

XI.AA

**MALVERNE UFSD
301 Wicks Lane
Malverne, NY 11565
Phone: 516/887-6415 or 6476**

**SERVICE AGREEMENT
4201 SCHOOL**

THIS AGREEMENT made this 1st day of September, 2015 by and between BOARD OF EDUCATION, MALVERNE UFSD, (hereinafter referred to as the "SCHOOL DISTRICT"), having its principal place of business located at 301 Wicks Lane, Malverne, NY 11565 and the 4201 school, HENRY VISCARDI SCHOOL, hereinafter referred to as the "SERVICE PROVIDER" having its principal place of business for purposes of this Agreement at 201 I.U. Willets Road, Albertson, NY 11507.

WITNESSETH:

WHEREAS, School Districts are authorized by law to contract with institutions within the State of New York for the instruction of disabled children in those situations where the School District is unable to provide for the education of certain or all disabled children in classes in the public schools; and

WHEREAS, SERVICE PROVIDER is a school chartered by the Board of Regents of the University of the State of New York pursuant to § 4201 of the New York State Education Law and as such is authorized to establish, conduct, operate and maintain an educational program for severely physically disabled students; and

WHEREAS, the School District desires that SERVICE PROVIDER provide instruction to the students enrolled in the program(s) operated by SERVICE PROVIDER; and

WHEREAS, SERVICE PROVIDER warrants that it has reviewed the individualized education program ("IEP") of each pupil to be enrolled in its program(s), and represents that it will provide the level of services identified in the IEP to meet the needs of such children; and

WHEREAS, SERVICE PROVIDER is capable of and willing to provide the within services in accordance with the students' IEPs to the 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: This Agreement shall be in effect for the period September 1, 2015 to June 30, 2016 unless terminated earlier, as set forth herein.

2. SCOPE OF SERVICES:

SERVICE PROVIDER shall provide adequate instruction, related services and/or a facility to students listed in Appendix A 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 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 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 SCHOOL DISTRICT Committee on Special Education (CSE) with annual progress reports for each individual student receiving services;
- v. Complete evaluations as per the request of the SCHOOL DISTRICT'S Director of Special Education and upon agreement of the SERVICE PROVIDER, on an as needed basis and in accordance with SERVICE PROVIDER'S payment policy,;
- vi. Comply with any testing requirements upon notification of such review dates.

3. PAYMENT SCHEDULE:

a. In full consideration for the educational services to be rendered by SERVICE PROVIDER to the School District for the period of this Agreement, the School District will pay to SERVICE PROVIDER, for each child, a per pupil charge (PPC) set by the Commissioner of the New York State Education Department. If the PPC for this school year is not available at the beginning of this school year, the SCHOOL DISTRICT shall pay the PPC applicable to the previous school year until new PPC is 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. The SCHOOL DISTRICT shall retroactively pay SERVICE PROVIDER any underpayment for that current school year in accordance with the new PPC or any overpayments will be reimbursed by SERVICE PROVIDER to the SCHOOL DISTRICT for that current school year.

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(s) or until such time as the student is withdrawn from such program(s) in accordance with the termination provision herein. In the event of such termination, payment shall be prorated from the time services were provided to the student.

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 individuals who received services. Students shall be assigned an identification number which shall be used in the place of student names for billing purposes. SCHOOL DISTRICT shall give SERVICE PROVIDER notice of any invoice dispute within twenty (20) days of receipt of the invoice.

No parent or guardian 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 patient or patient's family for services provided pursuant to this Agreement.

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. Employees of 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.

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. 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. 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 SCHOOL DISTRICT students placed with SERVICE PROVIDER. For purposes of this Agreement, the definition and calculation of enrollment and attendance shall be determined by SCHOOL DISTRICT, in accordance with New York State Education Law § 4201 and pursuant to each student's appointment by the Commissioner of Education.

9. LICENSE AND AUTHORIZATION: SERVICE PROVIDER warrants that it is duly 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 or by persons otherwise qualified to provide services in accordance with all applicable laws and regulations. SERVICE PROVIDER shall certify that all such individuals possess documentation evidencing such license or other qualifications as required by Federal, State or local statutes, rules, regulations and orders. Where applicable, SERVICE PROVIDER agrees to submit to SCHOOL DISTRICT, upon request, 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.

10. 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 applicable requirements and protocols as established by SCHOOL DISTRICT and the State Education Department of New York including, without limitation, fingerprinting. Upon request, SERVICE PROVIDER must submit to the SCHOOL DISTRICT verification regarding such providers' clearance status.

11. ATTENDANCE RECORDS: SERVICE PROVIDER shall maintain monthly attendance records which shall be submitted to SCHOOL DISTRICT at the end of each month upon request.

12. REPORTS OF STUDENTS: SERVICE PROVIDER will make every effort to obtain 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.

13. 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. 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 law.

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. Upon request, reports shall be furnished upon termination of the Agreement. SERVICE PROVIDER shall provide such additional information concerning the pupil's progress as may be reasonably required by SCHOOL DISTRICT.

15. STATE AUDITS: SERVICE PROVIDER shall cooperate with the State and its Agents and provide all information to them as may be required for the State and its Agents to fulfill their auditing or other legal responsibilities.

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, subject to SERVICE PROVIDER'S approval, 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. Notwithstanding anything to the contrary herein, in the event a student's continued presence poses a danger to the health or safety of that student or others, the SERVICE PROVIDER may remove the student from the educational setting as in accordance with law. 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 the SCHOOL DISTRICT including but not limited to SED.

18. NON-SOLICITATION CLAUSE: For the period of this Agreement and for one year after the termination of this Agreement the SCHOOL DISTRICT shall not hire or solicit for employment an employee of SERVICE PROVIDER who was employed by SERVICE PROVIDER or who provides or provided services to a student residing within the SCHOOL DISTRICT without the express written consent SERVICE PROVIDER's Chief Operating Officer.

19. TERMINATION NOTICE: This Agreement may be terminated by either party upon thirty (30) days written notice to the other party but in compliance with the students' IEP's and in accordance with all applicable Federal and State laws and regulations.

20. CONFIDENTIALITY: SERVICE PROVIDER agrees that 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 except as in accordance with law.

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

22. INDEMNIFICATION and HOLD HARMLESS PROVISION: SERVICE PROVIDER agrees that it shall defend, indemnify and hold harmless SCHOOL DISTRICT, its officers, directors, agents and employees 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 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.

SCHOOL DISTRICT agrees that it shall defend, indemnify and hold harmless SERVICE PROVIDER, its officers, directors, agents and employees 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 act, error or omission, misstatement, misleading statement, neglect or breach of duties by SCHOOL DISTRICT or any of its officers, directors, agents or employees taken or made with respect to this Agreement.

23. INSURANCE PROVISION: SERVICE PROVIDER shall purchase from and maintain in a company or companies lawfully licensed to do business in the State of New York such insurance as will protect SERVICE PROVIDER and SCHOOL DISTRICT from claims set forth below for which SERVICE PROVIDER may be legally liable, whether such operations be by

SERVICE PROVIDER or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. 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 insurance policies, with the exception of workers' compensation and professional liability.

24. **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.

Notices shall be delivered or mailed to:

Malverne UFSD
301 Wicks Lane
Malverne, NY 11565

Attention: Dir. of Pupil Personnel

Henry Viscardi School
201 I.U. Willets Road
Albertson, NY 11507

Attention: Sheryl P. Buchel, CFO

25. **ASSIGNMENT OF CONTRACT:** 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 and, as applicable, SED.

26. **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.

27. **GOVERNING LAW:** This Agreement shall be governed by the laws of the State of New York and applicable Federal laws and regulations. Each of the parties agrees to submit to the jurisdiction of the courts of the State of New York, County of Nassau, or the Federal court otherwise having jurisdiction.

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

33. 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.

34. AUTHORITY TO ENTER AGREEMENT: Each party represents and warrants to the other party that this Agreement has been duly authorized, executed and delivered and that the performance of its obligations under this Agreement do not conflict with any order, law, rule or regulation or any agreement or understanding by which such party is bound.

35. Conflicts of Interest: Each party represents that there are no conflicts of interest between each other or that would otherwise limit either party's participation in this Agreement.

36. Execution: This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same document as if all parties had executed a single original document. This Agreement may be executed by facsimile copy and each signature thereto shall be and constitute an original signature, as if all parties had executed a single original document.

37. Survival of Terms: All provisions of this Agreement that would reasonably be expected to survive the termination of this Agreement shall do so.

38. Retention of Rights: The parties shall each retain all their rights at law and in equity in the event of a material breach of the Agreement by the other party.

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

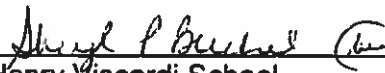
Date:

BY:

President, Board of Education
Malverne UFSD

Date:

BY:



Henry Viscardi School
Sheryl P. Buchel, CFO