

Catapult Learning

AGREEMENT TO PROVIDE NONPUBLIC NURSING SERVICES

Between:

CATAPULT LEARNING, LLC, having its corporate office at Two Aquarium Drive, Suite 100, Camden, NJ 08103 (hereinafter referred to as “**Catapult**”);

and:

FRANKLIN LAKES BOARD OF EDUCATION, a body corporate of the State of New Jersey, organized pursuant to N.J.S.A. 18A: 10-1, having its principal office at 490 Pulis Avenue, Franklin Lakes, NJ 07417 (hereinafter referred to as the “**Board**”).

WHEREAS, the Board is mandated to provide nursing services to nonpublic school students within the Franklin Lakes Public Schools (“**District**”); and

WHEREAS, Catapult is a company that provides, *inter alia*, nursing services of the type that the Board needs; and

WHEREAS, the Board desires to enter into an Agreement with Catapult for the provision of these services;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, the parties hereby agree as follows:

1. DESCRIPTION OF SERVICES

- (a) Catapult shall provide nursing services to the Board for all eligible children enrolled in nonpublic schools in the District based upon the amount of available funding. Such services shall be rendered pursuant to and in accordance with Chapter 226 of the Laws of 1991, and all rules and regulations promulgated thereunder by the State of New Jersey (“**State**”) Board of Education and the Commissioner of Education.
- (b) The specifications for the nursing services to be provided by Catapult pursuant to

this Agreement are set forth in Schedule A attached hereto and made a part hereof (the “**Services**”).

- (c) Catapult shall, upon request, provide the Board with such reports regarding the Services covered by this Agreement, which may reasonably be required by the Board, to assure itself that Catapult is delivering Services in accordance with applicable law and the terms of this Agreement.
- (d) Staff who provide Services under this Agreement (hereinafter referred to as “**Catapult Staff**”) shall at all times remain Catapult employees or independent contractors, subject to Catapult’s ultimate control and authority, including on issues of personnel conduct, discipline and termination.

2. TERM AND TERMINATION

- (a) The term of this Agreement (the “**Term**”) shall be for ten months (10) months commencing September 1, 2016 and terminating June 30, 2017. (“**Termination Date**”), unless earlier terminated. Catapult shall only provide Services when School is in session during normal School hours up to the amount of available funding, unless Catapult receives prior approval for additional Services and funding for such Services.
- (b) This Agreement may be terminated by either party for cause if the other party is in breach of any material provision of this Agreement, but only after written notice of default and an opportunity to cure has been given to the breaching party. The notice of default must give the breaching party an opportunity to cure of at least thirty (30) days in the case of a non-monetary default and at least ten (10) days in the case of a monetary default. If the breaching party has not cured the breach before the cure date stated in the notice of default, the party giving notice may terminate this Agreement by giving the breaching party written notice of termination stating the date on which the termination is to be effective. Notwithstanding the delivery of a notice of default or notice of termination under this Section, the parties shall continue to observe and perform their respective obligations under this Agreement until the effective date of termination.
- (c) Either party may terminate this Agreement without cause by providing one hundred and twenty (120) days prior written notice to the other party. In the event either party elects to terminate this Agreement pursuant to Section 2 (c), Catapult

shall be entitled to an equitable adjustment hereunder. Said equitable adjustment shall include all monthly fees for Services rendered up to the date of termination and costs reasonably incurred by Catapult in connection with such termination.

- (d) Notwithstanding the foregoing, Section 4 and the obligations of the parties there under, shall survive termination of this Agreement.

3. FEES AND PAYMENT

- (a) In consideration of the Services provided by Catapult as described herein, the District shall pay Catapult a per pupil monthly fee (to be determined by the State Board of Education) per school, as allocated by the State annually for payment of nursing Services under Chapter 226 (the “**Fee**”).
- (b) The Fee shall be paid by the District to Catapult on a monthly basis in ten (10) equal installments. Catapult shall submit an invoice to the District in equal installments for Services provided in the prior month no later than the twentieth day of the following month in which the Services were rendered. The Fee shall be due and payable by the District within thirty (30) days after receipt of such invoice from Catapult.
- (c) In the event that any amount due and payable under this Agreement is not paid to Catapult on or before the due date therefore, District shall pay to Catapult a late charge equal to the lesser of one percent (1%) per month or the maximum rate allowed by law, until all amounts due and payable to Catapult are paid.

4. INDEMNIFICATION

- (a) The Board shall defend, indemnify and hold harmless Catapult, it’s officers, directors, employees, and agents against and from all direct costs, expenses, damages, injury or loss (specifically excluding any incidental, consequential, special or punitive damages) to which Catapult may be subject by reason of any wrongdoing, misconduct, want of care, skill, gross negligence, or default by the Board, its officers, directors, agents, employees, or assigns, in the execution or performance of this Agreement.
- (b) Catapult shall defend, indemnify and hold harmless the Board against and from all direct costs, expenses, damages, injury or loss (specifically excluding any incidental, consequential, special or punitive damages) to which the Board may be subjected by reason of any wrongdoing, misconduct, want of care, skill, gross

negligence, or default by Catapult, its agents, employees, or assigns, in the execution or performance of this Agreement.

- (c) If a claim for indemnification (a “**Claim**”) is to be made by a party entitled to indemnification hereunder against the indemnifying party, the party claiming such indemnification shall give written notice (a “**Claim Notice**”) to the indemnifying party as soon as practicable after the party entitled to indemnification becomes aware of any fact, condition or event which may give rise to damages for which indemnification may be sought under this Section. Such Claim Notice shall specify the nature and amount of the Claim asserted, if actually known to the party entitled to indemnification hereunder. If any lawsuit or enforcement action is filed against any party entitled to the benefit of indemnity hereunder, written notice thereof shall be given to the indemnifying party as promptly as practicable and in any event within fifteen (15) days after the service of the citation or summons. Subject to the limitations of this Section, the failure of any indemnified party to give timely notice hereunder shall not affect rights to indemnification hereunder, except to the extent that the indemnifying party demonstrates actual damage caused by such failure. After such notice, if the indemnifying party shall acknowledge in writing to the indemnified party that the indemnifying party shall be obligated under the terms of its indemnity hereunder in connection with such lawsuit or action, then the indemnifying party shall be entitled, if it so elects at its own cost and expense, (A) to take control of the defense and investigation of such lawsuit or action, (B) to employ and engage attorneys of its own choice, who shall be reasonably satisfactory to the indemnified party, to handle and defend the same unless the named parties to such action or proceeding include both the indemnifying party and the indemnified party and the indemnified party has been advised in writing by counsel that there may be one or more legal defenses available to such indemnified party that are different from or additional to those available to the indemnifying party, in which event the indemnified party shall be entitled, at the indemnifying party’s cost and expense, to separate counsel of its own choosing, and (C) to compromise or settle such claim, which compromise or settlement shall be made only with the written consent of the indemnified party, such consent not to be unreasonably withheld or delayed; provided, however, that any such compromise or settlement shall give each indemnified party a full, complete and unconditional release of any and all liability by all relevant parties relating thereto. If the indemnifying party fails to assume the defense of such claim within thirty (30) calendar days after receipt of the Claim Notice, the indemnified party against which such claim has been asserted shall (upon

delivering notice to such effect to the indemnifying party) have the right to undertake, at the indemnifying party's cost and expense, the defense, compromise or settlement of such claim on behalf of and for the account and risk of the indemnifying party; provided, however, that such Claim shall not be compromised or settled without the written consent of the indemnifying party, which consent shall not be unreasonably withheld or delayed.

- (d) In the event the indemnified party assumes the defense of the claim, the indemnified party will keep the indemnifying party reasonably informed of the progress of any such defense, compromise or settlement. The indemnifying party shall be liable for any settlement of any action effected pursuant to and in accordance with and subject to the limitations of this Section and for any final judgment (subject to any right of appeal).
- (e) In the event that any action, suit, proceeding or investigation relating hereto or to the transactions contemplated by this Agreement is commenced, the parties hereto agree to immediately notify each other in writing of the pending action, suit, proceeding or investigation, and to cooperate to the extent possible to defend against and respond thereto and make available to each other such personnel, witnesses, books, records, documents or other information within its control that are reasonably necessary or appropriate for such defense.

5. NOTICES

This Agreement will be binding upon the parties hereto and their respective successors and assigns. Any notice to the parties under this Agreement shall be sent certified mail, return receipt requested, addressed as follows:

Board: Michael J. Solokas, Business Administrator
Franklin Lakes Public Schools
490 Pulis Avenue
Franklin Lakes, New Jersey 07417

Catapult: Contracts Department
Catapult Learning, LLC
Two Aquarium Drive, Suite 100,
Camden, NJ 08103

6. FORCE MAJEURE

- (a) Neither party will be liable to the other party hereunder or in default under this

Agreement for failures of performance resulting from acts or events beyond the reasonable control of such party, including, by way of example and not limitation, acts of God, civil disturbances, war, and strikes.

7. NO AGENCY

- (a) Nothing in this Agreement shall be deemed to create or give rise to a partnership or joint venture between the parties. Neither party shall have the authority to, or shall attempt to, bind or commit the other party for any purpose except as expressly provided herein.

8. ASSIGNMENT

No assignment of this Agreement or of any duty or obligation or performance or payment hereunder, shall be made by either party, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that Catapult may assign this Agreement or any duty or obligation or performance or payment hereunder to its successor or any entity acquiring all or substantially all of the assets of Catapult.

9. APPLICABLE LAW

In providing all Services under this Agreement, Catapult shall abide by all applicable federal, state and local statutes, ordinances, rules, regulations, and standards, as well as the standards and requirements imposed upon the District by federal and/or state agencies providing funding to the District for the purchase of Catapult Services.

10. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

11. NON-DISCRIMINATION

Catapult is an equal opportunity employer. It conducts all business activities, including hiring, without regard to age, race, color, sex, disability, marital status, national origin, citizenship status, or other legally protected category.

12. NO WAIVER

No failure on the part of either party to exercise, no delay in exercising, and no course of dealing with respect to any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

13. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and all previous agreements or discussions between the parties relating to the subject matter hereof, written or oral, are hereby terminated and/or superseded by this Agreement. This Agreement may be amended or modified only by a written instrument signed by both parties. If any provision of this Agreement is held invalid, the validity of the remainder of this Agreement shall not be affected. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14. PUBLICITY

Each party may disclose the existence, subject matter, size, and/or value of this Agreement in press releases and public announcements and in such connection may refer by name to the other party, subject to the other party's consent which consent shall not be unreasonably withheld.

15. NUMBER AND GENDER

Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neutral genders.

16. BINDING EFFECT

This Agreement will be binding upon the parties hereto and their respective successors and assigns.

[THE SPACE BELOW IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

FRANKLIN LAKES BOARD OF EDUCATION

BY: _____

TITLE: _____

DATE: _____

CATAPULT LEARNING, LLC

Joseph McNamara, Corporate Controller

DATE: _____

SCHEDULE A

NURSING SERVICES AGREEMENT

Nursing Services shall include:

1. Maintenance of a cumulative health record for each pupil, utilizing form "A-45 Health History and Appraisal form" or similar form recommended by the District Board of Education.

This maintenance shall include:

- a. Comprehensive health appraisal prior to School entrance by family physician.
 - b. Inclusion of any reports by family physicians.
 - c. Recording of all hearing and vision screening.
 - d. Recording of all scoliosis screenings.
 - e. Recording and tracking of immunization history.
2. Audiometric Screenings to be conducted annually on those students enrolled in grades K, 1, 2, 3, 7 and 11 adhering to N.J.A.C. 6:29-5.
 3. Vision Screenings to be conducted biennially on students enrolled in grades K through 10.
 4. Height, weight and blood pressure screenings to be conducted annually on all students enrolled in grades k through 12.
 5. Scoliosis Screenings, (as provided for in N.J.S.A. 18A: 40-4.3), to be conducted biennially on all students aged 10 through 18, unless parent or guardian requests in writing that the student be excused for examination. In this case, the written request will become part of the medical record.
 6. Assist with medical examinations, including dental screening.
 7. Notification of local or County Health Officials of any student who has not been properly immunized.
 8. Provision of basic emergency first aid when on site at time of occurrence.
 9. Coordination with District personnel in the development of a Nonpublic Nursing Services

- Policy.
10. Assist the District in negotiating with each School regarding the Services to be provided.
 11. Provide a maximum amount of nursing Services time based on the funds allocated in each School.
 12. Regularly scheduled meetings with the principals to discuss the Program.
 13. Medical supplies provided as needed by each School within funding limits which are purchased on behalf of the contracting School.
 14. In-service Training and Professional Development of nursing staff, as well as in-service training for the teaching staff on procedure as to when and how to refer any child for a medical situation.
 15. Newsletter on nursing practices, achievements, and concerns distributed to the principals, teachers and District administrators.

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EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127) N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in

accordance with N.J.A.C. 17:27-5.2, or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302

The contractor and its subcontractors shall furnish such reports or other documents to the Div. of Contract Compliance & EEO as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Div. of Contract Compliance & EEO for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.**

Date