

ENGLISH AS A SECOND LANGUAGE PROGRAM 2016-17 SERVICE AGREEMENT

This English as a Second Language Program 2016-2017 Service Agreement (the "Agreement") is made and entered into July 1, 2016 (the "Effective Date") by and between the Lincoln Intermediate Unit No. 12, with its primary place of business located at 65 Billerbeck Street, New Oxford, Pennsylvania 17350 (the "LIU"), and the Northern York County School District, Northern York County School District, Dillsburg, PA (the "Client"). LIU and Client sometimes are individually referred to herein as "Party" and jointly referred to as the "Parties".

WHEREAS, LIU provides English as a Second Language ("ESL") instructional, assessment, consulting, advising, supervisory and support services to public school entities on a fee-for-service basis; and

WHEREAS, Client is a public school entity who desires to contract with the LIU to receive such ESL services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, as well as for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by the Parties, and intending to be legally bound, the Parties hereby agree as follows:

1. **Background.** The primary purpose of this agreement is for the LIU ESL Program to provide individual or small group direct ESL Instruction based upon the Client's ESL Program model and to provide required state assessment administration by qualified, certified staffing to the agreed upon English Language Learners (ELLs) within the Client or ELLs located within instructional sites beyond the Client boundaries.

2. **Services.** The LIU agrees to provide the following Services to Client.

a. **ESL Instruction and Staffing Services.**

i. The LIU will provide the Services with professional employees who are authorized and screened by the LIU, including all required background, criminal history clearances and mandated reporter training, and who hold the Pennsylvania Instructional and ESL Program Specialist Certificates.

ii. The LIU will provide student instructional time that is based upon Language Proficiency Levels as defined by the State guidelines and requirements and based on the W-APT and/or ACCESS for ELLs assessment scores and with consideration of individual student needs. Per the Basic Education Circular, *Chapter 4.26 Educating Students with Limited English Proficiency and English Language Learners*, students receive the following amount of instruction:

1. Entering (level 1) / Beginning (level 2) students: 2 hours
2. Developing (level 3): 1-2 hours
3. Expanding (level 4): 1 hour
4. Bridging (level 5): up to 1 hour or support dictated by student need

iii. The LIU will monitor students who have exited the ESL program for 2 years as required by State and Federal requirements.

iv. Salary, benefits and the contractual work days of professionals providing ESL services will be provided by the LIU in accordance with the Lincoln Intermediate Unit Education Association (LIUEA) professional contract.

v. The LIU will provide staff development for individuals providing the ESL Services

hereunder, including: participation in LIU in-service days; requested Client Act 80 days that do not exceed the LIUEA annual contractual work day limit; and other approved Professional Development not to exceed the annual contractual work day limit.

vi. LIU ESL teachers will participate in parent-teacher conferences, IST, RtII, IEP or other professional duties related to students that may or may not extend beyond the regular school day as allowed by the LIUEA professional contract.

vii. Individuals providing ESL Services hereunder may voluntarily participate in additional duties or extra-curricular activities.

viii. The LIU will provide substitute teachers for all LIU ESL teachers unless special circumstances or exceptions permit no substitute (i.e. multiple location assignments), or unless otherwise directed by the Client. The LIU will provide substitute teachers in accordance with the LIUEA professional contract, which includes the following types of leave: sick; family sick; personal; bereavement; required LIU in-service days, trainings or professional development.

ix. Client agrees and understands that Itinerant LIU ESL teachers shall not be assigned playground, cafeteria, bus or other similar duties.

b. Curriculum Services.

i. The LIU will provide ESL instruction that coordinates and follows the Client's planned curriculum for English Language Arts, English and/or ESL. Instruction will be provided, as needed, for the PA Social and Cultural English Language Development Standards (ELDS) to support newly arriving non-English speaking students from other countries.

ii. The ESL instruction provided by the LIU may include the academic language support required for content areas; however, the ESL teacher may not replace the content-area teacher unless the ESL teacher has Highly Qualified Teacher (HQT) status and he/she replaces English or Language Arts for ELL students and provides the grade.

iii. The ESL teacher is responsible for lesson planning and alignment of lessons to the Client's curriculum and/or the classroom teacher plans for instruction in the case of Special Education classrooms. Lesson plans are developed based on the LIU ESL Program's required lesson elements for ESL instruction. Lesson plans are available upon request by the Client and may be presented by the LIU ESL teacher at any time.

iv. The ESL teacher will collaborate with the content or classroom teacher to provide suggestions for support in the classroom. However, the ESL teacher is not responsible for specific content area or classroom content, planning and/or assessment that is otherwise the responsibility of the content or classroom teacher of record.

c. Supervision and Scheduling Services.

i. Supervision, observation and evaluation of LIU ESL teachers and program staff will be provided by the LIU ESL Program Supervisor and/or Director of Migrant and ESL Programs. The LIU Teacher Effectiveness Differentiated Supervision Plan will follow the State approved teacher evaluation framework.

ii. The LIU will provide its ESL teachers and program staff guidance, support and updates on educational trends, English language proficiency standards and assessments including, but not

limited to, the WIDA-WAPT, ACCESS for ELLs and other state mandated requirements and/or assessments regarding ELLs.

iii. The LIU ESL Teacher, Program Supervisor and/or Director will collaborate with the Client to develop a regular schedule of instruction based on student needs and contracted time.

iv. Teacher/student schedules and/or adjustments to schedules will be reviewed and approved by the Client and the ESL Program Supervisor and/or Director prior to implementation.

v. Scheduling of the ESL teacher will consider the ESL teacher's preparation, planning, and collaboration time along with travel, arrival and departure time to and from the classroom, and when an assignment requires travel between or among assigned instructional sites during the regular school day.

3. Service Fee / Cost. Client agrees that the hourly rate charged by the LIU for the Services described above in Paragraph 2 shall be \$91.00/hour (ninety-one dollars per hour), inclusive of travel and mileage.

4. Additional / Optional Services. In addition to the Services set forth above in Paragraph 2, Client may request that LIU provide the following additional/optional services at the hourly rate set forth, with a minimum charge of one hour (unless otherwise stated):

Individual Student Assessment	\$100.00
Small Group Student Assessment (1-10 students)	\$200.00
Large Group Student Assessment (11+ students)	\$300.00
ESL Program Review/Consultation	\$425.00 up to 3.5 hours daily
ESL Program Review/Consultation	\$850.00 up to 7.0 hours daily
Client's ESL Teacher Evaluation	\$100.00
Phone/Research Assistance Help Line	\$25.00 - \$50.00 per call based on need
LIU ESL Teacher Beyond LIUEA Contractual Terms (i.e., summer, student record and/or assessment review/need, etc...).	\$91.00 (hourly contract rate)
Miscellaneous	Determined with Client based on need

5. Invoicing and Payment. The LIU will invoice Client for all expenses on a monthly basis, with such invoices being provided to Client between the 15th and 20th of the month following the provision of Services. Client shall pay all invoices within forty-five (45) calendar days of the date of the invoice.

6. Term. The Term of this Agreement shall begin July 1, 2016 and continue for a period of one (1) year through June 30, 2017.

7. Termination. In the event of a material breach by a Party, either Party may terminate this Agreement upon providing the other Party written notice of its intent to terminate and providing the breaching Party thirty (30) calendar days to cure the material breach. Notwithstanding the foregoing, either Party may terminate this Agreement at any time and for any reason, with or without cause, upon providing the other Party ninety (90) calendar days' written notice. Upon termination, all work shall stop and payment for all Services performed up to and through the date of termination shall become immediately due and payable by Client to the LIU.

8. Confidentiality. Under this Agreement, the Parties may have access to information that is confidential in nature. Such information includes, but is not limited to work product, facts or statistics, ideas, materials, business plans, technical information, methodologies, student records or any other shared data. LIU and Client agree not to use or disclose such confidential information for any purpose whatsoever, unless such use or disclosure is contemplated by this Agreement or required by law. This paragraph shall not apply with respect to any information that enters the public domain through no fault of the receiving Party.

9. Mutual Indemnification. Each Party agrees to indemnify, defend and hold harmless the other Party (and the other Party's Board of Directors, Officers, employees, agents and/or contractors) from and against any and all claims, damages, injuries (including bodily injury, dismemberment, and/or death), liabilities, and costs (including reasonable attorneys' fees), which arise out of or may be suffered or incurred, in whole or in part, as a result of the acts or omissions of the indemnifying Party (or the indemnifying Party's Board of Directors, Officers, employees, agents and/or contractors), and whether arising under this Agreement. Any indemnification under this paragraph shall be in addition to any other rights that the indemnified Party may have against the indemnifying Party, and will survive the termination or expiration of this Agreement.

10. Limitation of Damages / Release / Immunity. Neither Party will be liable to the other Party for special, indirect, consequential or punitive damages arising out of this Agreement, regardless of the basis of the claim, except to the extent of indemnification for third-party claims (as set forth above). Further, each Party, on behalf of itself, its Board of Directors, Officers, employees, agents and contractors, agrees to release the other Party and that Party's Board of Directors, Officers, employees, agents and contractors, from all liabilities and claims for damages of any kind whatsoever (including negligence and willful misconduct), whether known or unknown, arising out of or related to this Agreement. Notwithstanding the foregoing or any other provision of this Agreement, nothing in this Agreement shall be deemed a direct or indirect waiver of or limitation to any sovereign or governmental immunity, in any respect, applicable to either Party (including, without limitation, under the Pennsylvania Political Subdivision Tort Claims Act) or impose liability, directly or indirectly, on either Party from which it would otherwise be immune under applicable law.

11. Nature of Relationship. LIU and Client shall be considered "independent entities" with respect to each other. None of the provisions of this Agreement are intended to create nor shall be deemed or construed to create any relationship between LIU and Client, other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. LIU and Client and any of their respective agents or employees shall not be construed to be the agent, employee, joint employer, or representative of the other. Neither LIU nor Client shall have any express or implied rights or authority to assume or create any obligation or responsibility on behalf of or in the name of the other.

12. Notice. All notice to, contact with, or any provision of information relevant or pertaining to this Agreement shall be directed to the Parties as follows:

a. To the LIU:

Contact Name: Barbara Clemmer, ESL Supervisor & David Kopp, Assistant
Address: Lincoln Intermediate Unit
ESL/Migrant Education Programs
P.O. Box 70
New Oxford, PA 17350
Email: baclemmer@iu12.org
Phone: 717-624-4616 Extension 3206 or Extension 6455
Fax: 717-624-8500

b. To the Client:

Client Contact/Title: _____

Address: _____

Email: _____
Phone: _____
Fax: _____

13. Good Faith. Each Party agrees to act in good faith in the fulfillment of this Agreement. Neither Party shall attempt to hinder or otherwise prevent the other Party from fulfilling their duties as outlined herein.

14. Insurance. The LIU shall maintain, in effect at all times during the term of this Agreement, General Liability insurance and Workers' Compensation insurance, including Employers Liability coverage, as required by law. Client shall, at its own cost and expense, maintain insurance coverage reasonably appropriate for the activities it conducts and the risks it assumes under this Agreement.

15. Force Majeure. Neither Party shall be responsible for delays or failures in performance resulting from matters beyond their reasonable control, including, without limitation, acts of God, labor disruptions, utility or supply interruptions, fire, flood or other casualty, communication line failures, power failures or surges, earthquakes, etc. In the event that either Party's business or operations are substantially interrupted by a force majeure event as herein described, then that Party shall be relieved of its obligations only as to those affected operations and only as to those affected portions of this Agreement for the duration of such interruption.

16. Nondiscrimination. Neither Party shall discriminate on the basis of race, religion, sex, national origin, age, handicap, or sexual orientation in the performance of its obligations under this Agreement. Each Party shall comply with all nondiscrimination policies required by any federal, state or local governmental agency that is the source of funds for this Agreement.

17. Assignment. This Agreement is not assignable, in whole or in part, by either Party without the other Party's prior written consent.

18. Waiver. The waiver or failure by either Party to exercise any right in any respect provided for herein shall not be deemed a waiver of any further right hereunder.

19. Severability. If any part of this Agreement is found to be invalid or unenforceable, then that part of the Agreement shall not affect the validity or enforceability of the remainder of this Agreement.

20. Survival. All provisions of this Agreement relating to confidentiality, limitation of liability and indemnity shall survive its termination.

21. Entirety Clause. This document including any referenced attachments represents the complete agreement between LIU and Client. Any changes in this Agreement must be approved by both Parties in writing.

22. Amendments; Interpretation. No provisions of this Agreement may be changed or modified except by a written instrument signed by both LIU and Client. Headings contained in this Agreement are for convenience only and are not to be considered in construing the respective language of the Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context indicates is appropriate. The word "including" when used herein is intended to be exemplary and inclusive of the word or phrase it modifies, and is not intended to be exclusive or limiting.

23. Counterparts. This Agreement may be executed in several counterparts, each of which shall be

deemed an original part which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date and the persons signing covenant and warrant that they are duly authorized to sign for and on behalf of the respective Parties.

Client

Lincoln Intermediate Unit 12

BY: _____
(authorized signature)

BY: _____
(authorized signature)

Name: _____

Name: LeeAnn Zeroth, Ed.D

Title: _____

Title: Executive Director