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**SERVICE AGREEMENT BETWEEN  
KELBERMAN CENTER, INC.**

**AND**

**CLINTON CENTRAL SCHOOL DISTRICT FOR THE 2020-2021 SCHOOL YEAR**

THIS AGREEMENT is effective this 1<sup>st</sup> day of August, 2020, between the Kelberman Center, Inc. (hereinafter referred to as “KC”), a New York not-for-profit corporation located in Utica, New York, and Clinton Central School District, a New York State School District located in Clinton, New York (hereinafter referred to as “School District”), related to School Consultation Services to be provided to the School District by the Kelberman Center, Inc.

**WITNESSETH**

WHEREAS, KC, is a not-for-profit corporation whose mission is providing a regional center for excellence for individuals with autism spectrum disorders and related learning challenges, and

WHEREAS, The School District wishes to engage the technical assistance of KC in providing assistive technology consultation in the district for the benefit of students, families and teachers,

NOW, THEREFORE, in consideration of the mutual promises herein stated, it is agreed by and between the parties as follows:

1. **OBLIGATIONS OF KC.** KC hereby agrees to use its best efforts to provide up to ten (10) hours of Assistive Technology Evaluation at the rate of \$165 dollars per hour. Performed Services under this Agreement shall be billed on a monthly basis, following the delivery of service. This Agreement reflects a fee per hour contract.
  
2. **OBLIGATIONS OF THE SCHOOL DISTRICT.** The School District hereby agrees to promptly provide payment for all billed hourly services on a monthly basis, within thirty (30) days of invoice. In addition, the School District shall reimburse KC agents for travel expense to and from the District, or any other location requested by the District, according to the following rate structure on a monthly basis within thirty (30) days of invoice:

**Roundtrip:**

- 0 – 15 minutes \$12.50
- 16 – 30 minutes \$25.00
- 31 – 45 minutes \$37.50
- 46 – 60 minutes \$50.00

Each Additional 15-minute increment \$12.50 per 15-minute interval

### **3. RELATIONSHIP BETWEEN KC AND THE SCHOOL DISTRICT.**

3.1 None of the provisions of this Agreement are intended to create nor shall be deemed or construed to create any relationship between KC and the School District other than that of independently operated entities contracting with each other solely to effectuate the purposes and provisions of this Agreement. KC and the School District each agree to provide regular supervision to all of their agents in connection with the Program.

3.2 KC and the School District shall maintain an effective liaison and close cooperation with each other to provide maximum benefits to each participant.

3.3 Both parties agree not to make reference to the other party in public documents or use the other party's trademark, or symbol in any form of advertising or for any purpose without the other party's prior written approval of the communication.

### **4. STUDENT RECORDS.**

4.1 Nothing in this Agreement shall be deemed to replace the position of ultimate responsibility that the School District has for the students located within its District and by its participation in this Agreement KC does not accept any responsibility for said students and student records. This Agreement does not alter any requirements that the School District must fulfill regarding its ongoing obligations to meet each of its student's needs as reflected in the participating student's IEP. In addition, the School District shall maintain responsibility for the privacy of and control over the participant's student records.

4.2 Subject to applicable confidentiality requirements and to the extent feasible, the School District shall, however, establish and maintain a system, which permits maximum sharing of student records, medical and other records and information about program participants with KC, for the limited purpose of effectuating the provision of School Consultation Services.

4.3 The parties agree that responsibility for any and all communication with parents of participating students regarding the assessment and evaluation of students' needs during provision of School Consultation Services shall be the sole responsibility of the School District. From time to time, the KC staff may be required to deliver professional opinions; however, these shall be delivered under the terms of this Agreement, strictly to and for the benefit of the School District staff involved.

4.4 KC acknowledges that student records are confidential and will comply with all requirements of the Family Educational Rights and Privacy Act and the Individuals with Disabilities Education Act regarding such confidentiality. Both parties shall be bound by the provisions of all Federal and New York State laws with regard to privacy of Protected Health Information under the provisions of HIPAA or any other relevant statutes.

5. **TERM.** This Agreement shall be in effect for all days of the 2019/2020 school year.

6. **COVENANT OF NONDISCLOSURE/CONFIDENTIALITY/NONCOMPETITION.**

6.1 (a.) The parties agree that KC's School Consultation Programs are proprietary intellectual property of KC. The parties agree that the provision of KC's School Consultation Services involve a specialized approach to provide the potential for students with autism spectrum disorders and/or other intellectual and developmental disabilities to reach their full potential. The parties agree that terms and conditions of this Agreement are confidential and shall not be disclosed to third parties by an agent or employee of either party without the express written consent of the other party. For purposes of this Agreement, the term "third parties" includes any person or entity except (i) the parties to this Agreement, (ii) any employee or agent of a party to this Agreement who has a reasonable need to know of this Agreement's existence and/or its terms, (iii) governmental entities, and (iv) persons who have obtained a lawful subpoena or court order. Information obtained will not be made available to other school districts or parties without the express written consent of KC. Any breach of this Article will be treated as a default and grounds for immediate rescission of the Agreement at KC's discretion.

6.1 (b.) Upon termination of the Agreement all proprietary intellectual property provided to the District as part of KC's School Consultation Programs in the provision of services shall remain the property of KC and shall be returned to KC within ten (10) days following termination.

6.1 (c.) The District covenants that its purpose in entering this agreement is to provide services for the benefit of the enrolled participants, district students with autism spectrum disorder and/or other intellectual and developmental disabilities. Therefore, the District covenants that information obtained from KC during the term of this agreement regarding KC's proprietary School Consultation Programs will not be made available to other school districts or parties without the express written consent of KC.

6.2 KC and School District mutually agree that during the entire term of the Agreement and for a period of three (3) years following the termination of this Agreement between the parties, neither party shall: (a) directly or indirectly solicit, entice or hire away each other's employees, agents, contractors or subcontractors, or (b) knowingly disclose to any third party the identity of either parties' participants, clients or subcontractors, or the status or existence of any contract, or lack thereof, between either party and its past, present or prospective participants, clients or subcontractors, without the prior express written consent of the other party.

7. **ADDITIONAL STUDENTS.** Should the District determine that it is required to accommodate additional students with KC School Consultation Program services, in excess of the hours recited in the Agreement; the parties shall promptly cooperate to reach a consensual alteration, in writing, in order to promptly meet those student needs.

8. **INSURANCE.** The School District agrees to maintain its own liability insurance for all employees, volunteers and students receiving or participating in the Program's services under this Agreement. Certificates of such insurance shall be furnished by the School District to KC and shall contain the provision that KC be given 30 days' written notice of any intent to cancel or terminate by either the School District or the insuring company. Failure to furnish insurance certificates or to maintain such insurance shall be a default under this contract and shall be grounds for immediate termination of this contract.

9. **INDEMNIFICATION.** The School District shall indemnify and hold harmless KC, its agents, and employees, from and against all claims, damages, losses and expenses, including but not limited to, attorney's fees arising out of or resulting from KC's performance under this Agreement, and shall defend KC against any such claims, damages, losses and expenses with counsel reasonably satisfactory to KC, in whole or in part; provided that nothing in this Agreement shall require the School District to hold harmless or defend the KC from any claims arising from the willful misconduct of the KC or its employees. This indemnification shall extend to the omission or commission of any act, lawful or unlawful, by the School District, its agents and/or employees, including but not limited to court costs and attorney's fees incurred by the School District in connection with the defense of said matters.

10. **SECURITY.** The School District agrees to take reasonably prudent steps to protect the personal safety of the KC staff involved in providing School Consultation Services, at all times including providing the school District personnel to assist with interaction with all school district participants and their families during regular school hours. The School District shall provide notification of any developing public safety issues or other pertinent matters of relevance to the KC staff involved in providing School Consultation Services in a prompt and timely fashion in an effort to protect the safety of the KC staff.

11. **DEFAULT.** Upon the occurrence of default under the provisions of this Agreement, and at the same time or in the alternative, a termination prior to the stated term of the contract, KC shall immediately be relieved of any and all liability to provide ongoing services under the terms of the Agreement related to the provision of services under the individual IEPs between the School District and its students.

## 12. **MISCELLANEOUS PROVISIONS**

12.1 Governing Law. The validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the applicable provisions of New York law.

12.2 Entire Agreement. This Agreement contains all the terms and conditions agreed upon by the parties hereto regarding the subject matter of this Agreement. Any prior agreements, promises, negotiations or representations, either oral or written, relating to the subject matter of this Agreement not expressly set forth in this Agreement are of no force or effect. This Agreement may be altered with the written consent of both parties.

**WITNESS WHEREOF**, the parties hereto, by their authorized representatives, have executed this Agreement, effective as of the date first above written:

APPROVAL BY KELBERMAN CENTER INC.:

In Utica, New York this \_\_\_\_ day of \_\_\_\_\_ 2020.

\_\_\_\_\_  
Tara Costello  
Executive Director/CEO

APPROVAL BY CLINTON CENTRAL SCHOOL DISTRICT:

In Clinton, New York this \_\_\_\_ day of \_\_\_\_\_ 2020.

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