



SERVICE AGREEMENT

By and Between

Malverne UFSD

And

ATC HEALTHCARE SERVICES, LLC

MEMBER



American Staffing Association



Contract Holder
FSS Contract V787P-4515A

This AGREEMENT is made and entered into by and between **Malverne UFSD**, located at **301 Wicks Lane Malverne, NY 11565** (hereinafter referred to as **FACILITY**), and **ATC Healthcare Services, LLC**, a limited liability company having its principal office at 1983 Marcus Avenue, Suite E-122, Lake Success, NY 11042 (hereinafter referred to as **ATC**).

WHEREAS, **FACILITY** desires, for the purpose of staffing, the personnel listed in Exhibit A (hereinafter referred to as **Healthcare Associates**) to fill positions at its premises on a temporary basis for the period commencing **June 22, 2022** ("Effective Date") and;

WHEREAS **ATC** is willing to provide **Healthcare Associates** to **FACILITY** for temporary staffing.

THEREFORE, **FACILITY** and **ATC** agree as follows:

1. RESPONSIBILITIES OF ATC

- A. Provision of Personnel. **ATC** will provide **Healthcare Associate(s)** to fill specified position(s) who possess the skills and qualifications for said position(s) as defined by **FACILITY**.
- B. Experience. **ATC** will verify that **Healthcare Associates** have a minimum of one (1) year relevant experience [six (6) months for **Certified Nursing Assistants**], or as defined by **FACILITY** in writing for a specified position. **ATC** will perform standard professional background checks on all **Healthcare Associates** to ensure that they possess acceptable professional references and clinical experience in the areas that they are to provide services under this Agreement.
- C. OSHA. **ATC** will provide general (generic) infection control and safety training to **Healthcare Associates** in accordance with **OSHA** standards.
- D. Licensure. **ATC** will provide **FACILITY** with **Healthcare Associates** who have current and unrestricted licenses, registrations and/or certifications as appropriate to their profession and as issued by applicable state and/or national licensing bodies to perform duties associated with the specified position. Upon request, **ATC** will provide **FACILITY** with documentation of such licensure, registration and/or certification.
- E. Personnel Standards. **ATC** complies with **OSHA**, governmental, and Joint Commission standards for contracted agency personnel. **ATC** provides **Healthcare Associates** who are **HIPAA** trained, and qualified in relation to their education, training, licensure, and competence as defined by **FACILITY's** written job description or specification.
- F. Criminal Background Checks. **ATC** shall perform criminal background checks as specified in writing by **FACILITY**. Such written specification by **FACILITY** should include disqualifying infractions.
- G. Health Clearance. **ATC** verifies tuberculosis status for direct care staff and medical clearance to perform essential functions of the job where mandated by state law. Other medical testing (e.g., **MMR** titers) required by **FACILITY** shall be specified in writing.
- H. Payment to Healthcare Associates. **ATC** is responsible for all payments made to **Healthcare Associate(s)** for services provided under this Agreement.
- I. Personnel Cancellation. **ATC** will make best efforts to inform **FACILITY** of any **Healthcare Associate** cancellation no later than two (2) hours prior to reporting time and will make all reasonable attempts to find an appropriate replacement.
- J. Insurance. **ATC** shall procure and maintain (or require its subcontractors, if applicable, to maintain at subcontractor's expense) General and Professional Liability Insurance with limits not less than \$1,000,000 per occurrence, \$3,000,000 aggregate; Automobile Liability Insurance with combined

single limit of \$1,000,000; and Worker's Compensation Insurance as required by state law. ATC will provide, at FACILITY's request, certificates of insurance evidencing such coverage.

- K. Subcontractors. In the event that ATC utilizes subcontractors to fulfill the staffing requests of FACILITY under this Agreement, all such subcontractors will meet the same criteria as ATC's employed Healthcare Associates.

2. RESPONSIBILITIES OF FACILITY

- A. Request for Personnel. FACILITY will notify ATC of specific needs (i.e., by shift and specialty) and the duration thereof as soon as the need is determined and provide appropriate work schedule.
- B. Acceptance and Supervision of Personnel. FACILITY will accept Healthcare Associates who meet the qualifications for specific positions as defined by FACILITY in its written job descriptions or specifications. FACILITY shall have the right of refusal where FACILITY has determined that Healthcare Associate(s) is/are not qualified for the position requested. Members of FACILITY's professional staff will supervise Healthcare Associates while Healthcare Associates provide services under this Agreement.
- C. Float/Reassignment. FACILITY agrees to float/reassign Healthcare Associates in rotation with its own staff and only in accordance with its own floating policies. FACILITY will float Healthcare Associates only to clinical areas within their clinical competence as determined by the Healthcare Associate's licensure/certification, training, and/or skill level, and where the Healthcare Associate feels that he or she possesses the experience and/or competencies to perform the job. FACILITY understands and acknowledges that the Healthcare Associate has the right to contact ATC if he or she is reassigned/floated to an area in which he or she does not feel competent.
- D. Orientation. FACILITY will provide an appropriate orientation to units in which Healthcare Associates will be placed on assignment. The orientation length and extent is at the direction of FACILITY. FACILITY will orient Healthcare Associates, at its cost, to FACILITY rules, regulations, policies, procedures, dress code, physical layout, emergency protocol, emergency evacuation, and equipment on any unit to which Healthcare Associate is assigned. This is understood to be an ongoing process.
- E. Self-Scheduling. FACILITY will schedule all shifts through ATC. No shifts may be scheduled directly with the Healthcare Associate. For any shift booked directly with the Healthcare Associate, there will be a five dollar (\$5.00) per hour surcharge.
- F. Performance Evaluation. FACILITY is responsible for the establishment of staff clinical competence during the initial orientation period and on an ongoing basis during the contract period. FACILITY agrees to complete a performance evaluation of Healthcare Associate at the completion of each assignment in the same unit of FACILITY or at other intervals, but at least biannually. FACILITY agrees and understands these evaluations are needed for ATC to ensure proper management of Healthcare Associates and to comply with regulatory and other standards.
- G. Working Environment. FACILITY will maintain a safe working environment and provide all appropriate personal protective equipment (PPE), including but not limited to gloves, gowns, masks, particulate respirator masks, goggles and other protective apparel, as appropriate for assignment.
- H. Training. FACILITY will provide specific training on types and use of safety devices and equipment available and approved by FACILITY, such as needles or sharp safety devices.
- I. Communication of Disciplinary Actions and Other Incidents. FACILITY agrees to contact ATC and communicate in writing any disciplinary actions, performance related issues, occupational injuries/hazards, incidents, sentinel events, depositions, or lawsuits related to Healthcare Associates within one (1) business day of known occurrence. FACILITY agrees to initiate and/or facilitate communication with ATC whenever an incident/injury report related to a Healthcare Associate is completed that directly involves FACILITY, whether or not the incident results in an

adverse event involving patients or staff members, and agrees to allow an authorized representative of ATC to obtain the report after an accident or injury to ensure proper disposition of the matter. FACILITY understands that Healthcare Associates are expected to contact ATC whenever such incidents are completed and that negative trends in performance may lead to disciplinary action.

- J. Unsatisfactory Performance. FACILITY will notify the ATC representative immediately and provide written documentation for any unsatisfactory performance or conduct by the Healthcare Associate(s), including if a Healthcare Associate appears to be under the influence of any substance. If FACILITY determines that a Healthcare Associate is incompetent, has engaged in misconduct, or has been negligent, FACILITY may request the Healthcare Associate to leave FACILITY. FACILITY will be obligated to compensate ATC only for the number of hours actually worked by such Healthcare Associate.
- K. Cancellation of Shift. FACILITY will use Healthcare Associate(s) for all scheduled shifts. If a shift is canceled, FACILITY will be billed per Cancellation Policy listed in Invoicing and Payment Section 5K.
- L. Recruitment of Healthcare Associates. FACILITY acknowledges and understands that ATC incurs considerable expense to advertise, recruit, interview, reference check, and evaluate its employees. As a result, FACILITY will take no steps to recruit as its own employees those Healthcare Associates provided by ATC under this Service Agreement. FACILITY may hire an ATC employee six (6) months after the last date employee worked for FACILITY at no charge. If FACILITY hires a Healthcare Associate at any time during their employment at FACILITY through ATC, or within six (6) months after the last date worked, FACILITY will be liable for liquidated damages of Twelve Thousand Five Hundred dollars (\$12,500.00), or twenty-five percent (25%) of first year's salary, whichever is greater. Furthermore, the non-solicitation language herein applies to any Healthcare Associate that is scheduled to work at FACILITY by ATC who subsequently switches to a competing agency or entity of any kind to work at FACILITY.
If FACILITY staffs an ATC Healthcare Associate who has been introduced, interviewed, or a resume was provided by ATC thru another Staffing Agency prior to six (6) months after the last shift worked under this agreement; FACILITY will be liable for liquidated damages of six thousand dollars (\$6,000.00).
- M. Direct Placement. If FACILITY hires any Healthcare Associate on a direct placement basis who has been introduced, interviewed, or provided resumes for by ATC, FACILITY agrees to pay ATC a direct placement fee of twenty-five percent (25%) of the Healthcare Associate's annualized first year salary (see Exhibit D attached for Direct Placement Fee Confirmation Form). FACILITY agrees not to refer any Healthcare Associate who has been introduced to FACILITY by ATC to another party, including but not limited to, any affiliate, department or division of FACILITY. Should FACILITY refer Healthcare Associate to another party, and the party enters into a service relationship with the Healthcare Associate, both FACILITY and party will be responsible for payment of the placement fee.

All direct placement fees are due and payable to ATC upon receipt of an invoice. FACILITY will send payment to:

ATC Healthcare Services, LLC
75 Remittance Drive Dept. 6773
Chicago, IL 60675-6773

If the hired Healthcare Associate is dismissed or leaves for any reason (except for dismissal due to layoff or a reduction in workforce), within thirty (30) days of date of hire, ATC will replace Healthcare Associate at no additional charge to the FACILITY. If a suitable replacement cannot be found, a refund will be administered to FACILITY. This refund will be pro-rated based on number of days worked within the thirty (30) day new hire window.

Once FACILITY hires Healthcare Associate, ATC is released from all staffing responsibility, employer obligations, and personnel matters related to Healthcare Associate, including, but not limited to

insurance coverage, payment of wages or other forms of compensation, and mandatory state and federal withholdings. FACILITY agrees to indemnify, defend, and hold harmless ATC from any liability or claim, arising out of employment with FACILITY.

- N. Insurance. FACILITY will procure and maintain General and Professional Liability Insurance with limits not less than \$1,000,000 per occurrence, \$3,000,000 aggregate; and Worker's Compensation Insurance for its employees as required by state law. FACILITY will provide, at ATC's request, certificates of insurance evidencing such coverages.
- O. Change in Ownership. In the event of a change in Ownership of the FACILITY, FACILITY must notify ATC within sixty (60) days of this change. FACILITY is required to submit to ATC a legal document informing ATC of the change, date of the change, new company name if required. In addition, FACILITY must inform ATC immediately of responsible party for payment (update section 5B of this Agreement). At the time of the sale, all outstanding balances must be paid by the FACILITY in full immediately.
- P. Exhibits. All Exhibits must be signed by FACILITY and returned to ATC upon initial Execution of the Service Agreement.

3. FACILITY SAFETY PARTNERSHIP

- A. Safe Working Environment. In order for ATC to provide FACILITY with the best service possible and for FACILITY to provide a safe work environment for ATC's employees, following is a mutual understanding of safety and on-the-job injury procedures, practices and philosophies:
1. FACILITY will only utilize ATC employees on jobs for which they have been assigned and trained. Any variance must be reported to the ATC office before work begins.
 2. ATC employees will be oriented and trained by FACILITY in all safety, hazardous communication (Safety Sheets information, etc.), operational instructions and specific safety PPE usage for tasks in the same manner as other FACILITY employees, including but not limited to safety trainings, in-services and meetings. Evidence of safety training completion will be shared with ATC.
 3. FACILITY is required under OSHA 1904.31 (a) to complete and maintain an OSHA 300 and 300a form for ATC employees that sustain an injury or exposure at the FACILITY worksite while under FACILITY supervision.
 4. ATC Employees are not authorized to perform tasks for which they have never been trained and which are outside their typical work duties.
 5. ATC employees will be required to wear all appropriate safety equipment. FACILITY must provide Healthcare Associates Personal Protective Equipment (PPEs) appropriate to job duties at FACILITY's expense. At minimum FACILITY must follow their Respiratory Protection Plan in accordance with OSHA and supply:
 - o GOWN- Gown must fully cover torso from neck to knees, arms to end of wrists, and wrap around the back and fasten in back of neck and waist.
 - o MASK OR RESPIRATOR (Approved by NIOSH) - Secure ties or elastic bands at middle of head and neck; fit test, medical clearance as needed by face-mask type and specific mask training as applicable to mask type.
 - o GOGGLES OR FACE SHIELD
 - o GLOVES
 - o OTHER PPE as required for task
 6. ATC will be notified immediately (at least within twenty-four (24) hours) in the event of an accident or injury to an ATC employee. ATC will coordinate appropriate medical treatment in this event, except in emergent cases requiring immediate treatment or medical

C

care. FACILITY will allow an authorized representative of ATC to obtain a report after an accident or injury to ensure proper disposition of the matter.

7. FACILITY will notify ATC in the event any ATC employee appears to be under the influence of any substance.

8. FACILITY will review and complete the Safety Checklist listed in Exhibit C.

4. **HOLD HARMLESS STATEMENT**

A. Prohibited Job Related Activities. Unless FACILITY has obtained the prior written consent of ATC, FACILITY agrees not to ask or allow an ATC employee to perform any of the following job-related activities:

1. Driving an automobile or other motor vehicle.
2. Handling cash, securities, or other valuables.

If this prior written consent is not obtained, FACILITY agrees to waive all rights to make a claim against ATC, and FACILITY will relieve ATC from all liability and responsibility for any damage, loss, or expense which FACILITY incurs as a result of the ATC employee engaging in such activities, and FACILITY further agrees to indemnify and hold harmless ATC from and against all claims, damages, bodily injuries, losses, and expenses which might be caused as a result of the ATC employee engaging in any of these activities.

B. Hazards. FACILITY agrees not to knowingly expose any ATC employee to unnecessary hazard or extra hazards and to not violate any OSHA, safety law, rule or regulation whether federal, state or local. FACILITY may be held liable as a result of any such violation.

5. **INVOICING AND PAYMENT**

C

A. Payment. FACILITY will remit invoice payment to ATC based on rates and terms listed in Exhibit A upon receipt of invoice. FACILITY is responsible for paying interest on all accounts receivable over fifteen (15) days in the amount of 1.5% (one and one-half percent) per month (18% [eighteen percent] per annum), or the maximum rate permitted by applicable law, whichever is less. If FACILITY fails to pay any amounts when due under this Agreement, then ATC, at its option and without limiting any other rights available to it under this Agreement or otherwise, may by giving notice to the FACILITY, (i) suspend services hereunder, (ii) require FACILITY to pay in advance of ATC performing staffing services, (iii) require FACILITY to provide other security for payment satisfactory to ATC.

B. Customer Contact Sheet for Accounts Payable. FACILITY will complete Exhibit B in its entirety. If there should be a change in any information listed in Exhibit B, FACILITY will notify ATC within three (3) business days.

C. Invoicing. Invoicing will be done by ATC on a weekly basis from a signed time slip. Hours will be rounded to the nearest quarter hour for billing purposes. Invoices will be considered correct unless disputed in writing by FACILITY within thirty (30) days of date of invoice.

D. Holidays. Holidays are billed at one and one-half (1½) times the normal hourly rate. The holiday begins at the start of the day shift and continues through the entire night shift. The recognized holidays are as follows:

New Year's Day	July Fourth
Martin Luther King, Jr.'s Birthday	Labor Day
President's Day	Thanksgiving
Easter Sunday	Christmas Eve
Memorial Day	Christmas Day
Juneteenth	New Year's Eve

- E. Overtime. Overtime billing at one and one-half (1½) times the normal hourly rate will be charged for all hours worked over forty (40) per Healthcare Associate per billing week.
- F. On-Call. On-call shall be considered hours in excess of the minimum guaranteed straight-time hours as set forth in this Agreement. The on-call rate for Healthcare Associates is listed in Exhibit A for time spent on-call. If the Healthcare Associate is called in while on-call, then the rate shall be one and one-half (1½) times the applicable hourly rate as specified in this Agreement. FACILITY shall pay ATC time and one-half (1½) for a minimum of two (2) hours for any Healthcare Associate who is on-call and subsequently activated by FACILITY, whether or not Healthcare Associate actually works such two (2) hours. However, if Healthcare Associate works more than two (2) hours, FACILITY shall pay ATC for the total hours actually worked by Healthcare Associate at one and one-half (1½) times the applicable hourly rate.
- G. Supervisory and/or Charge. The applicable rates for Healthcare Associates performing services in a supervisory and/or in-charge capacity shall be four dollars (\$4) per hour above the hourly rates specified in this Agreement.
- H. Orientation. FACILITY will be invoiced for any required orientation at the rates listed in Exhibit A.
- I. Crisis Rates. A crisis situation is defined as a situation in which ATC's HCAs are expected to perform their duties under circumstances in which they are working in a hazardous environment. For example, they are at risk of exposure to a highly communicable disease (for example COVID-19). Crisis rates will be billed at 1 ½ times the hourly bill rate. If there should be a crisis event the following terms apply:

1. ATC employees will be required to wear all appropriate safety equipment. FACILITY must provide Healthcare Associates Personal Protective Equipment (PPEs) appropriate to job duties at FACILITY's expense. At minimum FACILITY must follow their Respiratory Protection Plan in accordance with OSHA and supply:
 - o GOWN- Gown must fully cover torso from neck to knees, arms to end of wrists, and wrap around the back and fasten in back of neck and waist.
 - o MASK OR RESPIRATOR (Approved by NIOSH) - Secure ties or elastic bands at middle of head and neck; fit test, medical clearance as needed by face-mask type and specific mask training as applicable to mask type.
 - o GOGGLES OR FACE SHIELD
 - o GLOVES
 - o OTHER PPE as required for task
2. SHIFT CANCELLATION: A shift that has been confirmed by your FACILITY and cancelled for any reason, the entire shift will be billed

In addition, as pertaining to COVID-19 Crisis:

3. FACILITY must provide appropriate assessment for potential hazards and provide specific training and appropriate Personal Protective Equipment (PPE) for the identified hazards to include COVID-19.
4. FACILITY is responsible to report COVID-19 work related exposures to ATC Healthcare Services within 24 hours. FACILITY will record on their OSHA 300 Log any illnesses which are occupationally related.
5. If an ATC Healthcare Services employee sustains an exposure due to a confirmed case of COVID-19 while on duty for ATC at the client facility and the facility determines the ATC employee will be placed on a 14-day quarantine, then the facility will be responsible to pay the contracted rate for the scheduled shifts (with a minimum of at least four (4) shifts) during the FACILITY-imposed 14-day quarantine period for the ATC employee.

6. FACILITY must provide, at its cost, an initial baseline COVID-19 test for all Healthcare Associates beginning an assignment at the FACILITY. Any additional COVID-19 testing to be required by a Healthcare Associate, on a regular basis (i.e. every week, or every other week, etc.) must be organized by the FACILITY, at its cost.
 7. The crisis rates will remain in effect until the FACILITY has signed an attestation that the FACILITY has been COVID-19 free for at least 14 days. Attestation cannot be dated retroactively.
- J. Nonpayment. In the event of nonpayment of any amounts owing under this agreement, FACILITY agrees to pay all reasonable attorneys' fees, collection costs, and expenses incurred by ATC in connection with the collection of such amounts.
- K. Per Diem Cancellations and Late Requests.
1. FACILITY has the right to cancel any scheduled short-term assignments with four (4) hours notice prior to the start of the shift without penalty. Shifts canceled with less than four (4) hours notice will be billed for the full scheduled shift at the agreed shift rate.
 2. When FACILITY places shift orders less than four (4) hours prior to the start of a shift and the scheduled Healthcare Associate is late as a result, the full shift will be billed.
 3. If a Healthcare Associate begins a shift and is sent home for any reason other than unsatisfactory performance, the entire shift will be billed.

6. MUTUAL RESPONSIBILITIES

- A. Term and Termination. This agreement shall commence on the Effective Date and will be automatically renewed on an annual basis. Either party may terminate this agreement at any time with or without cause, upon thirty (30) days written notification to the other party. Such termination will have no effect upon the rights and obligations resulting from any transactions occurring prior to the effective date of the termination.
- B. Notices. All notices required or permitted to be given under this Agreement shall be in writing and may be delivered personally with proof of receipt, sent by registered or certified pre-paid mail, return receipt requested, or by an overnight carrier with proof of receipt.

Notices to ATC shall be sent to:

ATC Healthcare Services, LLC
600 Broadway, Suite 8
Lynbrook, NY 11563
Attn: Penina Wiener

and

ATC Healthcare Services, LLC
1983 Marcus Avenue, Suite E-122
Lake Success, NY 11042
Attn: Contracts Department

Notices to FACILITY shall be sent to:

Malverne UFSD
301 Wicks Lane
Malverne, NY 11565
Attn: Donna Fecht

Email: dfecht@malverneschools.org
Phone: 516 887 6405

- C. Amendments. No amendments to this Agreement will be effective unless made in writing and signed by both parties.
- D. Exhibits. All exhibits annexed hereto are expressly made a part of this agreement as though fully set forth herein.
- E. Independent Contractors. In entering into and performing under this agreement, both parties are at all times performing as independent contractors. Nothing in this agreement shall constitute or be construed as the creation of an employment relationship, partnership, or joint venture between ATC, its agents or employees, and FACILITY. With respect to personnel furnished to FACILITY under this agreement, such personnel shall be at all times considered employees of ATC and ATC shall comply with all local, state, and federal laws and ordinances applicable to it as an employer, including requirements for payment of wages, verification of employment eligibility pursuant to United States immigration laws, fair labor standards, workers compensation, and laws requiring equal employment opportunity and prohibiting discrimination in employment. Nothing in this Agreement shall be construed as creating an employment relationship between FACILITY and Healthcare Associate.
- F. Indemnification. Each party shall indemnify and hold harmless the other party and its parents, subsidiaries, affiliates, shareholders, directors, officers, trustees, employees, agents, and contractors against all actions, claims and demands whatsoever including costs, expenses, and reasonable attorneys' fees resulting from or claimed to have resulted from any negligent acts or omissions of the indemnifying party, its employees or independent contractors (including, for ATC, a Healthcare Associate), with respect to the performance of services under this Agreement or in the performance of the indemnifying party's obligations pursuant to this Agreement.
- G. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of law. Any action or proceeding initiated by any party to this Agreement shall be brought against in the courts of the State of New York, County of Nassau or the United States District Court for the Eastern District of New York, and each of the parties consents and submits to the jurisdiction of such courts in any such action or proceeding, and each party waives any objection to venue laid therein.
- H. Dispute Resolution. Both parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between senior executives of the parties, or their respective designees, who have authority to settle the same, and, furthermore, both parties agree not to commence any formal action or proceeding unless the matter is not resolved by such negotiation within sixty (60) days of receipt of a written dispute notification. Nothing in this clause shall be construed as prohibiting a party or its affiliate from applying to a court for interim injunctive relief.
- I. Non-Discrimination. ATC and FACILITY affirm and agree to comply with ATC's policy as it relates to discrimination and harassment, including sexual harassment, as stated below:
1. It is the policy of ATC not to discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, disability, disabled veteran, Vietnam-era veteran or other protected veteran status, or any other characteristic protected by federal, state or local laws.
 2. Harassment and sexual harassment violate ATC policy as all employees should have the ability to perform their jobs in an atmosphere which is free from all forms of discrimination.
 3. All complaints of discriminatory treatment in violation of ATC policy, and any complaint of harassment of any type, including sexual harassment, as well as any complaint of retaliation for the reporting of such unlawful treatment should be brought to the attention of a member of ATC's management staff. Both ATC and FACILITY agree to investigate all complaints and collectively

cooperate in the investigation and appropriate resolution of such complaints.

- J. Entire Agreement. This Agreement constitutes the entire contract between ATC and FACILITY regarding the services covered under this Agreement and will supersede any prior agreements between the parties for the same services. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.
- K. Assignment. Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that either party may, without the consent of the other, assign the Agreement to a controlled subsidiary of that party or a purchaser of all or substantially all of that party's assets used in connection with performing this Agreement, provided the assigning party guarantees the performance of and causes the assignee to assume in writing all obligations of the assignor under this Agreement. The rights and obligations of this Agreement shall bind and benefit any successors or assigns of the parties.
- L. Waiver. The waiver by either party of a breach or violation of any provision of this Agreement will not be deemed a waiver of any subsequent breach of the same or a different provision.
- M. Invalid Provision. In the event that a provision of this Agreement is held to be invalid, the remainder of this Agreement will remain in full force and effect.
- N. Headings. The headings of sections of this Agreement are for reference only and will not affect the meaning or interpretation of this Agreement.
- O. Applicable Laws. Both parties will comply with all applicable local, state and federal laws and regulations in the provision of services under this Agreement and certify that they are licensed, as applicable, to provide such services.
- P. Access to Records. If required by law or regulation, both parties will make available to Health and Human Services ("HHS"), Centers for Medicine and Medicaid Services ("CMS"), the General Accounting Office ("GAO"), and the other party, or their authorized representatives, all contracts, books, documents, and records relating to the nature and extent of the costs hereunder for a period of four (4) years after furnishing services in fulfillment of the terms herein, or such other time period as required by applicable law. If services are provided by subcontract with a related organization, both parties will require by contract that the subcontractor make available to HHS, CMS, GAO, and the other party, or their authorized representatives, all contracts, books, documents, and records relating to the nature and extent of the costs thereunder for a period of four (4) years after the furnishing of services thereunder, or such other time period as required by applicable law.
- Q. Suspension or Debarment. Each party represents that it is not currently under investigation or debarred by any state or federal governmental agency for Medicare or Medicaid fraud. Further, each party represents that to the best of its reasonable knowledge, its currently practicing staff (to include for ATC its Healthcare Associates and for FACILITY its applicable healthcare staff, hereinafter collectively "Staff"), are not currently excluded from participating in the Medicare or Medicaid programs or other government programs which are reported on the OIG or GSA lists. In the event an investigation of a party is initiated by any state or federal governmental agency, or it is discovered that the representations contained herein are false, the non-breaching party reserves the right to immediately terminate this Agreement. It is understood and agreed to by the parties that the ability to verify if any Staff are currently debarred is dependent upon the accuracy of the information contained on the OIG and GSA lists of excluded persons and the representations of each individual Staff.
- R. Confidential Information. Each party agrees to use its best efforts to prevent and protect the other party's Confidential Information, as hereinafter defined, from disclosure to any person other than its employees or agents having a need for disclosure in connection with the provision of services under this Agreement. Confidential Information includes, but is not limited to, costs, profit and margin information, financial information, and client lists, regardless of whether such information is designated as Confidential Information at the time of its disclosure. Confidential Information shall not be deemed

proprietary and the receiving party shall have no obligation with respect to such information where the information: (a) was known to the recipient prior to receiving the Confidential Information from the other party; (b) has become publicly known through no wrongful act of the recipient; (c) was received by the recipient without breach of this Agreement from a third party without restriction as to the use and disclosure of the information; (d) was independently developed by the recipient without use of the Confidential Information; or (e) was ordered to be publicly released by the requirement of a government agency. Each party agrees that all Confidential Information shall remain the property of the discloser. Nothing contained herein shall be construed as granting or implying any transfer of rights to the recipient in the Confidential Information. This clause shall survive termination of the Agreement.

- S. Protected Health Information. Both parties agree to use and disclose protected health information only as permitted by applicable state and federal laws, including applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations promulgated thereunder, the HIPAA Privacy and Security Rules codified at 45 C.F.R. Parts 160 and 164, and all applicable HIPAA-related rules and regulations as they are published and as further defined by later-occurring government regulations.
- T. Affordable Care Act. Upon thirty (30) days prior written notice, ATC may implement a rate adjustment based on increased labor costs attributable to the Affordable Care Act, with such adjustment being effective at the end of the thirty (30) day notice period. ATC warrants that such rate adjustment will not exceed two percent (2%) of the then current rates.
- U. Force Majeure. ATC shall not be liable or responsible to FACILITY, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of ATC including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not); terrorist threats or acts, riot, or other civil unrest; national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either Party's workforce); restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, qualified personnel or third party services; materials or telecommunication breakdown or power outage; or failure or delay of ATC's suppliers, third party service providers or subcontractors due to the above mentioned events, provided that, if the event in question continues for a continuous period in excess of fifteen (15) days, FACILITY shall be entitled to give notice in writing to ATC to terminate this Agreement.

The parties have executed this Agreement and so certify below by signatures of authorized representatives.

ATC Healthcare Services, LLC

SIGNATURE: David Savitsky
DocuSigned by:
EF653BE2EAFCA3E...
 NAME: David Savitsky
 TITLE: CEO
 EMAIL: DSavitsky@ATCHealthcare.com
 DATE: 6/28/2022

Malverne UFSD

SIGNATURE: _____
 NAME: _____
 TITLE: _____
 EMAIL: _____
 DATE: _____

THIS DOCUMENT IS NOT VALID OR BINDING UNLESS SIGNED BY AN OFFICER OR DIRECTOR OF CONTRACTING OF ATC HEALTHCARE SERVICES, LLC