

2016-17 SY

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT ("Agreement") is entered into on **November 28, 2016**, between **101 Therapy Staffing Inc. ("Provider")**, with its principal place of business located at **1290 Kifer Road, Suite #301, Sunnyvale, CA 94086**, and **Milpitas Unified School District ("Client")**, with its principal place of business located at **1331 East Calaveras Blvd, Milpitas, CA 95035**

RECITALS

WHEREAS, Provider is engaged in the business of providing personnel for the performance of certain specified services ("Services").

WHEREAS, all of Provider's personnel have been fingerprinted (including the Provider receiving confidential DOJ and FBI information), subject to background checks and are cleared for employment.

WHEREAS, Client wishes to retain Provider to provide Services to Client in connection with the project or projects set forth in the Statement of Work attached hereto as Exhibit A and incorporated herein by reference, and Provider wishes to be so engaged.

NOW, THEREFORE, Provider and Client agree as follows:

1. Scope of Services

Provider shall use reasonable efforts to provide the Services and provide certain personnel (the "Supplied Personnel") to perform the work (the "Work") described in Exhibit A: Statement of Work ("Statement of Work") for Client in accordance with the terms and conditions of this Agreement.

2. Price and Payment Terms

A. Client will pay Provider for the Services and Supplied Personnel at the rates set forth in the Statement of Work and will also pay any additional costs or fees set forth in this Agreement. Provider will invoice Client for services provided under this Agreement on a semi-monthly basis. Payment is due on receipt of invoice. Invoices will be supported by the pertinent time sheets or other agreed system for documenting time worked by the Supplied Personnel. Client's signature or other agreed method of approval of the work time submitted for Supplied Personnel certifies that the documented hours are correct and authorizes Provider to bill Client for those hours. If a portion of any invoice is disputed, Client will pay the undisputed portion.

B. 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 attorneys' fees, court costs, or other costs incurred in collection of delinquent accounts shall be paid by Client. If payment of invoices is not current, Provider may suspend performing further work.

C. Supplied Personnel are presumed to be nonexempt from laws requiring premium pay for overtime, holiday work, or weekend work. Provider will charge Client special rates for premium work time only when Supplied Personnel's work on assignment to Client, viewed by itself, would legally require premium pay and Client has authorized, directed, or allowed the Supplied Personnel to work such premium work time. Client's special billing rate for premium hours will be the same multiple of the regular billing rate as Provider is required to apply to the Supplied Personnel's

regular pay rate. (For example, when federal law requires 150% of pay for work exceeding 40 hours in a week, Client will be billed at 150% of the regular bill rate.)

3. Relationship of the Parties

A. The Supplied Personnel are employees of Provider. Provider is, for example, responsible for withholdings and payment of any applicable local, state or federal payroll taxes, and payment for workers' compensation protection. Provider will indemnify and hold Client harmless against any claims made or brought by Supplied Personnel, government or taxing authority relating to such payments or withholdings.

B. Provider's performance 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.

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 upon twenty-four (24) hours' written notice. Termination for breach will not preclude the terminating party from exercising any other remedies for breach.

5. Ownership: Confidential Information

Client and Provider acknowledge that during the term of this Agreement, either party might share information with the other that the disclosing party considers to be proprietary and confidential to itself ("Confidential Information").

All Confidential Information disclosed under this Agreement shall be and remain the property of the disclosing party and nothing contained in this Agreement shall be construed as granting or conferring any rights to such Confidential Information on the other party. The recipient shall honor any request from the disclosing party to promptly return or destroy all copies of Confidential Information disclosed under this Agreement and all notes related to such Confidential Information. The parties agree that the disclosing party will suffer irreparable injury if its Confidential Information is made public, released to a third party, or otherwise disclosed in breach of this Agreement and that the disclosing party shall be entitled to obtain injunctive relief against a threatened breach or continuation of any such breach and, in the event of such breach, an award of actual and exemplary damages from any court of competent jurisdiction.

6. Limitation of Liability

A. In no event will Provider be liable for any loss of profit or revenue by Client, or for any other consequential, incidental, indirect or economic damages incurred or suffered by Client arising as a result of or related to the Work, whether in contract, tort or otherwise, even if Client has advised of the possibility of such loss or damages. Client further agrees that the total liability of Provider 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 three (3) month period preceding the date the claim arises.

B. Client will indemnify and hold Provider harmless against any claims by third parties, including all costs, expenses and attorneys' fees incurred by Provider therein, arising out of or in conjunction with Client's performance under or breach of this Agreement.

C. As a condition precedent to indemnification, the party seeking indemnification will inform the other party within five (5) business days after it receives notice of any claim, loss, liability, or demand for which it seeks indemnification from the other party; and the party seeking indemnification will cooperate in the investigation and defense of any such matter.

D. The provisions in this paragraph 6 of this Agreement constitutes the complete agreement between the parties with respect to indemnification, and each party waives its right to assert any common-law indemnification or contribution claim against the other party.

7. Non-Solicitation of Employees and/or Subcontractors.

A. Except as may be otherwise agreed in writing by the Client and Provider, during the term of this Agreement and for twelve (12) months thereafter, Client shall not offer employment to or employ, either directly or indirectly, whether as an independent contractor, consultant, employee or otherwise, any individual who is or was during the validity of the Agreement and the preceding 12 months, an employee of Provider, or was involved in the performance of this Agreement. In the event of a breach of any provision in this clause, Provider shall have the right, without limiting any other remedies available to it under the law, to seek an injunction, in any court having jurisdiction, enjoining Client from continuing its breach.

B. It is acknowledged that solicitation by Client of any of Provider's employees or subcontractors will cause Provider to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by Provider of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such solicitation, Client agrees that liquidated damages may be assessed and recovered by Provider as against Client, in the event of wrongful solicitation and without Provider being required to present any evidence of the amount or character of actual damages sustained by reason thereof; therefore Client shall be liable to Provider for payment of liquidated damages in the amount of Twenty Thousand Dollars (\$20,000) for each employee or subcontractor wrongfully solicited by Client. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Client shall pay them to Provider without limiting Provider's right to terminate this Agreement for breach as provided elsewhere herein.

8. Arbitration

The Provider and Client agree that any dispute or controversy arising out of or relating to any interpretation, construction, performance or alleged breach of this Agreement shall be settled and determined solely and exclusively by arbitration to be held in the County of Santa Clara, State of California, and to be administered by the Judicial Arbitration and Mediation Service ("**JAMS**") in accordance with the JAMS Commercial Arbitration Rules then in effect. The arbitration shall be conducted by a single arbitrator who shall be appointed by agreement of the Parties or, if no agreement can be reached, by JAMS pursuant to its rules. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive, and binding on the Parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction. The Provider and Client shall each pay one-half of the costs and expenses of such arbitration, and the Provider and Client shall each pay its own attorneys' fees and expenses. However, the arbitrator shall award reasonable attorneys' fees and costs to the prevailing Party in the arbitration. Nothing in this section is intended to prevent either party from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration.

9. Miscellaneous.

9.1 Governing Laws. It is the intention of the parties hereto that the internal laws of the State of California (irrespective of its choice of law principles) shall govern the validity of this Agreement, the construction of its terms, and the interpretation and enforcement of the rights and duties of the parties hereto.

9.2 Binding upon Successors and Assigns. Subject to, and unless otherwise provided in, this Agreement, each and all of the covenants, terms, provisions, and agreements contained herein shall be binding upon, and inure to the benefit of, the permitted successors, executors, heirs, representatives, administrators and assigns of the parties hereto.

9.3 Severability. If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and application of such provision to other persons or circumstances shall be interpreted so as best to reasonably effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision which will achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provision.

9.4 Entire Agreement. This Agreement, the exhibits hereto, the documents referenced herein, and the exhibits thereto, constitute the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties with respect hereto and thereto. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof.

9.5 Amendment and Waivers. Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party to be bound thereby. The waiver by a party of any breach hereof or default in the performance hereof shall not be deemed to constitute a waiver of any other breach or default or any succeeding breach or default.

9.6 No Waiver. The failure of any party to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions.

9.7 Attorneys' Fees. Should an action be brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover, as an element of the costs of suit and not as damages, reasonable attorneys' fees to be fixed by the court (including without limitation, costs, expenses and fees on any appeal). The prevailing party shall be the party entitled to recover its costs of suit, regardless of whether such suit proceeds to final judgment. A party not entitled to recover its costs shall not be entitled to recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining if a party is entitled to recover costs or attorneys' fees.

9.8 Notices. Whenever any party hereto desires or is required to give any notice, demand, or request with respect to this Agreement, each such communication shall be in writing and shall be effective only if it is delivered by personal service or mailed, United States certified mail, postage prepaid, addressed as follows:

101 Therapy Staffing, Inc.	1290 Kifer Rd., Suite #301 Sunnyvale, CA 94086 Phone: 408-331-2181 Fax: 408-519-3457 Attn: <u>Evelyn Robinson, Admin/Operations Mgr.</u>
----------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------

To Client:	Milpitas USD 1331 East Calaveras Blvd Milpitas, CA 95035 Phone: 408-635-2600 Ext 6009 Email: ccrenshaw@musd.org Attn: Carla Crenshaw, Director, Special Education
------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Such communications shall be effective when they are received by the addressee thereof; but if sent by certified mail in the manner set forth above, they shall be effective five (5) days after being deposited in the United States mail. Any party may change its address for such communications by giving notice thereof to the other party in conformity with this Section.

9.9 Further Assurances. Each party agrees to cooperate fully with the other parties and to execute such further instruments, documents and agreements and to give such further written assurances, as may be reasonably requested by any other party to better evidence and reflect the transactions described herein and contemplated hereby and to carry into effect the intents and purposes of this Agreement.

9.10 Construction of Agreement. This Agreement has been negotiated by the respective parties hereto and their attorneys and the language hereof shall not be construed for or against any party. The titles and headings herein are for reference purposes only and shall not in any manner limit the construction of this Agreement, which shall be considered as a whole.

9.11 Client's Representations. Client represents and warrants that it is free to enter into this Agreement and to perform each of the terms and covenants of it. Client represents and warrants that it is not restricted or prohibited, contractually or otherwise, from entering into and performing this Agreement, and that its execution and performance of this Agreement is not a violation or breach of any other agreement between the Client and any other person or entity.

9.12 Advice of Counsel. EACH PARTY ACKNOWLEDGES THAT, IN EXECUTING THIS AGREEMENT, SUCH PARTY HAS HAD THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND HAS READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT.

9.13 Counterparts. This Agreement may be executed by facsimile and in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

9.14 Force Majeure Neither 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.

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

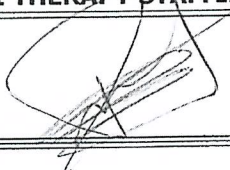
PROVIDER : 101 THERAPY STAFFING, INC	CLIENT: MILPITAS USD
Signature: 	Signature:
Name: Pradeesh Thomas	Name:
Title: President	Title:
Date: 11/9/16	Date:

EXHIBIT A: STATEMENT OF WORK

1.0 Statement of Work

Provider agrees to provide State licensed **Special Education Teachers and Instructional Assistants** (referred to as "**Educators**") to Client as requested by Client. Any Educators provided by the provider will hold and maintain appropriate registration and licensure to practice in the state. Evidence of registration and licensure will be provided to Client upon commencement of work.

Educators will provide special education services in compliance with applicable state and federal regulations and in accordance with Client's policies, procedures, rules and regulations. Client will inform provider about the Client's policies, procedures and regulations prior to commencement of the Work.

Client shall notify Provider immediately and in writing of any failure to comply with any state and federal regulations of Client's appropriate policies, procedures, rules and regulations.

Educators 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 HIPAA regulations and Client's policies, procedures, rules and regulations.

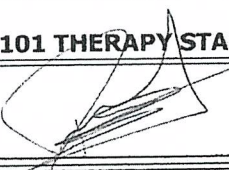
2.0 Billing Rate

Client will pay Provider for the Services rendered pursuant to this Agreement at the hourly rate as follows:

Special Education Teacher \$80.00 per hour 8 Hours per day/5 days per week

Charanpreet Walla
Anzella Jones

3.0 Special Conditions

PROVIDER: 101 THERAPY STAFFING, INC	CLIENT: MILPITAS USD
Signature: 	Signature:
Name: Pradeesh Thomas	Name:
Title: President	Title:
Date: 12/5/16	Date:

Milpitas USD
2016-2017 SY Rate Sheet

Special Education Teacher \$80.00 per Hour
8 Hour Work Day/5 Days per week

Anzella Jones

Start Date: January 17, 2017