

**NASSAU BOCES DEPARTMENT OF REGIONAL SCHOOLS AND  
INSTRUCTIONAL PROGRAMS  
REGIONAL SUMMER SCHOOL PROGRAM**

AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by and between the Board of Cooperative Educational Services of Nassau County, hereinafter known as "Nassau BOCES", whose principal place of business is 71 Clinton Road, P.O. Box 9195, Garden City, New York 11530, and the Malverne Union Free School District, hereinafter known as the "District", whose administrative office is located at 301 Wicks Lane, Malverne, NY 11565.

**WITNESSETH:**

WHEREAS, the District desires to have a Regional Summer School Program, hereinafter known as the "Program" for students at the designated school(s) in the District. The designated school(s) and associated costs of the Program appear in the attached matrix in Appendix A; and

WHEREAS, the Nassau BOCES is duly certified and qualified under the laws of the State of New York and Regulations of the New York State Commissioner of Education to provide and assume full responsibility for the Program through its Department of Regional Schools and Instructional Programs; and

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

- A. The term of the within agreement shall be for the period commencing on or about July 1, 2022 and terminating on or about August 31, 2022.
- B. The Nassau BOCES shall assume responsibility for the Program as follows:
  - 1. The Program shall be offered by the Nassau BOCES for the summer of 2022, commencing on or about July 1, 2022 and ending on or about August 31, 2022, unless otherwise terminated as provided for in the Agreement. The Program shall be offered as a directly sponsored Nassau BOCES program under the auspices of the Board of Cooperative Educational Services of Nassau County as a program component of the Nassau BOCES Department of Regional Schools and Instructional Programs. Either party may terminate this agreement upon thirty (30) days prior written notice to the other party.
  - 2. The Program shall be available to students of the district and other Nassau BOCES component districts.
  - 3. All teaching and supervisory staff persons who are assigned to the Program shall be employees of the Nassau BOCES. As such, staff persons must submit applications and required documentation, including certification (individuals must have a valid teaching certificate) as potential new hires of the Nassau BOCES.



4. In the April preceding the commencement of the Program, Nassau BOCES shall provide the District with a list of all teaching and supervisory staff hired for the previous summer school session to indicate those who are eligible to be rehired for the upcoming summer. Final hiring and retention decisions shall be at the discretion of the Nassau BOCES but subject to the provision of Educational Law 3014-a.
5. As a condition of employment, all Nassau BOCES employees must complete the Nassau BOCES fingerprinting process so that the Nassau BOCES may obtain a criminal background check. In addition, the prospective employee must complete a Nassau BOCES application form that will require, among other information, character references that the Nassau BOCES may verify. Any charge for such fingerprinting or background check shall be borne by the prospective employee, or by the District, at its discretion.
6. All professional staff and supervisors who are assigned to the Program shall report to, and be supervised by, Nassau BOCES administrators.
7. Periodically, Nassau BOCES administrators may conduct classroom visits/observations and shall provide copies of any written notes to teachers. These visits may occur in person or remotely.
8. Program curriculum shall comply with any applicable New York State Education Department (SED) requirements.
9. The Nassau BOCES shall advertise the Program held at the District location as a Nassau BOCES program. Pertinent class information shall appear on the Nassau BOCES website, [www.nassauboces.org](http://www.nassauboces.org), as well as through other means.
10. The Nassau BOCES shall conduct classes with a managed open enrollment policy so that students may enroll at specified times during the school year as long as such registration does not disrupt the District's provision of instruction to its students during the school day and, in no event, shall occur at the District schools between the hours of 8:00 AM and 3:00 PM. The continued operation of classes by the Nassau BOCES is contingent upon adequate class enrollment to be determined at the sole discretion of the Nassau BOCES.
11. To the fullest extent permitted by law, the Nassau BOCES agrees to indemnify and hold harmless the District, its board members, officers, agents and employees against any and all causes of actions, claims, liabilities, losses, costs, damages and expenses, including, but not limited to, reasonable attorneys' fees and disbursements arising from any claims, dispute or causes of action of whatever nature arising, in whole or in part, from the negligence or intentional misconduct of the Nassau BOCES respecting the performance of the services to be provided by the Nassau BOCES pursuant to the terms of the within Agreement, or the action of, or the failure to act by the Nassau BOCES, its representatives or employees or anyone for whose acts the Nassau BOCES may be liable. In the event that any legal proceeding is instituted or

any claim or demand with respect to the foregoing is asserted by any person with respect to any indemnification which may be sought from the Nassau BOCES pursuant to the provisions of this paragraph, the District shall promptly notify the Nassau BOCES of the suit, claim or demand and give the Nassau BOCES an opportunity to defend and settle same without any cost to the District and will extend reasonable cooperation to the Nassau BOCES in connection with the defense, which shall be at the expense of the Nassau BOCES. In the event that the Nassau BOCES fails to defend the same within 30 calendar days of receipt of the notice, the District shall be entitled to assume the defense thereof, and the Nassau BOCES shall be liable to repay the District for all its expenses reasonably incurred in connection with the defense, including reasonable attorneys' fees, disbursements, expert witness fees and settlement payments. All provisions of this Paragraph shall survive the expiration or sooner termination of this Agreement.

12. The Nassau BOCES, including its employees and agents, shall comply with all applicable Federal, State and local statutes, rules and regulations.
13. The Nassau BOCES, including its employees and agents, shall adhere to all applicable procedures, policies, rules and regulations of SED and the District.
14. The Nassau BOCES is retained by the District only for the purposes and to the extent set forth in this Agreement. The Nassau BOCES' relationship to the District is solely that of an independent contractor during the term of the within Agreement. All employees of the Program shall be deemed employees of the Nassau BOCES for all purposes, and the Nassau BOCES alone shall be responsible for their work, personal conduct, direction, compensation and for payment of all employment and other taxes in relation thereto. The Nassau BOCES acknowledges that it shall not hold itself, its officers, employees and/or agents out as employees of the District. The Nassau BOCES shall, during the periods of its services hereunder, be engaged as an independent contractor. As such, the Nassau BOCES shall be solely responsible for the payment of Federal and New York State income taxes applicable to this Agreement.

**C. The District agrees to the following:**

1. Classes shall be held at the designated school(s). Classes shall be scheduled according to the attached matrix.
2. The District shall assist with the publicity and outreach of the programs by distributing information about the Program to guidance counselors, students and other interested groups or individuals.
3. The District's building administrator(s) shall cooperate with the Nassau BOCES liaison assigned to the District with regard to the Nassau BOCES classes which take place therein.
4. The District shall contact registered students in the District and the Nassau BOCES



shall contact registered students from other districts, who are on the waiting list developed and/or agreed to by the parties, to arrive at pre-scheduled registration in accordance with the Program's intake and assessment policies.

5. To the fullest extent permitted by law, the District agrees to indemnify and hold harmless the Nassau BOCES, its board members, officers, agents and employees against any and all causes of actions, claims, liabilities, losses, costs, damages and expenses, including, but not limited to, reasonable attorneys' fees and disbursements arising from any claims, dispute or causes of action of whatever nature arising, in whole or in part, from the negligence or intentional misconduct of the District respecting the performance of the services to be provided by the District pursuant to the terms of the within Agreement, or the action of, or the failure to act by the District, the District's representatives or employees or anyone for whose acts the District may be liable. In the event that any legal proceeding is instituted or any claim or demand with respect to the foregoing is asserted by any person with respect to indemnification, which may be sought from the District pursuant to the provisions of this paragraph, the Nassau BOCES shall promptly notify the District of the suit, claim or demand and give the District an opportunity to defend and settle same without any cost to the Nassau BOCES and shall extend reasonable cooperation to the District in connection with the defense, which shall be at the expense of the District. In the event that the District fails to defend the same within 30 calendar days of receipt of the notice, the Nassau BOCES shall be entitled to assume the defense thereof, and the District shall be liable to repay the Nassau BOCES for all its expenses reasonably incurred in connection with the defense, including reasonable attorneys' fees, disbursements, expert witness fees and settlement payments. All provisions of this paragraph shall survive the expiration or sooner termination of this Agreement.
6. The District shall provide all students with a copy of the District's Code of Conduct and/or a Student Handbook. Discipline issues shall be handled in accordance with said Code of Conduct by the District in consultation with the Nassau BOCES.
7. The District shall conduct Superintendent's Hearings as needed for disciplinary reasons according to the District's protocol. The principal of the Program shall attend all hearings.
8. The appeals process of any student and/or parent/guardian shall follow the District's protocol as stated in its Code of Conduct.
9. The Nassau BOCES is retained by the District only for the purposes, and to the extent, set forth in this Agreement. The Nassau BOCES' relationship to the District is solely that of an independent contractor during the term of the within Agreement. All employees of the Program shall be deemed employees of the Nassau BOCES for all purposes, and the Nassau BOCES alone shall be responsible for their work, personal conduct, direction, compensation and for payment of all employment and other taxes in relation thereto. The District acknowledges that it shall not hold itself, its officers, employees and/or agents out as employees of the Nassau BOCES.

**D. Compensation:**

1. The Nassau BOCES shall submit a detailed invoice to the District referencing time period, staffing at the rates set forth in Appendix A and an 18.5% management fee according to the details identified on the District's matrix.
2. The District shall pay the Nassau BOCES within 30 days of receipt of the invoice.
3. The District shall pay for all custodial and security costs and all other costs and charges related to the space provided to the Nassau BOCES for the Program.
4. Compensation for employees performing services for the Program shall be based on title in accordance with Appendix A. In the event that a District's applicable labor contract provides for rates greater than those indicated in Appendix A, the District shall be solely responsible for paying said rate differential. Such rate differential shall not be eligible for state aid.

**E. Additional Terms and Conditions**

1. **INSURANCE REQUIREMENTS:** Both parties shall maintain the insurance set forth in Appendix B.
2. **SAFEGUARDING INFORMATION:** Neither party shall use or disclose any information concerning the services to be performed pursuant to this Agreement for any purpose which is prohibited by Federal and State statutes and/or regulations.
3. **CONFIDENTIALITY:**
  - a. Both parties agree that all information obtained in connection with the services provided for in this Agreement is deemed confidential information. Neither party shall use, publish, discuss, disclose or communicate the contents of such information, directly or indirectly with third parties, except as provided for in this Agreement. The parties further agree that any information received by it, its employees and/or agents, respectively, during the course of the services provided pursuant to this Agreement which concerns the personal, financial or other affairs of the other party, its employees, agents, clients, and/or students shall be treated by the first party, its employees and/or agents in full confidence and shall not be revealed to any other persons, firms or organizations.
  - b. In the event of a breach of the within confidentiality provision by either party, the breaching party shall immediately notify the non-breaching party and advise it as to the nature of the breach and the steps it has taken to minimize said breach. The breaching party shall indemnify and hold the non-breaching party harmless from any claims arising from its breach of the within confidentiality provision. The parties further agree that the terms and

conditions set forth herein shall survive the expiration and/or termination of this Agreement.

- c. **"Confidential Information"** shall include all such information, written or oral, disclosed, directly or indirectly, whether or not prepared by the Disclosing Party, through any means of communication or observation, by the Disclosing Party, or any of its affiliates, representatives, employees, agents, clients and/or students to, or for the benefit of, the Disclosing Party. Confidential Information means information that the Disclosing Party desires to maintain as confidential or secret, which is supplied or provided to any other Party, including but not limited to, information about Disclosing Party, its employees, agents, clients and/or students, such as: any and all personally identifiable information, including, but not limited to, information that can be used to distinguish or trace an individual's identity either alone or together with other personal information, such as their name, address, phone number, social security number, biometric records such as fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, handwriting, place of birth, mother's maiden name, employment histories, credit histories, personal references of applicants for employment, medical or personal records, including, but not limited to, disabilities, recovering substance abuse conditions, medical information including AIDS/HIV, information contained in a worker's compensation record, student directory information including, but not limited to, a student's name, address, parents, guardians and/or families address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, grade level, enrollment status, height and weight, dates of attendance, participation in officially recognized activities and sports, degrees, honors and awards received, the most recent educational agency or institution attended, identification numbers, user ID's, personal identification numbers, and any other information disclosed to a party in confidence pertaining to the Disclosing Party, its employees, agents, clients and/or students.
  - d. Both parties shall comply with all District and Nassau BOCES policies and Federal, State, and local laws, regulations, rules and requirements related to the confidentiality of records, data security and privacy. The District agrees to allow the Regional Summer School program to access their student Assessment Scoring and Analysis Program (ASAP) data for use in comparisons of prior exams, growth scores and curriculum focus.
4. **DISCRIMINATION PROHIBITED:** Neither party shall discriminate against any individual because of age, race, creed, color, national origin, sexual orientation, military status, sex, reproductive health decisions, disability, predisposing genetic characteristics, marital status or other protected status, and shall take affirmative action to ensure that each individual is afforded equal opportunities without said discrimination because of age, race, creed, color, national origin, sexual orientation, military status, sex, reproductive health decisions, disability, predisposing genetic characteristics, marital status or other protected status.

5. **CONSTRUCTION OF PROVISIONS:** If any one or more of the provisions contained in this Agreement are held to be excessively broad as to duration, scope, activity or subject, then such provisions shall be construed by limiting and reducing them so that they are enforceable to the fullest extent permitted by law.
6. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement of the parties and may not be changed orally, but only by an agreement, in writing, signed by authorized representatives of the parties.
7. **ASSIGNMENT OF AGREEMENT:** Neither party shall assign, transfer or convey any of its respective rights or obligations under this Agreement without the prior written consent of the other party.
8. **SEVERABILITY:** If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.
9. **GOVERNING LAW:** This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of New York without regard to conflicts or choice of law provisions that would defer to the substantive laws of another jurisdiction. Each of the parties hereto consents to the jurisdiction of any State court located within the County of Nassau, State of New York, or Federal court in Federal District Court for the Eastern District of New York located in the County of Suffolk, State of New York, and irrevocably agrees that all actions and proceedings relating to this Agreement must be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of, and proceeding in, any such court.
10. **TERMINATION:** Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party. In the event of termination, the parties shall adjust the accounts due and payable for services rendered.
11. **EXTENSION OF AGREEMENT:** The term of this Agreement may be extended annually, upon mutual agreement of the parties in writing.
12. **NON-WAIVER:** No course of dealing of any party hereto, no omission, failure or delay on the part of any party hereto in asserting or exercising any right hereunder, and no partial or single exercise of any right hereunder by any party hereto shall constitute or operate as a waiver of any such right or any other right hereunder. No waiver of any provision hereof shall be effective unless in writing and signed by, or on behalf of, the party to be charged therewith. No waiver of any provision hereof shall be deemed or construed as a continuing waiver, as a waiver with respect to any

other or subsequent breach or default of such provision or as a waiver of any other provision hereof unless expressly so stated in writing and signed by, or on behalf of, the party to be charged therewith.

13. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement of the parties with respect to the subject matter thereof and supersedes any and all other agreements, understandings and representations, written or oral, by and between the parties.
14. **MODIFICATION:** This Agreement may be changed only by an agreement in writing signed by the party or parties against whom an enforcement of any waiver, change, modification, extension or discharge is sought. Any waiver of any term, condition or provision of this Agreement shall not constitute a waiver of any other term, condition or provision, nor shall a waiver of any breach of any term, condition or provision constitute a waiver of any subsequent or succeeding breach.
15. **THIRD-PARTY BENEFICIARIES:** There are no third-party beneficiaries of or in this Agreement, other than NYSIR.
16. **IRAN DIVESTMENT CERTIFICATION:** By signing this Agreement, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief that each person is not on the list created pursuant to New York State Finance Law § 165-a(3) (b).
17. This Agreement, and any amendments to this Agreement, shall not be in effect until agreed to in writing and signed by authorized representatives of both parties. Further, this Agreement, and any amendments to this Agreement, shall be subject to formal approval of the Nassau BOCES Board of Education and shall have no force or effect until such approval and full execution by the parties hereto.





IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written. The term of this agreement may be extended annually upon mutual agreement of the parties.

MALVERNE UNION FREE SCHOOL  
DISTRICT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BOARD OF COOPERATIVE EDUCATIONAL  
SERVICES OF NASSAU COUNTY

By \_\_\_\_\_  
Name: Dr. Robert R. Dillon  
Title: District Superintendent

RAF: CT-2/14/22: IS: MAS



## **APPENDIX B INSURANCE REQUIREMENTS**

### **1. Commercial General Liability Insurance**

\$1,000,000 per occurrence/\$3,000,000 aggregate (must include coverage for sexual misconduct).

### **2. Workers' Compensation and N.Y.S. Disability**

Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits Insurance for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.

A self-employed person and certain partners and corporate officers are excluded from the definition of "employee" pursuant to Workers' Compensation Law Section 2(4). As such, individuals in such capacity are excluded from Workers' Compensation Law coverage requirements. A person seeking an exemption must file a CE-200 form with the State. The form may be completed and submitted directly online to the Workers Compensation Board:

[http://www.wcb.ny.gov/content/ebiz/wc\\_db\\_exemptions/requestExemptionOverview.jsp](http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp)

### **3. Professional Errors and Omissions Insurance**

\$1,000,000 per occurrence/ \$3,000,000 aggregate for the professional acts of the Nassau BOCES performed under this Agreement for the District. If written on a "claims-made" basis, the retroactive date must pre-date the inception of this Agreement. Coverage must remain in effect for two calendar years following the completion of work.

### **4. Excess Insurance**

\$3,000,000 each occurrence and aggregate. Excess coverage must be on a follow-form basis.

Notwithstanding any terms, conditions or provisions in any other writing between the parties, the parties hereby agree to effectuate the naming of the other party as an additional insured on its respective commercial general liability policy.

The policy naming the other party as an additional insured must:

- be an insurance policy from an A.M. Best rated "secure" or better insurer, licensed in New York State.
- state that the Nassau BOCES' coverage is primary and non-contributory coverage for the District, its Board, employees and volunteers.
- be listed as an additional insured by using endorsement CG 2026 or its equivalent. The decision to accept an alternative endorsement rests solely with the District. A completed copy of the endorsement must be attached

to the certificate of insurance and the certificate must state that the endorsement is being used. The certificate of insurance must describe the specific services provided by the Nassau BOCES that are covered by the commercial general liability policy and the umbrella policy. Upon request by the District, the Nassau BOCES shall provide copies of the declarations pages of the liability and umbrella policies with a list of endorsements and forms.

Both parties agree to indemnify and hold the other harmless for any applicable deductibles and self-insured retentions, to the extent not covered by the applicable policy.

If a policy is written on a "claims-made" basis, the retroactive date must pre-date the inception of this Agreement.

Both parties acknowledge that failure to obtain the foregoing insurance constitutes a material breach of contract. The respective parties must provide the other with satisfactory proof that the above requirements have been met prior to the commencement of the services to be provided hereunder. The failure of a party to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by the other party. Upon request, each party shall provide the other party with a copy of the applicable insurance policies including any endorsements, modifications or exclusions thereto.

Both parties are members/owners of the New York Schools Insurance Reciprocal ("NYSIR"). The parties acknowledge that the procurement of that insurance as required herein is intended to benefit not only the other party, but also NYSIR as the respective party's insurer.

SB 1/20/22



Department of Regional Schools & Instructional Programs • Specialized Schools  
71 Clinton Road, P.O. Box 9195, Garden City, New York 11530-9195 • (516) 396-2249 • Fax: (516) 396-2251

## AMENDMENT

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AMENDMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2022 to the \_\_\_\_\_, 2022 Agreement between the Malverne School District (hereinafter referred to as the "School District") and the Board of Cooperative Educational Services of Nassau County (hereinafter referred to as the "Nassau BOCES").

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**WHEREAS**, the parties entered into an Agreement dated \_\_\_\_\_, 2022 establishing the rights and responsibilities of the Nassau BOCES and the School District for the Regional Summer School Program for the 2022 summer program; and

**WHEREAS**, due to the COVID-19 pandemic, the parties want to include a provision to permit for distance learning during the Regional Summer School Program for the Summer of 2022; and

**WHEREAS**, the parties are desirous of providing for amendment of said Agreement;

**NOW, THEREFORE**, based upon the mutual covenants and understandings between the parties, it is understood and agreed:

**FIRST:** EFFECT OF THE AMENDMENT

All the terms and provisions set forth at length in the aforementioned Agreement shall continue in full force and effect during the term thereof, except as expressly modified herein.

**SECOND:**

Section C(1) should be amended to create a subsection (a): Subsection (a) will read as follows:

Should school districts be required to remain closed for educational purposes due to Executive Order or other lawful means, the Program will be held by the designated schools through means of distance learning.

In the event that distance learning is utilized for educational purposes for the Program, the distance learning plan must be approved by all necessary parties, including, but not limited to, New York State Education Department. Such distance learning plan must be submitted by the schools to Nassau BOCES prior to the commencement of the Program.

\_\_\_\_\_  
SCHOOL DISTRICT

Dated: \_\_\_\_\_

By: \_\_\_\_\_

BOARD OF COOPERATIVE  
EDUCATIONAL SERVICES of  
NASSAU COUNTY

Dated: \_\_\_\_\_

By: \_\_\_\_\_

. The Nassau BOCES advises students, parents, employees and the general public that it offers employment and educational opportunities without regard to age, race, creed, color, national origin, sexual orientation, religion, military/veteran status, sex (including pregnancy, childbirth, or related medical condition), gender, gender identity, gender expression, marital status, disability, predisposing genetic characteristic(s), or domestic violence victim status. The Nassau BOCES shall provide equal access to the Boy Scouts and other designated youth groups. The Nassau BOCES shall not discriminate or take any retaliatory action against an employee with respect to compensation, terms, conditions or privileges of employment because of the employee's or dependent's reproductive health decision-making. Information and grievance procedures are available by contacting the following Civil Rights Compliance Officers at 71 Clinton Rd., Garden City, NY 11530: Thomas McGrath, Executive Director of the Department of Human Resources at 516-396-2358, [tmcgrath@nasbores.org](mailto:tmcgrath@nasbores.org) and/or Selma Stoddard, Esq., Attorney (Employee Relations), Department of Human Resources at 516-396-2360, [sstoddard@nasbores.org](mailto:sstoddard@nasbores.org). Inquiries concerning the application of regulations prohibiting discrimination may be referred to the above-mentioned Civil Rights Compliance Officers or to the Office for Civil Rights at NY Office for Civil Rights, U.S. Department of Education, 32 Old Slip, 26th Floor, New York, NY 10005- 2500 or call 646-428-3900, or fax 646-428-3843, or TDD 800-877-8339 or email [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov) or file form at <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>