

SERVICE AGREEMENT

THIS AGREEMENT made this 5th day of December 2023 by and between Malverne UFSD (hereinafter referred to as the "SCHOOL DISTRICT"), having its principal place of business located at 75 Ocean Avenue, Malverne, NY 11565, and Gersh Academy Inc. (hereinafter referred to as the "SERVICE PROVIDER"), having its principle place of business for purposes of this Agreement located at 21 Sweet Hollow Road, Huntington, New York 11743.

WITNESSETH:

WHEREAS, the School District is authorized by the Education Law of the State of New York to contract with institutions within the State of New York for the instruction of students with disabilities; and

WHEREAS, SERVICE PROVIDER is a private institution conducting special services and programs for children with neurobiological disorders who meet the criteria for classification as students with disabilities; and

WHEREAS, the School District desires that SERVICE PROVIDER provide special instructional services and programs for the education of certain children in the School District in need of these services; and

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

WHEREAS, SERVICE PROVIDER is ready, willing and able to provide the instructional services to the student(s) named herein.

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 January 2, 2024 to June 30, 2024, unless terminated earlier, as set forth herein.

2. **SCOPE OF SERVICES:**

a. SERVICE PROVIDER shall provide instructional and related services during the school year for those children covered by the terms of this Agreement, listed in Confidential Schedule "A" annexed to 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; and
- vi. Complete evaluations as per the request of the Director of Special Education on an as needed basis (see fee schedule at Schedule B). All services shall be provided in strict compliance with the student's IEP.

3. **PAYMENT TERMS:**

a. 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 rates set forth in the fee schedule attached hereto as Schedule "B".

b. In the event that the SCHOOL DISTRICT, through separate agreement with the parent(s) of a child serviced under this Agreement, has agreed to fund only a portion of the child's tuition and fees, the SCHOOL DISTRICT shall pay no more than the amount set forth in that separate agreement in full consideration for the services to be rendered by SERVICE PROVIDER; any balance shall not be the responsibility of the SCHOOL DISTRICT.

4. **PAYMENT SCHEDULE:** SERVICE PROVIDER will submit an invoice for services rendered on a monthly basis, and payment to SERVICE PROVIDER shall be made within thirty (30) calendar 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) calendar 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 of SERVICE PROVIDER shall be deemed employees of SERVICE PROVIDER for all purposes and SERVICE PROVIDER alone shall be responsible for their work, personal conduct, direction, and compensation. SERVICE PROVIDER acknowledges that it will not hold itself, its officers, employees and/or agents out as employees of SCHOOL DISTRICT. SERVICE PROVIDER is retained by SCHOOL DISTRICT only for the purposes and to the extent set forth in this Agreement, and its relationship to SCHOOL DISTRICT shall, during the periods of its services hereunder, be that of an independent contractor. 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: SERVICE PROVIDER will indemnify SCHOOL DISTRICT for any tax liability, interest, and/or penalties imposed upon SCHOOL DISTRICT by any taxing authority based upon SCHOOL DISTRICTS failure to withhold any amount from the payments for tax purposes.

8. **RESPONSIBILITY FOR PAYMENT OF SERVICES:** 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, except for circumstances in which the SCHOOL DISTRICT, through separate agreement with the parent(s) of a child serviced under this Agreement, has agreed to fund only part of a child's tuition and fees. 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.

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 tuition and related service costs. For purposes of this Agreement, the definition and calculation of enrollment and attendance shall be determined by SCHOOL DISTRICT, in accordance with section 175.6 of the Regulations of the Commissioner of Education.

10. **LICENSE AND AUTHORIZATION:**

a. SERVICE PROVIDER warrants that it is a duly authorized nonpublic school. SERVICE PROVIDER represents that services shall be performed by individuals who are licensed

and/or certified 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.

b. 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.

11. **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.

12. **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.

13. **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 in accordance with each student's IEP. 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.

14. **AUTHORIZATION OF SCHOOL DISTRICT:** SERVICE PROVIDER shall coordinate all instruction through the Pupil Personnel Services Office or any other authorized office of SCHOOL DISTRICT.

15. **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.

16. **PHOTO I.D.:** SERVICE PROVIDER shall furnish each individual providing services hereunder with a photo identification badge to be worn at all times for any individual who provides services on-site at the SCHOOL DISTRICT.

17. **CHANGE IN STUDENT ROSTER:** 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.

18. **STUDENT PRESCRIPTIONS:** Where applicable, SERVICE PROVIDER shall obtain all medical prescriptions from the parent/guardian of students receiving services pursuant to this Agreement.

19. **TERMINATION NOTICE:** This Agreement may be terminated by either party upon thirty (30) 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, and SERVICE PROVIDER will be entitled to receive all sums due, accrued, and unpaid as of the date of termination. 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.

20. **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. In the event of a breach of the within confidentiality provision, SERVICE PROVIDER shall immediately notify SCHOOL DISTRICT and advise it as to the nature of the breach and the steps it has taken to minimize said breach. SERVICE PROVIDER shall indemnify and hold the 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.

21. **HIPAA:** Both parties to this Agreement understand that they may receive and/or come into contact with *protected health information* as defined, by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Parties hereby acknowledge their respective responsibilities pursuant to HIPAA and, if necessary, shall execute a Business Associate Agreement in connection with such responsibilities.

22. **INDEMNIFICATION and HOLD HARMLESS PROVISION:** SERVICE PROVIDER further agrees that it shall defend, indemnify and hold harmless SCHOOL

DISTRICT, its officers, directors, agents and employees for all loss, costs, damages and expenses, including attorneys' fees, judgments, fines and amounts paid in settlement in connection with a terminated, pending or completed action, suit or proceeding arising from any act, error or omission, misstatement, misleading statement, neglect or breach of duties by SERVICE PROVIDER or any of its officers, directors, agents or employees taken or made with respect to this Agreement.

23. **INSURANCE PROVISION:** SERVICE PROVIDER shall purchase from and maintain in a company or companies lawfully licensed to do business in the State of New York such insurance as will protect SERVICE PROVIDER and SCHOOL DISTRICT from claims set forth below for which SERVICE PROVIDER may be legally liable, whether such operations be by SERVICE PROVIDER or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Notwithstanding any terms, conditions or provisions in any other writing between the parties, SERVICE PROVIDER hereby agrees to effectuate the naming of SCHOOL DISTRICT as an unrestricted additional insured on SERVICE PROVIDERS 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 policy naming SCHOOL DISTRICT as an additional insured shall:

a. Be purchased from an A.M. Best rated "secured" insurer, authorized to conduct business in New York State.

b. Contain a 30-day notice of cancellation.

c. State that the organization's coverage shall be primary coverage for SCHOOL DISTRICT, its Board, employees and volunteers.

d. SCHOOL DISTRICT shall be listed as an additional insured by using endorsement CG 2026 or broader. The certificate must state that this endorsement is being used. If another endorsement is used, a copy shall be included with the certificate of insurance.

e. SERVICE PROVIDER agrees to indemnify SCHOOL DISTRICT for any applicable deductibles.

f. Required Insurance:

i. Commercial General Liability Insurance: \$1,000,000 per occurrence/ \$2,000,000 aggregate.

ii. Automobile Liability: \$1,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.

iii. Workers' Compensation and N.Y.S. Disability: Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits Insurance for all employees.

iv. Professional Errors and Omissions Insurance: \$1,000,000 per occurrence/ \$2,000,000 aggregate for the professional acts of the SERVICE PROVIDER performed under the contract for SCHOOL DISTRICT. 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.

g. In the event that any of the insurance coverage to be provided by SERVICE PROVIDER contains a deductible, SERVICE PROVIDER 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 SERVICE PROVIDER.

h. SERVICE PROVIDER shall provide the SCHOOL DISTRICT with evidence of the above insurance requirements upon execution of the within Agreement. SERVICE PROVIDER 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 SERVICE PROVIDER 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, SERVICE PROVIDER 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.

i. Prior to commencement of its services, SERVICE PROVIDER shall obtain and pay for insurance as may be required to comply with the indemnification and hold harmless provisions outlined under this Agreement.

NOTICES: Any notices to be given under this Agreement by either party to the other may be affected 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:

SERVICE PROVIDER

Gersh Academy Inc.
21 Sweet Hollow Road
Huntington, NY 11743
Attention: Vice President of Finance

SCHOOL DISTRICT

Malverne Union Free School District

With a copy to:

24. **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.

25. **NON-DISCRIMINATION:** Services provided pursuant to this Agreement shall be provided without regard to age, race, creed, color, sex, sexual orientation, military status, national origin, predisposing genetic characteristics, gender identity, religion, marital status or disability. SERVICE PROVIDER will affirmatively ensure that each individual is afforded equal opportunities with discrimination on the basis of age, race, creed, color, sex, sexual orientation, military status, national origin, predisposing genetic characteristics, gender identity, religion, marital status or disability.

26. **GOVERNING LAW:** This Agreement shall be governed by the laws of the State of New York.

27. **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.

28. **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.

29. **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.

30. **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.

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

32. **NONWAIVER:** No action or failure to act by SERVICE PROVIDER or SCHOOL DISTRICT shall constitute a waiver of a right or duty afforded them under the Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

33. **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.

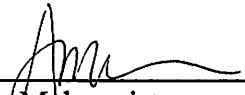
IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

Date: _____

By: _____
President, Board of Education

GERSH ACADEMY INC.

Date: _____

By:  _____
Amy Malmquist
Chief Operating Officer