

BMR HEALTH SPED SERVICES SERVICE AGREEMENT FOR TEACHERS

This agreement is made effective as of October 3rd 2016, by BMR Health SPED Services, (hereafter referred to as "BMR Health SPED Services") and Milpitas Unified School District (hereafter referred to as "Client") and will be in effect for the Client's 2016/2017 school year only;

Whereas, Client requires the services of a Special Education professional, Resource Specialist Program Teacher and/or Special Education Teacher;

Whereas, Client desires to contract with BMR Health SPED Services to provide Client with Professionals to work 35 hours per week with a duty free lunch of at least 35 minutes each day; Whereas, BMR Health SPED Services desires to enter into such contract.

Now, therefore, in consideration of the foregoing and the mutual covenants and promises contained herein, the parties agree as follows:

1. Client's Right and Obligations:

- a. Client agrees to pay BMR Health SPED Services an hourly fee and BMR Health SPED Services will confirm placement of candidates and fee by mead of Contractor Assignment Confirmation. The fee per hour is \$75 for Special Education (SPED) Teachers, funds paid under this Agreement shall not exceed \$95,025.00 per teacher for the 2016-2017 school year.
- b. If Client requires Professionals to work any holiday listed in Exhibit "A" as attached, Client will pay one hundred and fifty percent (150%) of the Hourly Fee for each hour worked by Professional(s) on such holiday.
- c. Client shall pay BMR Health SPED Services one hundred fifty percent (150%) of the Hourly Fee for each hour worked by Professional(s) in excess of forty (40) hours per week.
- d. Should BMR Health SPED Services be unable to provide Professional(s) to work the Contractors Assignment's contracted hours during a particular week; Client shall pay BMR Health SPED Services only for the actual hours Professional worked during that week.
- e. BMR Health SPED Services will bill Client on a 30 day monthly cycle, and Client shall pay the invoice in full within 45 days. Client will mail payment to the address listed on the signature page of this agreement.
- f. If BMR Health SPED Services does not receive payment within forty-five (45) days of sending an invoice, BMR Health SPED Services shall notify Client and allow Client a ten (10) day period to cure ("Cure Period"). If the invoice remains unpaid at the close of the Cure Period, the invoices will bear interest at a rate of twelve percent (12%) per annum from the date due until the date BMR Health SPED Services receives payment, and Client will be responsible for paying this amount.
- g. Client agrees to provide instruction to Professional on Client's documentation procedures. Ensuring proper execution and maintenance of Client's documents is solely professional's responsibility.
- h. BMR Health SPED Services will provide contract Professionals for client. The length of contract will be for the entirety of the 2016-2017 school year for each Professional submitted. Client may cancel a contract for

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professional services for any reason by providing BMR Health SPED Services sixty (60) days' written notice.

2. BMR Health SPED Services Rights and Obligations
 - a. BMR Health SPED Services will provide Client with appropriately licensed Professionals in accordance with Client's requests. Client will have no obligation or liability for insurance and payroll taxes with respect to said Professionals.
 - b. BMR Health SPED Services shall provide available qualified candidate(s) in response to each of Client's requests for a Professional. BMR Health SPED Services will provide Client with the qualifications of the Professional(s) presented as candidates including any license or education certificates as required. BMR Health SPED Services bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at BMR Health SPED Services own expense prior to commencement of said work/services. BMR Health SPED Services will provide Client with a current copy of license, and ensure that Professionals fulfill the current TB and fingerprint background check requirements of Education Code sections 49406 and 45125. Et seq.
 - c. Professional has been provided with the necessary training for compliance with OSHA standards relating to blood-borne pathogens. Client will provide "site specific" information required by the standards, such as location of protective, site procedures, ect.
 - d. BMR Health SPED Services reserves the right to suspend providing Professional services to Client in the event Client's account becomes more than sixty (60) days past due. Failure to so suspend providing a Professional to Client will not prejudice BMR Health SPED Services' right to payment. BMR Health SPED Services may also, in its sole discretion, immediately terminate this Agreement if Client's account is more than (60) days past due. This sixty (60) day period does not include the ten day cure period as referenced in paragraph 1 (f) of this Agreement.
 - e. BMR Health SPED Services shall not be responsible for any loss or claim of damage whatsoever incurred by Client in the event BMR Health SPED Services cannot provide a Professional to Client, the Professional resigns, or the Professional cannot continue services for any reason. However, BMR Health SPED Services will make every effort to replace Professional within a timely manner.
 - f. Non-Compete. Client agrees, during the term of this Agreement, and for a period of one (1) year following the termination of this agreement, it will not solicit, hire or offer employment to BMR Health SPED Services' employees or representatives directly or indirectly or through another Agency. Client agrees to pay a fee of twenty (20) percent of any Professional's salary if the Client hires a BMR Health SPED Services Professional who has been a service provider in the District prior to the one (1) year "Non-Compete" period.

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3. Independent Contractor
 - a. Nothing contained in this Agreement shall be construed to constitute BMR Health SPED Services, or its Professionals, as a partner, employee, or agent of Client, it being intended that each shall remain independent contractor responsible for his own actions. Each party shall be responsible for hiring, payment, control, and termination of its own employees and no employee of one party shall be considered an employee of the other for any purposes.
4. Termination:
 - a. This Agreement is for a term of twelve (12) months. This Agreement may be terminated at any time, for any reason, as set forth in this paragraph. Termination shall be written, and either personally delivered or faxed to one of the signatories to this Agreement or mailed via certified mail to the other party's address as recited below. Termination shall be effective sixty (60) days after personal deliver or mailing, unless termination is for Client's nonpayment, in which case it is effective immediately upon notification by BMR Health SPED Services. Termination of the Agreement shall not prejudice BMR Health SPED Services right to payment and will not affect the provisions of Paragraph 3, above, which are understood to survive termination.
5. Indemnification:
 - a. BMR Health SPED Services agrees to indemnify and defend Client and its employees and agents from any and all claims, damages, and liability in any way occasioned by or arising out of negligence of BMR Health SPED Services and/or its employees, officers, agents, or Professionals in the performance of this Agreement.
6. Insurance And Safety Laws:
 - a. BMR Health SPED Services agrees to maintain professional and comprehensive general liability insurance, with no exclusion for molestation or abuse, at a minimum of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in aggregate throughout the course of this Agreement. At Client's request, BMR Health SPED Services will provide certifications evidencing worker's compensation, general liability and professional liability insurance coverage. Client accepts responsibility for its own complains with all relevant safety and health laws regulations during the period of Professional's assignment under Client's supervision.
7. Entire Contract:
 - a. This Agreement contains the entire contract between the parties and supersedes all previous oral and written agreements. There are not other agreements, representations, or warranties not set forth. This Agreement may only be modified in writing signed by both parties, and all amendments shall be attached to this Agreement and made part hereof.
8. Jurisdiction and Applicable Law:

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- a. This Agreement is deemed to have been made in the State of California and shall be interpreted and the right and liabilities of the parties determined in accordance with the laws of the State of California. The Parties agree that all equitable and legal actions for claims, debts, or obligations arising out of, or to enforce the terms of, this Agreement must be brought in the California State Courts and that the Court shall have personal jurisdiction over the parties, and that venue of the action shall be appropriate to and exclusive in each Court.
- b. Waiver and Severability: No delay by either party to enforce or exercise any right, remedy, power under this Agreement shall be construed as a waiver of such right, remedy, or power. A waiver by either party of any breach or default under the terms of this Agreement shall not constitute a waiver of any subsequent breach or default. In the event any provision of this Agreement is held to be unenforceable by a court of competent jurisdiction the remainder of the Agreement shall remain in full force and effect.
- c. Notices: Any notices under this Agreement must be in writing and mailed by certified mail to addresses recited below.

Milpitas Unified School District
1331 East Calaveras Blvd
Milpitas, CA. 95035

BMR Health SPED Services
5976 W Las Positas Blvd Ste 216
Pleasanton, CA 94588

Notices are effective upon mailing.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

BMR Health SPED Services

_____ Date: _____
Jicky Thomas, Director

Milpitas Unified School District

_____ Date: _____
Signature of Client Representative

Title of Client Representative