

## **PROFESSIONAL DEVELOPMENT/CONSULTANT AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between the **Malverne Union Free School District** ("School District"), located at 301 Wicks Lane, Malverne, New York 1156 and **5-in-5, Inc.**, ("Consultant"), at 260 West 26<sup>th</sup> Street, Apt. 6L, New York, NY 10001.

1. **TERM:** The term of the within Agreement shall be in effect from July 1, 2022 through June 30, 2023, unless terminated earlier, as set forth herein.
2. **CONDITIONS:** The School District shall retain the Consultant to provide certain professional development services for the School District and its staff under the terms and conditions hereinafter set forth. The Consultant shall perform services only to the extent authorized by the School District.
3. **DUTIES AND SERVICES:** The Consultant shall provide professional development services as follows:
  - a. Professional Development, trainings and workshops delivered to teachers, educations, non-teaching school staff, school mental health & counseling staff and administrators
  - b. Presentations for students and collaboration on productions around wellness issues
  - c. Development of behavioral health staff co-trainers
  - d. Parent/Family and community workshops, presentations and planning meetings with PTSAs
  - e. Consultation and Planning meeting with administration, behavioral staff, building level staff
  - f. Development and training of district-wide behavioral health experts
  - g. Assistance with development of community based resources, education tools, curriculums, websites and plans
  - h. Assistance in designing and developing district-wide branding and outreach.
  - i. Additional services including but not limited to: One Student Assembly with Same Here Staff, One school building selected to pilot the Same Here Mood Scale App, and access to presentations in Spanish and other languages for parents.
4. **FEES & EXPENSES:** During the term of this Agreement, the School District shall pay the Consultant a total amount not to exceed \$40,000, to be paid at an hourly rate of \$215.00 upon the satisfactory completion of services. Except as otherwise set forth herein, Consultant shall be responsible for all costs and expenses incurred by Consultant that are incident to the performance of services for School District, including, but not limited to, all tools, vehicles, or other equipment to be provided by Consultant, all fees, fines, licenses, bonds or taxes required of or imposed against Consultant and all other of Consultant's costs of doing business. School District shall not be responsible for any expenses incurred by Consultant in performing services for School District.

5. **INVOICE DUE ON MONTHLY BASIS:** Consultant will submit an invoice for services rendered on a monthly basis, and payment to Consultant shall be made within thirty (30) days from receipt of invoice from Consultant. The invoice shall include time sheets and attendance, types of services rendered and fees payable. School District shall give Consultant notice of any invoice dispute within twenty (20) days of its receipt and reserves the right to withhold payment pending the resolution of this dispute. Failure to dispute any invoice shall not be deemed as an acceptance and does not act as a waiver of School District's rights or prevent School District from availing itself of any remedy or course of action it has at law or in equity at a later date.
6. **RELATIONSHIP BETWEEN THE PARTIES:** The Consultant is retained by the School District only for the purposes and to the extent set forth in this agreement, and its relation to the School District shall, during the periods of its services hereunder, be that of an independent contractor. The Consultant shall be free to dispose of that portion of its time, energy, and skill during regulation business hours as the Consultant is not obligated to devote hereunder to the School District in such a manner as it sees fit and to such persons, firms or corporations as it deems advisable. Neither the Consultant nor its employees shall be considered as having employee status or entitled to participate in any of the School District's worker's compensation, retirement, fringe benefits, unemployment insurance, liability insurance, disability insurance or other similar employee benefit program.
7. **LICENSE AND AUTHORIZATION:** Consultant warrants that it is duly licensed and authorized to perform services and/or provide instruction as described herein. Consultant warrants that it will provide School District with licensed and qualified individuals. Consultant further represents that such services shall be performed by individuals that are licensed under the laws of the State of New York, inclusive of any necessary State Education Department Licensing requirements. Consultant 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, Consultant agrees to submit to School District proof of certification and/or professional licensing of all individuals providing services.
8. **INCOME TAX DESIGNATION:** The School District shall not withhold from sums payable to Consultant under this Agreement any amounts for Federal, State, or local taxes including Federal or State income taxes, employment taxes (including Social Security and Medicare taxes), and unemployment taxes. Consultant agrees that any tax obligation of Consultant arising from the payments made under this Agreement will be Consultant's sole responsibility.
9. **CONFIDENTIALITY:** Consultant, its employees, and/or agents agree that all information obtained in connection with the services provided for in this Agreement is deemed confidential information. Consultant, its employees, and/or agents shall not use, publish, discuss, disclose or communicate the contents of such information, directly or indirectly with third parties, except as provided for in this Agreement. Consultant further agrees that any information received by Consultant, its employees, and/or agents during the course of the services provided pursuant to the Agreement which concerns the personal,

financial, or other affairs of School District, its employees, agents, clients, and/or students will be treated by Consultant, its employees, and/or agents in full confidence and will not be revealed to any other persons, firms, or organizations. Consultant acknowledges its responsibility to maintain the security and privacy of student, teacher and/or principal data and its responsibility to adhere to all applicable federal and state statutes and regulations including but not limited to and the Family Educational Rights and Privacy Act (20 USC § 1232g) and New York Education Law § 2-d. In the event of a breach of the within confidentiality provision, Consultant shall immediately notify School District and advise it as to the nature of the breach and the steps the Consultant has taken to minimize said breach. Consultant shall indemnify and hold School District harmless from any claims arising from its breach of the within confidentiality provision. The parties further agree that the terms and conditions set forth herein shall survive the expiration and/or termination of this Agreement.

10. **COMPLIANCE WITH SAVE LEGISLATION:** The Consultant understands and agrees that, unless its instructors and employees will have no direct contact with school-aged students, 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. The Consultant shall adhere to all applicable requirements and protocols as established by the School District and the State Education Department of New York.
11. **SCHOOL GROUNDS & RULES:** It is understood and agreed that while on school grounds, Consultant shall obey all School District rules and regulations and must follow all reasonable directives of School District's administrators and employees.
12. **TERMINATION:**
  - a. This Agreement may be terminated by the School District upon seven (7) days written notice to the Consultant. In the event of such termination, the parties will adjust the accounts due and payable to Consultant for services rendered. Consultant will not incur any additional expenses upon receipt of School District's notification that Consultant'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 Consultant 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 Consultant, upon three (3) days' written notice from the School District to Consultant.
  - c. Notwithstanding anything to the contrary contained in the Agreement, Exhibit A or any other related documents, the School District expressly reserves the right to immediately suspend, cancel or terminate the Consultant's services under this Agreement in the event that its schools are closed and/or it becomes illegal, impossible or impracticable to continue the Consultant's services due to any reason,

including but not limited to any force majeure event, and upon the School District's exercise of such right, the Consultant, its officers, employees and/or agents shall not be entitled to further compensation, payments or any other benefits pursuant to this Agreement for the duration of such closure, except as otherwise agreed to in writing between the Consultant and the School District. Force majeure events shall include any condition beyond the School District's reasonable control including, without limitation, acts of God, accident, riots, civil commotion, wars, terrorist act, epidemic, pandemic including COVID-19 or similar epidemic or outbreak, quarantine, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental or quasi-governmental acts or omissions, changes in laws or regulations, national strikes, fire, and explosion. In the event of such suspension, cancellation or termination of Consultant's services, Consultant shall be entitled to payment only for services actually rendered in accordance with this provision, and shall not otherwise be entitled to payment for any previously scheduled services that were not actually rendered prior to the date of such school closing.

13. **DEFENSE AND INDEMNIFICATION:** To the fullest extent permitted by law, the Consultant agrees to defend, indemnify and hold the School District harmless from and against any and all penalties, interest or any other payment assessed against the District by any taxing authority should the Consultant's status as an independent contractor be disallowed by the taxing authority. Consultant further agrees that, to the fullest extent permitted by law, it shall defend, indemnify and hold harmless School District, its officers, directors, agents and employees from and against all loss, costs, claims, demands, actions, lawsuits, damages and expenses, including attorneys' fees, judgments, fines and amounts paid in settlement (collectively, "Damages") in connection with any terminated, pending or completed action, suit or proceeding arising from any act, error or omission, misstatement, negligence, recklessness, willful misconduct or breach of duties by Consultant or any of its officers, directors, agents or employees in connection with the performance of services pursuant to this Agreement. The obligations pursuant to this provision shall survive the termination of this Agreement.
14. **INSURANCE:** Consultant agrees to maintain the following insurance and name the School District as an additional insured on Consultant's commercial general liability and excess liability insurance policies:
  - a. **Commercial General Liability Insurance:** \$1,000,000 per occurrence/ \$2,000,000 aggregate. The policy shall provide coverage for claims of negligent hiring, training and supervision, including claims arising in the context of sexual molestation, abuse, harassment, or other sexual misconduct.
  - b. **Automobile Liability:** \$1,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.
  - c. **Workers' Compensation, Employers' Liability and N.Y.S. Disability:** Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits Insurance for all employees. A self-employed person and certain partners and corporate officers may be excluded from the definition of "employee" pursuant to Workers' Compensation Law Section 2 (4). A person seeking an exemption must

submit proof of filing of a CE-200 form with the New York State Workers Compensation Board.

- d. Professional Errors and Omissions Insurance: \$2,000,000 per occurrence/\$2,000,000 aggregate for the professional acts of Consultant and its employees performed under this Agreement. If written on a "claims-made" basis, the retroactive date must pre-date the inception of the contract or agreement. Coverage shall remain in effect for two (2) years following the completion of work.

Said policies shall be from an A.M. Best rated "Secure" insurer, licensed in New York State and shall state that Consultant's coverage shall be primary and non-contributory coverage for School District, its Board, employees and volunteers. School District shall be listed as an additional insured by using endorsement CG 2026 or equivalent. At the School District's request, Consultant shall provide a copy of the declaration page of the liability policy with a list of endorsements and forms. If so requested, Consultant will provide a copy of the policy endorsements and forms. In the event that any of the insurance coverage to be provided by Consultant contains a deductible, Consultant shall indemnify and hold School District harmless from the payment of such deductible, which deductible shall in all circumstances remain the sole obligation and expense of Consultant.

Consultant shall purchase from and maintain in a company or companies lawfully licensed to do business in the State of New York such insurance as will protect Consultant and School District from claims set forth below for which Consultant may be legally liable, whether such operations be by Consultant or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Notwithstanding any terms, conditions or provisions in any other writing between the parties, Consultant hereby agrees to effectuate the naming of School District as an unrestricted additional insured on Consultant's insurance policies, with the exception of workers' compensation and professional liability. If the policy is written on a claims-made basis, the retroactive date must precede the date of the contract. The School District, in its sole discretion, may waive some requirements of this paragraph; any such waiver must be in writing signed by an authorized representative of the School District.

Consultant shall provide the School District with evidence of the above insurance requirements upon execution of this Agreement. Consultant further acknowledges that its failure to obtain or keep current the insurance coverage required by this Agreement shall constitute a material breach of contract and subjects Consultant to liability for damages including, but not limited to, direct, indirect, consequential, special and any other damages School District sustains as a result of this breach. In addition, Consultant shall be responsible for the indemnification to School District of any and all costs associated with such lapse in coverage including, but not limited to, reasonable attorneys' fees.

15. ASSIGNMENT OF AGREEMENT: Consultant shall not assign, transfer or convey any of its rights or obligations under this Agreement without the prior written consent of School District.
16. DISCRIMINATION PROHIBITED: Neither School District nor Consultant will discriminate against any individual because of his/her age, race, creed, color, national

origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics or marital status and will take affirmative action to ensure that each individual is afforded equal opportunities without discrimination because of his/her age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics or marital status.

17. **GOVERNING LAW:** This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of New York without regard to conflicts or choice of law provisions that would defer to the substantive laws of another jurisdiction. Each of the parties hereto consents to the jurisdiction of any state court located within the County of Nassau, State of New York, or federal court in Federal District Court for the Eastern District of New York located in the County of Nassau, State of New York, and irrevocably agrees that all actions or proceedings relating to this Agreement must be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of and proceeding in any such court.
18. **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.
19. **MUTUAL AGREEMENT:** 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.
20. **NO PRIOR AGREEMENTS:** This Agreement and its exhibit(s) constitute the full and complete Agreement between School District and Consultant, and supersede all prior written and oral agreements, commitments or understandings with respect thereto. The Agreement may not be altered, changed, added to, deleted from or modified except through the mutual written consent of the parties.

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

**MALVERNE UNION FREE  
SCHOOL DISTRICT**

**CONSULTANT**

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

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

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

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