



# MORGAN HILL UNIFIED SCHOOL DISTRICT

## SERVICES AGREEMENT

2021-22

THIS AGREEMENT ("Agreement") is made between Morgan Hill Unified School District, 15600 Concord Circle, Morgan Hill, CA 95037, hereinafter referred to as the DISTRICT, and the following named service provider hereinafter referred to as VENDOR:

**VENDOR NAME:** Effective School Solutions, LLC  
**DBA:** Effective School Solutions  
**ADDRESS:** 121 Chanlon Road, Suite 310  
**MAILING ADDRESS:** (if different than above)  
**CITY:** New Providence      **STATE:** NJ      **ZIP:** 07974  
**PHONE:** 215 983 7089      **FAX:**  
**EMAIL ADDRESS:** mroseman@effectiveschoolsolutions.com  
**FEDERAL TAX I.D. OR SOCIAL SECURITY NUMBER:** 45-2692108

*Vendor is responsible for updating contact information in a timely manner.*

**NOTE: Federal Regulations (Code Sections 6041 and 6209)** require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed or failure to furnish the taxpayer identification number. The DISTRICT requires your federal tax identification number or Social Security Number, whichever is applicable, in order to comply with these regulations.

### Check appropriate box for federal tax classification:

Individual/sole proprietor     
  C Corporation     
  S Corporation  
 Partnership     
  Trust/estate     
  Other \_\_\_\_\_  
 Limited Liability Company     
 Type:  (C)     (S)     (P)

Submittal of Documents: The VENDOR shall not commence the work under this Agreement until the VENDOR has submitted and the DISTRICT has approved the certificate(s) and affidavit(s), and the endorsement(s) of the insurance required as indicated below:

<b>Signed Agreement</b>
<b>Insurance Certificates and Endorsements</b>
<b>W-9 Form</b>
<b>Workers' Compensation Certificate</b> (if applicable)
<b>Tuberculosis Clearance</b> (if applicable)
<b>Fingerprinting/Criminal Background Investigation</b> (if applicable)
<b>DIR #</b> _____ (if applicable)
<b>Addendum for Technology Service Agreement</b> (if applicable)
<b>Addendum for COVID-19</b> (if applicable)

**1. TERM**

This Agreement is effective on 1/1/2022 and terminates on 6/30/22 or upon completion of services, whichever occurs first.

VENDOR shall not undertake any work under this Agreement until this Agreement is reviewed and approved by the DISTRICT's Board of Education, and VENDOR is in receipt of a signed Agreement.

**2. TERMINATION**

**2.1 Without cause by DISTRICT.** DISTRICT may, upon sixty (60) day notice, terminate this Agreement and compensate VENDOR only for services satisfactorily rendered to the date of termination. Written notice by DISTRICT shall be sufficient to stop further performance of services by VENDOR. Notice shall be deemed given when received by the VENDOR.

**2.2 Without cause by VENDOR.** VENDOR may, upon thirty (30) day notice, with or without reason, terminate this Agreement. Upon this termination, DISTRICT shall only be obligated to compensate VENDOR for services satisfactorily rendered to the date of termination. Written notice by VENDOR shall be sufficient to stop further performance of services to DISTRICT. VENDOR acknowledges that this thirty (30) day notice period is acceptable so that the DISTRICT can attempt to procure the services from another source.

**2.3 With cause by DISTRICT.** DISTRICT may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

**2.3.1.** Material violation of this Agreement by the VENDOR; or

**2.3.2.** Any act by VENDOR exposing the DISTRICT to liability to others for personal injury or property damage; or

**2.3.3.** VENDOR is adjudged bankrupt, VENDOR makes a general assignment for the benefit of creditors or a receiver is appointed on account of VENDOR'S insolvency.

Written notice by DISTRICT shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or good faith efforts towards correction thereof be made, or in the case of a condition or violation that cannot be cured within three (3) calendar days, another reasonable time period agreed upon by the parties, this Agreement shall upon the expiration of the three

(3) calendar days cease and terminate. In the event of this termination, the DISTRICT may secure the required services from another VENDOR. If the expense, fees, and/or costs to the DISTRICT exceed the cost of providing the services pursuant to this Agreement, the VENDOR shall pay the excess expense, fees, and/or costs to the DISTRICT up to five (5) percent of the amount set forth in Section 13 of this Agreement within thirty (30) days upon the receipt of the DISTRICT'S notice of these expenses, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available.

**3. SUBCONTRACT OR ASSIGNMENT**

Neither party shall assign, delegate or subcontract any part of this Agreement without the written consent of the other party, except that a party may assign or transfer this Agreement without such consent to its successor in interest by way of merger, acquisition or sale of all or substantially all of its assets.

**4. INTERPRETATION**

**In the event of any conflict or inconsistency between VENDOR'S agreement or documents and this MORGAN HILL UNIFIED SCHOOL DISTRICT SERVICES AGREEMENT, the MORGAN HILL UNIFIED SCHOOL DISTRICT SERVICES AGREEMENT shall prevail and supersede all other agreements or contract language, unless expressly superseded by Vendor's agreement.**

**5. INDEPENDENT CONTRACTOR STATUS**

In the performance of the services to be provided, VENDOR is an independent contractor with the authority to control and direct the performance of the details of the work, and this Agreement shall not be construed to create the relationship of agent, employee, partnership, joint venture, or association. VENDOR understands and agrees that it and all of its employees are not employees of the DISTRICT and are not entitled to benefits to which DISTRICT employees are normally entitled, including, but not limited to, State Unemployment Compensation, Workers' Compensation, vacation or sick pay.

**6. TAX REPORTING / PAYMENT**

VENDOR shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including, but not limited to, Unemployment Insurance, Social Security and Income Taxes with respect to VENDOR'S employees. Pursuant to IRS regulations, the DISTRICT shall provide VENDOR in IRS identified tax classification with an annual statement of compensation on the appropriate federal forms (currently IRS Form 1099 Misc.).

**7. REGULATIONS**

The parties shall comply with all federal, state, and local laws, ordinances, regulations, permit requirements, and Board of Education's policies and regulations in performance of this Agreement, including as set forth herein at Paragraph 8.

**8. FINGERPRINTING AND CRIMINAL RECORDS CHECK**

The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to the VENDOR performing any of the services as listed in Item 12 of this Agreement. DISTRICT retains authority to remove any VENDOR employee from DISTRICT site upon the determination that he/she has not complied with this fingerprinting and background check requirement, or has been convicted of a violent or serious felony, as defined in Education Code §45122.1. VENDOR must notify the DISTRICT and remove any employee immediately should the VENDOR learn that an employee working on a DISTRICT site has been convicted of a serious or violent felony, or sex offense. Failure to provide notice as required above may result in cancellation of this Agreement by DISTRICT and further legal action by the DISTRICT where applicable.

**9. GOVERNING LAW**

This Agreement shall be governed under the laws of the State of California. VENDOR hereby consents to the jurisdiction of the state or federal courts of Santa Clara County, California.

**10. MISCELLANEOUS**

This Agreement, including Exhibits A and B attached hereto, contains the entire agreement between DISTRICT and VENDOR and supersedes any and all prior discussions, understandings, and negotiations, whether oral or in writing. This Agreement may not be modified or amended unless in writing and signed by both parties.

**11. INSURANCE AND INDEMNIFICATION**

VENDOR agrees to defend, indemnify, and hold harmless the DISTRICT, its Board of Education, officers, employees and agents, individually and collectively, from and against all costs, losses, claims, demands, suits, actions, payments, liabilities and judgments, including attorney's fees, arising from personal or bodily injuries, property damage or otherwise, to the extent proximately caused by VENDOR'S negligent performance of this Agreement or misconduct.

VENDOR must keep in full force and affect a policy or policies of Workers' Compensation Insurance in the amount or amounts required by applicable law.

During the term of this Agreement, VENDOR shall procure and maintain general liability, automobile liability, and professional liability (errors and omissions) from a California licensed insurer with per-occurrence limits of \$1 Million unless otherwise specified by the DISTRICT. VENDOR shall provide DISTRICT with a Certificate(s) of Insurance evidencing such coverage. Certificate Holder is Morgan Hill Unified School District. VENDOR shall also provide an Additional Insured Endorsement, naming Morgan Hill Unified School District as Additional Insured. Such insurance coverage shall be primary insurance and any insurance or self-insurance maintained by the DISTRICT shall be non-contributory.

VENDOR shall use its best efforts to provide at least thirty (30) days prior written notice to the DISTRICT should the policy be cancelled or expired.

**12. DESCRIPTION OF SERVICES (SCOPE OF WORK)**

VENDOR shall supply all required payment and performance bonds and shall pay employees applicable prevailing wages in accordance with state and federal law where required. VENDOR shall furnish, at its own expense, all labor, materials, equipment and other items necessary to carry out the terms of this Agreement. VENDOR shall provide the following services to DISTRICT:

A description of VENDOR'S services to District is attached as Exhibit A.  
 A description of the terms and conditions of VENDOR's services is attached as Exhibit B.  
 Exhibits A and B to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement.

(Additional pages may be added and shall be marked Exhibit "A" and are incorporated herein by this reference).

**13. COMPENSATION AND EXPENSES**

DISTRICT agrees to pay the VENDOR for services satisfactorily rendered pursuant to this Agreement at the rate set forth in Section 12 for a total fee not to exceed \$139,200.

District shall pay VENDOR according to the following terms and conditions:

- 13.1.** Payment shall be made for all undisputed amounts in installment payments within thirty (30) days after the VENDOR submits an invoice to the DISTRICT. VENDOR will only be paid after the MHUSD Board of Education has approved/ratified this Agreement.
- 13.2.** VENDOR invoices will be subject to verification that services have been rendered and subject to written approval by Dr. Rebecca O'Brien.
- 13.3.** DISTRICT shall not be liable to VENDOR for any costs or expenses paid or incurred by VENDOR in performing services for DISTRICT including but not limited to travel, professional development related expenses, duplication, etc.
- 13.4.** VENDOR shall not increase prices during the term of this Agreement.
- 13.5.** All invoices must be submitted within 30 days of rendering services. DISTRICT reserves the right to reject invoices submitted for payment more than 30 days after services are performed.

**14. AUDIT**

VENDOR shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of VENDOR transacted under this Agreement. VENDOR shall retain these books, records, and systems of account during the Term of this

Agreement and for five (5) years thereafter. VENDOR shall permit the DISTRICT, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the services covered by this Agreement. Audit(s) may be performed at any time, provided that the DISTRICT shall give reasonable prior notice to VENDOR and shall conduct audit(s) during VENDOR'S normal business hours, unless VENDOR otherwise consents.

**15. CERTIFICATES / PERMITS / LICENSES**

VENDOR and all VENDOR'S employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.

**16. CONFIDENTIALITY**

VENDOR and all VENDOR'S agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

**17. NOTICE**

Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

<p><b><u>DISTRICT</u></b>                  Morgan Hill Unified School District                  15600 Concord Circle                  Morgan Hill, CA 95037</p> <p>ATTN: <u>Dr. R. O'Brien, Director, Special Education</u></p>	<p><b><u>VENDOR</u></b>                  Effective School Solutions                  121 Chanlon Road, Suite 310                  New Providence, NJ 07974</p> <p>ATTN: <u>Carol Petrosyan</u></p>
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**18. ATTORNEY FEES / COSTS**

Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

**19. COMPLETION**

The work completed herein must meet the approval of the DISTRICT, which shall not be unreasonably withheld or conditioned, and shall be subject to the DISTRICT'S general right of inspection and supervision, in a manner consistent with VENDOR'S status as an independent contractor, to secure the satisfactory completion thereof. Work must be completed in good workmanship like manner and in accordance with the generally accepted standard of care in the industry.

**20. SEVERABILITY**

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or

impaired thereby, except where enforcement is inconsistent with the parties' intent.

21. **RELEASE, DISCHARGE OR WAIVER**

No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either party hereto unless in writing and executed by both parties hereto. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this Agreement, shall be deemed a waiver of any rights or remedies that either party hereto may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants or conditions.

22. **EXECUTION IN COUNTERPARTS**

This Agreement may be executed in several counterparts each of which shall be an original and all of which shall constitute but one and the same agreement.

**Any party signing this Agreement on behalf of the VENDOR hereby represents that he/she is duly authorized by the VENDOR to execute this Agreement and that the VENDOR has agreed to be bound by the provisions hereof.**

Effective School Solutions, LLC ("VENDOR")

Signature: 

Date: 11/30/2021

Name: DUNCAN F. YOUNG

Title: CEO

MORGAN HILL UNIFIED SCHOOL DISTRICT ("DISTRICT")

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Kirsten Perez

Title: Deputy Superintendent and Chief Financial Officer

Date of Board Approval: \_\_\_\_\_

Notwithstanding the effective date of this Agreement set forth in Paragraph 1, this Agreement shall not be considered accepted, approved or otherwise effective until 1) Board approval and 2) the required approvals and certifications have been implemented, provided by, or submitted to the DISTRICT, as appropriate.



### **Exhibit A: Description of ESS Tier 3 In-District Mental Health Clinical Services**

Effective School Solutions (“ESS”) provides specialized in-district clinical services for students with emotional and behavioral problems. Since 2009, ESS has created innovative clinical programs that improve care for students, strengthen outcomes, and help to maintain students in the least restrictive environment. Our origins are as a private therapeutic school and the vision for ESS is thus to provide the same level of clinical care that students would receive at an Intensive Outpatient Program (IOP) or Partial Hospitalization Program (PHP), but located within the school-based setting.

ESS has developed a holistic approach to treating students encompassing proprietary program protocols, multi-tiered layers of supervision and quality management, family services, professional development and psychoeducation for teachers, all supported and tracked through baseline comparison performance outcome statistics. ESS’s unique approach and proprietary know-how comprises over a decade of development and is currently deployed in over 90 districts across 9 states.

ESS services represent more than just the services that a traditional counselor would provide by providing a system of care and a team-based approach. The factors that make ESS distinct include the following:

- A multi-model approach to the delivery of intensive mental health services comprising weekly individual therapy, daily group therapy, bi-weekly family therapy, monthly family support group, supervised lunch for ESS students, and immediate response sessions for students struggling during the school day to assist in practicing regulation skills.
- Proprietary written processes, procedures and protocols that specifically address how to handle the needs of students with high-risk mental health issues and that address specific areas of need like school avoidance, the specific needs of students with externalized behaviors, crisis assessment, etc. These documents, which serve as the “playbook” for ESS services, have been created over ESS’ 10-year history.
- A historical track record of data driven success. As an example, in the 2019-2020 academic year, grades for students in ESS improved by 16%, attendance increased by 35%, and discipline incidents decreased by 62%. Additionally, 99% of all students in ESS were able to be maintained in-district versus requiring an outplacement to a Non-Public School (NPS).
- Licensed clinicians with experience in child and adolescent psych and a proprietary training program for these clinicians that augments their clinical skills with the skills necessary to manage high risk mental health challenges in the school environment.
- A flexible job description and staff approach that enables ESS clinicians to stay after hours for parent visits and to provide in-home interventions for students with school avoidance issues; most districts have internal policies or union arrangements that prevent school district employees from doing this work.



- Four separate layers of clinical supervision, including a regional clinical director, an executive clinical director, a chief clinical officer, and a quality management team.
- A proprietary process and approach to quality management to audit clinical records, screen for high-risk cases and check for the integrity of clinical documentation.
- An electronic health records system with customizations that enable tracking of academic and school performance data and the data’s linkage to therapeutic success measures.
- A unique approach to data collection and measurement, including specific proprietary data points (e.g. Therapeutic Success Index) that allow therapeutic progress to be reported in a measurable way.
- A library of over 30 professional development workshops covering a wide array of mental health related topics. Included in the proposal below is 4 hours of professional development for staff as well as 2 virtual workshops for parents across the district.

**Investment:**

Program Components	Cost
<b>2021-2022 Cost (Prorated from 1/1/22-6/30/22):</b> Tier 3 clinical programming at one site to serve a maximum of <b>10</b> Students, including <b>1</b> full-time, licensed mental health professional, supervision and oversight by the ESS Regional Clinical Director and Executive Clinical Director, and quality and risk management by the ESS QM clinical expert, plus <b>4</b> hours of district-wide professional development, <b>2</b> 1-hour virtual parent mental health workshops, and furnishing of the ESS therapeutic space	<b>\$139,200</b>

ESS offers extended summer programming for a select number of students at an additional \$12,000 for 1 mental health professional. ESY is a five-week program convening twice weekly for group therapy with individual or family sessions offered bi-weekly to provide continuity of services and assist the student in maintaining emotional stability over the summer. **Should the district adopt ESS for the full 2022-2023 school year by April 15<sup>th</sup>, 2022, the fee for ESY will be waived.**

## EXHIBIT B

to Agreement between Morgan Hill Unified School District (“the District”) and Effective School Solutions, LLC (“Effective School Solutions”)

1. Effective School Solutions shall provide the therapeutic mental health services of one full time California-licensed mental health professional for the 2021-2022 school year (“School Year”), defined as the period of January 1, 2022 through June 30, 2022. This professional will hold a license from one or more of the following California Board of Behavioral Sciences. The mental health professional shall work under the direction and supervision of Effective School Solutions, and in conjunction with staff designated by the School. These mental health professionals shall be present at all times during the term of the Agreement when School is in session during the school year. Effective School Solutions shall provide therapeutic mental health services for a maximum of ten (10) students per licensed mental health professional (hereinafter referred to as “cohort”) enrolled in the School at any given time during the School Year. The students in the cohort need not necessarily be the same students for the entire period at the School. It is understood that Effective School Solutions will be reasonably available prior to the start of each period above for consultation for preparation of the launching of ESS services and to provide parent informational sessions to help assist in the transition of students returning to the District and entering ESS programming. Furthermore, in the weeks preceding the beginning of each of the periods above, ESS will provide all necessary clinical evaluations of students to ensure that they are appropriate for ESS programming.

2. Unless otherwise determined by Effective School Solutions through consultation with the District, based on an assessment of the needs of a particular student or students, the therapeutic mental health services shall include and be scheduled, as follows:

- a) up to one (1) individual psychotherapy session each week for each student and family therapy typically offered on a twice-monthly basis;
- b) up to one (1) daily group therapy session, in which the number of students assigned to a specific group shall not be greater than ten (10) on a consistent basis; and
- c) up to one (1) multifamily group therapy session each month.

If elected by the District, Effective School Solutions will provide its summer program (“summer program”) for up to ten (10) students per mental health professional enrolled at the School as noted below to the fee set forth in Section 10. The summer program is a five-week program scheduled during the months of July and August and includes twice-weekly group therapy sessions of seventy-five (75) minutes each and individual or family therapy sessions every other week. The students in the Summer Program need not necessarily be the same students for the entire period. In the event of a School closure, the implementation of required virtual learning, staggered schedules, and/or other modifications to School opening plans to address public health guidance, Effective School Solutions may make reasonable modifications to the delivery of the above services.

3. In the event the licensed mental health professional is absent, if requested by the District, Effective School Solutions shall exert its best efforts to assign a qualified substitute (either in-person or virtual if an in-person substitute is unavailable) to provide the services. If a substitute cannot be obtained, Effective School Solutions shall provide the District with a credit of three hundred (\$300) dollars for each day of service missed by the mental health professional after an aggregate total of five absences per number of contracted licensed mental health professionals during the school year. If the District is not satisfied with the services provided by one or more of the licensed mental health professional assigned by Effective School Solutions, the Board may request a change in the professional assigned, in which case Effective School Solutions shall use commercially reasonable efforts to effectuate the change as quickly as possible but in no event later than seventy-five (75) days from the date Effective School Solutions receives the change request in writing. For the avoidance of doubt, the District does not have the authority to discipline or terminate the employment of any Effective School Solutions personnel. Rather, the District will promptly report any concerns regarding the performance or conduct of an Effective School Solutions employee to the Executive Director of Effective School Solutions.

4. Effective School Solutions shall provide all the clinical and administrative services outlined in the Agreement during normal School hours on regularly scheduled School days, except that multi-family therapy sessions and some individual family therapy sessions may be scheduled at the School during evening hours at the discretion of Effective School Solutions. If the student is absent on the date the individual or family therapy session is scheduled, or

school is not held on the scheduled day for the services, such services will not be rescheduled and will not be considered an absence pursuant to Section 3.

5. Days during which there is an extended School facility closure (e.g., for public health reasons) shall not constitute “regularly scheduled School days” pursuant to Section 4, and missed sessions due to extended School facility closures will not be considered absences pursuant to Section 3. During extended School facility closures, Effective School Solutions will deliver virtual or telephonic support consisting of a combination of virtual or telephonic individual therapy sessions, virtual or telephonic family therapy sessions and virtual or telephonic group therapy. ESS staff members will continue to work full-time.

6. The District shall provide Effective School Solutions with:

- a) a confidential office for the mental health professionals to provide individual therapy sessions at the School;
- b) a classroom or similar space to conduct group therapy sessions, multifamily therapy groups and study skills classes;
- c) filing cabinet(s) with locking mechanisms to secure confidential records;
- d) use of telephones
- e) access to student education records including grades, attendance rates and disciplinary incidents for each student in the cohort provided services by Effective School Solutions, in a manner prescribed by the District, subject to state and federal requirements for confidentiality of student education records and personally identifiable information. To the extent that confidential student education records or other confidential student information comes into the possession of Effective School Solutions, Effective School Solutions shall not further disclose that information without appropriate parental consent unless required by applicable law.

7. Effective School Solutions shall be designated as a “school official” by the District for the purpose of providing services to students pursuant to the terms of the Agreement. All records of the services provided by Effective School Solutions to students of the District shall be considered Education Records, as defined by FERPA, and shall be maintained by Effective School Solutions in accordance with applicable law on behalf of the District. Effective School Solutions shall make all records of services provided to such students in the cohort

available to the District upon request or as required in order to deliver services to the student at issue, including but not limited to, in the event of a due process hearing under state or federal law. Effective School Solutions shall provide parents/students with an acknowledgement for their signature, which confirms that any information received by Effective School Solutions from the student may become part of the student's Education Record retained by the District. Once a student is no longer receiving services, Effective School Solutions shall deliver all original records pertaining to that student to the District for future reference electronically or in printed form, and any copies retained by Effective School Solutions shall continue to be treated as Education Records pursuant to FERPA.

8. All computers furnished by the District in accordance with the terms of the Agreement shall be password protected with access limited to Effective School Solutions. The District shall ensure that there will not be any unauthorized access to the confidential information contained on any such computer.

9. It is within the sole discretion of Effective School Solutions to determine whether a student can enter or remain in the cohort once the student has been referred by the School for the services outlined in the Agreement. However, it is expressly understood that the primary reason for Effective School Solutions to either reject a student or remove a student from the cohort, after considering the input of the appropriate personnel of the School, is a student's unwillingness to appropriately participate in the services outlined in the Agreement or, in the sole opinion of Effective School Solutions staff, the student is a danger to himself/herself or others.

10. For the School Year , the District shall pay Effective School Solutions the amount set forth in Section 13 of the Agreement. Payment shall be made in six (6) equal and consecutive monthly installments of twenty-three thousand two hundred dollars (\$23,200). The first payment shall be due on January 1<sup>st</sup>, 2022 and shall be due on the first day of every month thereafter. In addition to the above amounts, the summer program will be billed separately on July 1 of every year according to the following rates:

- a) for a summer program of up to two mental health professionals, the District will be billed \$12,000
- b) for every subsequent mental health professional providing services for a summer program, the District will be billed \$6,000

If the District executes and returns a renewal contract on or before April 15<sup>th</sup>, 2022, the summer program will be provided at no additional cost. The District shall furnish Effective School Solutions with vouchers that Effective School Solutions shall execute and timely submit for payment.

11. Each party represents and warrants that it will comply with federal, state, and local public health guidance in the conduct of the work supported by the Agreement. Each party shall indemnify, hold harmless, and defend the other party from any liability arising out of or relating to such party's failure to follow such guidance in the conduct of the work supported by the Agreement.

12. The parties each acknowledge and agree that Effective School Solutions does not bill directly to Medicaid or to any other state-funded programs. The District will hold harmless, indemnify and defend Effective School Solutions and its directors, employees, agents, successors and permitted assigns from any and all losses, damages, liabilities, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, incurred by Effective School Solutions, relating to or resulting from any claim arising out of or occurring in connection with any actual or alleged overpayments or billings errors or improprieties concerning Medicaid or any other state or publicly funded programs, or any other actual or alleged violation by the District, its employees, representatives, agents, or assigns, of any applicable federal, state, or local statute, regulation, ordinance, or order.

13. Unless otherwise required by law, the District shall not release the terms and conditions of the Agreement, including but not limited to the financial terms of the Agreement, to any person and/or entity. If the District or any of its representatives becomes compelled by applicable law, regulation, or in legal proceedings or other similar process to disclose the Agreement, the District will, unless prohibited by law, provide Effective School Solutions with prompt notice of such requirement prior to disclosure of the Agreement.

14. The District agrees that it shall not hire, use as a consultant, or use as an independent contractor for a vendor other than Effective School Solutions any employee or former employee of Effective School Solutions who provides and/or provided services to the School in particular, or the District in general, pursuant to the Agreement for a period of two (2) years from the date the employee last provided services to the District as an employee of Effective School Solutions. Since damages for violating this Section "14" are incapable of

precise calculation and would be difficult to prove, the parties agree that the District would pay to Effective School Solutions liquidated damages in an amount equal to four (4) times the employee's annual salary for the time period equal to the breach of this restrictive covenant. The parties agree that this liquidated damages amount is fair and reasonable and is intended to compensate Effective School Solutions, and not constitute a penalty. The parties acknowledge and agree that Effective School Solutions' harm caused by a District Breach would be impossible or very difficult to accurately estimate as of the date of contract, and that the liquidated damages are a reasonable estimate of the anticipated or actual harm that might arise from a District breach. The District's payment of the liquidated damages would be the District's sole liability and entire obligation and the Effective School Solution's exclusive remedy for any breach of this Section "14." The provisions of this Section "14" of this Exhibit B shall remain in full force and effect, regardless of whether the Agreement is terminated prior to the expiration of the term of the Agreement or the Agreement is not renewed by the parties upon the expiration of the term of the Agreement.

15. All intellectual property rights, including copyrights, patents, patent disclosures, and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how, and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, derivative works, and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product, and other materials that are delivered to the District under the Agreement or prepared by or on behalf of Effective School Solutions in the course of performing its obligations under the Agreement (collectively, the "Deliverables") except for any confidential information of the District or District materials shall be owned by Effective School Solutions. Effective School Solutions hereby grants the District a license to use all Intellectual Property Rights in the Deliverables free of additional charge and on a non-exclusive, non-transferable, non-sublicensable, fully paid-up, royalty-free, and perpetual basis to the extent necessary to enable the District to make reasonable use of the Deliverables.

16. The Agreement is subject to all applicable federal, state and local statutes, regulations and ordinances.

17. The provisions of the Agreement shall apply to, bind, and inure to the benefit of each of the parties hereto, and to their respective successors, assigns, and legal representatives.

18. With the exception of indemnification liability, neither party shall be liable for special, incidental or consequential damages or lost profits (however arising, including negligence) arising out of or in connection with the Agreement, even if such party has been advised of the possibility of such damages. With the exception of indemnification liability, in no event shall either party be liable to the other party in an amount greater than the amount paid or to be paid under the Agreement. This limitation of each party's liability is cumulative, with all payments for claims or damages in connection with the Agreement giving rise to the claim being aggregated to determine satisfaction of the limit. The existence of one or more claims will not enlarge the limit.