

PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered as of the 10th day of November, 2015 by and between the Board of Education of the Malverne Union Free School District (“District”), and Seneca Consulting Group, Inc. (“Contractor”).

WHEREAS, the District requested proposals (“RFP”) for professional services in connection with implementation of and compliance with the Affordable Care Act (“ACA; and

WHEREAS, the District desires to retain the services of Contractor to provide the aforementioned services in accordance with the terms and conditions of the proposal received from them in response to the District’s request;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and agreements herein contained, and for other good and valuable considerations, the Contractor and the District hereby agree as follows:

A. CONTRACT DOCUMENTS:

1. This Agreement incorporates by reference the Contractor’s proposal entitled “Affordable Care Act Administration Agreement” (“contract”). The Contract Documents shall consist of this Agreement, the aforementioned document(s) and any other documents referenced in them. In the event of any discrepancy, conflict or inconsistency between the terms of this Agreement and any of the Contract Document(s), the language of this Agreement shall prevail.

B. TERM:

1. The term of this Agreement shall be from the effective date hereof until June 30, 2016, unless terminated or extended as provided for in the contract. It is understood that the District is under no obligation to renew this Agreement upon its expiration.

C. CONDITIONS:

In performing services specified in this Agreement, it is understood that:

1. Contractor, will be engaged as an independent contractor, and therefore be solely responsible for the payment of Federal and State income taxes applicable to this Agreement. Consultant agrees to complete and submit the attached Non-Employee & Vendor TIN Verification Form together with this Agreement.
2. The Contractor is retained by the District only for purposes and to the extent set forth in this Agreement, and its relationship to the District shall be that of an

independent contractor. Except as otherwise provided herein, Contractor shall be free to dispose of that portion of its time, energy and skill as the Contractor is not obligated to devote hereunder to the District in such a manner as it sees fit, provided it does not interfere with its obligations to the District or reduce the time, energy and skill required to be devoted to the District under this Agreement. Contractor shall not be considered as having employee status nor shall it be entitled to participate in any of the District's workers' compensation, retirement, fringe benefits, unemployment insurance, liability insurance, disability insurance or other similar employment benefit program, nor shall Contractor be entitled to any of the rights or benefits available to District employees under State law or any collective bargaining agreement.

3. The Contractor shall provide the District with assistance in the development of a health insurance plan for employees not currently provided health insurance through the District which meets the requirements of the Patient Protection and Affordable Care Act ("ACA") and consulting services in connection with determining those employees for whom health insurance is mandated pursuant to the requirements of the Patient Protection and Affordable Care Act, as more fully set forth in Exhibit A hereto.
4. Paragraph 7 ("Property of the Employer") is amended by adding the following first sentence: The Contractor acknowledges that it will have access to confidential information including but not limited to employee information and information concerning finances and assets of the District, as well as access to the District's eSchoolData, Finance Manager and other programs. Contractor agrees that it will not, except in the proper performance of its duties under this Agreement, at any time during or after completion of service hereunder, without the prior written authorization of the District, directly or indirectly use, divulge, furnish or make accessible to any person, any confidential information, or utilize any District software or programs.
5. This Agreement incorporates by reference any applicable BOCES contract which, without additional expense to the Employer, would make payment(s) hereunder by the Employer, eligible for BOCES aid.
6. The Contractor hereby agrees to effectuate the naming of the District as an unrestricted additional insured on the Contractor's insurance policies.
7. To the extent not set forth in the SPECIFICATION OF SERVICES annexed to the contract as Exhibit A, the Contractor agrees that its services shall also include the following:

Assist the District(s) meet its "Employer Mandate" obligations under ACA (Internal Revenue Code 4980H). For example:

- Assess the impact of implementing the “Employer Mandate” with regard to Individual-only coverage as of January 2015 (or whenever this part of the Employer Mandate becomes effective); and
- Assess the impact of implementing the “Employer Mandate” with regard to Individual and dependent coverage as of January 2015 (or whenever this part of the Employer Mandate becomes effective).
 - Identify the District(s) current employees (both full-time and variable-hour employees) who would qualify for health insurance coverage under ACA, and determine and the financial impact thereof.
 - Identify which type of health insurance coverage would be deemed “affordable” under ACA for its eligible employees (applying, for example, the “Form W-2” safe harbor).
 - Offer strategies and help the District(s) apply the “Look-Back/Stability Period Safe Harbor” Measurement Method (a.k.a. “Look-Back Measurement Method”) Under ACA to new and ongoing employees of the District(s).
 - For example, help the District(s):
 - Determine the relevant “plan years”
 - Identify, establish and apply the most beneficial measurement periods (e.g., 3-12 months, etc.) for:
 - Initial Measurement Periods;
 - Standard Measurement Periods;
 - Stability Periods; and
 - Administrative Periods
- Identify and account for any applicable employment break periods and/or periods of special unpaid leave for each District employee who is evaluated using the Look-Back Measurement Method.
- Identify which District employees must be treated as new, ongoing, Variable-hour, full-time, part-time and/or seasonal employees under ACA for purposes of applying the Look Back Measurement Method and for determining eligibility for health insurance benefits from the District(s).
- Review collective bargaining agreements (CBAs”) and help the District(s) determine how each CBA affects the District’s obligations under ACA.
- Suggest a best practice for official notification procedures.

- Analyze and advise whether the District(s) current health insurance plans are “affordable” based on ACA requirements and offer options for alternate health insurance plans that comply with ACA.
- Analyze and advise which is the best “safe harbor” option under ACA for calculating the affordability of health insurance coverage in accordance with each eligible District employees’s income.
- Provide assurances that current District(s) health insurance offerings meet the ACA standards for “minimum essential coverage.
- Provide the District(s) with penalty analysis for: (1) failing to offer health insurance benefits as required by ACA; (2) offering health insurance benefits that do not provide minimum value as required by ACA; (3) providing coverage that is not “affordable” under ACA standards; and (4) providing coverage that does not satisfy the non-discrimination rule under ACA.
- Advise the District(s) on how to navigate and comply with the non-discrimination rule under ACA.
- Analyze and advise the District(s) to determine what, when and how many notices required by ACA must be provided to its employees.
- Provide the District(s) with a system to ensure that eligible full-time employees of the District are automatically enrolled in health insurance coverage, and that appropriate opt-out procedures are implemented.
- Review and assist the District(s) with developing strategies for complying with the reporting requirements required by ACA relative to W-2 forms, the IRS and District employees.
- Provide the District(s) with a clear understanding of the New York State Health Insurance Exchange and its implications for the District and District employees, if any.
- Ensure that new and ongoing employees of the District(s) are treated correctly and consistently with respect to ACA requirements.
- Develop strategies for enrolling District(s) employees who meet the applicable legal threshold for average hours worked during the relevant period of time and, as a result, are entitled to health insurance coverage from the District.
- Ensure that the District(s) properly implement the requirements under ACA for all District employees (e.g., new, ongoing, and seasonal employees).

- Revise compliance procedures as the Federal Government makes ongoing changes and adjustments to the ACA.
 - Provide the District(s) with a reference manual (Compliance Report that documents all of the recommendations, procedures and protocol that relate to this consulting contract.
 - To assist and support the District at audits conducted by the Federal oversight agencies.
8. This Agreement, and any amendments to this Agreement, will not be in effect until agreed to in writing and signed by authorized representatives of both parties.

D. COMPENSATION:

1. The Contractor will submit claim forms to the District for processing in accordance with the payment schedule set forth in the contract to be countersigned that, in the aggregate, will not exceed the total contract price for the services rendered. As necessary and/or upon request, the Contractor shall submit time sheets listing services performed for any services rendered on an hourly basis. The District shall pay Contractor within thirty (30) days of the District's receipt and approval of said claim forms and/or time sheets.
2. The District, in accordance with federal and state requirements, will submit a Form 1099 and IT 2102.1 respectively at year-end for all individuals/entities receiving payment(s) exceeding \$600.

E. SEVERABILITY:

1. Should any provision of this Agreement, for any reason, be declared invalid and/or unenforceable, such decision shall not affect the validity of the remaining provisions of this Agreement. Such remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid provision(s) eliminated.

F. GOVERNING LAW and CHOICE OF FORUM:

1. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with, and governed by, the laws and regulations of the State of New York and applicable Federal laws and regulations.
2. It is hereby expressly understood and agreed that the parties agree to consent to the jurisdiction of any state court located in Nassau County (and only Nassau County) or federal court located in the Eastern District of New York (and only in said District).

G. CONFIDENTIALITY, NON-COMPETE & CONFLICT OF INTEREST:

1. Contractor acknowledges that it will have access to confidential information including but not limited to employee information and information concerning finances and assets of the District, as well as access to the District's eSchoolData and financial management software, programs, and data. Contractor agrees that it will not, except in the proper performance of its duties under this Agreement, at any time during or after completion of service hereunder, without the prior written authorization of the District, directly or indirectly use, divulge, furnish or make accessible to any person, any confidential information, or utilize any District software or programs.
2. Contractor agrees that it (1) shall not engage (whether for compensation or not) directly or indirectly in any business activity which shall compete in whole or in part, directly or indirectly, with the services to be provided by Contractor under this Agreement; (2) shall not use, divulge or furnish any confidential or sensitive information obtained in the course of its services hereunder; and (3) shall not solicit, recruit or attempt to recruit any current District employee for the purpose of filling an employment position elsewhere for the duration of this Agreement and for a period of three (3) years from the effective date of termination. If any of the provisions of this section is found by a court of competent jurisdiction to be excessively broad in duration, geographical scope or subject, it shall be reformed automatically and thereafter limited or reduced to the extent required to render it enforceable.
3. Contractor warrants that it has not and shall not accept or engage in any employment, interest, business or activity that is or would reasonably appear to compromise or be incompatible with the full and proper discharge of Contractor's professional judgment or services rendered to the District under this Agreement. Contractor shall promptly disclose any conflicts of interest to the District that exist or that may arise during the course of its services under this Agreement.
4. In the event of a conflict of interest or other violation of the foregoing restrictions, the District reserves the right to terminate Contractor's services and recover any compensation paid to Contractor.

H. ENTIRE AGREEMENT:

1. This Agreement is the complete and exclusive statement of the agreement between the parties, and supersedes all prior or contemporaneous, oral or written: agreements, proposals, understandings, representations, conditions or covenants between the parties relating to the subject matter of the Agreement.
2. This Agreement may not be changed orally, but only by an Agreement, in writing, signed by authorized representatives of both parties.

3. Contractor shall comply with all applicable Federal, State and local statutes, rules and regulations including the New York State Safe Schools Against Violence in Education ("SAVE") legislation and any applicable fingerprinting and clearance requirements. Contractor shall adhere to all applicable policies, procedures, rules and regulations of the District and the State Education Department.

IN WITNESS THEREOF, the parties hereto have executed this Agreement the day and year first above written.

CONTRACTOR

DISTRICT

BY: _____
Name/Title:

BY: _____
Name/Title: