



Placement, Consulting & Professional Development Provider Service Agreement

THIS AGREEMENT made this 1st day of July, 2022 by and between the BOARD OF EDUCATION, MALVERNE UNION FREE SCHOOL DISTRICT (hereinafter referred to as the "School District"), as the party of the first part, having its principal place of business located 75 Ocean Avenue, Malverne, New York, 11565. 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 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. 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.
1038 W. Jericho Turnpike
Smithtown, New York, 11787
Attn: Nicholas Mortati, President

SCHOOL DISTRICT: _____
ADDRESS _____
CITY/TOWN/ZIP CODE: _____

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: July 14, 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. 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: July 14, 2022

Name/Title: Nicholas Mortati, President