTRICT. SERVICE PROVIDER is retained by SCHOOL DISTRICT only for the purposes and to the extent set forth in this Agreement, and its relationship to SCHOOL DISTRICT shall, during the periods of its services hereunder, be that of an independent contractor. SERVICE PROVIDER shall not be considered as having employee status and shall not be entitled to participate in any of SCHOOL DISTRICT's workers' compensation, retirement, fringe benefits, unemployment insurance, liability insurance, disability insurance, or other similar employee benefit programs. Similarly, SERVICE PROVIDER, its officers, its employees and/ or agents shall not be considered as having employee status for the purposes of any other rights, privileges or benefits derived from employment by SCHOOL DISTRICT. SERVICE PROVIDER agrees that this Agreement does not confer benefits of any nature whatsoever upon it other than payment for services provided herein. SERVICE PROVIDER shall not assert any claim for additional benefits of any nature, including, but not limited to, unemployment compensation benefits, by reason of the services to be performed pursuant to this Agreement. SERVICE PROVIDER shall not be entitled to assert any claim to entitlements pursuant to any collective bargaining agreement now or hereafter in effect between SCHOOL DISTRICT and its employees.
  6. EXPENSES OF SERVICE PROVIDER: SERVICE PROVIDER shall be responsible for all costs and expenses incurred by SERVICE PROVIDER that are incident to the performance of services for SCHOOL DISTRICT, including, but not limited to, all tools, vehicles, or other equipment to be provided by SERVICE PROVIDER, all fees, fines, licenses, bonds or taxes required of or imposed against SERVICE PROVIDER and all other of SERVICE PROVIDER's costs of doing business. SCHOOL DISTRICT shall not be responsible for any expenses incurred by SERVICE PROVIDER in performing services for SCHOOL DISTRICT.

7. INCOME TAX DESIGNATION AND INDENNIFICATION: SCHOOL DISTRICT shall not withhold from sums payable to SERVICE PROVIDER under this Agreement any amounts for Federal, State, or local taxes including Federal or State income taxes, employment taxes (including Social Security and Medicare taxes), and unemployment taxes. SERVICE PROVIDER agrees that any tax obligation of SERVICE PROVIDER arising from the payments made under this Agreement will be SERVICE PROVIDER's sole responsibility. SERVICE PROVIDER will indemnify SCHOOL DISTRICT for any tax liability, interest, and/or penalties imposed upon SCHOOL DISTRICT by any taxing authority based upon SCHOOL DISTRICT's failure to withhold any amount from the payments for tax purposes.
8. RESPONSIBILITY FOR PAYMENT OF SERVICES:
  - a. No parent or guardian or any other person shall be required to make any payment for services on behalf of any child covered by this Agreement SERVICE PROVIDER and its employees shall not share or accept any fee or gratuity from the student or student's family for services provided pursuant to this Agreement.
  - b. SCHOOL DISTRICT shall not incur any charges should SERVICE PROVIDER, its employees, and/or agents fail to attend a session for any reason whatsoever. Should an individual student be absent or unable to attend a session, for any reason whatsoever, the SCHOOL DISTRICT shall not be responsible for payment of the fee(s) associated with such services. SCHOOL DISTRICT will endeavor to notify SERVICE PROVIDER of a student's absence whenever practicable.
9. SCHOOL DISTRICT'S RIGHT TO EXAMINE ACCOUNTING RECORDS: SCHOOL DISTRICT shall have the right to examine any and all accounting records as they pertain to the services to be provided pursuant to this Agreement.
10. LICENSE AND AUTHORIZATION: SERVICE PROVIDER warrants that it is duly licensed and authorized to perform the services as described herein. SERVICE PROVIDER warrants that it will provide SCHOOL DISTRICT with licensed and qualified individuals. SERVICE PROVIDER further represents that such services shall be performed by individuals that are licensed under the laws of the State of New York, inclusive of the State Education Department Licensing requirements. SERVICE PROVIDER shall certify that all such individuals possess documentation evidencing such license qualifications as required by Federal, State or local statutes, rules, regulations and orders. Where applicable, SERVICE PROVIDER agrees to submit to SCHOOL DISTRICT proof of certification and/or professional licensing of all individuals providing services to Medicaid eligible school aged students, 5-21 years old, classified with a disability or suspected of having a disability for Medicaid reimbursement purposes. SERVICE PROVIDER further agrees to complete and submit, upon the request of SCHOOL DISTRICT, all forms to document the evaluation and services provided to Medicaid eligible school aged students, 5-21 years old, classified with a disability or suspected of having a disability for Medicaid reimbursement purposes. The individuals who are furnishing services hereunder shall be subject to the approval of SCHOOL DISTRICT. SCHOOL DISTRICT reserves the right to reject the placement of any individual.

11. COMPLIANCE WITH LAW: SERVICE PROVIDER understands and agrees that it is responsible for complying with all applicable Federal, State, local statutes, rules, and ordinances including the New York State Safe Schools Against Violence in Education (SAVE) legislation. SERVICE PROVIDER shall adhere to all requirements and protocols as established by SCHOOL DISTRICT and the State Education Department of New York: to wit, but not limited to, fingerprinting. SERVICE PROVIDER further agrees and understands that all individuals providing services under this Agreement must be cleared by the New York State Education Department in accordance with the provisions contained in the SAVE Legislation prior to providing services to SCHOOL DISTRICT. SERVICE PROVIDER must submit a complete roster of names and social security numbers for all individuals who will be or may be providing services to the SCHOOL DISTRICT pursuant to Agreement, for SCHOOL DISTRICT's verification of such individual's clearance status. In the event that SERVICE PROVIDER utilizes an individual who has not obtained fingerprinting clearance with the State Education Department, SCHOOL DISTRICT shall have the right to immediately terminate the within contract.
12. REPORTS OF STUDENTS: SERVICE PROVIDER will obtain whatever releases or other legal documents that are necessary in order that SERVICE PROVIDER may render full and complete reports concerning the progress of the pupil(s) covered by the terms of this Agreement. The full responsibility for obtaining such clearances rests on SERVICE PROVIDER. Any failure to carry out such responsibility shall permit the Commissioner of Education to withdraw approval for the placement of such child in such program, in which event this Agreement shall be canceled forthwith in regard to such child for whom such releases are not submitted.
13. REPORTS TO SCHOOL DISTRICT: SERVICE PROVIDER hereby agrees to furnish written reports of each pupil's progress to SCHOOL DISTRICT. SERVICE PROVIDER will render such reports to SCHOOL DISTRICT at any time that such reports are made to the parents of the pupil(s) covered by the terms of this Agreement, and will render such additional reports as may be required by the SCHOOL DISTRICT. At a minimum, all reports shall be furnished at the end of each semester, i.e., January 31st and June 30th. Any and all reports shall be furnished upon termination of the Agreement. SERVICE PROVIDER shall provide such additional information concerning the pupil's progress as may be required by SCHOOL DISTRICT.
14. COMMISSIONER VISITS: SERVICE PROVIDER shall be subject to the visitation of the Commissioner of Education or his/her designated representative(s).
15. AUTHORIZATION OF SCHOOL DISTRICT: SERVICE PROVIDER shall coordinate all instruction through the Pupil Personnel Services Office or any other authorized office of SCHOOL DISTRICT.
16. SCHOOL GROUNDS & RULES: It is understood and agreed that while on school grounds, SERVICE PROVIDER, its employees and/or agents shall obey SCHOOL DISTRICT rules and regulations and must follow all reasonable directives of SCHOOL DISTRICT's administrators and employees.

17. PHOTO I.D.: SERVICE PROVIDER shall furnish each individual providing services hereunder with a photo identification badge to be worn at all times while the individual is onsite providing services to SCHOOL DISTRICT.
18. STUDENT REMOVAL: SCHOOL DISTRICT shall have the right to add or remove a child from the program/ services at any time during the school year. Payment for children added or removed shall be prorated for the period of time services were provided to the child.
19. STUDENT PRESCRIPTIONS: Where applicable, SCHOOL DISTRICT shall obtain all medical prescriptions from the parent/guardian of referred to SERVICE PROVIDER. SCHOOL DISTRICT shall forward copies of these prescriptions to SERVICE PROVIDER upon its written request.
20. ATTENDANCE RECORDS: SERVICE PROVIDER shall maintain monthly attendance records which shall be submitted to SCHOOL DISTRICT at the end of each month. If a child has been absent for a period of five (5) or more consecutive days, the attendance record shall indicate the reason for that absence.
21. TERMINATION:
  - a. This Agreement may be terminated by the SCHOOL DISTRICT upon seven (7) days' written notice to the SERVICE PROVIDER. In the event of such termination, the parties will adjust the accounts due and payable to SERVICE PROVIDER for services rendered. SERVICE PROVIDER will not incur any additional expenses upon receipt of SCHOOL DISTRICT's notification that SERVICE PROVIDER's services have been terminated. Upon any such termination, the parties shall endeavor in an orderly manner to wind down activities hereunder. In the event of termination, all and services due to SCHOOL DISTRICT must be completed by SERVICE PROVIDER within thirty (30) days of the termination date.
  - b. This Agreement may be terminated by the SCHOOL DISTRICT in the event of a material breach by the SERVICE PROVIDER, upon three (3) days' written notice from the SCHOOL DISTRICT to SERVICE PROVIDER.
22. NON-EXCLUSION FROM PROGRAM PARTICIPATION: SERVICE PROVIDER represents and warrants that it, its employees and/or its contractors are not excluded from participation, and is not otherwise ineligible to participate, in a "federal health care program" as defined in 42 U.S.C. S 1320 a-7b(f) or in any other government payment program.

In the event SERVICE PROVIDER is excluded from participation or becomes otherwise ineligible to participate in any such program during the term of the within agreement, SERVICE PROVIDER will notify the SCHOOL DISTRICT in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to SERVICE PROVIDER, the SCHOOL DISTRICT reserves the right to immediately cease contracting with SERVICE PROVIDER.

SERVICE PROVIDER further represents and warrants it will, at a minimum, check monthly all of its employees and contractors against:

- The General Services Administration's Federal Excluded Party List System (or any successor system),
- The United States Department of Health and Human Services Office of the Inspector General's Lists of Excluded Individuals and Entities or any successor list, and
- The New York State Department of Health's Office of the Medicaid Inspector General's List of Restricted, Terminated or Excluded Individuals or Entities.

In the event an excluded party is discovered, SERVICE PROVIDER will notify the SCHOOL DISTRICT in writing within three (3) days after such event.

Any employee or contractor found to be ineligible to participate in any such program during the term of this Agreement will immediately cease services and be replaced with an eligible Service Provider.

23. CONFIDENTIALITY and DATA SECURITY AND PRIVACY STANDARDS:

- a. SERVICE PROVIDER, its employees, and/or agents agree that all information obtained in connection with the services provided for in this Agreement is deemed confidential information. SERVICE PROVIDER, its employees, and/or agents shall not use, publish, discuss, disclose or communicate the contents of such information, directly or indirectly with third parties, except as provided for in this Agreement. SERVICE PROVIDER further agrees that any information received by SERVICE PROVIDER, its employees, and/or agents during the course of the services provided pursuant to this Agreement which concerns the personal, financial, or other affairs of SCHOOL DISTRICT, its employees, agents, clients, and/or students will be treated by SERVICE PROVIDER, its employees, and/or agents in full confidence and will not be revealed to any other persons, firms, or organizations.
- b. SERVICE PROVIDER acknowledges that it may receive and/or come into contact with personally identifiable information, as defined by New York Education Law Section 2-d, from records maintained by SCHOOL DISTRICT that directly relate to a student(s) (hereinafter referred to as "education record"). SERVICE PROVIDER understands and acknowledges that it shall have in place sufficient protections and internal controls to ensure that information is safeguarded in accordance with applicable laws and regulations, and understands and agrees that it is responsible for complying with state data security and privacy standards for all personally identifiable information from education records, and it shall:
  - i. limit internal access to education records to those individuals that are determined to have legitimate educational interests;
  - ii. not use the education records for any purposes other than those explicitly authorized in this Agreement;

- iii. maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of education records in its custody; and
  - iv. use encryption technology to protect data while in motion or custody from unauthorized disclosure using a technology or methodology specified by the secretary of the United States Department of Health and Human Services in guidance issued under Section 13402(H)(2) of Public Law 111-5 and the National Institute of Standards and Technology Cyber Security Framework Version 1.1.
- c. SERVICE PROVIDER further understands and agrees that it is responsible for submitting a data security and privacy plan to SCHOOL DISTRICT prior to the start of the term of this Agreement. Such plan shall outline how all state, federal and local data security and privacy contract requirements will be implemented over the life of the contract consistent with SCHOOL DISTRICT's policy on data security and privacy, as adopted. Further, such plan shall include a signed copy of SCHOOL DISTRICT's Bill of Rights and the training requirement established by SERVICE PROVIDER for all employees who will receive personally identifiable information from student records (hereinafter referred to as "student data").
- d. SERVICE PROVIDER further understands that as part of SCHOOL DISTRICT's obligations under New York Education Law Section 2-d, SERVICE PROVIDER is responsible for providing SCHOOL DISTRICT with supplemental information to be included in SCHOOL DISTRICT's Parents' Bill of Rights. Such supplemental information shall be provided to SCHOOL DISTRICT within ten (10) days of execution of this Agreement and shall include:
- i. the exclusive purposes for which the student data will be used;
  - ii. how SERVICE PROVIDER will ensure that subcontractors, persons or entities that SERVICE PROVIDER will share the student data with, if any, will abide by data protection and security requirements;
  - iii. that student data will be returned or destroyed upon expiration of the Agreement;
  - iv. if and how a parent, student, or eligible student may challenge the accuracy of the student data that is collected; and
  - v. where the student data will be stored (described in such a manner as to protect data security), and security protections taken to ensure such data will be protected, including whether such will be encrypted.
- e. In the event of a breach of the within confidentiality and data security and privacy standards provision and unauthorized release of student data, SERVICE PROVIDER shall immediately notify SCHOOL DISTRICT and advise it as to the nature of the

breach and steps SERVICE PROVIDER has taken to minimize said breach. Said notification must be made within seven (7) days of the breach. In the case of required notification to a parent or eligible student, SERVICE PROVIDER shall promptly reimburse SCHOOL DISTRICT for the full cost of such notification.

- f. In the event that SERVICE PROVIDER fails to notify SCHOOL DISTRICT of a breach, said failure shall be punishable by a civil penalty of the greater of \$5,000 or up to \$20 per student, teacher and principal whose data was released, provided that the maximum penalty imposed shall not exceed the maximum penalty imposed under General Business Law, section 899-aa(6)(a).
- g. Except as set forth in paragraph (f) above, in the event SERVICE PROVIDER violates Education Law 2-d, said violation shall be punishable by a civil penalty of up to \$1,000. A second violation involving the same data shall be punishable by a civil penalty of up to \$5,000. Any subsequent violation involving the same data shall be punishable by a civil penalty of up to \$10,000. Each violation shall be considered a separate violation for purposes of civil penalties and the total penalty shall not exceed the maximum penalty imposed under General Business Law section 899-aa(6)(a).
- h. SERVICE PROVIDER shall indemnify and hold SCHOOL DISTRICT harmless from any claims arising from its breach of the within confidentiality and data security and privacy standards provision.

Upon termination of this Agreement, SERVICE PROVIDER shall return or destroy all confidential information obtained in connection with the services provided herein and/or student data. Destruction of the confidential information and/or student data shall be accomplished utilizing an approved method of confidential destruction, including, shredding, burning or certified/witnessed destruction of physical materials and verified erasure of magnetic media using approved methods of electronic file destruction. The parties further agree that the terms and conditions set forth herein shall survive the expiration and/or termination of this Agreement

- 24. HIPAA and FERPA ACKNOWLEDGMENT: Both parties to this Agreement understand that they may receive and/or come into contact with protected health information as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and information protected by the Family Educational Rights and Privacy Act ("FERPA"). The parties hereby acknowledge their respective responsibilities pursuant to HIPAA and, if necessary, shall execute a Business Associate Agreement in connection with such responsibilities.
- 25. HIPAA COMPLIANCE:
  - a. Definitions: Terms used, but not otherwise defined in this Agreement, shall have the same meaning as those terms in 45 C.F.R. sections 160.103 and 164.501.
    - i. Business Associate. "Business Associate" shall mean SCHOOL DISTRICT.
    - ii. Covered Entity. "Covered Entity" shall mean SERVICE PROVIDER.

- iii. De-identify/De-identified. "De-identify/ De-identified" means to remove, encode, encrypt, or otherwise eliminate or conceal data that identifies an individual, or modifies information so that there is no reasonable basis to believe that the information can be used to identify an individual.
- iv. Designated Record Set. "Designated Record Set" shall mean the enrollment, payment, claims adjudication and case or medical management record maintained by or for a health plan.
- v. Disclose. The release, transfer or provision of access to PHI, whether oral or recorded in any form or medium.
- vi. Disclosing Party. "Disclosing Party" means the party that is disclosing information to another party pursuant to this Agreement
- vii. HHS. "HHS" shall mean the United States Department of Health and Human Services.
- viii. HIPAA. "HIPAA" shall mean Title II, subtitle F ("Administrative Simplification") of the Health and Insurance Portability and Accountability Act of 1996, Pub. L. 104-191 (Aug. 21, 1996), enacting sections 1171-1179 of the Social Security Act, as well as implementing regulations adopted by HHS pursuant to HIPAA.
- ix. Identifying Characteristic. Includes, but is not limited to, all of the following, as well as any other unique information: name, address; names of relatives; name of employers; all elements of dates, including birth date, admission date, discharge date, etc.; telephone numbers; fax numbers; electronic mail address; social security number; medical record number; Medicaid and Medicare numbers health plan beneficiary number; account number; certificate/ license number; serial number of a vehicle or other device; internet URL; internet protocol ("IP") address, biometric identifiers, including voice prints and photographic images.
- x. Individual. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. section 164.502(g).
- xi. Minimum Necessary Information. "Minimum Necessary Information" means (i) in the case of routine and recurring types of disclosures, the set of data or records which the disclosing party's policies and procedures have established as reasonably necessary to achieve the purpose of such disclosures; and (ii) in the case of non-routine and non-recurring disclosures, the set of data or records which the Disclosing Party determines is reasonably necessary to accomplish the purpose of the disclosure, upon review of each disclosure according to criteria developed by the Disclosing Party; provided that in the case of disclosure (A) to a Covered Entity, (B) to a professional for purposes of providing professional services to the Disclosing Party, or (C) to a public official for disclosures which are permitted by law without Individual consent, the Minimum Necessary Information shall be the set of data or records requested by that party, upon



the party's reasonable representation that the request is for the minimum necessary given the purpose of disclosure(s).

- xii. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
  - xiii. Protected Health Information. "Protected Health Information" or "PHI" means any information which identifies or could reasonably be believed to identify an individual, which in any way concerns that individual's health status, healthcare, or payments for his or her healthcare, or which a party is otherwise legally required to protect under an information privacy and protection law applicable to that party, and includes as well any information derived by the processing of such information which is not de-identified with respect to any individual who is the subject of the information, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
  - xiv. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
  - xv. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
  - xvi. Treatment, Payment, and Healthcare Operations. "Treatment, Payment and Healthcare Operations" shall have the same meaning as in 45 CFR § 164.501.
  - xvii. Use. The sharing, employment, application, utilization, examination, or analysis, in any form or medium, of information within the Contractor organization.
- b. Obligations of SCHOOL DISTRICT:
- i. SCHOOL DISTRICT agrees to disclose PHI to SERVICE PROVIDER upon its own volition, upon SERVICE PROVIDER's request, or upon the request of a third party if such disclosure is permissible by law, so that SERVICE PROVIDER may provide the agreed to services to or on behalf of SCHOOL DISTRICT, unless SCHOOL DISTRICT otherwise objects to the disclosure, or SERVICE PROVIDER is no longer providing the services to SCHOOL DISTRICT.
  - ii. SCHOOL DISTRICT shall not disclose and shall ensure that its directors, officers, employees, contractors and agents do not use PHI received from SERVICE PROVIDER in any manner that would constitute a violation of the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164 ("Privacy Standards") if used by SERVICE PROVIDER, except that SCHOOL DISTRICT may use PHI (a) for SCHOOL DISTRICT's proper management and administrative services, or (b) to carry out the legal responsibilities of SCHOOL DISTRICT.

- iii. SCHOOL DISTRICT shall not disclose and shall ensure that its directors, officers, employees, contractors, and agents do not disclose PHI received from SERVICE PROVIDER in any manner that would constitute a violation of the Privacy Standards if disclosed by SERVICE PROVIDER, except that SCHOOL DISTRICT may disclose PHI in a manner permitted pursuant to this Agreement or as required by law. To the extent SCHOOL DISTRICT discloses PHI to a third party, SCHOOL DISTRICT must obtain, prior to making any such disclosure: (a) reasonable assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement, and only disclosed as Required by Law or for the purposes for which it was disclosed to such third party; and (b) an agreement for such third party to immediately notify SCHOOL DISTRICT of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- iv. SCHOOL DISTRICT agrees that it will implement the necessary safeguards required by law to prevent the use of disclosure of PHI.
- v. SCHOOL DISTRICT shall, within ten (10) days of becoming aware of a disclosure of PHI in violation of this Agreement by SCHOOL DISTRICT, its officers, directors, employees, contractors, or agents, or by a third party to which SCHOOL DISTRICT disclosed PHI pursuant to paragraph "4" above, (i) report any such disclosure to SERVICE PROVIDER and (ii) mitigate to the extent practicable any harmful effect that is known to SCHOOL DISTRICT or a use or disclosure of PHI by SCHOOL DISTRICT in violation of the requirements of this Agreement
- vi. In the event that SCHOOL DISTRICT shall enter into an Agreement with any agent or subcontractor that will have access to PHI that is received from, or created or received by SCHOOL DISTRICT on behalf of SERVICE PROVIDER, SCHOOL DISTRICT agrees to include in the terms and provisions of such Agreement that such Agreement or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to SCHOOL DISTRICT pursuant to this Agreement with respect to such PHI.
- vii. Within ten (10) days of a request by a Practice for access to PHI about an individual contained in a Designated Record Set, SCHOOL DISTRICT shall make available to SERVICE PROVIDER such PHI for so long as such information is maintained in the Designated Record Set. In the event any individual requests access to PHI directly from SCHOOL DISTRICT, SCHOOL DISTRICT shall, within five (5) days, forward such request to SERVICE PROVIDER. Any denials of access to the PHI requested shall be the responsibility of SERVICE PROVIDER.
- viii. Within ten (10) days of receipt of a request from SERVICE PROVIDER for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record set), SCHOOL DISTRICT shall provide such information to SERVICE PROVIDER for amendment and incorporate any such amendments in the PHI as required.

- ix. Within ten (10) days of notice by SERVICE PROVIDER to SCHOOL DISTRICT that it has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, SCHOOL DISTRICT shall make available to SERVICE PROVIDER such information as is in SCHOOL DISTRICT's possession that SERVICE PROVIDER is required to provide in such an accounting. At a minimum, SCHOOL DISTRICT shall provide SERVICE PROVIDER with the following information: (a) the date of the disclosure; (b) the name of the entity or person who received the PHI, and if known, disclosed; and (c) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event that the request for an accounting is delivered directly to SCHOOL DISTRICT, SCHOOL DISTRICT shall, within five (5) days, forward such request to SERVICE PROVIDER. It shall be SERVICE PROVIDER's responsibility to prepare and deliver any such accounting requested. SCHOOL DISTRICT hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this paragraph.
  - x. SCHOOL DISTRICT hereby agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by SCHOOL DISTRICT on behalf of SERVICE PROVIDER available to the Secretary of Department of Health and Human Services for purposes of determining SERVICE PROVIDER's and SCHOOL DISTRICT's compliance with the Privacy Standards.
- c. Obligations of Service Provider:
- i. SERVICE PROVIDER agrees to maintain the confidentiality of any PHI provided to it by SCHOOL DISTRICT in accordance with all applicable Federal, State, and local laws, rules and regulations in addition to the following. Nothing in this provision shall be construed as limiting or prohibiting SERVICE PROVIDER from releasing PHI regarding the student treated to the student and/ or the student's guardian.
  - ii. SERVICE PROVIDER represents and warrants that it will not use, disclose, release, reveal, show, sell, rent, lease, loan, publish, or otherwise grant access to PHI in any manner that is prohibited by law or regulation, or in any manner that would be a violation of any law or regulation if it were to have been done by the SCHOOL DISTRICT.
  - iii. SERVICE PROVIDER represents and warrants that if it uses, discloses, releases, reveals, shows, sells, rents, leases, loans, publishes, or otherwise grants access to PHI or an element of PHI, it will do so only in an amount that is the minimum necessary and only to the minimum number of individuals necessary to obtain the purpose of the services being rendered to or on behalf of SCHOOL DISTRICT.
  - iv. SERVICE PROVIDER agrees that no finding, listing, or information derived from the PHI, with or without identifiers, may be released if such finding, listing, or information contains any combination of data elements that might allow the deduction

of the individual's identity without first obtaining written authorization from SCHOOL DISTRICT.

- v. SERVICE PROVIDER shall establish appropriate administrative, technical, and physical safeguards to protect the confidentiality of PHI that it receives from SCHOOL DISTRICT and to prevent individuals not involved in performing the services that it provides to SCHOOL DISTRICT from using or accessing the PHI.
  - vi. SERVICE PROVIDER may use the PHI as necessary for the proper management and administration of SERVICE PROVIDER and/ or permitted by law to carry out its legal responsibilities, if: (a) disclosure is required by law.
  - vii. SERVICE PROVIDER shall not request SCHOOL DISTRICT to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by SERVICE PROVIDER.
- d. Relationship to Individuals Who Are Subject of Information:
- i. SERVICE PROVIDER agrees that SCHOOL DISTRICT and the applicable individual retain all ownership rights to the PHI and SERVICE PROVIDER does not obtain any right, title or interest to the PHI furnished by SCHOOL DISTRICT, except as SERVICE PROVIDER is required to maintain records in accordance with the laws and standards that govern its profession.
  - ii. SERVICE PROVIDER agrees to comply with all lawful requests of individuals, who are subjects of the PHI, to permit access to inspect and obtain a copy of the PHI about the individual that is subject to this Agreement, as required by law, within thirty (30) days of such request.
  - iii. SERVICE PROVIDER agrees to make PHI available for amendment and to incorporate any amendments or corrections to an individual's PHI upon request by SCHOOL DISTRICT in accordance with applicable law.
  - iv. SERVICE PROVIDER agrees to make available the information required to provide an accounting of disclosures in accordance with applicable law.
- e. Request for Information: SERVICE PROVIDER agrees that it will use reasonable efforts to limit its request for PHI to the minimum amount necessary to achieve the purpose for which the request is being made. In addition, SERVICE PROVIDER agrees to make its internal practices, books, records and information related to the use and disclosure of information available to the Department of Health and Human Services for review, upon request of the Secretary of that Department, to the extent that such is required by law.
- f. Chain of Trust: If any information is transmitted electronically between SERVICE PROVIDER and SCHOOL DISTRICT, the parties agree to electronically exchange information and to protect the transmitted information as required by HIPAA. The parties

acknowledge that they are required to, and depend upon each other to maintain the integrity and confidentiality of the transmitted information.

26. INDEMNIFICATION and HOLD HARMLESS: To the fullest extent permitted by law, SERVICE PROVIDER agrees to defend, indemnify and hold harmless SCHOOL DISTRICT, its officers, directors, agents or employees against all claims, demands, actions, lawsuits, costs, damages and expenses, including attorneys' fees, judgments, fines and amounts, arising from any act, omission, error, recklessness or negligence of SERVICE PROVIDER, its officers, directors, agents or employees in connection with the performance of services pursuant to this Agreement. The obligations pursuant to this provision shall survive the termination of this Agreement.

27. INSURANCE:

- a. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, SERVICE PROVIDER hereby agrees to effectuate the naming of SCHOOL DISTRICT as an additional insured on SERVICE PROVIDER's commercial general liability and excess liability policies. If the policy is written on a claims-made basis, the retroactive date must precede the date of the contract.
- b. The policy naming SCHOOL DISTRICT as an additional insured shall:
  - i. be an insurance policy from an A.M. Best rated "Secure" insurer, licensed in New York State.
  - ii. state that SERVICE PROVIDER's coverage shall be primary and non-contributory coverage for SCHOOL DISTRICT, its Board, employees and volunteers.
- c. SCHOOL DISTRICT shall be listed as an additional insured by using endorsement CG 2026 or equivalent. The decision to accept an alternative endorsement rests solely with SCHOOL DISTRICT. A completed copy of the endorsement must be attached to the certificate of insurance.
- d. The certificate of insurance must describe the specific services provided by SERVICE PROVIDER that are covered by the liability policies.
- e. At SCHOOL DISTRICT's request, SERVICE PROVIDER shall provide a copy of the declaration page of the liability and umbrella policies with a list of endorsements and forms. If so requested, SERVICE PROVIDER provide a copy of the policy endorsements and forms.
- f. SERVICE PROVIDER agrees to indemnify SCHOOL DISTRICT for any applicable deductibles and self-insured retentions.

g. Required Insurance:

- i. **Commercial General Liability Insurance:**  
\$1,000,000 per occurrence/ \$2,000,000 aggregate with coverage for sexual misconduct.
- ii. **Automobile Liability:**  
\$1,000,000 combined single limit for owned, hired, borrowed and non-owned motor vehicles.
- iii. **Workers' Compensation, Employers' Liability/N.Y.S. Disability/N.Y.S. Paid Family Leave:**

Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits/ N.Y.S. Paid Family Leave Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.

A self-employed person and certain partners and corporate officers are excluded from the definition of "employee" pursuant to Workers' Compensation Law Section 2 (4). As such, individuals in such capacity are excluded from Workers' Compensation Law coverage requirements. A person seeking an exemption must file a CE-200 form with the state. The form can be completed and submitted directly to the WC Board online.

- iv. **Professional Errors and Omissions Insurance:**  
\$2,000,000 per occurrence/ \$2,000,000 aggregate for the professional acts of SERVICE PROVIDER performed under the for SCHOOL DISTRICT. If written on a "claims-made" basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for two years following the completion of work.
  - v. **Umbrella/Excess Insurance:**  
\$3,000,000 each occurrence and aggregate. Umbrella/ Excess coverage shall be on a follow-form basis over the required General Liability and Professional Liability coverage.
- h. SERVICE PROVIDER acknowledges that failure to obtain such insurance on behalf of SCHOOL DISTRICT constitutes a material breach of contract. SERVICE PROVIDER is to provide SCHOOL DISTRICT with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of SCHOOL DISTRICT to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by SCHOOL DISTRICT.
- i. SCHOOL DISTRICT is a member/ owner of the NY Schools Insurance Reciprocal (NYSIR). SERVICE PROVIDER further acknowledges that the procurement of such

insurance as required herein is intended to benefit not only SCHOOL DISTRICT but also NYSIR, as SCHOOL DISTRICT's insurer.

28. **NOTICES:** Any notices to be given under this Agreement by either party to the other may be effected by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing. Notice shall be delivered or mailed to:

Kidz Educational Services SLP, OT, PT, LMSW,  
Psychology, Audiology, PLLC  
1400 Old Country Road, Suite C103N  
Westbury, New York 11590

Valley Stream Union Free School District 24  
75 Horton Avenue  
Valley Stream, New York 11581  
Attn: Director of Pupil Services

29. **ASSIGNMENT OF AGREEMENT:** SERVICE PROVIDER shall not assign, transfer or convey any of its respective rights or obligations under this Agreement without the prior written consent of SCHOOL DISTRICT.
30. **DISCRIMINATION PROHIBITED:** Neither SCHOOL DISTRICT nor SERVICE PROVIDER will discriminate against any individual because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, disability, reproductive health decisions, predisposing genetic characteristics or marital status and will take affirmative action to ensure that each individual is afforded equal opportunities without discrimination because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, disability, reproductive health decisions, predisposing genetic characteristics or marital status.
31. **GOVERNING LAW:** This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of New York without regard to conflicts or choice of law provisions that would defer to the substantive laws of another jurisdiction. Each of the parties hereto consents to the jurisdiction of any state court located within the County of Nassau, State of New York, or federal court in Federal District Court for the Eastern District of New York located in the County of Suffolk, State of New York, and irrevocably agrees that all actions or proceedings relating to this Agreement must be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of and proceeding in any such court.
32. **SEVERABILITY:** If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.

33. NO PRIOR AGREEMENTS: This Agreement constitutes the full and complete Agreement between SCHOOL DISTRICT and SERVICE PROVIDER, and supersedes all prior written and oral agreements, commitments or understandings with respect thereto. This Agreement may not be altered, changed, added to, deleted from or modified except through the mutual written consent of the parties.
34. AGREEMENT CONSTRUCTION: This Agreement has been arrived at mutually and is not to be construed against any party hereto as being the drafter hereof or causing the same to be drafted.
35. REPRESENTATIONS AND WARRANTIES: SERVICE PROVIDER represents and warrants: 1) that SERVICE PROVIDER has no obligations, legal or otherwise, inconsistent with the terms of this Agreement; 2) that the performance of the services to be provided in this Agreement does not and will not violate any applicable law, rule or regulation or any proprietary or other right of any third party; and 3) that SERVICE PROVIDER has not entered into or will not enter into any Agreement (whether oral or written) in conflict with this Agreement.
36. AMENDMENT: This Agreement may be amended only in writing and signed by the parties.
37. NON-WAIVER: No course of dealing of any party hereto, no omission, failure or delay on the part of any party hereto in asserting or exercising any right hereunder, and no partial or single exercise of any right hereunder by any party hereto shall constitute or operate as a waiver of any such right or any other right hereunder. No waiver of any provision hereof shall be effective unless in writing and signed by or on behalf of the party to be charged therewith. No waiver of any provision hereof shall be deemed or construed as a continuing waiver, as a waiver in respect of any other or subsequent breach or default of such provision, or as a waiver of any other provision hereof unless expressly so stated in writing and signed by or on behalf of the party to be charged therewith.
38. AUTHORIZATION TO ENTER AGREEMENT: The undersigned representative of SERVICE PROVIDER hereby represents and warrants that the undersigned is an officer, director, or agent of SERVICE PROVIDER with full legal rights, power and authority to enter into this Agreement on behalf of SERVICE PROVIDER and bind SERVICE PROVIDER with respect to the obligations enforceable against SERVICE PROVIDER in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

VALLEY STREAM UNION FREE SCHOOL DISTRICT 24

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

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

KIDZ EDUCATIONAL SERVICES SLP, OT, PT, LMSW,  
PSYCHOLOGY, AUDIOLOGY, PLLC

Date: 6/1/22

By: 