

AGREEMENT FOR EDUCATIONAL STAFFING

THIS AGREEMENT, dated January 29, 2019, is between Kelly Services, Inc., 999 West Big Beaver Road, Troy, Michigan 48084 ("Kelly"), and Indiana Area School District, with its principal offices located at 501 East Pike, Indiana, PA 15701 ("Customer").

1) DESCRIPTION, LOCATION AND PRICING OF SERVICES

Kelly will assign to the Customer Kelly temporary employees ("Assigned Employees"), through its service line, Kelly Educational Services, to provide education-related services, under the Customer's operational supervision, at the location(s) and for the pricing (and other related costs) described in Exhibit A (the "Services"). Additional services, if any, may be found in Exhibit C, the Statement of Work. The pricing in Exhibit A is confidential between Kelly and Customer. Customer will be permitted to use the Exhibit in connection with its business operations, responses to Freedom of Information Act requests, and other uses as required by law.

2) KELLY GUARANTEE

Kelly guarantees that the Assigned Employees it places with the Customer will satisfactorily perform the services ordered by Customer. If not, Kelly will cancel charges for unsatisfactory services and furnish a replacement as soon as possible when the Customer has provided notice of its dissatisfaction within the first 16 working hours of an Assigned Employee's assignment. If Kelly receives notice after an Assigned Employee's first 16 working hours, Kelly will furnish a replacement as soon as possible, but not cancel the charges for the unsatisfactory services.

3) KELLY'S RESPONSIBILITIES

As the provider of staffing services, Kelly will be the employer of Assigned Employees, and will be responsible for the staffing services listed below.

- (a) Recruit, select, and hire Assigned Employees;
- (b) Place Assigned Employees according to Customer's requirements;
- (c) Pay Assigned Employees their wages and provide them the benefits that Kelly offers to them as Kelly employees;
- (d) Pay or withhold payroll taxes (e.g., FICA) and insurance premiums (e.g., Medicare) and fulfill its obligations for unemployment compensation (e.g., FUTA, SUTA);
- (e) Provide workers' compensation benefits and coverage for Assigned Employees;
- (f) Maintain Assigned Employees' personnel and payroll records related to their employment by Kelly;
- (g) Comply with laws, rules or regulations applicable to providers of staffing services;
- (h) Require Assigned Employees to agree in writing to protect the confidentiality of Customer's proprietary information;
- (i) Require Assigned Employees to execute agreements that Customer requests with regard to intellectual property developed by them in performance of their work for Customer;
- (j) Require Assigned Employees to acknowledge in writing that they have no right to participate in Customer's employee benefit plans;
- (k) Require Assigned Employees to comply with all rules and policies of Customer (e.g., those relating to premises access and security);
- (l) Make legally required employment law disclosures to Assigned Employees; and
- (m) Comply with the Patient Protection and Affordable Care Act ("Affordable Care Act") and its regulations, as applicable, and have established internal procedures to review and maintain its compliance with the Affordable Care Act.

4) CUSTOMER'S RESPONSIBILITIES

As the recipient of Kelly's temporary staffing services, the Customer will be responsible for controlling the environment in which Assigned Employees perform their work, the details of their work, and, teaching board-approved curriculum and approved lesson plans. The Customer also will:

- (a) Provide Assigned Employees with a safe and suitable workplace, including all required site-specific training related to the chemical, physical and biological hazards in the workplace, emergency procedures, school rules and protocols, policies and procedures regarding student disciplinary actions, and the confidentiality of student records and information;
- (b) Provide Kelly with prompt notice of any injury suffered by an Assigned Employee;
- (c) Use Assigned Employees only in assignments that match the job descriptions for which Kelly places them, and will not give duties to an Assigned Employees that the Assigned Employee must perform outside of Customer's premises;
- (d) Notify Kelly when Assigned Employees are required to use Customer's timekeeping system;
- (e) Provide adequate internal controls, supervision, and instructions for Assigned Employees;

- (f) Assume responsibility the conduct of the Assigned Employees when they are required to handle keys, cash, confidential information and records of students and the Customer's regular employees;
- (g) Assume responsibility for the use of any vehicle, machinery, and/or equipment used by Assigned Employees in connection with their assignment (except for workers' compensation claims);
- (h) Assume sole responsibility for any bodily injury claims asserted against Kelly or its Assigned Employees by students, their parents or representatives, Customer personnel or business invitees, or other third parties (except to the extent that such claims are based on the negligence of Kelly or the failure of Kelly full time staff personnel to fulfill their obligations regarding the recruitment, screening, and hiring of the Assigned Employees);
- (i) Ensure that the Assigned Employees do not have sole custody of a single student, be solely responsible for supervising more than one classroom of students at a time, or administer or maintain custody of any student medications;
- (j) Provide Kelly with prompt, written notice of any concern or complaint about the conduct of an Assigned Employee by the end of the same day that it learns of the concern or complaint, and permit Kelly to actively participate in Customer's investigation of such a concern or complaint;
- (k) Provide Kelly with written notice within one business day after the Customer learns of any formal or informal complaint, litigation, potential litigation, or an administrative or governmental charge, that involves an Assigned Employee, and permit Kelly a reasonable opportunity to participate actively in the matter, as Kelly sees fit;
- (l) Assume responsibility for the conduct of its own officers, employees, and agents; and
- (m) Comply with duties imposed on it by law, rule, or regulation.

5) CUSTOMER REPRESENTATIONS

The Customer represents and warrants that:

- (a) Its actions under this Agreement do not violate its obligations under any agreement that Customer has with any labor union;
- (b) Kelly's responsibilities listed in this Agreement regarding screening, the payment of wages, and the provision of benefits to the Assigned Employees do not violate a policy or practice of the Customer;
- (c) The Customer has disclosed to Kelly all screening requirements that Customer would use for the positions covered by this Agreement if the Customer were directly employing individuals in such positions;
- (d) The Customer has the right, power, and any requisite authorization to enter into this Agreement;
- (e) The Customer has satisfied any applicable procedural requirements necessary for it to be authorized to enter into this Agreement;
- (f) The Customer representative who is signing this Agreement has been delegated authority by the school board or district to execute this Agreement;
- (g) If the Assigned Employees will use a Customer-provided time-keeping system or process, then a such time keeping system or process shall be compliant with all applicable legal requirements, including recording of time worked; and
- (h) The Customer neither request nor requires that the Assigned Employees perform duties outside of Customer's premises (e.g., participate on field trips) unless Kelly gives it written consent in advance.

6) BILLING & PAYMENT TERMS

- (a) **Invoices.** Kelly will invoice Customer each week for the services of the Assigned Employees at agreed-upon rates. The rates at which Kelly will invoice the Customer (and any reimbursable expenses) are listed in Pricing Exhibit A. Payment will be due upon Customer's receipt of the Kelly invoice. In the event of termination of this Agreement, Customer will pay Kelly promptly for services performed up to the time of termination. If the Customer's rates are not set out in Pricing Exhibit A, Kelly and the Customer will agree on rates at the time of an order, which Kelly will record electronically in its systems. The services billed may be provided by Kelly Services Global, LLC or Kelly Services USA, LLC, affiliates of Kelly, or third-party staffing providers (collectively, "Staffing Providers"). Kelly is acting solely as a collection agent on behalf of the Staffing Providers in such cases and bears no liability, except as that of collection agent to the Staffing Providers or their customers.
- (b) **Taxes.** Any sales or use taxes that apply to sales to Customer will be added to Customer's invoices as a separate item.
- (c) **Pricing Adjustments.** Kelly will adjust pricing once every twelve months:
 - i) To reflect the impact of inflation upon our costs by an amount not to exceed the year over year change in the Consumer Price Index for the preceding 12 months; or

- ii) To reflect increases in wages or related taxes, benefit and other costs as the result of any determination, order, or action by or under any applicable governmental authority, collective bargaining agreement or insurance or benefit program; or
 - iii) For changes in sales, use, or gross receipts taxes; or
 - iv) For changes in (A) the Customer's requirements (e.g., requisition, billing and invoicing processes; the introduction of third party software systems and processes), (B) service levels, or (C) service delivery method; or
 - v) To ensure that the pay rates comply with federal and state laws and regulations regarding minimum wages and overtime compensation.
- (d) **Record of Time Worked; Automated Scheduling.** Customer agrees to adhere to the "Time, Billing & Automated Scheduling Terms" in Exhibit B.
- (e) **Expenses.** Expenses (e.g., mileage) and all costs and administrative fees associated with required screenings and drug tests will be charged to the Customer, passed through without mark up.

7) WORKERS' COMPENSATION AND LIABILITY INSURANCE

Kelly will, at its own expense, provide and keep in full force and effect during the term of this Agreement the following kinds and minimum amounts of insurance:

- (a) **Workers' Compensation.** Workers' compensation statutory coverage as required by the laws of the jurisdiction in which the services are performed and includes alternate employer endorsement;
- (b) **Commercial General Liability.** Commercial general liability insurance with a \$1,000,000 combined single limit per occurrence and includes contractual liability and personal injury coverage;
- (c) **Commercial Automobile Liability.** Commercial automobile liability insurance with a \$2,000,000 combined single limit on vehicles owned, leased, or rented by Kelly while performing under this Agreement;
- (d) **Umbrella Liability Insurance.** Umbrella liability insurance to be used in excess of the liability policies with \$15,000,000 combined single limit per occurrence; and
- (e) **Commercial Blanket Bond.** A commercial blanket bond with limits of \$3,000,000 in the aggregate per occurrence and includes coverage of employee dishonesty to the extent Kelly failed in its responsibilities and customer protection.

Kelly will provide Customer with a certificate of this insurance coverage upon request.

8) INDEMNIFICATION BY KELLY

- (a) Kelly will indemnify, defend and hold harmless Customer and its directors, officers, employees and agents, to the extent of the insurance limits set forth in Section 7, from and against all demands, claims, actions, losses, judgments, costs and expenses (including reasonable attorney fees) (collectively "Damages") imposed upon or incurred by Customer to the extent arising out of any of the following:
 - i) Kelly's failure to comply with its obligations under applicable employment-related laws, regulations or orders in Kelly's capacity as the general employer of the Assigned Employees;
 - ii) Breach of any obligation of Kelly contained in this Agreement; or
 - iii) Any direct claim for workers' compensation benefits for job-related bodily injury or death asserted against Customer by any Kelly employees or, in the event of death, by their personal representatives.
- (b) Kelly's obligation to indemnify, defend and hold harmless will not apply to: (i) indirect, special or consequential Damages, (ii) the extent that Damages are due to Customer's failure to fulfill its duties under Section 4, (iii) the extent that any Damages, except for the payment of workers' compensation benefits, are the result of any negligent act or omission or intentional misconduct of Customer, its officers, employees or agents, or (iv) the extent that Customer is required to indemnify Kelly against such Damages under Section 9.

9) INDEMNIFICATION BY CUSTOMER

- (a) To the extent permitted by law, Customer will indemnify, defend and hold harmless Kelly and its directors, officers, employees and agents from and against all Damages imposed upon or incurred by Kelly, other than for job-related bodily injury or death of an Assigned Employee, arising out of any of the following:
 - i) Customer's failure to comply with its obligations under applicable laws, regulations or orders; or
 - ii) Breach of any obligation of Customer contained in this Agreement;

- (b) Customer's obligation to indemnify, defend and hold harmless will not apply (i) to indirect, special or consequential Damages or (ii) to the extent any Damages are caused by any negligent act or omission or intentional misconduct of Kelly, its officers, employees or agents.

10) NOTIFICATION OF CLAIMS

- (a) Customer and Kelly agree (i) to notify each other in writing of any asserted claim within ten (10) days of either discovery of the occurrence upon which the claim may be based or learning of the claim, whichever occurs first, and (ii) to permit Kelly or Customer, as the case may be, to defend the claim at the option of the party against whom the claim is asserted, with counsel acceptable to such party, which consent will not be unreasonably refused.
- (b) Neither party will pay or agree to pay any asserted claim under this Agreement without prior written approval from the party against whom the claim is asserted, which approval will not be unreasonably withheld; provided that approval on behalf of Kelly must be obtained from the Kelly Law Department in Troy, Michigan.

11) TERM; TERMINATION

The term of this Agreement begins as of the date first shown above and will continue in effect until canceled by either party upon not less than thirty (30) days prior written notice to the other. Kelly reserves the right to terminate this Agreement immediately in the event of non-payment. In the event of termination, this Agreement will continue to govern the parties' rights and obligations with respect to services performed prior to termination.

12) NON-SOLICITATION

Unless otherwise agreed to in writing, neither party shall hire or solicit the employment of the other party's regular, full-time employees during the term of this Agreement and for a period of twelve (12) months thereafter. This provision shall not apply to a party's generalized recruiting practices.

13) MISCELLANEOUS

(a) Notices

- i) Any notices, consents or other communications required or permitted under this Agreement must be in writing (including telecommunications) and delivered personally or sent by telex, telecopy or other wire transmission (with request for assurance in a manner typical with respect to communication of that type), overnight air courier (postage prepaid), registered or certified mail (postage prepaid with return receipt requested), addressed as shown on the first page of this Agreement.
- ii) Unless otherwise stated in this Agreement, notices, consents or other communications will be deemed received (a) on the date delivered, if delivered personally or by wire transmission; (b) on the next business day after mailing or deposit with an overnight air courier; or (c) three business days after being sent, if sent by registered or certified mail.

(b) Severability; Waiver

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. Any delay or waiver by a party to declare a breach or seek any remedy available to it under this Agreement or by law will not constitute a waiver as to any past or future breaches or remedies.

(c) Assignment

Neither Kelly nor Customer may assign this Agreement without the prior written consent of the other party; provided that Kelly may use secondary vendors to fulfill any or all of its obligations hereunder without securing Customer's consent. This Agreement will be binding upon the parties hereto, and their successors, heirs and assigns, as permitted.

(d) Independent Contractor

In its performance of this Agreement, Kelly will at all times act in its own capacity and right as an independent contractor, and nothing contained herein may be construed to make Kelly an agent, partner or joint venturer of Customer.

(e) Force Majeure

No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement [(except for any obligations to make payments to the other party hereunder)], when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (i) acts of God; (ii) flood, fire, earthquake or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order or law; (v) actions, embargoes or blockades in effect on or after the date of

this Agreement; (vi) action by any governmental authority; (vii) national or regional emergency; (viii) strikes, labor stoppages or slowdowns or other industrial disturbances; and (ix) shortage of adequate power or transportation facilities. The party suffering a Force Majeure Event shall give notice within five (5) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

(f) Amendments

This Agreement may not be amended or supplemented in any way except in writing, dated and signed by authorized representatives of both parties.

(g) Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(h) Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Pennsylvania without giving effect to any choice or conflict of law provision or rule.

(i) Entire Agreement

This Agreement, its Exhibits (and any job descriptions signed by the Customer) are the entire understanding and agreement between the parties with respect to the subject matter covered, and all prior agreements, understandings, covenants, promises, warranties and representations, oral or written, express or implied, not incorporated in this Agreement are superseded.

KELLY SERVICES, INC.

INDIANA AREA SCHOOL DISTRICT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____