

## AFFORDABLE CARE ACT ADMINISTRATION AGREEMENT

AGREEMENT (the "Agreement") made as of this \_\_\_\_ day of \_\_\_\_\_, 2022 by Seneca Consulting Group, Inc., a New York corporation having an office located at 960 Wheeler Road #5367 Hauppauge NY 11788 (hereinafter referred to as "ADMINISTRATOR") and Malverne Union Free School District, having its administrative offices at 301 Wicks Lane Malverne NY 11565, (hereinafter referred to as "DISTRICT").

WHEREAS, ADMINISTRATOR, an employee benefits Administrator, provides professional fee-based benefits consulting and administrative services and;

WHEREAS, DISTRICT desires to retain ADMINISTRATOR to provide consulting and Affordable Care Act administration and ADMINISTRATOR is capable and willing to provide the services to DISTRICT.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings herein agreed, and for other good and valuable consideration, the parties agree as follows:

(1) Appointment as ADMINISTRATOR. DISTRICT hereby engages and appoints ADMINISTRATOR to provide employee benefit consulting services and to act as DISTRICT's authorized agent (an authorized agent is a person or firm that, with the payor's authorization, transmits specific information and/or Affordable Care Act ("ACA") return documents to the Internal Revenue Service ("IRS") on behalf of the payor and may match name/TIN combinations). ADMINISTRATOR agrees to provide DISTRICT with the services set forth in Exhibit A.

(2) ADMINISTRATOR'S Duties. ADMINISTRATOR agrees that:

- I. It will use its best efforts to support the objectives of DISTRICT on behalf of DISTRICT;
- II. It has no authorization whatsoever from DISTRICT to alter, modify or change any of the terms, rates and/or conditions contained in any of DISTRICT's documents, proposals or contracts, nor does it have authorization to change, alter or discharge participation in DISTRICT's benefit programs, and/or to incur any indebtedness on behalf of DISTRICT;
- III. It will not circumvent, or attempt to circumvent, DISTRICT in DISTRICT's relationship with, other third-party administrators, underwriters, vendors, insurance carriers and like organizations, regardless of whether or not DISTRICT has a written contract with such third-party administrators, underwriters, vendors, insurance carriers or like organizations.
- IV. It will provide comprehensive tracking of employee hours of service to determine "Full-Time" "Part-Time" status based on the DISTRICT's adoption of the IRS Safe Harbors per IRS Notices 2012-58, 2012-17, 2011-36, 2011-73. "Measurement Period Report"
- V. It will prepare and provide to the DISTRICT written Measurement Period Reports four (4) times per fiscal year on a quarterly basis.
- VI. It will prepare and provide the DISTRICT with DRAFT IRS Forms 1095C and 1095B for individuals required to receive one based on §6056 and §6055, and per the District's adoption of the IRS Safe Harbors pursuant to IRS Notices 2012-58, 2012-17, 2011-36, 2011-73
- VII. It will as be needed and/or requested by DISTRICT, revise DRAFT IRS Forms 1095C and 1095B and provide the revised forms to the district.
- VIII. After DISTRICT has provided written approval of the DRAFT IRS Forms 1095C and 1095B, ADMINISTRATOR will provide final forms for the DISTRICT for the DISTRICT'S production, or if DISTRICT requests, in writing, that ADMINISTRATOR distribute the final approved forms, the ADMINISTRATOR will appropriately send and file the forms on behalf of the DISTRICT
- IX. It will prepare and provide the DISTRICT with Draft IRS Forms 1094C and 1094B and thereafter, as needed and/or requested by DISTRICT, revise the forms and provide the revised forms to the DISTRICT
- X. After District has provided written approval for the IRS Forms 1094C and 1094B, ADMINISTRATOR will efile forms IRS Forms 1094C, 1094B all forms 1095C and 1095B through the IRS Affordable Care Act Information Returns Program (AIR) using ADMINISTRATOR's AIR Transmitter Control Code (TCC)

(3) DISTRICT'S Duties. DISTRICT agrees:

- I. To provide to ADMINISTRATOR current data, reports, work history, contribution rates, plan documents related charges and the terms and conditions of DISTRICT's agreements with group health plans offered

to its employees and providers of benefit services as requested and needed by ADMINISTRATOR to perform its services, and to respond in a timely manner to requests for information submitted by the ADMINISTRATOR;

- II. It will not circumvent, or attempt to circumvent, ADMINISTRATOR in ADMINISTRATOR's relationship with ADMINISTRATOR's own clients, other third-party administrators, underwriters, vendors, insurance carriers and like organizations, regardless of whether or not ADMINISTRATOR has a written contract with such third party administrators, underwriters, vendors or insurance carriers.
- III. To provide and maintain an accurate list of individuals who are eligible to receive Form 1095C or 1095C (Employee List) to include the following fields:
  - a. Employee Number
  - b. Social Security Number
  - c. Last Name
  - d. First Name
  - e. Original Date of Hire
  - f. Termination or Retirement Date
  - g. Rehire Date
  - h. Current Address (Street, City, State & Zip Code)
  - i. Employee Group (As listed in payroll system)
  - j. Employee Primary Position (As listed in payroll system)
- IV. Provide and maintain an accurate report of employee contribution requirements towards single coverage as required under §6056
- V. Provide and maintain an accurate report of employee groups and positions offered Minimum Essential Health Care coverage as required under §6056
- VI. Provide and maintain an accurate report of employee groups and positions that are considered "Variable Hour" employees as defined in IRS Safe Harbors per IRS Notices 2012-58, 2012-17, 2011-36, 2011-73
- VII. Provide and maintain an accurate report of employee groups and positions that are considered "Non-Variable Hour" employees as defined in IRS Safe Harbors per IRS Notices 2012-58, 2012-17, 2011-36, 2011-73
- VIII. Provide and maintain an accurate report of all individuals covered under its self-insured health plan (NYSHIP ACA Enrollment Infor Report) to include the following fields:
  - a. Social Security Number as required under §6055
  - b. Last Name
  - c. First Name
  - d. Month of Coverage as required under §6055
  - e. Current Address (Street, City, State & Zip Code)
  - f. Employee Group (Retiree, Active, Other)
  - g. Medicare Primary Indicator
- IX. Errors; Review of Data. All Services provided hereunder will be based upon information provided to ADMINISTRATOR by DISTRICT. DISTRICT will promptly review all documents and reports produced by ADMINISTRATOR and provided or made available to DISTRICT by ADMINISTRATOR and District will promptly notify ADMINISTRATOR of any error or omission or discrepancy with DISTRICT's records and will provide corrected data DISTRICT agrees and acknowledges that it must review and approve the District Measurement Period Report, prior to ADMINISTRATOR producing any Draft or Final IRS Forms. The obligation of the DISTRICT to review and approve documents and reports in no way limits the ADMINISTRATOR'S responsibility to provide accurate analysis and produce accurate documents and reports (based on the documentation provided by the DISTRICT)
- X. DISTRICT agrees and acknowledges that it has the responsibility to train its employees and staff regarding and Board Resolutions pertaining to the Affordable Care Act, including Board Resolutions adopting IRS Safe Harbors per IRS Notices 2012-58, 2012-17, 2011-36, 2011-73.
- XI. DISTRICT agrees and acknowledges that it has the responsibility to train its employees and staff regarding the IRS reporting requirement under sections §4980, §6055 & §6056
- XII. DISTRICT agrees and acknowledges that it has the responsibility provide ADMINISTRATOR accurate and correct information, and DISTRICT is responsible to correct any incorrect data that it provided to ADMINISTRATOR
- XIII. Records. ADMINISTRATOR does not serve as DISTRICT's record keeper and DISTRICT will be responsible for retaining copies of all documentation received from or provided to ADMINISTRATOR in connection with this Agreement to the extent required by DISTRICT or applicable law.

(4) Payments to ADMINISTRATOR. DISTRICT will pay ADMINISTRATOR \$10500. in addition, DISTRICT will pay ADMINISTRATOR \$1.35 per form to print and mail IRS forms. The first payment of \$3,500.00 is due upon full execution of this Agreement. The second payment of \$3,500.00 is due within 30 calendar days of DISTRICT'S receipt of the initial draft of the 1095 forms. The final payment of \$3,500.00 plus printing and mailing fees is due after ADMINISTRATOR'S completion of all services required by this Agreement. ADMINISTRATOR must submit a final invoice (form and substance satisfactory to DISTRICT) to DISTRICT. DISTRICT will make final payment within 30 calendar days of its receipt, review, and approval of invoice. In addition, upon written authorization from the DISTRICT to ADMINISTRATOR, the DISTRICT will pay ADMINISTRATOR \$275 per hour for services associated with the correction or errors contained in the documents provided to ADMINISTRATOR by the DISTRICT (including, but not limited to, incorrect date of hire, missing or incorrect termination of retirement dates, incorrect or missing social security numbers, and incorrect or missing coverage dates in health plan, or any data anomalies that were not addressed prior to the transmission of the 1095 forms). ADMINISTRATOR must submit invoices (form and substances satisfactory to DISTRICT) monthly for these correction services. DISTRICT will make payment within 30 calendar days of its receipt, review, and approval of an invoice.

a. Compliance with Individual State Reporting Requirements. Should DISTRICT require ADMINISTRATOR to process individual state reporting requirements, ADMINISTRATOR will provide individual state reporting for a flat fee of \$350 per filing.

(5) Term and Termination.

- I. The term of this Agreement will begin on the date of signing this Agreement and continue until the date upon which this Agreement or the Business Associate Agreement attached hereto as Exhibit B is terminated, June 30, 2023, or upon the completion of the services by ADMINISTRATOR pursuant to this Agreement, whichever is earlier.
- II. Upon termination by either party pursuant to Paragraph 5 (I.) of this Agreement prior to ADMINISTRATOR'S completion of the services set forth in this Agreement, ADMINISTRATOR will only be entitled to retain monies paid by DISTRICT for the value of services performed and delivered by ADMINISTRATOR prior to the date of termination.
- III. In the event of termination for any reason, ADMINISTRATOR will return to DISTRICT, within 10 calendar days of the effective date of the termination, all DISTRICT'S property and data that is in the possession of ADMINISTRATOR including, but not limited to, payroll history, employee listing and other compensation information and data on hand, and/or other confidential materials which may have been furnished by DISTRICT and entrusted to ADMINISTRATOR by reason of this Agreement. If information has been provided to ADMINISTRATOR in electronic form, ADMINISTRATOR will commit to DISTRICT that such information will be deleted from ADMINISTRATOR'S electronic storage media. If requested by DISTRICT, ADMINISTRATOR will provide a certificate of destruction.
- IV. In the event of termination for any reason, all reports, and Services due to DISTRICT must be completed by ADMINISTRATOR and delivered to DISTRICT within thirty calendar days of the termination date.
- V. This Agreement may be terminated by DISTRICT "for cause" upon the occurrence of any of the following events:
  - a. Immediately upon DISTRICT delivering written notice to ADMINISTRATOR of a breach by ADMINISTRATOR of any of the policies, rules and regulations of DISTRICT relating to the health or safety of students or DISTRICT employees;
  - b. Immediately upon ADMINISTRATOR'S breach of its obligations to provide the insurance coverage set forth in Paragraph 18;
  - c. Immediately upon ADMINISTRATOR'S breach of any of ADMINISTRATOR'S obligations pursuant to, or violation of, any applicable State or federal law or regulation; or
  - d. Fifteen calendar days after ADMINISTRATOR has received written notice from DISTRICT that ADMINISTRATOR has breached any of ADMINISTRATOR'S other obligations hereunder unless, within the 15 calendar day period ADMINISTRATOR cures the breach to DISTRICT'S satisfaction.

Upon termination of this Agreement "for cause," ADMINISTRATOR is not entitled to any further payments hereunder.

- VI. This Agreement is automatically terminated upon ADMINISTRATOR'S filing of a voluntary petition in bankruptcy or making an assignment for the benefit of creditors, or upon other action taken or suffered, voluntarily or involuntarily, pursuant to any federal or state law for the benefit of insolvents, and upon the filing of an involuntary petition in bankruptcy against ADMINISTRATOR which is not dismissed within 60 calendar days of filing. ADMINISTRATOR is not entitled to any further payments hereunder and if the termination occurs prior to ADMINISTRATOR'S completion of the services set forth in this Agreement,

ADMINISTRATOR will only be entitled to retain monies already paid by DISTRICT for the value of services actually performed and delivered by ADMINISTRATOR prior to the date of termination.

**(6) Property of ADMINISTRATOR.**

- I. To the extent permitted by law and except as otherwise provided herein, DISTRICT shall take reasonable steps necessary to hold in confidence and protect all trade secrets, which may include, but are not limited to, reports, documentation, techniques, products, ideas, concepts, output, and reports related to the Programs and Services of ADMINISTRATOR, from disclosure to any person, firm, corporation or other entity as allowed by law without ADMINISTRATOR's consent. DISTRICT shall ensure that all agents and any other persons with authorized access to any part of such confidential information be aware of and will observe and perform this non-disclosure covenant.

**(7) Property of DISTRICT.**

- I. Except as otherwise provided herein, ADMINISTRATOR will take all steps necessary to hold in confidence and protect all personal information and data, manuals, documentation, techniques, products, ideas, concepts, output, pricing, and reports related to the Programs and Services of DISTRICT, from disclosure to any person, firm, corporation or other entity without DISTRICT's written consent, provided same shall not otherwise be available. ADMINISTRATOR shall ensure that all agents and any other persons with authorized access to any part of such confidential information be aware of and will observe and perform this non-disclosure covenant.
- II. All of the undertakings and obligations of ADMINISTRATOR hereto relating to confidentiality and non-disclosure, whether contained in this Paragraph or elsewhere in this Agreement, will survive the termination or expiration of this Agreement.

**(8) Expenses.** ADMINISTRATOR will pay all expenses incurred in connection with the performance of ADMINISTRATOR's duties hereunder including, but not limited to, automobile and/or travel expenses.

**(9) Completion Dates and Approvals:** To ensure the IRS forms are produced and distributed in a timely manner to comply with the IRS Requirements.

- a) Recipient returns (1095) need to be mailed no later than March 2<sup>nd</sup> 2023, DISTRICT's final approval of the forms required by close of business February 15th, 2023.
- b) The required date for E-filing is March 31, 2023. DISTRICT's approval of the final data must be given to us no later than March 15, 2023.
- c) To produce DRAFT Recipient Returns for DISTRICT's review and approval, Final approval of DISTRICT's Measurement Period Report, Employee List and Healthcare Enrollment file is due by January 2<sup>nd</sup>, 2023.

**(10) Independent Contractor.** ADMINISTRATOR is retained by DISTRICT only for the purposes and to the extent set forth in this Agreement. ADMINISTRATOR's relation to DISTRICT is solely that of an independent contractor during the period of ADMINISTRATOR's retention and delivery of Services hereunder.

Neither ADMINISTRATOR nor any of its employees, shareholders, partners, members, officers, directors, agents, or assigns will be eligible for employee benefits or contributions thereto from DISTRICT relative to this Agreement including, but not limited to, social security, New York State Worker's Compensation, unemployment insurance, New York State Retirement System benefits, health or dental insurance, or malpractice insurance. With regard to employees of ADMINISTRATOR, ADMINISTRATOR alone will be responsible for their work, personal conduct, direction, compensation, and for payment of all employment and other taxes in relation thereto.

**(11) Assignment.** This Agreement may not be assigned or otherwise transferred by either party without the express written consent of the other.

**(12) Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter thereof and supersedes all other agreements, understandings and representations, written or oral, by and between the parties.



(13) Modification. This Agreement may not be changed orally, but only by an agreement in writing signed by both parties. Any waiver of any term, condition or provision of this Agreement will not constitute a waiver of any other term, condition, or provision, nor will a waiver of any breach of any term, condition or provision constitute a waiver of any subsequent or succeeding breach.

(14) Governing Law, Choice of Forum and Waiver of Jury Trial. This Agreement is subject to, governed by, enforced according to, and construed according to the laws of the State of New York, without regard to the conflicts of law's provisions thereof. Any dispute arising under this Agreement will be litigated in a New York State Court in Suffolk County, New York. The parties each waive trial by jury in any action concerning this Agreement.

(15) Headings. The headings or captions in this Agreement are for convenience and reference only and do not in any way modify, interpret, or construe the intent of the parties or affect any of the provisions of this Agreement.

(16) HIPAA. ADMINISTRATOR is and will remain in compliance with the privacy and security requirements of the Health Insurance Portability and Accountability Act. The parties have executed a Business Associate Agreement (attached hereto as Exhibit B).

(17) Indemnification. To the fullest extent permitted by law, ADMINISTRATOR indemnifies and will defend (with counsel selected by DISTRICT) and hold harmless DISTRICT, its employees, agents, representatives and members of the Board of Education, from any and all liabilities, losses, costs, damages, and expenses (including, but not limited to, reasonable attorneys' fees and disbursements) arising from any claims, disputes, or causes of action of whatever nature arising, in whole or in part, from the performance of ADMINISTRATOR's Services hereunder, or the action of, or the failure to act by ADMINISTRATOR, ADMINISTRATOR's representatives or employees, or anyone for whose acts ADMINISTRATOR may be liable.

In the event that any legal proceeding is instituted or any claim or demand with respect to the foregoing is asserted by any person in respect of which indemnification may be sought from ADMINISTRATOR pursuant to the provisions of this Paragraph 17, DISTRICT will promptly notify ADMINISTRATOR of such suit, claim or demand, and give ADMINISTRATOR an opportunity to defend and settle same without any cost to DISTRICT, and will extend reasonable cooperation to ADMINISTRATOR in connection with such defense, which will be at the expense of ADMINISTRATOR. If ADMINISTRATOR fails to defend the same within 30 calendar days of receipt of notice, DISTRICT will be entitled to assume the defense thereof, and ADMINISTRATOR will be liable to repay DISTRICT for all its expenses reasonably incurred in connection with the defense (including reasonable attorneys' fees, disbursements, expert witness fees and settlement payments).

To the fullest extent permitted by law, DISTRICT indemnifies and will defend and hold harmless ADMINISTRATOR, its employees, agents, and representatives from any and all liabilities, losses, costs, damages, and expenses (including, but not limited to, reasonable attorneys' fees and disbursements) arising from any claims, disputes, or causes of action of whatever nature arising from the action of, or the failure to act by DISTRICT, DISTRICT's representatives or employees, or anyone for whose acts DISTRICT may be liable.

All the provisions of this Paragraph will survive the expiration or sooner termination of this Agreement.

(18) Required Insurance. ADMINISTRATOR will obtain and keep in full force and effect during the term of this Agreement, at ADMINISTRATOR's sole cost and expense, the following insurance:

- **Commercial General Liability Insurance:** \$1,000,000 per occurrence/ \$2,000,000 aggregate (must include coverage for sexual misconduct).
- **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. The form may be completed and submitted directly online to the Workers Compensation Board:

[http://www.wcb.ny.gov/content/ebiz/wc\\_db\\_exemptions/requestExemptionOverview.jsp](http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp)

- **Professional Errors and Omissions Insurance:** \$2,000,000 per occurrence/ \$2,000,000 aggregate for the professional acts of ADMINISTRATOR performed under this Agreement for DISTRICT. If written on a "claims-made" basis, the retroactive date must pre-date the inception of this Agreement. Coverage must remain in effect for two calendar years following the completion of work.
- **Fidelity Bond:** For dishonest acts of ADMINISTRATOR's employees with coverage for computer fraud and fund transfer including client coverage.
- **Excess Insurance:** \$3,000,000 each occurrence and aggregate. Excess coverage must be on a follow-form basis.

Notwithstanding any terms, conditions, or provisions, in any other writing between the parties, ADMINISTRATOR hereby agrees to effectuate the naming of DISTRICT as an additional insured on ADMINISTRATOR's insurance policies, except for workers' compensation, N.Y. State disability and professional liability. Each policy naming DISTRICT as an additional insured must:

- o Be an insurance policy from an A.M. Best rated "secure" or better insurer, licensed in New York State.
- o State that ADMINISTRATOR's coverage is primary and non-contributory coverage for DISTRICT, its Board, employees, and volunteers.

DISTRICT must be listed as an additional insured by using endorsement CG 2026 or its equivalent. The decision to accept an alternative endorsement rest solely with DISTRICT. A completed copy of the endorsement must be attached to the certificate of insurance and the certificate must state that the endorsement is being used. The certificate of insurance must describe the specific services provided by ADMINISTRATOR (e.g., physical therapy, psychological services) that are covered by the commercial general liability policy and the umbrella policy. At DISTRICT's request, ADMINISTRATOR will provide a copy of the declarations page of its liability and umbrella policies with a list of endorsements and forms. If so requested, ADMINISTRATOR will provide a copy of the policy endorsements and forms.

ADMINISTRATOR hereby indemnifies DISTRICT for any applicable deductibles and self-insured retentions, all of which are the sole responsibility of ADMINISTRATOR, to the extent not covered by the applicable policy.

If a policy is written on a "claims-made" basis, the retroactive date must pre-date the inception of this Agreement.

ADMINISTRATOR acknowledges that failure to obtain the foregoing insurance on behalf of DISTRICT constitutes a material breach of contract. ADMINISTRATOR must provide DISTRICT with proof satisfactory to DISTRICT that the above requirements have been met, prior to the commencement of work or use of DISTRICT facilities. The failure of DISTRICT to object to the contents of the certificate or the absence of same will not be deemed a waiver of all rights held by DISTRICT. Upon request, ADMINISTRATOR will provide DISTRICT with a copy of ADMINISTRATOR's applicable insurance policies including any endorsements, modifications, or exclusions thereto.

DISTRICT is a member/owner of the New York Schools Insurance Reciprocal ("NYSIR"). ADMINISTRATOR acknowledges that the procurement of that insurance as required herein is intended to benefit not only DISTRICT, but also NYSIR as DISTRICT's insurer.

**(19) Required Records.** ADMINISTRATOR will provide services and maintain records, logs, and reports in accordance with all applicable laws, regulations and requirements of the New York State Education Department, the New York State Department of Labor and District policies and procedures in force during the term of this Agreement. ADMINISTRATOR must provide District with a copy of any reports, tests, evaluations, or observations that are prepared in connection with the Services provided by ADMINISTRATOR under this Agreement.

**(20) Review of Records.** District will have the right to examine any or all records or accounts maintained by ADMINISTRATOR in connection with this Agreement.

**(21) District's Authority.** ADMINISTRATOR represents and warrants that ADMINISTRATOR will observe and comply with the policies, rules, and regulations of the DISTRICT including, but not limited to, District Code of

Conduct (Collectively, the "Policies") and will cause ADMINISTRATOR's employees to do the same. ADMINISTRATOR acknowledges that ADMINISTRATOR has reviewed and is familiar with the Policies. ADMINISTRATOR will carry out the orders, directions and policies conveyed by the district from time to time either orally or in writing, provided however, that the ADMINISTRATOR will determine the manner of carrying out ADMINISTRATOR's professional duties hereunder consistent with ADMINISTRATOR's status as an independent contractor.

(22) Safeguarding Information. Neither ADMINISTRATOR nor District will use or disclose any information concerning the Services pursuant this Agreement for any purpose which is prohibited by Federal and State statutes and/or regulations."

(23) Notices. Any notices required or permitted to be given pursuant to the terms of this Agreement must be in writing and either personally delivered or sent by nationally recognized overnight carrier to the parties at the following addresses:

To ADMINISTRATOR:

Seneca Consulting Group  
960-Wheeler Road  
Suite 5367  
Hauppauge, New York 11780

To DISTRICT:

Malverne Union Free School District  
301 Wicks Lane  
Malverne NY 11565  
Attention: Mr. Christopher Caputo

(24) Waiver. Any waiver of any term, condition or provision of this Agreement will not constitute a waiver of any other term, condition, or provision, nor will a waiver of any breach of any term, condition or provision constitute a waiver of any subsequent or succeeding breach.

(25) Third-Party Beneficiaries. There are no third-party beneficiaries of or in this Agreement, other than NYSIR.

(26) Negotiated Agreement. This is a negotiated Agreement. It will not be construed against any party by reason of this Agreement being prepared by that party's attorney. Each party warrants that it/he/she has full power to execute, deliver and perform this Agreement and has taken all actions required by law, organizational documents or otherwise to authorize the execution and delivery of this Agreement.

(27) Iran Divestment Act of 2012. By signing this Agreement, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its/his/her own organization, under penalty of perjury, that to the best of its/his/her knowledge and belief that each person is not on the list created pursuant New York State Finance Law § 165-a(3)(b).

(28) Confidentiality of Records and Data Security and Privacy. ADMINISTRATOR must comply with all District policies and State, federal, and local laws, regulations, rules, and requirements related to the confidentiality of records and data security and privacy.

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

Malverne Union Free School District

SENECA CONSULTING GROUP, INC

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: 

Name: Daniel C. Opinante

Title: President

Date: March 11, 2022



## EXHIBIT A

### Affordable Care Act Employer Compliance Proposal and Scope of Work

#### SPECIFICATION OF SERVICES

ADMINISTRATOR will assist DISTRICT with meeting the DISTRICT's "Employer Mandate" obligations and reporting requirements pursuant to the ACA by:

- Identifying in writing DISTRICT's employees (both full-time and variable-hour employees) for whom DISTRICT may be liable for a Section 4980H penalty if affordable, minimum essential coverage providing minimum value is not offered.
- Identifying which type of minimum essential coverage would be deemed "affordable" under ACA for its full-time eligible employees (applying, for example, the "Form W-2" safe harbor);
- Offering strategies and helping DISTRICT apply the "Look-Back/Stability Period Safe Harbor" Measurement Method (a.k.a. "Look-Back Measurement Method") under the ACA to new and ongoing employees of DISTRICT.
- Identifying and accounting for any applicable employment break periods and/or periods of special unpaid leave for each DISTRICT employee who is evaluated using the Look-Back Measurement Method.
- Identifying in writing which DISTRICT employees must be treated as a new, ongoing, variable-hour, full-time, part-time and/or seasonal employees under ACA for purposes of applying the Look-Back Measurement Method and for determining those employees for whom the district may be liable for a Section 4980H penalty if affordable, minimum essential coverage providing minimum value is not offered;
- Reviewing collective bargaining agreements ("CBAs"), individual employment contracts, Board of Education resolutions, letters of understanding and any other documentation setting forth terms and conditions of employment and helping DISTRICT determine how each affects DISTRICT's obligations under ACA;
- Providing DISTRICT with a written penalty analysis for: (1) failing to offer minimum essential coverage as required by ACA; (2) offering minimum essential coverage that does not provide minimum value; (3) providing minimum essential coverage that is not "affordable" under ACA standards; and (4) providing coverage that does not satisfy the non-discrimination rule under ACA; and
- Assisting and supporting DISTRICT with audits, inquiries and/or investigations conducted by the Federal oversight agencies including, but not limited to, a response to any notices of a potential Section 4980H penalty;
- Preparing and electronically filing/sending Internal Revenue Code Section 6056 reports as DISTRICT's authorized agent including, but not limited to:
  - Using a secure method of delivery to import applicable DISTRICT data furnished by DISTRICT;
  - Drafting IRS Forms 1094-C and 1095-C;
  - On or before February 15<sup>th</sup> 2023 sending completed 1095-B and 1095-C forms to DISTRICT for DISTRICT's review and written approval (DISTRICT's written approval must be received by 5:00 p.m. on February 15<sup>th</sup> 2023);
  - Upon receipt of DISTRICT's written approval, furnishing all full-time employees with a copy of IRS Form 1095-C on or before March 2<sup>nd</sup> 2023;
  - Upon receipt of DISTRICT's written approval, electronically filing 1094-C and 1095-C forms with IRS on or before March 31<sup>st</sup> 2023; and
  - Providing the District with confirmation of IRS acceptance of the forms.

- Calculating the hours of service performed by each employee on a weekly and monthly basis over a compliance period including, but not limited to, regular workday, overtime, paid leave time, special unpaid leave time and stipends (each calculation will accurately reflect the hours of service for a particular week or month, even if the time is not entered into District's payroll system until after that week or month has concluded);
  - Calculating the average hours of service performed by each employee during the initial or standard measurement period;
  - Helping DISTRICT:
    - Determine the relevant "plan years"
    - Identify, establish and apply the most beneficial measurement periods (e.g., 3-12 months, etc.) including, if recommended, different measurement periods for different categories of employees, for:
      - Initial Measurement Periods;
      - Standard Measurement Periods;
      - Stability Periods; and
      - Administrative Periods;
  - Analyzing and advising in writing whether DISTRICT's currently offered health insurance plans are "affordable" based on ACA requirements and offering options for alternate health insurance plans that comply with ACA;
  - Analyzing and advising in writing which is the best "safe harbor" option under ACA for calculating the affordability of health insurance coverage in accordance with each eligible DISTRICT employees' income.
  - Providing written assurances that current DISTRICT health insurance offerings meet the ACA standards for "minimum essential coverage";
  - Analyzing and advising DISTRICT in writing to determine what, when and how many notices required by ACA must be provided to its employees and providing the required notices to the employees.
  - Providing DISTRICT with a clear understanding of the New York State Health Insurance Exchange and its implications for DISTRICT and DISTRICT employees, if any.
  - Ensuring that new and existing employees of DISTRICT are treated correctly and consistently with respect to ACA requirements.
  - Developing strategies for timely enrolling in a DISTRICT health insurance plan those employees who meet the applicable legal threshold for average hours worked during the relevant period of time and, as a result, for whom DISTRICT may be liable for a Section 4980H penalty if affordable, minimum essential coverage providing minimum value is not offered;
  - Revising compliance procedures as the Federal Government makes ongoing changes and adjustments to the ACA; and
- Providing DISTRICT with a reference manual (a "Compliance Report") that documents all the advice, analysis, calculations, recommendations, procedures, and protocol that relate to this Agreement.

**EXHIBIT B**  
**BUSINESS ASSOCIATE AGREEMENT**

This Agreement ("Agreement") between Seneca Consulting Group, Inc., a New York Corporation with principal office and place of business at 960 Wheeler Road #5367 Hauppauge, NY 11788 (herein "CONSULTANT") and Malverne Union Free School District, having its principal place of business at 301 Wicks Lane Malverne NY 11565, (hereinafter referred to as the "District").

**WITNESSETH**

WHEREAS, CONSULTANT provides employee benefit consulting services to District which relates to the group health insurance program provided to the participants of such District; and

WHEREAS, the parties acknowledge that they are subject to the rules of HIPAA and that this Agreement is required by HIPAA regarding certain EDI, Privacy and Security standards applicable to this Agreement; and

WHEREAS, District and CONSULTANT have entered into a relationship under which CONSULTANT may receive, use, obtain, access or create Protected Health Information (as that term is defined in Paragraph I(e) of this Exhibit to the Agreement) from or on behalf of District in the course of providing goods and services to District and its participants; and

WHEREAS, such Protected Health Information is confidential and must be afforded special treatment and protection, such that all information can be used or disclosed only in accordance with the Standards for Privacy of Individually Identifiable Health Information set forth at 45 CFR Parts 160 and 164 (hereinafter "the Privacy Rule") as implemented in the parties' relationship by this Agreement; and

WHEREAS, CONSULTANT acknowledges that it is a Consultant of District under the terms of HIPAA in its operation of this Agreement.

**I Definitions.**

- (a) Breach. "Breach" shall have the same meaning as the term "breach" in Section 13400(1) of the HITECH Act
- (b) Designated Record Set. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR 164.501, limited to the information created or received by CONSULTANT from or on behalf of District.
- (c) 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
- (d) Disclose. The release transfer or provision of access to PHI, whether oral or recorded in any form or medium.
- (e) Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (f) 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.
- (g) Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Consultant from or on behalf of District.
- (h) Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (i) Business Associate. "Business Associate" shall mean Consultant.  
Covered Entity. "Covered Entity" shall mean Malverne Union Free School District
- (j) 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).

104. Obligations and Activities of Consultant. Consultant agrees to:

- (a) not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required By Law.
- (b) use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) mitigate, to the extent practicable, any harmful effect that is known to consultant of a use or disclosure of Protected Health Information by Consultant in violation of the requirements of this Agreement.
- (d) report to District within forty-eight (48) hours any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- (e) ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by consultant on behalf of District agrees to the same restrictions and conditions that apply through this Agreement to Consultant with respect to such information.
- (f) provide access, at the request of District, within 48 hours, to Protected Health Information in a Designated Record Set, to District or, as directed by District, to an Individual to meet the requirements under 45 CFR 164.524.
- (g) make any amendment(s) to Protected Health Information in a Designated Record Set that the District directs or agrees to pursuant to 45 CFR 164.526 at the request of District or an Individual, and within 48 hours of such request.
- (h) make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Consultant on behalf of, District available to the District, or to the Secretary, in a time and manner or designated by the Secretary, for purposes of the Secretary determining District's compliance with the Privacy Rule.
- (i) document such disclosures of Protected Health Information and information related to such disclosures as would be required for District to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (j) provide to District or an Individual, within 48 hours of a request, information collected in accordance with Section (i) above of this Agreement, to permit District to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

105. Permitted Uses and Disclosures by Consultant.

Except as otherwise limited in this Agreement, Consultant may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, District, provided that such use or disclosure would not violate the Privacy Rule if done by District or the minimum necessary policies and procedures of the District.

106. Obligations of District. District shall:

- (a) notify Consultant of any limitation(s) in its notice of privacy practices of District in accordance with 45 CFR 164.520, to the extent that such limitation may affect Consultant's use or disclosure of Protected Health Information.
- (a) District agrees to disclose PHI to Consultant upon its own volition, upon consultant's request, or upon the request of a third party if such disclosure is permissible by law, so that consultant may provide the agreed to services to or on behalf of District, District otherwise objects to the disclosure, or CONSULTANT is no longer providing the services to District.
- (b) notify Consultant of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Consultant's use or disclosure of Protected Health Information.

(c) notify Consultant of any restriction to the use or disclosure of Protected Health Information that District has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Consultant's use or disclosure of Protected Health Information.

5. Permissible Requests by District

District shall not request Consultant to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by District.

6. Term and Termination

(a) Term. This Agreement shall be effective from the date the parties sign the attached Benefit Consulting Agreement (the "Effective Date"), until the later of 1) the date of termination of the aforementioned Benefit Consulting Agreement or 2) the date one of the parties terminates the Agreement pursuant to subdivision (b) of this paragraph, or 3) the date when all of the Protected Health Information provided by the District to Consultant or created or received by Consultant on behalf of District, is destroyed or returned to District, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information in accordance with the provisions of Subdivision (c) of this paragraph 6.

(b) Termination. Either party may terminate this Agreement upon thirty (30) days' notice to the other party, which shall serve to terminate the Benefit Consulting Agreement as well:

(c) Effect of Termination.

i. Except as provided below in paragraph (ii) of this section, upon termination of this Agreement, for any reason, Consultant shall immediately return or if directed by the District, destroy all Protected Health Information received from District, or created or received by Consultant on behalf of District. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Consultant. Consultant shall retain no copies of the Protected Health Information.

ii. In the event that Consultant determines that returning or destroying the Protected Health Information is infeasible, Consultant shall provide immediately to District notification of the conditions that make return or destruction infeasible. Upon submittal of written proof, satisfactory to District, that return or destruction of Protected Health Information is infeasible, Consultant shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Consultant maintains such Protected Health Information.

7. Indemnification.

Consultant agrees to indemnify, defend and hold harmless District and their affiliates, trustees, officers, directors, employees, successors and assigns from and against any and all claims, penalties, liabilities, losses, damages, suites, settlements, judgments or costs, including reasonable attorneys' fees, which may arise from the acts or omissions of Consultants in performing under this Agreement.

8. Audit.

Upon sixty (60) days' prior notice, District may audit Consultant's performance pursuant to this Agreement, including, but not limited to, the internal privacy practices of Consultant. District shall choose the Auditor in its sole discretion. The Audit shall be conducted on CONSULTANT's premises during regular business hours and CONSULTANT shall make available its books, records and procedures regarding compliance with Health Insurance Portability and Accountability Act of 1996 Privacy Rule and any applicable amendments thereto.

9. Miscellaneous.

(a) Regulatory References. A reference in the Agreement to a section in the Privacy Rule means the section as in effect or as amended.

(b) Amendment. The Parties agree to take such action as is necessary to amend the Agreement from time to time pursuant to a written agreement signed by the Parties and is necessary for District to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(c) Survival. The respective rights and obligations of Consultant under Section 2(f), 2(g), 6(c) and (7) of this Exhibit "B" shall survive the termination of the Agreement.



(d) Interpretation. Any ambiguity in the Agreement shall be resolved to permit District to comply with the Privacy Rule.

(e) Notices. Any notice required to be given under this Agreement shall be in writing and sent by confirmed facsimile or by certified mail, return receipt requested at the address set forth above or at such other address as the parties may designate from time to time.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

The parties agree that for purposes of HIPAA CONSULTANT shall be deemed a Consultant of District. CONSULTANT agrees to continue to perform, on behalf of District, all transactions that are considered Covered Transactions, as that term is defined by HIPAA and function as District's Clearinghouse, as that term is defined by HIPAA, and therefore further agrees to comply with HIPAA's standards regarding EDI, Privacy and Security. In no event shall District be required to provide CONSULTANT with any information in a format that meets the EDI standards of HIPAA.

IN WITNESS WHEREOF, the duly designated representatives of District and CONSULTANT have executed this Agreement and have evidenced their ratification and consent to be bound by the Agreement contained herein, as of the effective date of this Agreement.

Malverne Union Free School District

SENECA CONSULTING GROUP, INC

By:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: 

Name: Daniel C. Opinante  
Title: President  
Date: March 11, 2022