

SCHOOL-BASED SPEECH THERAPY SERVICES AGREEMENT

THIS SCHOOL-BASED SPEECH THERAPY SERVICES AGREEMENT (this "**Agreement**"), made as of November 20, 2020 (the "**Effective Date**"), between UNITED THERAPY SOLUTIONS, INC., a New Jersey corporation with an address at 141 South Avenue, Suite 6, Fanwood, NJ 07023 (the "**Company**"), and UNION COUNTY EDUCATIONAL SERVICES COMMISSION, with an address at 45 Cardinal Drive, Westfield, NJ 07090 ("**UCESC**").

WITNESSETH

WHEREAS, the Company offers and/or arranges for therapy services by Speech Language Specialists ("**SLSs**") (each, a "**Therapist**" and collectively, the "**Therapists**") in order to assist educational facilities to conform to state regulations and to develop and implement quality related services;

WHEREAS, UCESC operates a department of special education and desires to engage the Company to provide access to Therapists to provide necessary speech therapy to its students at school(s); and

WHEREAS, the Company desires to provide access to such Therapists for the provision of such services to students referred by UCESC, and UCESC desires to receive the same, all pursuant to the terms and conditions more particularly set forth herein.

NOW, THEREFORE, for good and valuable consideration, the parties intending legally to be bound, hereby agree as follows:

1. **Services.** During the Term (as defined below), the Company shall supply UCESC with Therapists in order to perform occupational therapy, physical therapy, speech therapy and such other services as shall be set forth on **Schedule A** (the "**Services**") attached hereto and made a part of this Agreement. **Schedule A** may, from time to time, be amended or modified by the written, executed agreement of the parties, and as so amended or modified, the new **Schedule A** shall be attached and made a part of this Agreement. The Services shall be provided at the schools designated by UCESC on **Schedule B** (the "**Schools**") attached hereto and made a part hereof, and UCESC agrees to provide the Company with adequate space at each such School and access to the computerized software for IEPs, progress notes, SEMI forms and other similar computer programs and software necessary to perform the Services and any equipment reasonably requested by the Company. The Company shall provide the Services in a manner which attempts to minimize disruption of the educational process, coordinate the availability of space and staff, and allow for the maximum time spent engaging in the Services to achieve the stated goals for each student.

2. **Term.** This Agreement shall commence as of November 30, 2020, and shall continue until the expiration of the school year on or about June 30, 2021 (the "**Initial Term**"), and shall be automatically renewed and extended for successive one (1) year terms (each a "**Renewal Term**"), unless either party notifies the other of its intention not to renew at least

thirty (30) days in advance of the scheduled termination date of the Initial Term or any Renewal Term, as the case may be. The Initial Term and each Renewal Term, if applicable, shall constitute the “**Term**,” subject to earlier termination as provided herein.

3. Payment for Services.

(a) In consideration of the Services, UCESC shall pay to the Company the fees set forth on **Schedule C** (the “**Fees**”), as may be amended from time to time during the Term upon the written, executed agreement of the parties.

(b) The Company shall submit consolidated monthly invoices (each, an “**Invoice**” and collectively, the “**Invoices**”) to UCESC containing the Fees for Services rendered by the Company during the immediately preceding calendar month. Each Invoice shall include a billing log in the form attached hereto as **Exhibit A** (each, a “**Billing Log**”) for each Therapist who provided Services during the respective immediately preceding calendar month, which shall provide, in reasonable detail, information regarding the actual number of hours spent at any School and a description of the Services provided.

(c) Payment of all Invoices for Services and reimbursements shall be made by the UCESC to the Company within thirty (30) days of receipt of each Invoice.

(d) UCESC shall notify the Company of any dispute with any Invoice within five (5) days from UCESC’s receipt of such Invoice (each, an “**Invoice Dispute**”). Notwithstanding the delivery of an Invoice Dispute, UCESC shall pay to the Company that portion of the Invoice as to which UCESC does not disagree. The parties shall seek to resolve all such disputes expeditiously and in good faith in accordance with the dispute resolution provisions set forth in **Section 8(k)**.

4. Termination.

(a) Either party may terminate this Agreement by providing at least ninety (90) days prior written notice to the other party of such party’s intention to terminate this Agreement.

(b) The Company may terminate this Agreement if UCESC fails to pay any Invoice when due under this Agreement and the failure continues for ten (10) business days after the UCESC’s receipt of notice of nonpayment.

(c) Upon termination of this Agreement, the parties hereto agree as follows:

(i) Each party shall deliver to the other party all Confidential Information of the other party and shall permanently erase all Confidential Information of the other party from computer systems, unless retention is otherwise required by law.

(ii) The Company shall immediately provide any Invoices for Services rendered which were not previously submitted and UCESC shall, within five (5) days of receipt

of such Invoices, promptly pay to the Company any outstanding Fees due and payable to the Company.

(d) Sections 6, 7 and 8 shall survive the termination of this Agreement.

5. Representations and Warranties. Each party hereby represents and warrants to the other party that (a) it has the full right, power and authority to enter into this Agreement; and (b) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action.

6. Covenants.

(a) Confidentiality. From time to time during the Term of this Agreement, either party (as the “**Disclosing Party**”) may disclose or make available to the other party (as the “**Receiving Party**”) information about its business affairs, confidential intellectual property, third-party confidential information and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” (collectively, “**Confidential Information**”). Confidential Information shall not include information that, at the time of disclosure and as established by documentary evidence: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 6(a) by the Receiving Party or any of its representatives; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of the Receiving Party or its representatives before being disclosed by or on behalf of the Disclosing Party; (iv) was or is independently developed by the Receiving Party without reference to or use, in whole or in part, of any of the Disclosing Party’s Confidential Information; or (v) is required to be disclosed under applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction. The Receiving Party shall: (A) protect and safeguard the confidentiality of the Disclosing Party’s Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (B) not use the Disclosing Party’s Confidential Information, or permit it to be accessed or used for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (C) not disclose any such Confidential Information to any person or entity, except to the Receiving Party’s representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under the Agreement. The Receiving Party shall be responsible for any breach of this Section 6(a) caused by any of its representatives.

(b) Nonsolicitation of Therapists. UCESC acknowledges and agrees that the Company has expended and continues to expend significant time and expense in recruiting and training its employees and that the loss of employees would cause significant and irreparable harm to the Company. UCESC agrees and covenants not to directly or indirectly solicit, hire, recruit, or attempt to solicit, hire, or recruit, any employee of the Company or any employee who has been employed by the Company in the twelve (12) month period immediately preceding the

date of termination of this Agreement (collectively, "**Covered Employee**"), or induce the termination of employment of any Covered Employee during the Term and for a period of twenty-four (24) months commencing on the date of termination of this Agreement. This non-solicitation provision explicitly covers all forms of oral, written, or electronic communication. In the event UCESC breaches the terms of this **Section 6(b)**, in addition to all other remedies available to the Company hereunder, UCESC shall pay to the Company an amount equal to fifty percent (50%) of the highest base salary(ies) of the Covered Employee(s) whom UCESC solicited in violation of this **Section 6(b)**.

(c) **Assurance Statement**. Each of the UCESC and the Company covenant that at all times during the Term it shall be in compliance with the terms contained in the Assurance Statements provided by the New Jersey Office of Special Education Policy and Procedure, as may be amended, supplemented or otherwise modified from time to time.

(d) **Compliance with Laws**. The parties are, and at all times shall be, in compliance with all laws, including, without limitation, (i) all applicable requirements of the Health Insurance Portability Act of 1996 and its related regulations (HIPPA), including any and all requirements regarding privacy and security of health information; and (ii) New Jersey Administrative Code (N.J.A.C.) 6A:14 (Special Education); Individuals with Disabilities Education Improvement Act 2004 (IDEA); N.J.A.C. 6A:32-7.3 et seq. (Student Records); Section 504 of the Rehabilitation Act of 1973; New Jersey Statutes Annotated (N.J.S.A.) 18A:46A-1 et seq. (Chapter 192, Laws of 1977); N.J.S.A. 18A:46-19.1 et seq. (Chapter 193, Laws of 1977); N.J.A.C. 6A:9 (Professional Licensure and Standards); and N.J. Department of Law and Public Safety statutes and regulations governing licensed occupations. Without limiting the generality of the foregoing, each party shall at all times, at its own expense, obtain and maintain all certifications, credentials, authorizations, licenses, and permits necessary to carry out the terms of this Agreement.

(e) **Therapist Information**. Prior to any Therapist commencing Services hereunder, the Company shall provide UCESC with a copy of such Therapist's license or government issued identification card, school certification(s) and fingerprint documentation.

(f) **Access to Books and Records**. To the extent applicable under Section 1861 of the Social Security Act, as amended, the Company and UCESC agree that, upon request made in accordance with applicable law and regulations, the Comptroller General of the United States, the United States Department of Health and Human Services, and the duly authorized representatives of the foregoing, shall be given access to this Agreement and all books, documents and records of the Company and UCESC that are necessary to verify the nature and extent of the costs to UCESC of Services rendered by the Company hereunder. Such access shall be given from the Effective Date until the date that is four (4) years after the termination of this Agreement. In the event any request for a party's books, documents and records is made pursuant to this section, such party shall notify the other party, shall promptly provide a copy of such request and shall promptly provide a copy of each book, document and record to the other party and shall grant the other party access thereto for review and reproduction.

(g) Further Assurances. Following the Effective Date, each party shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

7. Indemnification; Limitation of Liability.

(a) Indemnification. UCESC shall defend, indemnify and hold harmless the Company, its affiliates and their respective members, stockholders, partners, directors, managers, officers, employees, consultants and other agents (each, a “**Company Indemnitee**” and collectively, the “**Company Indemnitees**”) from and against all judgments, damages, liabilities, settlements, assessments, losses, deficiencies, obligations, actions, awards, costs and expenses, whether or not arising out of third-party claims (including, without limitation, interest, penalties, reasonable attorneys’ fees and expenses, and all reasonable amounts paid in investigation, defense, or settlement of any of the foregoing) (collectively, “**Damages**”), asserted or assessed against, incurred or sustained by or imposed upon the Company Indemnitees arising from, based upon or relating to (i) the performance or nonperformance of Services under this Agreement, unless such Damages are caused by the gross negligence or willful misconduct of a Company Indemnitee in the performance or nonperformance of the Services, or (ii) UCESC’s breach of its representations and warranties.

(b) Limitation of Liability. EXCEPT FOR OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, LIABILITY FOR INDEMNIFICATION, OR LIABILITY FOR BREACH OF SECTION 6(a), IN NO EVENT SHALL EITHER PARTY OR ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF: (A) WHETHER THE DAMAGES WERE FORESEEABLE; (B) WHETHER OR NOT THE BREACHING PARTY WAS ADVISED OF THE POSSIBILITY OF THE DAMAGES; AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) ON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. THE PARTIES ACKNOWLEDGE AND AGREE THAT IN NO EVENT SHALL EITHER PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE AMOUNT OF FEES PAID TO THE COMPANY DURING THE IMMEDIATELY PRECEDING YEAR.

8. Miscellaneous.

(a) Independent Contractor Relationship. The Company shall perform the Services as an independent contractor, and this Agreement shall not be construed to create between the parties the relationship of principal and agent, joint-venturers, co-partners, employer and employee, or any other similar relationship, the existence of which is expressly denied by each party. It is agreed that any person employed by the Company to perform the Services hereunder shall not be deemed to be an employee of the UCESC, and the Company and the Company’s subcontractors, agents or representatives shall not be, or represent themselves to be,

officers, employees, agents or representatives of the UCESC and shall not bind, or attempt to bind, UCESC to any agreement, liability or obligation of any nature. Anything herein to the contrary notwithstanding, the parties hereby acknowledge and agree that UCESC shall have no right to control the manner, means, or method by which the Company performs the Services. Rather, UCESC shall be entitled only to direct the Company with respect to the elements of Services to be performed by the Company, to inform the Company as to where and when such Services shall be performed, and to review and assess the performance of such Services by the Company for the limited purposes of assuring that such Services have been performed.

(b) Entire Agreement and Headings. This Agreement, including all schedules and Exhibits attached hereto, shall constitute the entire agreement between the parties as it relates to the subject matter contained herein and supersedes any prior agreement or understanding between the parties relating hereto. This Agreement shall only be modified by written document signed by both parties. The headings used in this Agreement are for convenience of reference only and do not form a part hereof and shall not in any way modify, interpret or construe the intent of the parties.

(c) Amendment. No provision of this Agreement may be amended, modified or waived unless such amendment or modification is agreed to in writing signed by the parties.

(d) No Waiver; Remedies Cumulative. No delay or omission by either party hereto in exercising any right or power hereunder will impair such right or power or be construed to be a waiver thereof. A waiver by either party of any provisions hereof or of any breach hereunder must be in writing signed by the waiving party and will not be construed to be a waiver of any prior or subsequent breach of such provision or of any other provisions herein contained. Except as otherwise provided in this Agreement, all remedies provided for in this Agreement will be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.

(e) Definitions. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in Exhibit B attached hereto and made a part hereof.

(f) Assignment. Neither party shall have the right to assign or otherwise transfer, delegate or subcontract its rights or obligations under this Agreement except with the prior written consent of the other party and any prohibited assignment shall be null and void.

(g) Severability. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision or provisions of this Agreement, which shall remain in full force and effect.

(h) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and each of their respective successors and permitted assigns.

(i) No Third Party Beneficiary Rights. Nothing express or implied in this Agreement is intended or shall be interpreted to create or confer any rights, remedies, obligations or liabilities whatsoever in any third party.

(j) Notices. All notices and other communications hereunder shall be validly given or made if in writing and shall be deemed to have been duly given (a) upon receipt if delivered by hand or (b) on the business day after being delivered postage-prepaid to a nationally recognized overnight delivery service, addressed to the Company or UCESC at such address indicated above, or to such other address or addresses as a party hereto may from time to time designate to the other in writing.

(k) Dispute Resolution. Any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity hereof (each, a “**Dispute**”), shall be submitted for negotiation and resolution to the President of the Company (or to such other person of equivalent or superior position designated by the Company in a written notice to UCESC) and the UCESC (or to such other person of equivalent or superior position designated by UCESC in a written notice to the Company), by delivery of written notice (each, a “**Dispute Notice**”) from either of the parties to the other party. Such persons shall negotiate in good faith to resolve the Dispute. If the Parties cannot resolve any Dispute within thirty (30) days after delivery of the applicable Dispute Notice, either party may file suit in a court of competent jurisdiction in accordance with the provisions of Section 8(k).

(l) Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with applicable provisions of New Jersey law without regard to its conflict of law principles, and each party hereby consents to the exclusive jurisdiction of the state and federal courts located in New Jersey for purposes of all actions commenced to construe or enforce this Agreement. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts located in the State of New Jersey, or, if such courts do not have subject matter jurisdiction, the state courts of the State of New Jersey located in the County of Union, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. The parties irrevocably and unconditionally waive any objection to venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

(m) Mutual Waiver of Jury Trial. THE COMPANY AND UCESC EACH WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY AFFILIATE OF ANY OTHER SUCH PARTY, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS OR OTHERWISE. THE COMPANY AND UCESC EACH AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION WILL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING

WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR ANY PROVISION HEREOF. THIS WAIVER WILL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.

(n) Counterparts. The parties may execute this Agreement in multiple counterparts, each of which will be deemed an original and all of which, when taken together, will constitute one and the same instrument. The parties may deliver executed signature pages to this Agreement by facsimile or email transmission.

(Signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date above written.

COMPANY:

UNITED THERAPY SOLUTIONS, INC.

By:


Name: Marie Fein

Title: President/Interim CEO

SCHOOL:

UCESC

By:



Name: Michael Kowalski

Title: Acting Superintendent

11/20/20

Schedule A

Services

- The Company agrees to make available SLSs to UCESC as reasonably necessary to perform the Services during the Term in accordance with the mutually agreed upon schedule for each School set forth in writing by the Company and UCESC.
- UCESC shall provide to the Company a list of students along with their individualized education program (“**IEP**”) prior to the school year and as may be updated during the school year.
- Each Therapist shall establish annual goals and objectives for each student, as outlined in such student’s IEP.
- Therapists shall provide occupational/physical/speech therapy screenings and evaluations as approved by the child study team supervisor. All evaluations shall include written reports summarizing the evaluation and consultations with teachers, case workers, and family members.
- Therapists shall prepare progress summaries for each student on a monthly basis.
- Therapists shall maintain a student attendance log and Daily Documentation.
- UCESC and the Company acknowledge and agree that therapists may provide Non IEP Mandated Services and may have Open Slots from time to time, which, for the avoidance of doubt, shall be paid in accordance with the Fees.
- Therapist shall use commercially reasonable efforts to reschedule any cancelled therapy session prior to the end of the respective school year, or, if necessary, during an extended school year.
- Therapists may provide consultation services, which may include meeting with teachers, special teachers, teaching assistants, a student’s aide or parents, in order to implement services to meet the goals and objectives for any student. Each consultation shall last for 30 minutes, and may include a Therapist’s participation in interdisciplinary meetings.

Schedule B

Schools and locations

Assignments to In/Out of district placements as determined by school personnel and assigned caseload.

Schedule C

Fees

The parties agree that the following amounts shall be paid for the respective services provided:

Speech Therapy Services- \$90.00 (Ninety dollars) per hour 5 days per week from 8:20-2:40.
Terms can be modified upon mutual agreement of both parties.

Evaluations are billable when not included in providers day rates as approved by the UCESC.

For the avoidance of doubt, in the event a Therapist is scheduled to provide Services but is unable to due to a failure of a student to attend a session for any reason school will be billed in accordance with the above fees.

Exhibit A

Form Billing Log

Exhibit B

Defined Terms

As used in this Agreement, the following terms shall have the following meanings:

- **Consultations**- IEP and non-IEP mandated indirect services rendered by a Therapist.
- **Daily Documentation**- documentation that is part of the delivery and billing of Services (including, but not limited to, daily notes as required by state licensing boards, attendance/tracking logs, SEMI documentation, related service logs (district specific) and daily time sheets).
- **Hourly Services**- service time rendered by a Therapist, in 60 minute intervals.
- **Non IEP Mandated Services** - discipline specific professional services that are not specifically mandated in a student's IEP or 504 Plan and which may include but are not limited to: screenings, informal consultations, RTI intervention, meeting attendance that have not been defined in the IEP as a part of a student's service record but are necessary in the ongoing care and service of a student, classroom groups and assistance, lunch group or duty coverage.
- **Open Slots**- Openings in a Therapist's schedule which are unassigned to an IEP mandated activity and are typically reserved for caseload growth over the course of a school year. These openings may also be due to scheduling constraints caused by district scheduling restrictions (i.e., lunch, student schedules/activities). Therapist can also use this time onsite to accomplish paperwork and provide non-IEP mandated services, as requested and appropriate. Paperwork includes but is not limited to drafting reports, progress reports, emails or other written correspondence with teachers, case managers and/or parents that may be associated with consultations or treatment plans. Openings in the schedule can also be used to account for other billable items or district directed activities.
- **SLP Services**- direct or indirect, IEP or non-IEP mandated services rendered by an SLP.