



SCHOOL STAFFING SERVICES AGREEMENT

This agreement ("Agreement") is made and entered into this 26th day of June, 2017, by and between SHC Services, Inc. d/b/a Supplemental Health Care, (hereinafter "SHC"), with principle offices located at 1640 W. Redstone Center Drive, Suite 200, Park City, Utah 84098 and Kenmore Tonawanda Union Free School District, on behalf of itself, its facilities, divisions, and subsidiaries (hereinafter collectively referred to as the "Client") with its principle offices located at 1500 Colvin Blvd Buffalo, NY 14223. SHC and Client are sometimes referred to as a "party" or collectively as the "Parties".

RECITALS

WHEREAS, SHC a Delaware corporation provides supplemental staffing referral services to clients on an as needed basis;

WHEREAS, the Client is a school district with the need to provide health care services to identified students served by the Client;

WHEREAS, Client requests SHC to make available licensed and qualified health care professionals by acting as a referral agent of Nurses, Therapists, Technicians, and/or other ancillary medical personnel ("Health Care Personnel") to supplement Client's staff; and

WHEREAS, SHC is willing to use its best efforts to recruit Health Care Personnel to work shifts at specified locations as requested from time to time by Client.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Client and SHC agree as follows:

1. SHC OBLIGATIONS:

- a. SHC, as requested by Client, will use its best efforts to locate, recruit and refer Health Care Personnel to Client to supplement Client's existing staff.
- b. SHC shall provide Health Care Personnel with the experience, education and training requested by Client.
- c. SHC shall maintain a Health Care Personnel file, containing the following:
 - i. A completed application, which includes skills, specialties, and preferences.
 - ii. Documentation of special education or training.
 - iii. A minimum of two references, which reflect satisfactory performance within the job category.
 - iv. Verification of identity, credentials, and authority to work.
 - v. Copy of current license, Basic Life Support/CPR, registration or certification as required by position.
 - vi. Evidence of health status, including evidence of a current physical (within one year), MMR, PPD, Hepatitis B, and any other immunizations required by Client.
 - vii. Dates of employment and performance evaluations.
 - viii. Confirmation of completing criminal background investigation and pre-employment drug screen.
 - ix. Office of Inspector General's List of Excluded Individuals/Entities Search.
- d. SHC shall provide SHC orientation for all new Health Care Personnel, SHC's orientation includes but is not limited to, child and dependent adult abuse reporting obligations and procedures, and which may include Client-specific information upon Client's request.
- e. Health Care Personnel, who are assigned to the Client for the first time, shall report to the designated Client contact before commencing work at Client's facility or student locations.
- f. SHC shall maintain commercial general liability and medical professional liability insurance for SHC and Health Care Personnel with a liability limit of not less than \$1 million per occurrence and \$3 million aggregate.
- g. SHC will use its best efforts to refer Health Care Personnel who will follow Client policies provided to SHC, to protect the health and welfare of the Client's students.
- h. SHC will notify Client via written correspondence, fax, email or phone, of the initiation of any action, of which it is becomes aware, commenced for the purpose of suspending, revoking or limiting any Health Care Personnel's license then providing services to Client. Written description of SHC Quality Assurance process is available upon request.

- i. SHC will comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Federal Rehabilitation Act of 1973, and all other State and Federal Statutory and constitutional non-discrimination provisions which prohibit discrimination on the basis of sex, age, race, color, national origin, religion, veteran status, sexual orientation, or handicap and/or marital status.
- j. SHC will comply with applicable Health Insurance Portability and Accountability Act (HIPAA) requirements.
- k. If services provided under this Agreement have an aggregate value of ten thousand dollars (\$10,000) or more, during a twelve (12) month period, SHC shall make its books, documents, records, etc., pertaining to this Agreement, available to the Secretary of Health and Human Services and/or the United States Comptroller General for four (4) years after furnishing services to Client.
- l. SHC shall use its best efforts to comply with the guidelines of The Joint Commission and OSHA standards regarding the use of supplemental staffing services.
- m. All Health Care Personnel providing services pursuant to this Agreement shall be considered employees of SHC, unless otherwise specified. This Agreement also applies to an independent contractor or subcontractor referred for service and accepted by Client.
- n. SHC assumes sole and exclusive responsibility for compensating Health Care Personnel for services performed for Client. SHC is responsible for withholding federal and state taxes, maintaining worker's compensation insurance coverage as required by state law, and reimbursing meal and lodging expenses as applicable under the Agreement.

2. CLIENT OBLIGATIONS:

- a. Client shall provide sufficient specific information (job order or job profile) to enable SHC to match the job requirements to the skills and experience of Health Care Personnel. Clinical competency will be determined by the appropriate Client administrator which may be communicated to SHC via written correspondence, fax, email or phone. Notwithstanding the foregoing, the parties agree that Client, in its sole discretion, shall determine the suitability of Health Care Personnel to provide services for Client.
- b. Client acknowledges that SHC's ability to fill jobs or shifts is subject to the availability of qualified Health Care Personnel. Client further acknowledges that the ability to attract and retain qualified Health Care Personnel to fill the positions required by Client is a competitive advantage belonging to SHC, and that SHC's database of Health Care Professionals constitute an asset of SHC, which is confidential, proprietary and not disclosable to Client.
- c. Client shall provide clinical direction, supervision, management, and productivity expectations to Health Care Personnel while providing professional services under this Agreement. To the extent that Health Care Personnel provide health-related services to Client's students, Client will ensure such services comply with all treatment plans and is consistent with Client's students' best interests, as determined by Client. Client agrees that SHC is not responsible for Health Care Personnel's productivity while on assignment; therefore, Client will pay invoiced amounts in full without regard to productivity requirements placed on Health Care personnel by Client.
- d. Client shall be responsible for educating the Health Care Personnel regarding Client's policies and procedures concerning its operations and student care, and communicating its expectations regarding the professional services to be rendered by Health Care Personnel pursuant to this Agreement.
- e. Client will not require Health Care Personnel to perform in a manner other than that which is reasonable and customary within their profession. Health Care Personnel shall not be requested to perform services outside the general job description provided by Client and/or the education, licensing, certification, skills or clinical competence of the Health Care Personnel. Prior to providing services, Client shall ensure that Health Care Personnel receive proper orientation to the Client's policies and procedures related to the student care area to which they are assigned, floated or reassigned.
- f. Client shall provide SHC information and copies of Client policies to orient Health Care Personnel, as requested by client.
- g. Client agrees that it shall not either, directly or indirectly, employ or attempt to employ, a Health Care Professional (i) referred by SHC to Client for one year from the date of the referral; or, (ii) if the Health Care Professional provides services through SHC to the Client, during the assignment and one year after its termination. Notwithstanding the foregoing in this Section 2.g., Client may hire the Health Care Professional with written consent of SHC or by complying with Schedule A ("Billable Employment Conversion Costs").
- h. Client will immediately notify SHC via written correspondence, fax, email or phone, of the initiation of any licensing issues, clinical and student care issues, unexpected incidents and errors, suspicious behaviors and any complaints regarding SHC Health Care Personnel. The notification should include, but are not limited to: risk management actions or concerns; occupational/safety hazards, events or injuries; events or sentinel events of which Client is aware regarding Health Care Personnel. Written description of SHC Quality

Assurance process is available upon request. Client will make available an appropriate panel for peer review as necessary.

- i. Client agrees that Health Care Personnel who are required to travel away from home to fill an assignment will be retained for full time positions for a period of 13 weeks ("Travel Assignments"), unless otherwise agreed by the parties in a signed Confirmation of Assignment ("COA"), which is incorporated herein by reference. Full time is defined as a minimum of 36 hours per week.
- j. Client will not discriminate in employment or referral of Health Care Personnel on the basis of sex, age, race, color, national origin, religion, veteran status, sexual orientation, or handicap.
- k. Client will maintain in clean and good working order its facilities, machines and equipment; provide currently and appropriately trained staff and supervisory personnel; and provide an acceptable working environment. Client will not entrust Health Care Personnel with access to cash, credit cards or negotiable instruments.
- l. Client represents that it is neither currently being investigated nor has been previously indicted by any state or federal agency for violations of the Social Security Act, Medicare or Medicaid laws, or any other programs administered by, through or under any state or federal agency.
- m. Client may request that SHC terminate any Health Care Personnel providing services under this Agreement, who is insubordinate, lacks appropriate licensure, training and experience; fails to follow Client's policies and procedures, or fails to engage in commonly accepted standards of care. Client agrees that it will pay for all services performed up to the date of termination. Client will provide specific basis for the request for termination, in writing, which will be referred to the Health Care Personnel and reported, as required, to state professional licensing standards and SHC's Quality Assurance.
- n. Client will not give access to Health Care Personnel confidential medical records in violation of HIPAA.
- o. Client acknowledges that SHC provides a valuable service to Client for which it will, pursuant to the terms of this Agreement and/or industry standards or practice, compensate SHC.
- p. In the event Health Care Personnel are injured in performing duties for Client, Client shall cooperate with SHC's investigation and response to such injury, including any need for light duty assignments.

3. COMPENSATION AND BILLING:

- a. SHC will bill Client weekly for its services in accordance with the rate schedule attached as Schedule "A" (Rate Schedule). SHC reserves the unilateral right to increase the stated rates, due to increased employment costs, upon thirty (30) days written notice to the Client.
- b. The Rate Schedule will remain in effect for the term of the Agreement unless SHC provides Client a written notice of rate increase as set forth in paragraph 3.a above.
- c. Mileage costs will be invoiced by SHC and paid by Client, unless stated in the Rate Schedule.
- d. The Rate Schedule is inclusive of all costs associated with the specific assignment, such as wages, payroll taxes, insurance, and meals and lodging costs for travel assignments authorized by Client, unless otherwise stated. SHC and Client have entered into a reimbursable arrangement requiring SHC to maintain adequate records or other sufficient evidence to satisfy the substantiation requirements of Internal Revenue Code Section 274(d), which will be provided to the Client by invoice.
- e. Invoices are due upon receipt. Each invoice, or portion thereof, which remains unpaid for thirty (30) days after the invoice date, will bear interest at the rate of 1.5% per month. Client agrees to pay all attorneys' fees and costs incurred by SHC in collecting past due invoices. If Client disputes an invoice for services provided by SHC, Client must notify SHC in writing within fourteen (14) days of the date of the disputed invoice. All invoices that are not disputed in writing within 14 days of receipt are conclusively presumed to be valid and accepted by Client.
- f. Client is obligated to timely pay SHC invoices regardless of Client's ability to bill or collect from third party payors for professional services rendered by Health Care Personnel under this Agreement, which includes any of Client's billing issues based on Health Care Personnel's productivity requirements as defined by Client.

- 4. TERM:** The term of this Agreement, is twelve (12) months from the date first stated above, unless sooner terminated by either party under this Section. Either party may terminate this Agreement without cause upon thirty (30) days written notice to the other party. However, scheduled assignments then occurring shall be completed and compensation paid to SHC. In the case of a breach of this Agreement, the non-breaching or non-defaulting party may immediately terminate this Agreement in writing upon the occurrence of any of the following events: failure to timely pay invoices, voluntary or involuntary filing for bankruptcy protection, or any material breach of the Agreement.

- 5. RELATIONSHIP OF PARTIES:** Neither party is the agent of the other. Neither party is authorized to bind the other to any responsibility or obligation, without the written consent of the other. SHC and Client are

independent contracting entities and do not create a joint venture, partnership or association under federal or state law. Client shall not make any payment to Health Care Personnel, unless authorized in writing by SHC.

6. **INDEMNIFICATION:** Each party to this Agreement agrees that they shall hold harmless, indemnify and defend the other party, its shareholders, directors, officers, agents and employees against any and all claims, causes of action, injuries and damages including, but not limited to, personal injury and property damage, including reasonable attorney's fees and court costs to the extent caused by any act or omission on the part of the other party, its agents, contractors or employees. SHC shall indemnify and defend Client against any claims by its Health Care Personnel for unpaid wages or workers' compensation, subject to SHC's right of subrogation.
7. **LIMITATION OF LIABILITY: NEITHER PARTY SHALL BE LIABLE FOR OR BE REQUIRED TO INDEMNIFY THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL, PUNITIVE, OR LOST PROFIT DAMAGES THAT ARISE IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE) AND REGARDLESS OF HOW CHARACTERIZED, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY SHALL NOT BE LIABLE TO THE OTHER PARTY FOR ANY INDEMNIFICATION OR DEFENSE, OR ANY AND ALL CLAIMS, LOSSES, EXPENSES, INJURIES, DAMAGES, COSTS, INCLUDING ATTORNEY'S FEES AND EXPENSES, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT BY REASON OF ANY ACT OR OMISSION OF A PARTY, INCLUDING BREACH OF CONTRACT OR NEGLIGENCE, IN AN AMOUNT WHICH EXCEEDS THE TERMS AND CONDITIONS OF A PARTY'S THEN EXISTING AVAILABLE AND APPLICABLE INSURANCE COVERAGE.**
8. **MAINTENANCE OF BOOKS AND RECORDS:** SHC shall keep and maintain records relating to services rendered hereunder as may be required by Client or by any fiscal intermediary, federal, state, or local government agency, or other party to whom billings for SHC's services are submitted which shall not be less than five (5) years from dates of services. Upon reasonable notice to SHC, Client shall have the right to inspect SHC's records, relating to services rendered under this Agreement, upon not less than fifteen (15) business days' written notice. Client shall pay all costs of requested copying.
9. **COMPLIANCE:** Performance under the Agreement shall be: (a) in substantial compliance with all applicable federal, state, and local laws, rules, ordinances and regulation; and (b) consistent with the reasonable and lawful policies and procedures of the Client. SHC shall not knowingly jeopardize the licensure of the Client or its participation in the Medicare and/or Medicaid programs.
10. **NON-APPROPRIATION OF FUNDS:** It is understood and agreed between the parties hereto that Client shall be bound and obligated hereunder only to the extent that funds shall have been appropriated and budgeted for the purposes of this agreement. In the event funds are not appropriated and budgeted in any fiscal year for payments due under this agreement, Client shall immediately notify SHC of such occurrence and this agreement shall terminate on the last day of the fiscal year for which an appropriation was received without penalty or expense to Client of any kind whatsoever.
11. **OWNERSHIP OF DOCUMENTS.** All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the Health Care Personnel in rendering services hereunder shall be the sole property of the Client who shall have the sole responsibility for maintaining all original documentation. Provided, that the SHC or the Health Care Personnel shall in no way be liable or legally responsible to anyone for the Client's use of any such materials, or following termination.
12. **CONTINGENT FEES PROHIBITED.** The SHC warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the SHC, to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the SHC any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the SCHOOL BOARD shall have the right to terminate this Agreement without further liability, and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift, or consideration paid in breach of this Agreement.
13. **SUSPENSION AND DEBARMENT:** Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government. By signature below the parties certify that they nor any principal of the entity is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

14. NOTICES: Unless otherwise provided in this Agreement, Notice provided under this Agreement shall be deemed to have been delivered, when sent through US mail, postage pre-paid, certified, return receipt requested, five (5) days after mailing; or, by overnight mail, upon receipt, to the address of a party stated below.

Client: Kenmore Tonawanda Union Free School District
1500 Colvin Blvd
Buffalo, NY 14223
Attn: Jill O'Malley

SHC: SHC Services Inc.
1640 W. Redstone Center Drive, Suite 200
Park City, Utah 84098
Attn: Contracting Department

The address for Notice may be changed in writing by providing the other party a new address for serving the Notice. In the event of a critical situation, service of a Notice by facsimile or email will accomplish delivery of a Notice, if the noticing party provides proof of receipt.

15. CONFLICT OF INTEREST. SHC hereby certifies and represents that none of the Client's officials, employees or agents has any significant financial or other pecuniary interest in the SHC's business enterprise or in the performance of this Agreement or any Assignment, and that no inducements of monetary or other value were offered or given to any officer, employee or agent of the Client.

16. MISCELLANEOUS:

- a. The laws of the State of New York govern the interpretation and construction of this Agreement to the exclusion of the law of any other forum, without regard to the jurisdiction in which any action or special proceeding maybe instituted.
- b. Neither party may assign this Agreement without the prior, written approval of the other.
- c. This Agreement shall constitute the entire Agreement of the parties. This Agreement also supersedes any and all other agreements or contracts, written or oral, between the parties with respect to the matters addressed herein. This Agreement may be amended at any time by mutual agreement of the parties, providing that such amendment is in writing and executed by both parties hereto, with the exception of the Rate Schedule which can be unilaterally updated by SHC as provided for in Section 3.a above.
- d. In the event that any clause in this Agreement is found to be invalid or unenforceable, all other clauses are severable and will remain in full force and effect.
- e. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement. Furthermore, this Agreement may be executed and delivered by electronic transmission showing the signatures of the parties hereto.
- f. The parties agree that the terms and conditions of this Agreement are confidential. Neither party shall distribute this Agreement, or any part thereof, to third persons unless required by law or court or administrative order.
- g. Waiver of a term or condition of this Agreement is not enforceable, unless in writing, signed by the party against whom waiver is advanced. Any waiver shall only constitute waiver of a specific condition and will not operate to waive any other term or condition of the Agreement, or as a continuing waiver of the same condition.
- h. The undersigned represents that he/she is duly authorized by the Client to enter into this Agreement and bind the principal to performing the terms and conditions of this Agreement.
- i. Subsections 1.k., 2.g., 2.p. and Sections 6 and 7 shall survive termination of this Agreement.

IN WITNESS WHEREOF, the parties have signed and entered into this Agreement as of the Effective Date set forth above.

**SHC SERVICES, INC. dba
SUPPLEMENTAL HEALTH CARE**

**KENMORE TONAWANDA UNION FREE SCHOOL
DISTRICT**

By: 
Name: Laeni Mazurkiewicz
Title: Senior Market Manager

By: _____
Name: _____
Title: _____

SCHEDULE A

Bill Rates:

Specialty	Hourly Rate
RN	\$49
LPN	\$39
PT	\$56-\$60
OT	\$56-\$60
COTA	\$39-\$43
PTA	\$39-\$43
SLP	\$57-\$61

***All rates are all-inclusive of payroll costs, employee benefits, workers' compensation insurance, malpractice insurance, and travel expenses if required.**

Confirmation of Assignment. The rates above are the minimum base rates for this Agreement; however, the parties acknowledge that depending on the length of the job assignment, specific credentialing requirements, and/or the availability of staff, there may be times that the actual bill rate will exceed the rates set forth above. Therefore, the parties have/will execute a Confirmation of Assignment (COA) that will set out the specific requirements for the assignment as well as the applicable bill rate.

Minimum Guarantee. Client agrees to schedule all Health Care Personnel confirmed for either a Travel Contract period and/or Local Contract for the weekly minimum hours of forty (40) for all eight (8), ten (10) or any combination of eight (8) or ten (10) hours shifts; and a minimum of thirty-six (36) hours for all twelve (12) hour shifts ("Minimum Hours") and to guarantee the total assignment hours ("Minimum Assignment Hours") for the assignment as specified on the COA. The calculation of the guaranteed minimum work week includes regular, call back and overtime hours worked, but does not include any "on-call" time. Client may place such Health Care Personnel in normal rotation to transfer/float in accordance with section 2.e of this Agreement, if necessary, in order to meet the Minimum Assignment Hours requirement. Notwithstanding the foregoing, the Minimum Hours or Minimum Assignment Hours shall not apply to Health Care Personnel who are assigned to the Client on a per diem basis.

Breaks/Meal Periods. Client shall provide Health Care Personnel all breaks and meal periods required pursuant to state and federal law. It is the Client's responsibility to ensure that such break/meal period is identified on the Health Care Personnel's time sheets prior to approving such time sheet.

Mileage Costs: Client shall be invoiced and shall pay the then-current IRS Standards, for all local mileage for Health Care Personnel while traveling between Client's facilities.

Meals and Lodging Costs: All rates set forth herein are inclusive of meals and lodging costs, if incurred.

Workweek: SHC's workweek is defined as Sunday – Saturday.

Cancellations:

- **Contract Assignments:** If Client wishes to cancel a contract assignment before such assignment begins, Client must provide SHC at least fourteen (14) days prior written notice of the scheduled commencement date of that assignment. If less than fourteen (14) days' notice is provided, then Client shall be invoiced a penalty equal to three (3) shifts of said assignment.
- **Travel Assignments:** If Client wishes to cancel a travel assignment that has begun, Client shall provide SHC with a minimum of thirty (30) days prior written notice and SHC shall invoice Client for any costs incurred for travel and lodging that could not be cancelled. If less than thirty (30) days' notice is provided, Client shall pay the total contracted amount for such travel assignment as if the Health Care Personnel had worked the full assignment as well as any costs incurred for travel and lodging that could not be cancelled due to the short notice.
- **Per Diem Assignments:** If Client wished to cancel a per diem assignment prior to assignment begins, Client must provide SHC with twenty-four (24) hours prior notice of cancellation; otherwise a four (4) hour minimum billing will be assessed.

Billable Employment Conversion Costs: A Health Care Personnel may be employed by the Client after the completion of 1,040 hours of service as an SHC employee at the Client facility and Client pays to SHC a fee of \$7,000 for the positions of PT/OT/SLP/RN and \$5,000 for the positions of PTA/COTA/LPN/LVP and \$2,500 for CNA. As clarification of Section 2.g., any Health Care Personnel, whose application has been submitted to Client by SHC, may not be employed at Client either directly, or through another staffing referral company, for one year following the submission of the application.

Direct Placement Fee: In the event the Client wishes to have SHC to conduct a search for qualified candidates to be hired by Client ("Candidate"), Client agrees to pay SHC a recruitment fee of 20% of the Candidate's first year salary, for any Candidate presented to Client by SHC who accepts a position with any clinic, group or organization owned, operated, subcontracted with or otherwise affiliated with Client whether or not in Client's actual community. This recruitment fee shall apply to each Candidate introduced by SHC for a permanent position, whether the Candidate has actually performed medical services through SHC. The fee will be due when an employment agreement, either written or verbal, is reached between the Client and the Candidate, or on the first day that the Candidate begins work for Client, whichever comes first.

Increase of Bill Rates: SHC reserves the right to unilaterally amend this Schedule A to increase the rates set forth above: (1) in the event there is an increase in SHC's burden costs as a result of any governmental mandate; and/or (2) at the beginning of each calendar year if there is an increase in the health care index., provided that SHC sends Client a written notice thirty (30) days in advance of such increase.