



## STAFFING AND PLACEMENT AGREEMENT

This Agreement ("Agreement") is entered into on 07/13/2016, between **BMR Health Services, Inc** ("Provider"), with its principal place of business located at 5976 W Las Positas Blvd, Ste # 216, Pleasanton, CA – 94588 and **Milpitas Unified School District** with its principal place of business located at 1331 East Calaveras Blvd, Milpitas, CA. 95035 and shall be effective through June 30, 2019 and renewable for 3 years after the expiration date either by executing a new contract or written request by Milpitas Unified.

### **RECITALS**

WHEREAS, Provider is engaged in the business of providing personnel for the performance of certain healthcare related services,

WHEREAS, Client wishes to retain Provider to provide personnel to Client in connection with the above mentioned services or services as set forth in Exhibit A, (Statement of Work).

NOW, THEREFORE, Provider and Client agree as follows:

#### **1. Scope of Services**

Provider will provide personnel (the "Supplied Personnel") to perform the work (the "Work") described in Exhibit A for Client in accordance with the completion times set forth therein.

#### **2. Price and Payment Terms**

Client agrees to cooperate with Provider's reasonable requests with respect to the availability of personnel and to pay Provider for the services of the Supplied Personnel.

#### **3. Relation of Parties**

A. The Supplied Personnel are employees of Provider or are subcontracted by the Provider, and Provider retains all responsibility related thereto, including but not limited to withholding and payment of any applicable local, state or federal taxes, and payment for Workers' Compensation protection. Provider will indemnify client against any claims made or brought by personnel, government or taxing authority relating to such payments or withholdings.

B. The performance by Provider of its duties and obligations under this Agreement will be that of an independent contractor, and nothing herein shall create or imply an agency relationship between Provider and Client, nor will this Agreement be deemed to constitute a joint venture or partnership between the parties.

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#### **4. Term and Termination**

Unless terminated as provided herein, this Agreement will extend to and terminate upon completion of the Work as provided herein. Client may terminate this Agreement without cause upon thirty (30) days written notice. In the event of termination without cause, Client agrees to pay Provider for all of the Work performed up to the date of termination. Either party may terminate this agreement for material breach, provided, however, that the terminating party has given the other party at least thirty (30) days written notice of and the opportunity to cure the breach. Termination for breach will not preclude the terminating party from exercising any other remedies for breach.

In the event of an arrest, BMR Health Services and Milpitas Unified School District will schedule a conference to discuss next steps based on District protocols and California Employment laws.

#### **5. Ownership of Intellectual Property**

To the extent that Provider has received payment of compensation as provided in this Agreement, any work of authorship created in conjunction with the Work will be deemed a "commissioned work" and "work made for hire" to the greatest extent permitted by law and Client will be the sole owner of the Work and/or any works derived there from. To the extent that the Work is not properly characterized as "work made for hire," then Provider hereby irrevocably assigns to Client all right, title and interest in and to the Work (including but not limited to the copyright therein), and any and all ideas and information embodied therein, in perpetuity and throughout the world.

#### **6. Confidential Information**

A. Provider warrants that it has obligated the Supplied Personnel to abide by the terms of this Agreement related to the nondisclosure of confidential information. All information relating to Client that is known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by Provider and will not be disclosed or used by Provider except to the extent that such disclosure or use is reasonably necessary to the performance of the Work.

B. All information relating to Client that is known to be confidential or proprietary, or which is clearly marked as such, shall be held in confidence by Provider and will not be disclosed or used by Provider except to the extent that such disclosure or use is reasonably necessary to the performance of Provider's duties and obligations under this Agreement.

C. These obligations of confidentiality will extend for a period of 12 months after the termination of this agreement, but will not apply with respect to information that is independently developed by the parties, lawfully becomes a part of the public domain, or of which the parties gained knowledge or possession free of any confidentiality obligation.

#### **7. Warranty and Disclaimer**

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Provider warrants that the Work will be provided in a workmanlike manner, and in conformity with generally prevailing industry standards. This warranty is exclusive and is in lieu of all other warranties, whether express or implied, including any warranties of merchantability or fitness for a particular purpose and any oral or written representations, proposals or statements made on or prior to the effective date of this agreement.

**8. Limitation of Remedies**

Client's sole and exclusive remedy for any claim against Provider with respect to the quality of the Work will be the correction by Provider of any material defects or deficiencies therein, of which Client notifies Provider in writing within ninety (90) days after the completion of that portion of Provider's Work. In the absence of any such notice, the Work will be deemed satisfactory to and accepted by Client.

**9. Limitation of Liability**

In no event will Client be liable for any loss of profit or revenue by Provider, or for any other consequential, incidental, indirect or economic damages incurred or suffered by Provider arising as a result of or related to the Work, whether in contract, tort or otherwise, even if Provider has advised of the possibility of such loss or damages. Provider further agrees that the total liability of Client for all claims of any kind arising as a result of or related to this Agreement, or to any act or omission of Provider, whether in contract, tort or otherwise, will not exceed an amount equal to the amount actually paid by Client to Provider for the Work during the twelve (12) month period preceding the date the claim arises. Provider will indemnify and hold Client harmless against any claims by third parties, including all costs, expenses and attorneys' fees incurred by Client therein, arising out of or in conjunction with Provider's performance under or breach of this Agreement.

**10. Solicitation/Hiring**

During the period of this agreement and for Twelve (12) months thereafter, neither party shall directly or indirectly solicit or offer employment to or hire any employee, former employee, subcontractor or former subcontractor of the other. The terms "former employee" and "former subcontractor" shall include only those employees or subcontractors of either party who were employed or utilized by that party on the Effective Date of this Agreement.

Milpitas unified school district may enter into an agreement with BMR Health to hire the services provider directly. The Service provider should have worked for 2 years with BMR Health at Milpitas unified. If the client is interested in hiring the services provided, Milpitas Unified school district should send written request to BMR Health and agree to an adjusted pricing for services.

Milpitas unified may also rescind their offer to the service provided and a discount will be provided to the client for future services.



**11. Non-Compete**

During the period of this agreement and for Twelve (12) months thereafter, Client agrees not to contract either directly or indirectly with the employee or the subcontractor who provided services through the provider at the Facility of the Client.

**12. Non-assignment**

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, together with their respective legal representatives, successors and assigns, as permitted herein.

**13. Attorneys' Fees**

The parties agree that if any of them ever have to begin or defend legal or other proceedings to enforce or interpret the terms of this Master Agreement, the prevailing party shall be entitled to recover any litigation expenses, including, without limitation, reasonable attorney's fees and costs.

**14. Severability**

If any term of this Agreement is found to be unenforceable or contrary to law, it shall be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.

**15. Force Majeure**

Either party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay is caused by events or circumstances beyond the delayed party's reasonable control.

**16. No Waiver**

The waiver by any party of any breach of covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing, and signed by the party waiving its rights. This Agreement may be modified only by a written instrument executed by authorized representatives of the parties hereto.

**17. Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements, proposals, negotiations, representations or

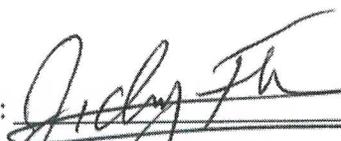


communications relating to the subject matter. Both parties acknowledge that they have not been induced to enter into this Agreement by any representations or promises not specifically stated herein.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

Provider: **BMR Health Services Inc**

Client: **Milpitas Unified School District**

By:   
Name & Title: **Jicky Thomas, Manager**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A: STATEMENT OF WORK**

**1.0 Statement of Work**

Provider agrees to provide a California State licensed providing Speech Language Pathologists, Psychologists, occupational & physical therapists (here after referred to as "SLP's", "OTs" & "PTs" to client as requested by client. Any SLPs, OTs& PTs provided will hold and maintain appropriate registration and licensure to practice in the state of California. Evidence of registration and licensure will be provided to client by provided upon commencement of therapist's services.

Providers SLPs, OTs, Psychologists, PTs & CFYs will provide therapy services in compliance with applicable state and federal regulations and in accordance with client's policies, procedures, rules and regulations. Client will inform provider and the SLPs, OTs, PTs & CFYs of client's policies, procedures, rules and regulations

Client shall notify provider immediately of any SLPs, OTs, Psychologists, PTs and CFYs failure to comply with any state or federal regulations or of client's appropriate policies, procedures, rules and regulations

SLPs, OTs, Psychologists, PTs and CFYs shall have access to any records necessary to provide services required herein accordance with all applicable federal, state and local statutes, rules and regulations, as well as under HIPPA regulations and client's policies, procedures, rules and regulations

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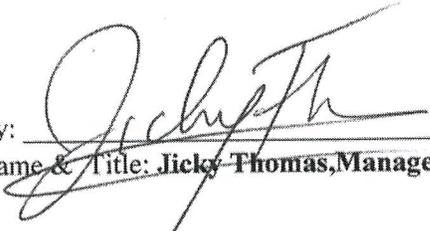
**Payment Terms**

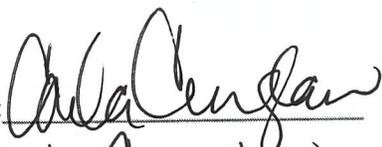
Invoices will be submitted on a monthly basis by the Provider and the Client agrees to make the payment on the same in full within 30 days from the date of receipt of such invoice. All payments should be mailed to **BMR Health Services Inc, 5976 W Las Positas Blvd, Ste # 216, Pleasanton, CA - 94588**. A finance charge of 1.5% per month on the unpaid amount of an invoice, or the maximum amount allowed by law, will be charged on past due accounts.

Payments by Client will thereafter be applied first to accrued interest and then to the principal unpaid balance. Any attorney fees, court costs, or other costs incurred in collection of delinquent accounts shall be paid by Client. If payment of invoices is not current, the provider may suspend performing further work.

Provider: **BMR Health Services Inc**

Client: **Milpitas Unified School District**

By:   
Name & Title: **Jicky Thomas, Manager**

Signature:   
Name: Carla Crenshaw  
Title: Director Student Services

\*The Per Diem and Hourly Rates for therapists will be increased by 3 % percent annually to incorporate a cost of living adjustment (COLA). The COLA increase will take effect each year on the anniversary of the Effective Date of the Agreement.

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