

**REQUEST FOR PROPOSAL # 2021-002
CONDITIONS AND SPECIFICATIONS**

SPECIAL EDUCATION AND STUDENT AFFAIRS RELATED SERVICES

RFP Opening: Thursday April 7th, 2020 at 2:00 PM

Destination for Delivery of Proposals: Mr. Christopher Berdnik
Pennsbury School District 134 Yardley Avenue Fallsington PA 19058

**PENNSBURY SCHOOL DISTRICT
FALLSINGTON, PA**

**REQUEST FOR PROPOSAL FOR SPECIAL EDUCATION AND STUDENT AFFAIRS
RELATED SERVICES**

RFP #2021-002

The Pennsbury School District (“the School District”) solicits sealed proposals for physicians, dentists, occupational therapists, and physical therapists, (individually or together referred to as “Therapists”) as specified hereinafter in accordance with the following terms, conditions and specifications:

Proposals and Award of Contract

1. The School District will receive sealed proposals from any Contractor to be in the hands of Mr. Christopher Berdnik, Chief Financial Officer, Administrative Building, 134 Yardley Avenue, Fallsington, PA, no later than 2 p.m. on April 7th , 2020 (the “Proposal Due Date”), and plainly marked on the envelope **Special Education and Student Affairs Related Services Proposal No. 2021-002**. The School District reserves the right to extend the date for the submission of sealed proposals.
2. Proposals shall be opened on Thursday, April 7th, 2020 in the Pennsbury School District Business Office, Administrative Building, 134 Yardley Avenue, Fallsington, PA 19058 beginning at 2:00 pm. The School District reserves the right to change the date for the opening of proposals.
3. The contract, if awarded, shall go to the Contractor whose proposal is in the best interests of the School District, taking into consideration relevant factors, including but not limited to the following: price, service offerings, completeness and clarity of proposal content, and capability of providing services, experience and references. This RFP does not require that the contract be awarded to the Contractor with the lowest price proposal.
4. The School District shall have no obligation to any Contractor unless and until formalized in a written contract duly approved by the Board of School Directors at a public meeting and signed by its designee.
5. Proposals should clearly provide a description of the Contractor’s capabilities to satisfy the requirements of the request. All proposals become the property of the School District upon submission. However, there will be no disclosure of contents to competing firms, and all proposals will be kept confidential during the selection process, except as may be otherwise required by law.
6. Submission of proposal should be one paper original, one paper copy and an electronic copy of the proposal.

Scope of Services

1. The scope of the various services for which proposals are sought is set forth in Appendix A, which is attached hereto. Contractors may submit proposals for one or more of the types of services set forth in Appendix A. All proposals shall clearly delineate the scope of each of the type of services proposed and the pricing structure for each type of service, in accordance with the terms of this RFP.
2. The School District recognizes that certain types of services set forth in Appendix A are specifically dependent upon the individual needs of students, which may not be known at this time. However, the School District desires to obtain information about Contractors' programs and services so that it can make informed and knowledgeable decisions about the services available, the structure of available programs, program cost and how those programs might meet the current or future needs of the School District and its students.
3. The School District form contracts will be utilized, depending on the type of services to be provided by the Contractor. Attached to this RFP (Appendix B) is the School District form contract. The only material terms to be determined are the scope of services to be provided by the selected Contractor and the amount to be paid for those services.
4. Upon award of the contract, the form agreement will only be modified to reflect the successful Contractor information, ultimate rates and/or price and/or other changes to the specifications agreed to by the School District after the issuance of the RFP.
5. Interested Contractors are responsible for becoming familiar with: (a) all of the provisions and requirements contained in the applicable form agreement attached hereto as Appendices A & B; (b) the School District's needs as outlined herein; and (c) all federal, state and local legal requirements governing such services, including, by way of example and not limitation, the School District's policies found on the School District's website (<http://www.pennsburyisd.org/>)
6. Contractors must agree to provide all services set forth in their submitted proposals. Contractors shall provide, at their sole cost and expense, all personnel, sub-Contractors, facilities, equipment and supplies needed to furnish the proposed services required by the School District, unless otherwise set forth in the proposals or in this RFP. By submitting a proposal, the Contractor agrees to meet these provisions and agrees not to seek any price increase from the School District during the contract term awarded for, by way of example and not limitation, price increases associated with increased personnel or sub-Contractor costs.

Instructions for Contractors

Interested Contractors are asked to respond to the following items in the sequence presented:

1. **Qualifications.** Describe the background, experience, certifications and capabilities of the employees and organization to provide the requested services. This includes, but is not limited to, the qualifications to provide the academic, socialization, behavioral, emotional, recreational, personal maintenance, vocational, transition, specially designed instruction and/or other services that may be required by the School District for the specified services in Appendix A. Describe how your services comply with and how personnel are provided professional development with respect to, applicable state and federal law, including but not limited to, IDEA, Section 504 and Chapters 14, 15 and/or 16 of the State Board of Education regulations.
2. **Scope of Services.** Provide a scope of services for each type of related services being proposed. This should include service delivery model(s), number of students served, ancillary services, supervision and continuing education of staff, communication with District Administration, and expertise areas of staff.
3. **Staff.** Name the principal in the organization who will have direct and continued responsibility for the services provided to the School District. Identify staff roles and work to be assigned to them. Identify certification status of staff and specific experience relative to these types of services. Identify the student to staff ratio.
4. **References.** Contractors should provide at least three references preferably located within Southeastern Pennsylvania. References should include institution name, address, contact name, and telephone number.
5. **Pricing.** Provide pricing proposals for all services described for **one-year, two-year and three-year contractual terms**. The proposal should clearly delineate all daily rates or other pricing, as well as a description and delineation of any other expenses expected to be submitted to the School District, which are not part of the daily rate and/or other fees. Actual fees will be based on the final negotiated contract. The School District reserves the right to award a contract for one year or multi-years based upon the rates and/or prices submitted in each proposal. **Prices set forth in proposals must remain firm until June 30, 2020 after which they may be withdrawn at the option of the Contractor.**
6. **Capabilities and Viability.** Submit evidence of your financial and operational capabilities to meet the requirements and needs of the School District described herein and in the Agreement, including but not limited to, capability of hiring a sufficient number of qualified employees.

Terms and Conditions

1. Contractors are responsible to (a) become familiar with the Contract Documents and all requirements contained therein; (b) comply with all federal, state and local legal requirements governing this request for proposals; and (c) comply with the contract terms and conditions. By submitting a proposal, the Contractor acknowledges and represents to the School District that: (a) information has been gathered regarding the (i) Contract Documents, and (ii) all federal, state and local legal requirements governing such matters; and (b) no promises, representations or inducements to the Contractor have been made by the School District or anyone acting for on behalf of the School District other than what is set forth in the Contract Documents.

2. If any Contractor desires information pertaining to or clarifying this RFP or the Contract Documents, as that term is defined in the form of contract included as Appendix B, the Contractor is to contact the person below in writing via e-mail. This shall be the only method to communicate for purposes of obtaining information prior to submission of the proposal.

Mr. Christopher Berdnik CFO
134 Yardley Avenue
Fallsington, PA 19058
(215) 421-4100 ext. 10027
cberdnik@pennsburysd.org

3. Contractor's employees or sub-Contractors working with students will be required to provide the School District with a required FBI and Pennsylvania Criminal Background Check, as well as a Pennsylvania Child Abuse Background Check, and TB test dated within three months of services

4. The School District reserves the right to reject any and all proposals, or any parts thereof or items therein, and to waive technicalities as it may deem best to protect the interests of the School District. In addition to the other reasons herein set forth, the School District may reject a proposal for any reason, at the District's sole discretion, including but not limited to omissions, alterations of form, conditional or uninvited alternative proposals to the specifications set forth herein, or irregularities of any kind. The distribution of this RFP shall not, in any way, obligate the School District to take any action regarding any response submitted.

5. The successful Contractor shall not assign the contract or any rights under the contract to any person, firm or entity without the consent of the School District, which may be withheld by the School District for any reason in its sole and absolute discretion.

6. No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to or waiver of a breach by the other, whether express or implied, shall not constitute waiver of or excuse for any other different or subsequent breach.

7. If an award is made, the contract will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. It is further represented that any contract that may be entered into has been made in Bucks County, Pennsylvania, and venue for any dispute relating to such contract shall be in the Court of Common Pleas of Bucks County.

8. The information provided herein, or any other document supplied by the School District, is to be considered strictly confidential and shall be considered proprietary to the School District. This is not to be shared with individuals outside of your organization unless the School District has specifically provided written consent allowing said individuals access to this information.

9. All costs incurred by any Contractor in preparing and providing responses to this RFP are solely the responsibility of the Contractor. The School District is not, and shall not, be liable for any costs incurred by the Contractors.

10. A Contractor's formal response to this RFP shall constitute its official "proposal" regarding the defined opportunity presented within this document.

11. Should a Contractor find conflicts or discrepancies in the Contract Documents, or should there be uncertainty as to the meaning or intent of any part thereof, or should there be conflicts between the Contract Documents and any applicable laws or regulations, the Contractor must, not later than four (4) business days prior to the Proposal Due Date, request clarification from the School District. Failure to request clarification constitutes a waiver of any claim by the Contractor for expense incurred as a result of a later interpretation of the Contract Documents or specifications by the School District. Other questions, inquiries or explanations desired by a prospective Contractor shall be requested in writing from the School District not later than four (4) business days prior to the Proposal Due Date. Oral explanations and instructions will not be binding upon the School District. Prospective Contractors should rely only on written addenda.

12. Any personnel provided by the Contractor shall be considered to be employees, subcontractors or agents of the Contractor. Under no circumstances will said personnel be considered to be employees or agents of the School District. However, the School District reserves the right to demand the removal and potential replacement of any one or group of individuals provided by the Contractor to service the needs of the School District.

13. If it becomes necessary to revise any part of this RFP, addenda will be provided to all prospective Contractors who received the request for proposal. The Contractor shall acknowledge receipt of all addenda distributed. If the School District determines that a response to inquiries or addenda is required, the Proposal Due Date may be extended by the School District.

14. The School District reserves the right to request an oral presentation prior to the awarding of the contract.

15. The proposal must meet each of the conditions and specifications set forth herein.

16. The Contractor must disclose any prior or current business or personal relationships with any School District employee or member of the Board of School Directors of the School District. If there has been any prior relationship, or if there is a current relationship, the Contractor shall briefly describe when the relationship occurred and briefly describe the nature of the relationship.

Selection Criteria

Each proposal will be independently evaluated on the following criteria:

1. Experience and Qualification. Depth/breadth in providing services similar to those requested and having obtained favorable outcomes.
2. Cost. Rates and reimbursable expenses for the services. While cost will be a consideration in the award of the contract, the contract will not necessarily be awarded to the Contractor submitting the lowest cost proposal.
3. References. Evaluation of past services as stated by references in the proposal and relevance of past experience as reported in the proposal.
4. Dependability. Ability to meet staffing needs, IEP requirements and other district needs as evidenced by documentation provided through references.
5. Responsiveness. The overall quality of the proposal, timeliness of submission and responsiveness to this Request for Proposal, as well as the ability of the Contractor to meet the needs of the School District.
6. Agreement to the Terms and Conditions of the Form Agreement. The School District proposes that the form agreements attached hereto be used, subject to agreement on the scope of services and the compensation. The prospective Contractor's willingness to enter into the agreement will be evaluated in making the selection. If any Contractor objects to any provision within the applicable form agreement(s), said objection must be clearly delineated in the Contractor's response to the RFP.

APPENDIX A

The School District is interested in procuring proposals from Contractors to perform the following types of services for the School District:

Occupational Therapy

- Conduct OT screenings including sensory processing
- Conduct OT evaluations including sensory processing for input to the Evaluation/Re-evaluation Report in accordance with IDEA/PDE requirements and timelines
- Determine appropriate level of service based on individual student need
- Develop input for IEP's
- Participate in IEP meetings as appropriate
- Provide therapy as prescribed in each student's Individualized Education Plan
- Participate in parent conferences as required
- Participate in team meetings as required
- Progress Monitor student's goals
- Complete Progress Reports quarterly
- Consultation with professional and para-educators regarding handwriting, sensory processing, functional motor skills, specific student goals
- Complete Medical Access Billing
- Consult with MTSS and Child Study teams as deemed necessary
- Provide training for professional and para-educators

Physical Therapy

- Conduct PT screenings
- Conduct PT evaluations and input to the Evaluation/Re-evaluation Report in accordance with IDEA/PDE requirements and timelines
- Develop input for IEP's
- Participate in IEP meetings as appropriate
- Participate in parent conferences as required
- Participate in team meetings as required
- Progress Monitor student's goals
- Complete Progress Reports quarterly
- Provide therapy as prescribed in each student's Individualized Education Plan
- Consultation with professional and para-educators
- Complete Medical Access Billing
- Consult with MTSS and Child Study teams as deemed necessary
- Provide training for professional and para-educators

APPENDIX A (Continued)

Psychiatric Evaluations (per diem and bilingual)

- Per Diem psychiatric evaluation to include: review of records and medical/psychiatric history, clinical interview, diagnosis, and recommendations for school based team.
- The District's specific needs at this time are Spanish and Russian.

Physician and physical evaluations

- Provide physical evaluation for school aged students.
- Provide medical consultations for health related matters, such as POTS and PANDAS

Dentist and dental evaluations

- Provide dental evaluation for school aged students.
- Provide dental consultations for health related matters.

Alternative Therapies

- Provide services that could include, but not be limited to, yoga, karate, music therapy and other concepts proposed to the District.

**APPENDIX B - SPECIAL EDUCATION SERVICES CONTRACT
STANDARD CONTRACT FOR SERVICES**

The Standard Contract (“CONTRACT”) sets forth the respective responsibilities and obligations with regard to the SERVICES to be provided to the Pennsbury School District, a public school district and a political subdivision, whose address is 134 Yardley Avenue, Fallsington, PA 19058, hereinafter referred to as the “DISTRICT”.

<p><u>Full Legal Name of CONTRACTOR (“CONTRACTOR”):</u></p>	<p><u>Term of CONTRACT:</u></p>
<p><u>d/b Name of CONTRACTOR:</u></p>	<p><u>SERVICES to be Provided by CONTRACTOR and dates for SERVICES to be provided (“SERVICES”):</u> All educational and related services for special education students referred and placed at CONTRACTOR’s facilities by the SCHOOL DISTRICT. Said services shall be provided by CONTRACTOR in accordance and compliance with the student’s Individualized Educational Plan (“IEP”) and this CONTRACT</p>
<p><u>CONTRACTOR’S Physical Address:</u></p>	<p><u>CONTRACT Price for SERVICES:</u> As stated in Appendix “C”</p>
<p><u>CONTRACTOR’S Mailing Address:</u></p>	<p><u>Special Terms:</u></p>
<p><u>CONTRACTOR’S Tax Identification Number</u></p>	

TERMS AND CONDITIONS OF CONTRACT

1. **CONTRACT.** This CONTRACT consists of the following documents only: (1) these TERMS AND CONDITIONS OF CONTRACT; and (2) the following Appendices that are attached hereto and incorporated in this CONTRACT:
 - a. Appendix "A", relating to the SERVICES to be provided by CONTRACTOR;
 - b. Appendix "B", relating to compliance with APPLICABLE LAW;
 - c. Appendix "C", relating to price and payment terms; and
 - d. Appendix "D", relating to HIPAA and a Business Associate Agreement

The intent of the Contract Documents (inclusive of this CONTRACT, the additional documents itemized above, and the request for proposals ("RFP") relating to this CONTRACT) is to include all items necessary for the proper execution and completion of the SERVICES and work by the CONTRACTOR. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the CONTRACTOR shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event that there are any actual or alleged conflicts between these TERMS AND CONDITIONS OF CONTRACT and any provision(s) contained in any of the appendices attached hereto or in the RFP, these TERMS AND CONDITIONS OF CONTRACT shall control.

2. **INDEPENDENT CONTRACTOR.** The parties hereto agree that the CONTRACTOR and any agents, subcontractors and employees of the CONTRACTOR in the performance of this CONTRACT shall act in an independent contractor capacity and not as officers, employees or agents of DISTRICT. The CONTRACTOR'S employees shall at all times be and remain the sole employees of the CONTRACTOR, and the CONTRACTOR shall be solely responsible for payment of all employees' wages, benefits and other compensation. The CONTRACTOR, without any cost or expense to DISTRICT, shall faithfully comply with all applicable laws or regulations involving workers' compensation and unemployment insurance, social security and withholding of income tax from wages, and shall indemnify and hold the DISTRICT harmless from any expenses or claims of whatsoever nature which may arise from an alleged violation of such applicable laws or regulations. CONTRACTOR has total control over the means, manner, and method of the performance of this CONTRACT. DISTRICT is only interested in the results of CONTRACTOR'S performance and obtaining the SERVICES described in this CONTRACT.
3. **COMPLIANCE WITH THE LAW.** CONTRACTOR shall comply in all material respects with all applicable law in the performance of the CONTRACT.
4. **PRICE.** The CONTRACTOR shall be required to perform the specified SERVICES for the fees stated herein.
5. **TIME OF PERFORMANCE.** All SERVICES shall be performed within the time period(s) specified in the CONTRACT. Time is of the essence with respect to CONTRACTOR'S performance under this CONTRACT.

6. PERFORMANCE SUBJECT TO DISTRICT'S SATISFACTION. CONTRACTOR shall be compensated only for work performed to the reasonable satisfaction of DISTRICT and applicable Commonwealth agencies or departments.
7. INVOICES. CONTRACTOR shall send an itemized invoice to DISTRICT'S address promptly after SERVICES are satisfactorily completed in accordance with the terms and conditions of this CONTRACT. The invoice should include only amounts due under the CONTRACT.
8. PAYMENT. DISTRICT shall put forth reasonable efforts to make payment by the required payment date. The required payment date is (a) the date on which payment is due under the terms of this CONTRACT; (b) sixty (60) days after a proper application for payment actually is received by DISTRICT if a date on which payment is due is not specified in the CONTRACT (a "proper" application for payment is not received until DISTRICT accepts any service as satisfactorily performed); or (c) the payment date specified on the invoice is later than the dates established by (a) and (b) above. Payment may be delayed as set forth herein. Payment by DISTRICT should not be construed by the CONTRACTOR as acceptance of the service performed by CONTRACTOR. DISTRICT reserves the right to conduct further auditing, testing and inspection after payment and to reject the service or material if such post payment testing or inspection discloses a defect or a failure to meet CONTRACT requirements. If a payment dispute arises, it shall be resolved pursuant to the CONTRACT CONTROVERSIES section of this CONTRACT. The CONTRACTOR shall proceed diligently with the performance of the CONTRACT in a manner consistent with DISTRICT'S reasonable interpretation pending final resolution of any payment dispute.
9. PROGRAM MANAGER/CONTRACT. CONTRACTOR shall designate a primary contact that will serve in the capacity as an "ombudsman", and a backup in the event of the unavailability of the designated contact, that DISTRICT can contact to promptly resolve disputes or service issues that arise with respect to the services provided by CONTRACTOR under this CONTRACT and to ensure that all services are being provided in accordance with this CONTRACT. These individuals shall be available to take calls and to take such action to resolve issues in accordance with this CONTRACT during business hours on Monday through Friday and on an emergency basis. CONTRACTOR shall provide the following information to DISTRICT with respect to the primary contact and the backup:
 - a. Office telephone number;
 - b. Home telephone number;
 - c. Cell phone number; and
 - d. E-mail addresses.
10. WARRANTY. The CONTRACTOR warrants that all SERVICES supplied by the CONTRACTOR, its agents and subcontractors and the independent contractors it supplies shall be in compliance with this AGREEMENT and with APPLICABLE LAW. CONTRACTOR shall correct any problem with the service without any additional cost to DISTRICT. If such services are not compliant, CONTRACTOR will remedy such breach at no additional costs to DISTRICT. If compensatory services to or for any child are required to

cure a breach by CONTRACTOR, CONTRACTOR shall provide such compensatory services to said child at no additional cost to DISTRICT.

11. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY. The CONTRACTOR warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: (a) the design of any service(s), product(s) or process(es) provided or used in the performance of the CONTRACT which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or (b) any copyrighted matter in any report document or other material provided to DISTRICT under this CONTRACT. CONTRACTOR shall defend any suit or proceeding brought against DISTRICT on account of any alleged patent, copyright or trademark infringement in the United States of any of the SERVICES provided or used in the performance of the CONTRACT. DISTRICT may participate in or choose to conduct, in DISTRICT'S sole discretion, the defense of any such action. If information and assistance are furnished by DISTRICT at CONTRACTOR'S written request, it shall be at the CONTRACTOR'S expense, but the responsibility for such expense shall be only that within CONTRACTOR'S written authorization. CONTRACTOR shall indemnify and hold DISTRICT harmless from all damages, costs, and expenses, including attorney's fees that the CONTRACTOR or DISTRICT may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any SERVICES provided or used in the performance of the CONTRACT. If any of the SERVICES provided by the CONTRACTOR in such suit or proceeding are held to constitute infringement and use is enjoined, the CONTRACTOR shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non- infringement equal performance products or modify them so that they are no longer infringing.
12. OWNERSHIP RIGHTS. DISTRICT shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to DISTRICT as part of the performance of the CONTRACT, unless otherwise prohibited by applicable law.
13. INDEMNIFICATION AND HOLD HARMLESS PROVISION.
 - a. CONTRACTOR shall indemnify, hold harmless and defend (at DISTRICT'S request) the DISTRICT, and DISTRICT'S employees, directors, agents, officials and attorneys, in either their official or individual capacities, from and against any and all loss, damage, liability, claims, suits, judgments, actions and demands whatsoever (INCLUDING attorney's fees) based upon or arising from:
 - any injury to, or death of, any person or persons, or damage to property, arising out of or caused or claimed to have been caused by acts or omissions of the CONTRACTOR, any subcontractor, employee or agent of the CONTRACTOR, or any other person or entity directly or indirectly employed by any of them, whether or not caused in whole or in part, by actions or omissions of DISTRICT, its agents, employees or officials, or any representative of DISTRICT with respect to or in connection to services under

this CONTRACT; provided, however, that if any injury to or death of any person or persons, or damage to property, arises out of any actions or omissions of DISTRICT, its agents, employees or officials, or any representative of DISTRICT, then the indemnity required by this CONTRACT by CONTRACTOR shall be proportionately reduced taking into account the relative degree of responsibility of the CONTRACTOR, its agents, employees, representative and of DISTRICT and its agents, employees and representatives; any claims, suits, actions, losses and/or damages by any of CONTRACTOR'S agents, employees or subcontractors against DISTRICT, its board of school directors, officers, agents, employees and attorneys in their official or individual capacities caused by any alleged or actual acts or omissions of DISTRICT employee, agent, official, board member or attorney, unless it is determined by a court of competent jurisdiction that the act or omission by DISTRICT'S employee, agent, official, board member or attorney was taken maliciously and in willful violation of the rights of CONTRACTOR'S agents, employees or subcontractors and with no involvement by CONTRACTOR or CONTRACTOR'S agents, officials or employees; any claims, suits, actions, losses and/or damages by any person, INCLUDING, growing out of any alleged improper conduct of any nature or type, INCLUDING, physical, mental or sexual abuse or harassment, invasion of bodily integrity, personal injury, violation or civil rights, and/or unlawful discrimination, by or attributable to any of CONTRACTOR'S employees, agents, officials or contractors; against any liability INCLUDING costs and expenses, for violation of proprietary rights or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this CONTRACT, or based upon any libelous or other unlawful matter contained in such data; any loss of grant or subsidy that results exclusively from the acts or omissions of CONTRACTOR and CONTRACTOR'S subcontractors, employees or agents; the reasonable costs incurred by DISTRICT of investigation into CONTRACTOR'S compliance with this CONTRACT which results in the finding of a material breach of any term of this CONTRACT by the CONTRACTOR; CONTRACTOR's breach of any term of this CONTRACT; and any and all claims, demands and actions brought by any independent contractor provided by CONTRACTOR under this CONTRACT for payments, commissions, wages or any benefit of any nature or type or involving an assertion that the individual is an employee and not an independent contractor.

14. AUDIT PROVISIONS. DISTRICT has the right, at reasonable times and at a site designated by DISTRICT, to audit CONTRACTOR'S books, documents and records to the extent that the books, documents and records relate to the services provided by CONTRACTOR under this CONTRACT, costs or pricing data for the CONTRACT. The CONTRACTOR agrees to maintain records which: (a) document the services provided; (b) support the prices charged; and (c) support costs incurred for the CONTRACT. The CONTRACTOR shall preserve books, documents, and records that relate to costs or pricing data for the CONTRACT for a period of six (6) years from date of final payment. The CONTRACTOR shall give full and free access to all records to: (a) DISTRICT and/or DISTRICT'S authorized representative(s); (b) officials of the Commonwealth of Pennsylvania who have programmatic, oversight or

auditing functions with respect to the services provided by CONTRACTOR under this CONTRACT; and (c) officials of the federal government who have programmatic, oversight or auditing functions with respect to the services provided by CONTRACTOR under this CONTRACT.

15. DEFAULT. DISTRICT may, subject to the Force Majeure provisions of this CONTRACT, and in addition to DISTRICT'S other rights under the CONTRACT, declare CONTRACTOR in default by written notice thereof to CONTRACTOR, and terminate as provided in the Termination Provisions of this CONTRACT the whole or any part of this CONTRACT for any of the following reasons:

- a. Failure to begin work within the time specified in the CONTRACT or as otherwise specified;
- b. Failure to perform the work with sufficient or qualified labor, equipment, or material to insure the completion of the specified work in accordance with the CONTRACT terms;
- c. Unsatisfactory performance of the work;
- d. Failure to pay CONTRACTOR'S employees on a timely basis;
- e. Breach of any term or condition of this CONTRACT;
- f. Discontinuance of work without approval;
- g. Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
- h. Insolvency or bankruptcy; or
- i. Assignment made for the benefit of creditors.

16. TERMINATION PROVISIONS. DISTRICT has the right to terminate this CONTRACT, in whole or in part, for any of the following reasons. Termination shall be effective upon written notice to the CONTRACTOR from DISTRICT.

- a. TERMINATION FOR CONVENIENCE: DISTRICT has the right to terminate the CONTRACT for its convenience if DISTRICT determines termination to be in DISTRICT'S best interest or determines that any student's placement at CONTRACTOR is no longer necessary or appropriate. The CONTRACTOR shall be paid for SERVICES satisfactorily completed prior to the effective date of the termination, but in no event shall the CONTRACTOR be entitled to recover loss of profits.
- b. TERMINATION FOR CAUSE: DISTRICT shall have the right to terminate the CONTRACT for CONTRACTOR default. DISTRICT shall also have the right, upon written notice to the CONTRACTOR, to terminate the CONTRACT for other cause as specified in this CONTRACT or by law. If it is later determined that DISTRICT erred in terminating the CONTRACT for cause, then, at DISTRICT'S sole discretion, the CONTRACT shall be deemed to have been terminated for convenience under this CONTRACT.
- c. REMEDIES AND PRESERVATION OF RIGHTS. In the event that DISTRICT terminates this CONTRACT in whole or in part based upon CONTRACTOR default, DISTRICT may procure, upon such terms and in such manner as DISTRICT determines, SERVICES similar or identical to those so terminated, and CONTRACTOR shall be liable to DISTRICT for any reasonable excess costs

for such similar or identical SERVICES included within the terminated part of the CONTRACT. If the CONTRACT is terminated for any reason, in addition to any other rights provided in this CONTRACT, DISTRICT may require CONTRACTOR to transfer title and delivery immediately to DISTRICT in the manner and to the extent directed by DISTRICT, such partially completed work, including, where applicable, reports, working papers and other documentation, as the CONTRACTOR has specifically produced or specifically acquired for the performance of such part of the CONTRACT as has been terminated. Except as provided below, payment for completed work accepted by DISTRICT shall be at the CONTRACT price. Except as provided below, payment for partially completed work including, where applicable, reports and working papers, delivered to and accepted by DISTRICT shall be in an amount agreed upon by the CONTRACTOR and DISTRICT. DISTRICT may withhold from amounts otherwise due the CONTRACTOR for such partially completed work(s), such sum as DISTRICT determines to be necessary to protect DISTRICT against loss. DISTRICT'S rights and remedies under this CONTRACT shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT. DISTRICT'S failure to exercise any rights or remedies provided in this CONTRACT shall not be construed to be a waiver by DISTRICT of DISTRICT'S rights and remedies in regard to the event of default or any succeeding event of default.

17. FORCE MAJEURE. Neither party will incur any liability to the other if its performance of any obligation under this CONTRACT is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control are defined as acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes. CONTRACTOR shall notify DISTRICT orally within one (1) day and in writing within five (5) days of the date on which CONTRACTOR becomes aware, or should have reasonably become aware, that such cause would prevent or delay CONTRACTOR'S performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the CONTRACT is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The CONTRACTOR shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as DISTRICT may reasonably request. After receipt of such notification, DISTRICT may elect either to cancel the CONTRACT or to extend the time for performance as reasonably necessary to compensate for the CONTRACTOR'S delay.
18. CONTRACT CONTROVERSIES. In the event of a controversy or claim arising from the CONTRACT, CONTRACTOR shall, within six (6) months after the cause of action accrues, file a written notice of controversy or claim with DISTRICT for a determination. DISTRICT shall send its written determination to CONTRACTOR within 30 calendar days after receipt of CONTRACTOR'S notice. DISTRICT'S decision shall be final and conclusive unless, within thirty (30) days after receipt of such written determination, CONTRACTOR files suit in the Court of Common Pleas of Bucks County or in the United States District Court for the Eastern District of Pennsylvania, if jurisdiction in such court is proper. Pending

a final judicial resolution of a controversy or claim, the CONTRACTOR shall proceed diligently with the performance of the CONTRACT in a manner consistent with DISTRICT'S interpretation and DISTRICT shall compensate CONTRACTOR pursuant to the terms of the CONTRACT.

19. ASSIGNABILITY AND SUBCONTRACTING. Subject to the terms and conditions of this Paragraph, this CONTRACT shall be binding upon the parties and their respective successors and assigns. The parties acknowledge that the services to be provided by CONTRACTOR shall be provided by independent contractors retained by CONTRACTOR. Except as set forth in the preceding sentence, the CONTRACTOR shall not subcontract with any person or entity to perform all or any part of the work to be performed under this CONTRACT. CONTRACTOR may not assign, in whole or in part, this CONTRACT or its rights, duties, obligations, or responsibilities hereunder without DISTRICT'S prior written consent, which consent may be withheld at DISTRICT'S sole and absolute discretion. Notwithstanding the foregoing, CONTRACTOR may, without DISTRICT'S consent, assign CONTRACTOR'S rights to payment to be received under the CONTRACT, provided that CONTRACTOR provide written notice of such assignment to DISTRICT together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this CONTRACT. For the purposes of this CONTRACT, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the CONTRACTOR provided, however, that the term shall not apply to the sale or other transfer to stock or a publicly traded company. Any assignment consented to by DISTRICT shall be evidenced by a written assignment agreement executed by the CONTRACTOR and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the CONTRACT and to assume the duties, obligations, and responsibilities being assigned. A change of name by the CONTRACTOR, following which the CONTRACTOR'S federal identification number remains unchanged, shall not be considered to be an assignment hereunder. CONTRACTOR shall give DISTRICT written notice of any such change of name.

20. CONTRACTOR INTEGRITY PROVISION.

- a. For purposes of this clause only, the words "confidential information," "consent," "CONTRACTOR," "financial interest," and "gratuity," shall have the following definitions:
 - Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to CONTRACT with DISTRICT.
 - Consent means written permission signed by a duly authorized officer or employee of DISTRICT, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, DISTRICT shall be deemed to have consented by virtue of execution of this CONTRACT.
 - CONTRACTOR means the individual or entity that has entered in the CONTRACT with DISTRICT, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.

- Financial interest means: (a) ownership of more than a five percent interest in any business; or (b) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
 - Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
- b. The CONTRACTOR shall perform the services hereunder in a professional and workmanlike manner and shall take no action in violation of applicable law.
 - c. The CONTRACTOR shall not disclose to others any confidential information gained by virtue of the CONTRACT except as may be required by law; provided, however, that if CONTRACTOR is required to disclose confidential information in accordance with law, CONTRACTOR must first notify DISTRICT and provide an opportunity to contest the release as may be allowed under applicable law.
 - d. The CONTRACTOR shall not, in connection with this or any other agreement with DISTRICT, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by an officer or employee of DISTRICT.
 - e. The CONTRACTOR shall not, in connection with this or any other agreement with DISTRICT, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of DISTRICT.
 - f. Except with the consent of DISTRICT, neither the CONTRACTOR nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the CONTRACT except as provided therein.
 - g. The CONTRACTOR, by execution of the CONTRACT and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.
 - h. For violation of any of the aforementioned provisions, DISTRICT may terminate this and any other agreement with the CONTRACTOR and claim liquidated damages in an amount equal to the value of anything received in breach of these provisions. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are *in addition to* those DISTRICT may have under law, statute, regulation or otherwise.

21. CHOICE OF LAW; JURISDICTION; and VENUE. This CONTRACT shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The CONTRACTOR consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The CONTRACTOR agrees that any such court shall have *in personam* jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.
22. INTEGRATION. The CONTRACT, including all referenced documents and Appendices, constitutes the entire agreement between the parties. No agent, representative, employee or officer of either DISTRICT or the CONTRACTOR has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the CONTRACT, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the CONTRACT. No modifications, alterations, changes, or waivers to the CONTRACT or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties. All such amendments will be made using the appropriate DISTRICT form.
23. The DISTRICT'S Statutory Immunity and Other Defenses and Immunities. Any other provision of this Contract to the contrary notwithstanding, the DISTRICT, its officers, employees and agents, retain their statutory governmental, official and any other immunity provided pursuant to the laws of the Commonwealth of Pennsylvania, including under 42 Pa. C.S.A. §§ 8501 and 8541 et seq., and do not waive the defenses of governmental and official immunity derived from such laws. The DISTRICT does not waive for itself or for its officers, employees and agents any other defenses or immunities available to it or any of them.
24. The Contractor and all of its Subcontractors, and all of their respective officers, agents, representatives and employees, shall have no claim against the DISTRICT, its officers, employees and agents and the members of the Board of School Directors for the acts, failures to act or negligence of the DISTRICT, or its officers, employees and members of the Board of School Directors, to the extent such claim or claims is compensable in whole or in part in the obligations of the Contractor or any of its Subcontractors under the Pennsylvania Workers Compensation Law or any other state workers compensation statute or statutes.
25. INSURANCE. CONTRACTOR shall, at CONTRACTOR'S sole cost and expense obtain and maintain in force throughout the original term, and any extension, of this CONTRACT the following insurances:
 - a. Comprehensive General Liability Insurance, which shall be primary to DISTRICT'S insurance: \$1,000,000 for each occurrence, combined single limit for bodily and property damage;

- b. “Wrongful Acts” insurance, also sometimes known as “D & O,” “E & O” or “School Leaders” Insurance whereby the CONTRACTOR is provided with defense and indemnity coverage for defined wrongful acts that include coverage for wrongful acts growing out of or related to alleged or actual: (i) sexual harassment; (ii) sexual abuse; (iii) civil rights violations; (iv) unlawful discrimination; and (v) unlawful employment practices, which shall be primary to any insurance that may be owned by US: \$2,000,000 per occurrence and in the aggregate.
- c. Automobile General Liability Insurance, which shall be primary to DISTRICT’S insurance: \$1,000,000 combined single limit for bodily injury and property damage; and
- d. Workers’ Compensation and Employers’ Liability, which shall be primary to DISTRICT’S insurance: (i) the minimum workers’ compensation required by law, (ii) \$100,000 for each accident; (iii) \$500,000 for disease; and (iv) \$100,000 for disease for each employee; and
- e. Umbrella/Excess Liability, which shall be primary to any insurance that may be owned by DISTRICT:
 - \$5,000,000 per occurrence and in the aggregate;
 - Coverage shall schedule additional limits over and above the comprehensive general liability and automobile liability as required by this CONTRACT.
- f. If any insurance policy is canceled or not renewed during the term of this CONTRACT, CONTRACTOR must notify DISTRICT immediately and secure alternative insurance that complies with the requirements of this CONTRACT. In the event that any such insurance that is terminated is a “claims made” policy, the substitute policy must contain terms, conditions and coverage limitations that comply with the requirements of this CONTRACT and that provides for retroactive coverage to the date of cancellation or nonrenewal to fill any gaps in coverage that may exist due to the cancellation or not renewal of the prior “claims made” policy. All “claims made” policies must be maintained in full force and effect for three (3) years from the date of termination of this CONTRACT.
- g. With respect to any claim that may be covered by any of the required insurance policies, CONTRACTOR must comply with all terms and conditions of the applicable insurance policy, including providing timely notice of claims.
- h. CONTRACTOR shall provide to DISTRICT prior to performing any services under this CONTRACT with either Certificates of Insurance and/or the actual insurance policies required by this CONTRACT. Any Certificate of Insurance shall contain a provision that the coverages provided under the policies, as well as the policies, will not be canceled or materially changed unless the insurers provide DISTRICT with sixty (60) days’ written notice of the intent to cancel a

policy, terminate, cancel or materially change the coverages provided under the policy. The certificates of insurance shall name Pennsbury School District as an additional insured.

- i. All insurance shall be with or through insurers lawfully authorized to do business in Pennsylvania.
- j. All insurance premiums and deductibles are the sole responsibility of the CONTRACTOR.
- k. All insurance is subject to DISTRICT'S review and approval.
- l. Any deductibles or self-insured retentions must be declared to and approved by DISTRICT.
- m. No insurance required by this CONTRACT may be provided by self-insurance or a self-insured pool unless approved by DISTRICT.

26. CERTIFICATION REGARDING FEDERAL DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION. CONTRACTOR hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in any federal or state program or grant.

27. MISCELLANEOUS PROVISIONS.

- a. SURVIVAL OF DESIGNATED PROVISIONS BEYOND TERMINATION OF CONTRACT. Notwithstanding anything herein to the contrary, the following provisions shall survive termination of this CONTRACT:
 - The Indemnification, Hold Harmless and Defense provisions of this CONTRACT;
 - The Patent, Copyright, and Trademark provisions of this CONTRACT;
 - The Ownership provisions of this CONTRACT;
 - The Contract Controversy provisions of this CONTRACT;
 - The Insurance Provision regarding "claims made" policies;
 - The provisions relating to Liquidated Damages;
 - The provisions relating to delayed or withheld payments by DISTRICT;
 - The provisions relating to the CONTRACTOR'S obligations with respect to compensatory education;
 - The provisions relating to records;
 - The provisions pertaining to DISTRICT'S remedies under this CONTRACT; and
 - The Contractor Integrity provisions of this CONTRACT.

- b. NON-WAIVER. No waiver by DISTRICT of any Default shall constitute a waiver of any subsequent event, and the DISTRICT retains a right of election of remedies at all times.
- c. AUTHORITY. All persons signing this CONTRACT on behalf of the CONTRACTOR hereby personally covenant and warrant to DISTRICT that they are authorized to enter into this CONTRACT by the governing body of the CONTRACTOR, if any, by all necessary resolutions or actions.
- d. CONTEXT. Reference in this CONTRACT to the singular shall be meant to include reference to the plural and vice versa. Reference in this CONTRACT to the masculine gender shall be meant to include the female and neuter and vice versa.
- e. HEADINGS. The headings of any Section or Paragraph hereof are for reference purposes only and shall not in any way affect the meaning or interpretation thereof.
- f. SEVERABILITY. All agreements and covenants herein contained are severable. In the event that any provision of this CONTRACT should be held to be unenforceable, the validity and enforceability of the remaining provisions hereof shall not be affected thereby. Any court construing this CONTRACT is expressly granted the authority to revise any invalid or unenforceable provision hereof in order to render same enforceable.
- g. CONTRACTOR NAME CHANGE. If at any time during the term of this CONTRACT or any extension or renewal thereof, CONTRACTOR changes its corporate name, by operation of law or otherwise, CONTRACTOR shall deliver to DISTRICT a copy of a Certificate of Name Change or such other evidence of CONTRACTOR'S name change and authority as is reasonably acceptable to DISTRICT. Such evidence shall be delivered to DISTRICT within ten (10) days of CONTRACTOR'S official name change, or, if not so delivered, then upon ten (10) day's request from DISTRICT.

PENNSBURY SCHOOL DISTRICT

[INSERT CONTRACTOR'S NAME]

By: _____
President

By: _____

By: _____
Secretary

Date: _____

Date _____

APPENDIX “A”

EDUCATIONAL AND COMPLIANCE SERVICES—GENERALLY

- 1.0 Definitions. The following terms, when set forth in the CONTRACT, in this APPENDIX, or in any other APPENDIX to the CONTRACT, in capital letters, shall have the meaning(s) set forth in the following definitions unless the context clearly indicates otherwise:
- 1.1 “ACCESS TO RECORDS” means and INCLUDES the right to inspect or have copies of RECORDS.
 - 1.2 “AFFILIATED ENTITIES” INCLUDE any parent, subsidiary, partner and/or joint venturer of or with CONTRACTOR and any person or entity that shares in the profits of CONTRACTOR or in the proceeds or profits resulting from this CONTRACT.
 - 1.3 “APPLICABLE LAW” shall mean all state, federal and local laws, regulations, ordinances, and regulatory guidelines that are applicable by their terms to the services provided by the CONTRACTOR or that are identified in the CONTRACT as being applicable.
 - 1.4 “CONTRACT” shall mean this CONTRACT between CONTRACTOR and DISTRICT.
 - 1.5 “CONTRACTOR” means the CONTRACTOR named in the CONTRACT and its AFFILIATED ENTITIES.
 - 1.6 “CONTRACT YEAR” shall, for the initial term of this CONTRACT, be the period of time between the effective date of this CONTRACT on July 1, 2012 and June 30, 2013, and for any renewal term, shall be the year period of time between July 1 and immediately following June 30.
 - 1.7 “INCLUDE(S)” and “INCLUDING” shall mean inclusive of but not limited to and/or by way of example and not limitation.
 - 1.8 “PDE” shall mean the Pennsylvania Department of Education.
 - 1.9 “RECORDS” shall mean all books, accounts, data, documents, papers, computer files and documents, metadata, photographs, writings, forms, letters, emails, text messages, memorandum, notes, transcripts and web-postings of whatever nature and kind that relates to students or this CONTRACT and the services provided to or supporting the services provided to students or under this CONTRACT. The term RECORDS includes the data contained in RECORDS or in electronic medium.

- 2.0 CONTRACTOR'S Obligations. The CONTRACTOR shall provide at its sole cost and expense, and through its employees, the following:
- 2.1 Provision of Program and Program Services. CONTRACTOR shall provide all facilities, buildings, services, personnel, supplies and equipment as is necessary to provide the program and services described herein.
- 2.1.1 Special Education Services. CONTRACTOR shall provide Special Education Services to all students placed by the DISTRICT with the CONTRACTOR in accordance with each student's IEP and as directed by the DISTRICT.
- 2.1.2 Services to Children. CONTRACTOR shall provide the requisite services to all children placed with CONTRACTOR within applicable state and federal timelines, regardless of staff, fiscal or other limitations or hurdles. CONTRACTOR may not fail or delay in the filling of employee vacancies necessary to provide the requisite services or refuse to provide necessary compensatory services.
- 2.1.3 IEP Implementation. The CONTRACTOR shall ensure that each IEP is implemented in accordance with the terms and conditions set forth in the IEP and APPLICABLE LAW by qualified and competent employees.
- 2.1.4 Location and Level of Services. Eligible children being served under this CONTRACT shall receive special education services in accordance with APPLICABLE LAW and the requirements of the applicable IEP. CONTRACTOR shall not provide services beyond those specified in the IEP, except when required otherwise under this CONTRACT, such as for compensatory education.
- 2.1.5 Classroom Instruction. In the event that any of the services provided by CONTRACTOR is classroom instruction, CONTRACTOR shall make its curriculum available for prior review by the DISTRICT.
- 2.1.6 Prior Approval. In accordance with APPLICABLE LAW, certain changes in the program or services to children require approval from one or more governmental agencies. The CONTRACTOR shall not commence any services or changes in the plan that requires prior approval without having obtained all required approvals.
- 2.1.7 Attendance at Meetings. CONTRACTOR shall attend and cause its appropriate personnel to attend meetings: (a) called by DISTRICT; or (b) necessary to comply with APPLICABLE LAW, INCLUDING multidisciplinary team meetings and IEP meetings.

- 2.1.8 Enforcement, Investigation, and Hearings. CONTRACTOR shall assist and cooperate with DISTRICT in the enforcement of applicable law, INCLUDING investigations and preparation for the defense of administrative complaints or due process hearings or other litigation associated with or related to the provision of services by CONTRACTOR under this CONTRACT. When appropriate and at the request of DISTRICT, CONTRACTOR shall enter into a joint defense CONTRACT.
- 2.1.9 Compensatory Services. The CONTRACTOR shall provide compensatory services when required. The cost of providing compensatory education, whether initiated by CONTRACTOR, ordered by a court or administrative procedure, or determined through mediation or other resolution of litigation, shall be borne solely by CONTRACTOR.
- 2.1.10 Training. CONTRACTOR shall provide to its employees training: (a) pertaining to maintaining a safe environment free from inappropriate conduct, such as sexual harassment, bullying and racial intimidation; and (b) such training that is reasonably necessary to ensure that each employee complies with his/her duties and obligations under this CONTRACT and applicable law.
- 2.2 Utilization and Employment of Sufficient Competent and Qualified Individuals. CONTRACTOR shall utilize only competent, skilled, trained and qualified individuals, who shall be employed as employees and not contractors or subcontractors of CONTRACTOR, to perform services under this CONTRACT and shall ensure adherence to the following terms and conditions with respect to individuals performing services under this CONTRACT:
- 2.2.1 Every individual employed or provided by CONTRACTOR to provide services under this CONTRACT shall comply with all applicable regulations governing public school entities, pertaining to and INCLUDING, age, fitness, competence, conduct, licensing, physical examination, drug and alcohol testing, and continued eligibility. Without intending to limit the generality of the foregoing, all employees, contractors and staff performing services under this CONTRACT must:
- 2.2.1.1 be of good moral character;
- 2.2.1.2 be at least eighteen (18) years of age;
- 2.2.1.3 be examined by a physician;
- 2.2.1.4 have been tested before start of work for tuberculosis;

- 2.2.1.5 have a certificate on file with the CONTRACTOR from a physician verifying the examination;
 - 2.2.1.6 be citizens of the United States or must hold a United States Immigration Service visa which authorizes the alien to reside and seek employment within the United States;
 - 2.2.1.7 possess all required licenses, certifications, or credentials that are required by APPLICABLE LAW to perform the services provided and to qualify for reimbursement as may be allowed from any available source, INCLUDING medical assistance.
- 2.2.2 Employees must be properly certificated as if they were employed by a public school district in accordance with applicable state regulations and the PDE staffing and policy guidelines. Private academic preschool certification alone is not sufficient.
- 2.2.3 CONTRACTOR shall, in advertisements, requests for employment placed by it or on its behalf, and on its website; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, ancestry, national origin, age, sex or any other legally protected characteristic.
- 2.2.4 Notwithstanding anything herein to the contrary, CONTRACTOR shall not supply or utilize any individual to perform any services under this CONTRACT who is not competent, qualified, skilled and trained or who would be disqualified from service under any APPLICABLE LAW or policy, currently in effect or as may be in effect in the future, governing employees of public school districts.
- 2.2.5 DISTRICT'S Right to Reject and/or Remove CONTRACTOR'S Employee(s). DISTRICT reserves the right, in its sole discretion, to reject the use of any specific employee(s) of the CONTRACTOR in the performance of services under this CONTRACT. In the event that DISTRICT provides written notice to CONTRACTOR to stop using any employee to perform any services under this CONTRACT, the CONTRACTOR shall immediately cease using said individual with regard to any services provided under this CONTRACT. DISTRICT will not pay for services provided by any employee in violation of the written notice. In the event that the CONTRACTOR disagrees or disputes DISTRICT'S decision in this regard, the CONTRACTOR shall submit written notice of its disagreement or dispute and DISTRICT shall meet and confer with the CONTRACTOR to try to resolve the dispute and to explain its rationale and reasons. DISTRICT'S decision following the meeting, however, shall be final.

2.2.6 Prior to any individual performing services for the DISTRICT, CONTRACTOR shall comply with all laws relating to the provision of clearances by prospective and current employees including, but are not limited to:

2.2.6.1 Criminal Background Check pursuant to Act 34;

2.2.6.2 Department of Public Welfare Clearance Statement pursuant to Act 151;

2.2.6.3 FBI Criminal History Record;

2.2.6.4 Fingerprint reports when required by law; and

2.2.6.5 Immigration and Naturalization I-9 form for establishing lawful employment status.

2.2.7 Original Documents. CONTRACTOR shall make the foregoing original documents available to the DISTRICT upon request.

2.2.8 Staffing Plan. CONTRACTOR shall make available upon request by the DISTRICT a staffing plan, enumerating the employee positions assigned to provide, oversee, supervise and manage the SERVICES required to be provided by this CONTRACT. The staffing plan shall: (a) enumerate each employee by job title providing services under this CONTRACT; and (b) identify the individual(s) filling each position.

2.3 RECORDS. CONTRACTOR shall prepare, maintain and provide to DISTRICT true, complete, detailed and accurate RECORDS pertaining to students or services provided under this CONTRACT in such format as requested by DISTRICT.

2.3.1 Quality Standards for Records. RECORDS required under this CONTRACT shall be prepared, collected and maintained by CONTRACTOR in accordance with the highest professional standards and certified as accurate by CONTRACTOR whenever provided to DISTRICT or submitted to any other entity.

2.3.2 Public Records. The CONTRACTOR shall make available to public inspection any RECORD that is a public record as defined in the Right-to-Know Law.

2.3.3 Minimum Retention Time. CONTRACTOR shall retain all RECORDS for a minimum of the time required by APPLICABLE LAW, or for six years beyond the close of the CONTRACT YEAR to which the RECORD applies, whichever is longer.

2.3.4 Required RECORDS. At a minimum, CONTRACTOR shall prepare, maintain and provide upon request or in accordance with instructions by DISTRICT or by APPLICABLE LAW, the following:

- 2.3.4.1 RECORDS required by the State or Federal governments, INCLUDING data for PennData and PDE, and records required by DISTRICT;
- 2.3.4.2 Financial and Accounting Records. RECORDS identifying the costs of special education services and related services provided under this CONTRACT;
- 2.3.4.3 RECORDS Necessary for Reimbursement or Subsidy. Data that is necessary in order to qualify for reimbursement or subsidies, INCLUDING those required for reimbursement by medical assistance, if applicable;
- 2.3.4.4 If applicable, data required by the Medical Assistance regulations, guidelines, and manuals, INCLUDING those found in 55 Pa. Code, Chapter 1101, and the SBAP Manual;
- 2.3.4.5 Progress Monitoring. Data from progress monitoring which is sufficient and to the satisfaction of DISTRICT to allow IEP teams to make determinations of future programmatic needs of children in accordance with APPLICABLE LAW;
- 2.3.4.6 Employee Records. Records and data required by APPLICABLE LAW and regulations with respect to all employees employed by CONTRACTOR, whether providing services or supporting this CONTRACT or not;
- 2.3.4.7 Document Retention Plan. A comprehensive document retention plan with respect to RECORDS;
- 2.3.4.8 Disaster Recovery Plan. A comprehensive disaster recovery plan designed to minimize or eliminate any interruption of services; and
- 2.3.4.9 Litigation Hold Plan. If litigation is filed relating to the services provided hereunder, a comprehensive litigation hold plan designed to ensure compliance with litigation hold requirements that may be applicable to the CONTRACTOR.
- 2.3.5 Use of State Forms. CONTRACTOR shall use the forms developed by PDE and/or forms required by DISTRICT, INCLUDING the IEP forms.
- 2.3.6 Ownership of RECORDS. All RECORDS in the possession of or created by CONTRACTOR and related to students shall be owned by DISTRICT, except for such RECORDS where the Commonwealth of Pennsylvania has a copyright in accordance with this CONTRACT. This includes all student records as defined in the Family Education Rights and Privacy Act ("FERPA"), and individual notes or records of any employee related to

any student or to the provision of services to any student. Although owned by DISTRICT, the CONTRACTOR shall maintain, protect, and safeguard the RECORDS in a secure manner.

2.3.7 ACCESS TO RECORDS. DISTRICT shall have ACCESS TO RECORDS upon request within given timelines. The cost for copies of RECORDS shall be borne by CONTRACTOR.

2.3.8 Reports. Upon request, CONTRACTOR shall submit to DISTRICT reports, INCLUDING progress reports and narrative reports, within the timeframe established by the DISTRICT. These reports shall comply with the following:

2.3.9 Progress Reports. Progress reports shall: (a) describe in detail the services provided under this CONTRACT; (b) in the format required by DISTRICT; and (c) contain the information necessary to enable DISTRICT to comply with any state or federal reporting requirements that pertain to the services provided under this CONTRACT.

2.3.10 Narrative Reports. Narrative reports shall contain such information and data as required by DISTRICT.

2.4 Facilities. By executing this CONTRACT, CONTRACTOR warrants and represents to DISTRICT that its facilities comply with all requirements of APPLICABLE LAW and zoning.

2.5 Legal and Other Notices. CONTRACTOR shall post all required legal notices in accordance with APPLICABLE LAW and such other notices requested by DISTRICT. In addition, CONTRACTOR shall make available such brochures, notices and other written material as requested by DISTRICT or required by APPLICABLE LAW. In the event that CONTRACTOR has a website, the CONTRACTOR shall post such pages or information in the website as reasonably requested by DISTRICT.

2.6 Taxes and Other Payment. CONTRACTOR shall pay, when due, all applicable state, federal and local taxes as well as all wages, compensation and other benefits due to its employees.

2.7 Safe Facilities. Without limiting the generality of the foregoing, if and to the extent that the Safe Schools Act applies either to this CONTRACT or to the CONTRACTOR, CONTRACTOR shall:

2.7.1 Develop and maintain a lawful written policy, and shall provide a copy and any revisions to DISTRICT, regarding its role in complying with Article XIII-A of the Public School Code;

- 2.7.2 Provide accurate and professionally maintained reports on a timely basis of all new incidents involving DISTRICT students involving acts of violence, possession of a weapon, or possession, use or sale of controlled substances, or possession, use or sale of alcohol or tobacco by any persons on school property;
- 2.7.3 Provide accurate and professionally maintained reports of all incidents of violence, incidents involving DISTRICT students involving possession of a weapon and convictions or adjudication of delinquency for acts committed on the property of CONTRACTOR;
- 2.7.4 Provide to DISTRICT a plan for working with local law enforcement that sets forth the procedures to be followed when an incident involving an act of violence occurs on the property of CONTRACTOR;
- 2.8 CONTRACTOR'S Policies. CONTRACTOR has adopted, and shall comply with, the policies attached hereto and incorporated herein by reference as if fully set forth herein, pertaining to the following:
 - 2.8.1 The Prohibition of Unlawful Discrimination;
 - 2.8.2 The Prohibition of improper conduct, INCLUDING the prohibition of sexual harassment, racial intimidation, ethnic intimidation, and the like;
 - 2.8.3 If applicable, ensuring safe school programs and compliance with Article XIII-A of the School Code which shall contain provisions pertaining to: (a) the preparation and maintenance of required reports, and (b) arrangement with local law enforcement;
 - 2.8.4 Ensuring that reports are made in accordance with the Child Protective Services Act; and
 - 2.8.5 Ensuring compliance with APPLICABLE LAW.
- 2.9 Third Party Reimbursements. CONTRACTOR shall perform the services required under this CONTRACT in the way that is necessary to qualify for any third party reimbursement and shall prepare, maintain and provide the RECORDS necessary to obtain such reimbursement, as directed by the DISTRICT. Third party reimbursement INCLUDES funding from Medicare, Medicaid and private insurance. Any and all funds recovered by CONTRACTOR or that are eligible for recovery shall be the property of DISTRICT. CONTRACTOR shall immediately turn over to DISTRICT any such funds that may be received by CONTRACTOR.
- 2.10 Notice Requirements. CONTRACTOR shall provide notice to DISTRICT in accordance with the following terms and conditions:

- 2.10.1 Notice of Claims, Suits and Threatened Claims. CONTRACTOR shall notify DISTRICT in writing as soon as possible, but in all circumstances, within twenty- four (24) hours, of all claims, suits or threatened claims relating to the services provided under this CONTRACT or the employees who performed services under this CONTRACT.
- 2.10.2 Notice of Communications to Regulators. Unless prohibited by APPLICABLE LAW, CONTRACTOR shall notify DISTRICT in writing as soon as possible, but in all circumstances, within twenty-four (24) hours, of all communications to or from regulators respecting: (a) any of the services covered under this CONTRACT; or (b) any student being served by DISTRICT or the CONTRACTOR under this CONTRACT.
- 2.10.3 Notice of Staff Vacancies. CONTRACTOR shall notify DISTRICT in writing within twenty-four (24) hours of any staff vacancy(ies) affecting DISTRICT students and shall state on the notice pertinent information, INCLUDING the following:
- 2.10.3.1 The names and number of DISTRICT children affected;
 - 2.11.3.2 The process(es) that will be used to fill the vacancy(ies); and
 - 2.11.3.3 Compensatory time owed to the children affected.
- 2.10.4 Parental Complaints/Grievances. CONTRACTOR shall notify DISTRICT as soon as possible, but in all circumstances within twenty-four (24) hours, of any problems, difficulties, complaints or grievances voiced by parents concerning CONTRACTOR'S provision of services under this CONTRACT.
- 2.10.5 Reports of Suspected Child Abuse. CONTRACTOR shall notify DISTRICT as soon as possible, but in all circumstances within twenty-four (24) hours, of any report that the CONTRACTOR makes in accordance with the Child Protective Services Law with respect to any student of the DISTRICT or any staff member supplying SERVICES under this CONTRACT.
- 2.10.6 Lack of Proper Programming. CONTRACTOR shall notify DISTRICT as soon as possible, but in all circumstances within twenty-four (24) hours, if adequate programming cannot be provided to any child CONTRACTOR is serving or required to serve. If the CONTRACTOR or its qualified professional employees believes that additional service is needed for any child being served or to be served, the ER/IEP process shall be used to determine whether any such additional service is required.

2.10.7 Debarment. CONTRACTOR shall provide immediate written notice to DISTRICT at any time CONTRACTOR learns that it or its principals are debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participating in any federal or state program or grant.

3.0 Prohibitions. CONTRACTOR shall not:

- 3.1 Employ or retain any individual to perform any services under or in connection with the CONTRACT who would be disqualified from employment with a school district;
- 3.2 Disclose any confidential information or records as defined in APPLICABLE LAW, INCLUDING the Family Rights and Privacy Act (“FERPA”) and the Health Insurance Portability and Privacy Act (“HIPAA”) in violation of APPLICABLE LAW;
- 3.3 Discriminate in violation of APPLICABLE LAW against any person, INCLUDING students, prospective students, parents, members of the public, applicants for employment and employees.

4.0 Performance Standards and Damages for the CONTRACTOR’S Breach of Certain of Its Duties.

- 4.1 Strict performance by CONTRACTOR of its obligations under this CONTRACT is of the essence. Should CONTRACTOR or any of its agents or employees fail to meet the performance standards in the following respects, DISTRICT shall be entitled to liquidated damages as outlined herein subject to the review procedures outlined herein. The parties agree that the liquidated damages set forth are a fair and reasonable approximation of the damages sustained by DISTRICT in the event of a breach of the Performance Standards and are not in the nature of a penalty.
- 4.2 Except as excused under the force majeure provision of the CONTRACT, CONTRACTOR shall meet the time requirements set forth in the CONTRACT or be liable for liquidated damages in accordance with the following:
 - 4.2.1 Where the CONTRACTOR breaches the CONTRACT by supplying an individual to perform services to the DISTRICT who does not meet the qualification standards set forth in this CONTRACT; the liquidated damages shall equal the amounts paid for wages, the employer’s share of wage taxes, and fringe benefits for each day that the unqualified employee was utilized; and

- 4.2.2 Where the CONTRACTOR breaches the CONTRACT by failing or refusing to provide any one or more of the reports required under Paragraphs 2.4, 2.8.2 or 2.8.3; the liquidated damages shall equal fifty dollars (\$50.00) per day for each calendar day that any one or more document is late.
- 4.2.3 Notwithstanding anything in the CONTRACT to the contrary, no payments are required to be made under this CONTRACT as long as the CONTRACTOR fails to provide any required document on a timely basis.
- 4.3 Liquidated damages allowed under this CONTRACT will be deducted from the monthly bill when paid by DISTRICT.
- 4.4 The liquidated damages provisions set forth in this CONTRACT shall not be construed as a limitation on the remedies that DISTRICT has under law resulting from the CONTRACTOR'S breach of any provision of this CONTRACT. DISTRICT'S decision to recover liquidated damages with respect to any breach by CONTRACTOR allowing liquidated damages shall not foreclose or limit DISTRICT'S rights to pursue any other remedy allowed by law or in this CONTRACT for any other breach of this CONTRACT

APPENDIX “B”

COMPLIANCE WITH APPLICABLE LAW AND POLICIES

- 1.0 Compliance with APPLICABLE LAW. It shall be the duty of CONTRACTOR throughout the term of this CONTRACT to comply with all APPLICABLE LAW, INCLUDING:
 - 1.1 Titles IV, VI and VII of the Civil Rights Act of 1964;
 - 1.2 The Family Education Rights and Privacy Act;
 - 1.3 The Pennsylvania Human Relations Act;
 - 1.4 The Americans with Disabilities Act;
 - 1.5 Section 504 of the Rehabilitation Act of 1973, its implementing regulations and the regulations of the State Board of Education published at 22 Pa. Code, Chapter 15;
 - 1.6 Title IX of the Education Amendments of 1972;
 - 1.7 The Individuals with Disabilities Education Act (hereafter “IDEA”), its implementing regulations, and the regulations of the State Board of Education published at 22 Pa. Code, Chapter 14;
 - 1.8 The applicable provisions of the Public School Code;
 - 1.9 The reporting requirements set forth in the Child Protective Services Law;
 - 1.10 All applicable federal, state and local laws, regulations and ordinances relating to:
 - 1.10.1 safety, health, physical welfare, fire and panic requirements with respect to any buildings utilized by CONTRACTOR in the performance of services under this CONTRACT; and
 - 1.10.2 food safety, including food safety of the kitchens, cafeterias and dining rooms, if food services are provided by CONTRACTOR.
- 2.0 Nondiscrimination.
 - 2.1 The CONTRACTOR shall not discriminate against any employee, applicant for employment, independent CONTRACTOR, or any other person because of race, color, religion, ancestry, national origin, age or sex. The CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment without regard to their race, color,

religion, disability, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training. The CONTRACTOR shall post in conspicuous places, available to employees, agents, applicants for employment, and other person, a notice to be provided by the CONTRACTOR setting forth the provisions of this nondiscrimination clause.

- 2.2 CONTRACTOR shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, disability, ancestry, national origin, age, or sex.
- 2.3 CONTRACTOR shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by the CONTRACTOR.
- 2.4 It shall be no defense to a finding of noncompliance with this nondiscrimination clause that the CONTRACTOR has delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the CONTRACTOR was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.
- 2.5 Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that the CONTRACTOR will be unable to meet its obligations under this nondiscrimination clause, the CONTRACTOR shall then employ and fill vacancies through other nondiscriminatory employment procedures.
- 2.6 CONTRACTOR shall comply with all State and Federal laws prohibiting discrimination in hiring or employment opportunities. In the event of the CONTRACTOR's noncompliance with the nondiscrimination clause of this contract or part, and the CONTRACTOR may be declared temporarily ineligible for further contracts, and other sanctions may be imposed and remedies invoked.

APPENDIX “C”

PAYMENTS TO AND FROM CONTRACTOR

- 1.0 DISTRICT shall pay the CONTRACTOR in accordance with the following terms, conditions, limitations and exclusions.
 - 1.1 Subject to all terms, conditions, limitations and exclusions contained in this CONTRACT, DISTRICT shall pay to CONTRACTOR the amount of to be determined by the RFP process per day per child placed by the DISTRICT.
 - 1.2 CONTRACTOR Invoices. CONTRACTOR shall submit an application for payment on a monthly basis and in the prescribed format to DISTRICT. Each application for payment must contain an appropriate breakdown of actual costs and expenses. In addition to any other information that is required by DISTRICT, each application for payment must contain, or be accompanied by, in one packet:
 - 1.2.1 A copy of daily attendance information to be submitted to the DISTRICT within the frequency required by the DISTRICT.
 - 1.2.2 Medical Assistance and Access service logs and summary reports and other data as is necessary to quality for reimbursement, if requested and applicable; and
 - 1.2.3 Sufficient detail, INCLUDING actual expense detail, such that DISTRICT can reasonably determine each item for which CONTRACTOR is seeking payment.
 - 1.3 Billing and Invoicing Prohibitions. CONTRACTOR may not seek payment for or include in its application for payment any services that have not been provided. Payment shall be made only for children who: (a) have been assigned by DISTRICT; (b) have not been withdrawn or otherwise terminated from the program prior to the start of the applicable month; and (c) for whom direct services have been provided by the CONTRACTOR to the child during the month.
 - 1.4 Overhead, Supplies, Equipment and Facilities. The CONTRACTOR is solely responsible for the cost and provision of necessary supplies, equipment, overhead and facility costs and may not bill DISTRICT for any such costs.
 - 1.5 Withholding and Delayed Payment. Notwithstanding anything herein to the contrary, DISTRICT may delay or withhold payment for any of the following reasons:

- 1.5.1 Failure to submit a properly completed and itemized invoice, supported by required RECORDS;
 - 1.5.2 CONTRACTOR'S failure to perform as agreed, INCLUDING provision of services as assigned;
 - 1.5.3 As allowed by any provision of the CONTRACT;
 - 1.5.4 In order to recover liquidated damages as stated in the CONTRACT;
 - 1.5.5 Whenever the CONTRACT has failed or refused to return equipment, data or funds to DISTRICT as required by this CONTRACT;
 - 1.5.6 Whenever the CONTRACTOR fails or refuses to provide required RECORDS on a timely basis;
 - 1.5.7 For any services provided by an employee or individual who is not qualified, as defined in this CONTRACT or APPLICABLE LAW, to perform the services;
 - 1.5.8 When DISTRICT has paid for any insurance, supplies, personnel, equipment, services or facilities that was the responsibility of the CONTRACTOR under this CONTRACT or applicable law; and
 - 1.5.9 When DISTRICT has been required to return any funds to a third party payer as a result of any act or omission by CONTRACTOR.
- 1.6 DISTRICT'S Performance of CONTRACTOR'S DUTIES. Notwithstanding anything in this CONTRACT to the contrary, DISTRICT has no responsibility or obligation to perform any of the duties and obligations of the CONTRACTOR under this CONTRACT. However, in the event that the CONTRACTOR is in breach of any of its obligations under this CONTRACT, DISTRICT may take such action as is necessary to provide the necessary services or make the required payments. In the event that DISTRICT takes such action and incurs costs or expenses in doing so, CONTRACTOR shall reimburse and hold DISTRICT harmless with respect to such costs and expenses and DISTRICT may withhold said amount(s) from any funds due to CONTRACTOR under this CONTRACT.

APPENDIX “D”

BUSINESS ASSOCIATE CONTRACT

WHEREAS, DISTRICT has a CONTRACT with CONTRACTOR for the provisions of certain services, some of which may involve the needed disclosure of Protected Health Information as defined in HIPAA; and

NOW, THEREFORE, in consideration of the forgoing premises and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the DISTRICT and CONTRACTOR agree as follows:

1. Construction and Applicability

Any term defined in the underlying CONTRACT, including any previous amendments to the CONTRACT entered into by the parties from time to time (the “CONTRACT”) shall be given the same meaning in this APPENDIX; except that, in the event of a conflict between any term or provision of this APPENDIX and the CONTRACT, the term or provision of this APPENDIX shall control with regard to matters governed by HIPAA. The parties specifically agree that this APPENDIX supersedes and replaces the obligations of CONTRACTOR set forth in the CONTRACT with respect to confidential information to the extent that such confidential information falls within the definition of PROTECTED HEALTH INFORMATION below. The parties agree to waive any applicable form of notice, notice period, effective date, or other formality or prerequisite to entering into this APPENDIX, except as specifically herein otherwise provided. In all other respects, except as herein specifically amended, the parties ratify and confirm that all other provisions of the CONTRACT remain in full force and effect.

2. Catch-all Definition

Terms used that are defined in the PRIVACY RULE, but not otherwise defined in this APPENDIX shall have the same meaning as those terms in the PRIVACY RULE.

3. Examples of Specific Definitions

- (a) BUSINESS ASSOCIATE. BUSINESS ASSOCIATE shall INCLUDE any and all employees of CONTRACTOR or employees of DISTRICT, as may be applicable depending upon the nature of service in the specific circumstances.
- (b) COVERED ENTITY. COVERED ENTITY shall mean DISTRICT or the CONTRACTOR, as may be applicable depending upon the work and services being performed in any given circumstance.
- (c) ELECTRONIC PROTECTED HEALTH INFORMATION. ELECTRONIC PROTECTED HEALTH INFORMATION shall have the same meaning as the term ELECTRONIC PROTECTED HEALTH INFORMATION in 45 CFR 160.103.

- (d) INDIVIDUAL. INDIVIDUAL shall have the same meaning as the term INDIVIDUAL in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (e) PRIVACY RULE. PRIVACY RULE shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- (f) PROTECTED HEALTH INFORMATION. PROTECTED HEALTH INFORMATION shall have the same meaning as the term PROTECTED HEALTH INFORMATION in 45 CFR 164.501, limited to the information created or received by BUSINESS ASSOCIATE from or on behalf of COVERED ENTITY.
- (g) REQUIRED BY LAW. REQUIRED BY LAW shall have the same meaning as the term REQUIRED BY LAW in 45 CFR 164.501.
- (h) SECURITY RULE. SECURITY RULE shall mean the Security Standards at 45 CFR Parts 160, 162 and 164.
- (i) SECRETARY. SECRETARY shall mean the SECRETARY of the Department of Health and Human Services or his designee.

4. Obligations and Activities of BUSINESS ASSOCIATE

- (a) BUSINESS ASSOCIATE agrees to not use or disclose PROTECTED HEALTH INFORMATION other than as provided for by this APPENDIX.
- (b) BUSINESS ASSOCIATE agrees to mitigate, to the extent practicable, any harmful effect that is known to BUSINESS ASSOCIATE of a use or disclosure of PROTECTED HEALTH INFORMATION by BUSINESS ASSOCIATE in violation of the requirements of this APPENDIX and the PRIVACY RULE.
- (c) BUSINESS ASSOCIATE agrees to report to COVERED ENTITY any use or disclosure of the PROTECTED HEALTH INFORMATION not provided for by this APPENDIX of which it becomes aware.
- (d) BUSINESS ASSOCIATE agrees to ensure that any agent, including a subcontractor, to whom it provides PROTECTED HEALTH INFORMATION received from, or created or received by BUSINESS ASSOCIATE on behalf of COVERED ENTITY, agrees to the same restrictions and conditions that apply through this APPENDIX to BUSINESS ASSOCIATE with respect to such information.
- (e) BUSINESS ASSOCIATE agrees to make internal practices, books, and records, including policies and procedures and PROTECTED HEALTH INFORMATION, relating to the use and disclosure of PROTECTED HEALTH INFORMATION received from, or created or received by BUSINESS ASSOCIATE on behalf of, COVERED ENTITY available to the COVERED ENTITY, or to the SECRETARY, in

a mutually agreeable time and manner or as designated by the SECRETARY, for purposes of the SECRETARY determining COVERED ENTITY's compliance with the PRIVACY RULE.

- (f) BUSINESS ASSOCIATE agrees to document such disclosures of PROTECTED HEALTH INFORMATION and information related to such disclosures as would be required for COVERED ENTITY to respond to a request by an INDIVIDUAL for an accounting of disclosures of PROTECTED HEALTH INFORMATION in accordance with 45 CFR 164.528.
- (g) BUSINESS ASSOCIATE agrees to provide to COVERED ENTITY or an INDIVIDUAL, in a reasonable time and manner, information collected in accordance with paragraph (i) of this APPENDIX, to permit COVERED ENTITY to respond to a request by an INDIVIDUAL for an accounting of disclosures of PROTECTED HEALTH INFORMATION in accordance with 45 CFR 164.528.
- (h) BUSINESS ASSOCIATE shall maintain the security of PROTECTED HEALTH INFORMATION, including ELECTRONIC PROTECTED HEALTH INFORMATION, in accordance with the requirements of the SECURITY RULE, including, but not limited to, 45 CFR 164.310, 45 CFR 164.312, and 45 CFR 164.316.
- (i) BUSINESS ASSOCIATE shall notify the COVERED ENTITY immediately in the event that the BUSINESS ASSOCIATE discovers a breach of security with respect to unsecured protected health information that the BUSINESS ASSOCIATE accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses. For the purposes of this notification requirement, "unsecured protected health information" shall mean PROTECTED HEALTH INFORMATION that is not secured through the use of a technology or methodology specified by the SECRETARY. The BUSINESS ASSOCIATE'S notice to the COVERED ENTITY shall include the identification of each individual whose unsecured protected health information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during such breach. The BUSINESS ASSOCIATE shall further provide, at its sole cost and expense, the notices (including individual notices) required under the American Recovery and Reinvestment Act of 2009, Section 13401(e), with respect to breaches of unsecured protected health information. The BUSINESS ASSOCIATE'S notices shall comply with the requirements of Section 13401(f) of the American Recovery and Reinvestment Act of 2009.
- (j) Notwithstanding any other provision in this APPENDIX, the BUSINESS ASSOCIATE shall comply with the requirements of the PRIVACY RULE, to the fullest extent required by law.

5. Permitted Uses and Disclosures by BUSINESS ASSOCIATE: General Use and Disclosure Provisions

Except as otherwise limited in this APPENDIX, BUSINESS ASSOCIATE may use or disclose PROTECTED HEALTH INFORMATION on behalf of, or to provide services to, COVERED ENTITY for the following purposes, if such use or disclosure of PROTECTED HEALTH INFORMATION would not violate the PRIVACY RULE if done by COVERED ENTITY or the minimum necessary policies and procedures of the COVERED ENTITY, as applicable: educational, related or special education services for the COVERED ENTITY.

6. Specific Use and Disclosure Provisions

- (a) Except as otherwise limited in this APPENDIX, BUSINESS ASSOCIATE may use PROTECTED HEALTH INFORMATION for the proper management and administration of the BUSINESS ASSOCIATE or to carry out the legal responsibilities of the BUSINESS ASSOCIATE.
- (b) Except as otherwise limited in this APPENDIX, BUSINESS ASSOCIATE may disclose PROTECTED HEALTH INFORMATION for the proper management and administration of the BUSINESS ASSOCIATE, provided that disclosures are REQUIRED BY LAW, or BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as REQUIRED BY LAW or for the purpose for which it was disclosed to the person, and the person notifies the BUSINESS ASSOCIATE of any instances of which it is aware in which the confidentiality of the information has been breached.

7. Obligations of COVERED ENTITY: Provisions for COVERED ENTITY to Inform BUSINESS ASSOCIATE of Privacy Practices and Restrictions

- (a) COVERED ENTITY shall notify BUSINESS ASSOCIATE of any limitation(s) in its Notice of Privacy Practices of COVERED ENTITY in accordance with 45 CFR 164.520, to the extent that such limitation may affect BUSINESS ASSOCIATE's use or disclosure of PROTECTED HEALTH INFORMATION.
- (b) COVERED ENTITY shall notify BUSINESS ASSOCIATE of any changes in, or revocation of, permission by INDIVIDUAL to use or disclose PROTECTED HEALTH INFORMATION, to the extent that such changes may affect BUSINESS ASSOCIATE's use or disclosure of PROTECTED HEALTH INFORMATION.
- (c) COVERED ENTITY shall notify BUSINESS ASSOCIATE of any restriction to the use or disclosure of PROTECTED HEALTH INFORMATION that COVERED ENTITY has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect BUSINESS ASSOCIATE's use or disclosure of PROTECTED HEALTH INFORMATION.

8. Permissible Requests by COVERED ENTITY

COVERED ENTITY shall not request BUSINESS ASSOCIATE to use or disclose PROTECTED HEALTH INFORMATION in any manner that would not be permissible under the PRIVACY RULE if done by COVERED ENTITY.

9. Miscellaneous

- (a) **Regulatory References.** A reference in this APPENDIX to a section in the PRIVACY RULE or the SECURITY RULE means the section as if effect or as amended.
- (b) **Amendment.** The Parties agree to take such action as is necessary to amend this APPENDIX from time to time as is necessary for COVERED ENTITY and the BUSINESS ASSOCIATE to comply with the requirements of the PRIVACY RULE, the SECURITY RULE, and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No.104-91, as amended.
- (c) **Survival.** The respective rights and obligations of BUSINESS ASSOCIATE under Section 4 of this APPENDIX shall survive the termination of this APPENDIX.
- (d) **Interpretation.** Any ambiguity in this APPENDIX shall be resolved to permit COVERED ENTITY and the BUSINESS ASSOCIATE to comply with the PRIVACY RULE and the SECURITY RULE.
- (e) **Incorporation of Legally Required Provisions.** In the event that there are any legally required provisions for a valid Business Associate Agreement that have not been stated herein, it shall be presumed that such required provisions are hereby incorporated herein by this reference as if fully set forth herein.

FAQ

Specifications for Pennsbury School District's Special Education and Student Affairs Related Services RFP # 2021-002

1. How many days will the therapists work during the school year?

The district teacher contract is currently for 191 days which includes teacher in-service days

2. What is the anticipated award date?

It is anticipated that the Contractor(s) awarded the bid will go to the board on the third Thursday in March 2020 for a start date of July 1, 2020. ESY services will be required for speech, OT and PT for July/August 2020.

3. Does the district intend to award to a single or multiple contractors?

At the present time, Pennsbury School District is open to awarding either to a single or to multiple Contractors depending on the proposals and which best fits the need of the School District.

4. Would you consider certified therapy assistants such as PTA, COTA, SLPA, and CFY?

Pennsbury School District would consider PTA, COTA and SLPAs that are certified and supervised as per their positions. A CFY position would need to be supervised by the contractor supplying the SLP services and in accordance to ASHA standards and regulations.

5. Are resumes required at the time of the proposal submission or only upon award?

Resumes for individual service providers will not be required at the time of the proposal. All service providers must have at least the minimum qualification for their individual role and have all clearances that are required by PDE.

6. To what grade levels will therapists provide services?

Pennsbury currently services students in grades K-12 and our students who remain until age of 18-21.

7. What are the projected caseloads?

Caseloads are in line with state guidelines for each discipline.

8. What would be the payment terms of the Pennsbury School District?

The District typically pays within 30 days of receipt of the invoice.

9. Can the Contractor submit for just one service or does Contractor need to bid on all services?

Contractor(s) may submit for one or more services.

10. Will therapists have access to internet capabilities/computers with Pennsbury School District?

The District will allow therapists to use computers within the district; however, we do not supply computers to Contractor(s). The therapists will have access to the Student Information System while within the District. They will have access to an on-line IEP writing system through the web.