

**PROFESSIONAL SERVICES AGREEMENT**

This Agreement is entered as of into this 18th day of November, 2014 by and between the Board of Education of the Malverne Union Free School District ("District"), and Brown & Brown of New York Inc., d.b.a. Fitzharris & Co., Inc. ("Contractor").

WHEREAS, the District issued a Proposal for Professional Services, entitled **Group Life and Long Term Disability Third Party Administrator**; and

WHEREAS, the District desires to retain the services of Contractor to provide the aforementioned services in accordance with the terms and conditions of the Proposal;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and agreements herein contained, and for other good and valuable considerations, the Contractor and the District hereby agree as follows:

A. **CONTRACT DOCUMENTS:**

1. This Agreement incorporates by reference (i) all the terms, conditions, and specifications of the Proposal dated **October 16, 2014**, and (ii) Contractor's proposal dated **October 23 2014**. The Contract Documents shall consist of this Agreement, the aforementioned documents and any other documents referenced in the Proposal specifications. In the event of any discrepancy, conflict or inconsistency between the terms of this Agreement and any of the Contract Documents, the language of this Agreement shall prevail, followed in priority by the language of the PROPOSAL specifications.

B. **TERM:**

1. The term of this Agreement shall be from **January 1, 2015** through **December 31, 2015**, inclusive, unless terminated or extended as provided for in the Proposal. It is understood that the District is under no obligation to renew this Agreement upon its expiration.

C. **CONDITIONS:**

In performing services specified in this Agreement, it is understood that:

1. Contractor, will be engaged as an independent contractor, and therefore be solely responsible for the payment of Federal and State income taxes applicable to this Agreement. Consultant agrees to complete and submit the attached Non-Employee & Vendor TIN Verification Form together with this Agreement.

2. The Contractor is retained by the District only for purposes and to the extent set forth in this Agreement, and its relationship to the District shall be that of an independent contractor. Except as otherwise provided herein, Contractor shall be free to dispose of that portion of its time, energy and skill as the Contractor is not obligated to devote hereunder to the District in such a manner as it sees fit, provided it does not interfere with its obligations to the District or reduce the time, energy and skill required to be devoted to the District under this Agreement. Contractor shall not be considered as having employee status nor shall it be entitled to participate in any of the District's workers' compensation, retirement, fringe benefits, unemployment insurance, liability insurance, disability insurance or other similar employment benefit program, nor shall Contractor be entitled to any of the rights or benefits available to District employees under State law or any collective bargaining agreement.
3. This Agreement, and any amendments to this Agreement, will not be in effect until agreed to in writing and signed by authorized representatives of both parties.

**D. COMPENSATION:**

1. The Contractor will submit claim forms to the District on a periodic basis during the course of each year's engagement and no more frequently than monthly to be countersigned that, in the aggregate, will not exceed the total contract price for the services rendered. As necessary and/or upon request, the Contractor shall submit time sheets listing services performed for any services rendered on an hourly basis. The District shall pay Contractor within thirty (30) days of the District's receipt and approval of said claim forms and/or time sheets.
2. The District, in accordance with federal and state requirements, will submit a Form 1099 and IT 2102.1 respectively at year-end for all individuals/entities receiving payment(s) exceeding \$600.

**E. SEVERABILITY:**

1. Should any provision of this Agreement, for any reason, be declared invalid and/or unenforceable, such decision shall not affect the validity of the remaining provisions of this Agreement. Such remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid provision(s) eliminated.

**F. GOVERNING LAW:**

1. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with, and governed by, the laws and regulations of the State of New York and applicable Federal laws and regulations.

**G. CONFIDENTIALITY, NON-COMPETE & CONFLICT OF INTEREST:**

1. Contractor acknowledges that it will have access to confidential information including but not limited to employee information and information concerning finances and assets of the District, as well as access to the District's eSchoolData and financial management software, programs, and data. Contractor agrees that it will not, except in the proper performance of its duties under this Agreement, at any time during or after completion of service hereunder, without the prior written authorization of the District, directly or indirectly use, divulge, furnish or make accessible to any person, any confidential information, or utilize any District software or programs.
2. Contractor agrees that it (1) shall not engage (whether for compensation or not) directly or indirectly in any business activity which shall compete in whole or in part, directly or indirectly, with the services to be provided by Contractor under this Agreement; (2) shall not use, divulge or furnish any confidential or sensitive information obtained in the course of its services hereunder; and (3) shall not solicit, recruit or attempt to recruit any current District employee for the purpose of filling an employment position elsewhere for the duration of this Agreement and for a period of three (3) years from the effective date of termination. If any of the provisions of this section is found by a court of competent jurisdiction to be excessively broad in duration, geographical scope or subject, it shall be reformed automatically and thereafter limited or reduced to the extent required to render it enforceable.
3. Contractor warrants that it has not and shall not accept or engage in any employment, interest, business or activity that is or would reasonably appear to compromise or be incompatible with the full and proper discharge of Contractor's professional judgment or services rendered to the District under this Agreement. Contractor shall promptly disclose any conflicts of interest to the District that exist or that may arise during the course of its services under this Agreement.
4. In the event of a conflict of interest or other violation of the foregoing restrictions, the District reserves the right to terminate Contractor's services and recover any compensation paid to Contractor.

**H. ENTIRE AGREEMENT:**

1. This Agreement is the complete and exclusive statement of the agreement between the parties, and supersedes all prior or contemporaneous, oral or written: agreements, proposals, understandings, representations, conditions or covenants between the parties relating to the subject matter of the Agreement.
2. This Agreement may not be changed orally, but only by an Agreement, in writing, signed by authorized representatives of both parties.