

**Developmental Cognitive Delay Specialist PROFESSIONAL SERVICES AGREEMENT
BETWEEN INDIGO EDUCATION AND NOVA CLASSICAL ACADEMY**

This Professional Services Agreement (the "Agreement") is made on May 10, 2022, by and between Innovative Special Education Services, d/b/a INDIGO Education, a Minnesota nonprofit corporation, located at 451 Lexington Parkway North, Suite 1700, St. Paul, MN 55104 ("INDIGO Education"), and Nova Classical Academy (the "School") located at 1455 Victoria Way W., St. Paul, MN 55102 (the "School"). INDIGO Education and the School shall be referred to collectively herein as the "Parties."

In consideration of the promises and the mutual obligations of the Parties hereto, each of them does hereby covenant and agree with the other as follows:

1. GENERAL AGREEMENT AND TERM

INDIGO Education agrees to furnish Developmental Cognitive Delay Specialist professional services to the School for direct and/or indirect time, commencing on August 1, 2022, and expiring on June 30, 2023, (the "Agreement Term") unless terminated earlier in accordance with the provisions of this Agreement. The Parties may mutually renew the Agreement at the end of the Agreement Term but neither party shall be obligated to do so.

2. SERVICES TO BE PROVIDED

A. INDIGO Education will perform the duties and assume the role of the School's Developmental Cognitive Delay Specialist (the "Specialist") for the duration of the Agreement Term. INDIGO Education shall appoint a person to serve as the Specialist who will be responsible for the duties outlined in the position description (the "Services"), attached as Exhibit A hereto and incorporated herein. The Parties may mutually amend the scope of the Services by supplemental writings signed by both Parties.

B. INDIGO Education retains the right to solely determine the specific duties of the Specialist, so long as they are consistent with the Services outlined in Exhibit A, and the location(s) at which the Specialist's duties are to be performed. If during the Agreement Term the School's needs as related to its Specialist exceed the Services identified in Exhibit A, INDIGO Education will use its best efforts to provide for increased staffing. However, INDIGO Education is not obligated to find nor does it guarantee the availability of additional staff.

C. The School acknowledges that the Specialist has certain responsibilities pursuant to state and federal law and regulations and, in furtherance of those responsibilities, the School acknowledges that it has a duty to cooperate with the Specialist. The School further agrees to make its business or fiscal manager available to meet with the Specialist no less than semi-annually for the purpose of providing the Specialist with information regarding the financial management and operations of the School.

3. BACKGROUND INVESTIGATIONS

INDIGO Education shall conduct criminal background investigations on all of its employees that are to perform the Services who may come into contact with the School's students prior to the commencement of those person(s) performing any of the Services.

4. CONFIDENTIALITY

INDIGO Education and its employees, consultants, and contractors shall maintain all records and information arising out of the provision of the Services in accordance with applicable federal, state, and local laws, rules, regulations, ordinances, directives, guidelines, policies, and procedures relating to the confidentiality of student education data. It shall be the responsibility of the School to provide INDIGO Education with any of its own guidelines, policies, or procedures relating to confidentiality that it wishes for INDIGO Education to comply with pursuant to this paragraph.

5. PAYMENT FOR SERVICES

The School shall compensate INDIGO Education for providing the Services as outlined in the compensation schedule, attached as Exhibit B hereto and incorporated herein.

6. PROFESSIONAL CREDENTIALS AND MANDATED REPORTER

A. The Specialist will maintain a Minnesota teaching license in one or more areas of special education, including Developmental Disabilities.

B. The Parties acknowledge and agree that the Specialist is a mandated reporter pursuant to Minnesota Statutes, Section 626.556.

7. INDEPENDENT CONTRACTOR

A. INDIGO Education shall select the means, method, location, and manner of performing the Services. Nothing in this Agreement is intended or should be construed as creating or establishing the relationship of a partnership or a joint venture between the Parties or as constituting INDIGO Education as an agent, representative, or employee of the School for any purpose. INDIGO Education is and shall remain an independent contractor for all Services performed under this Agreement.

B. INDIGO Education shall secure at its own expense all personnel required to perform the Services. INDIGO Education's personnel, while engaged in the performance of any work or services required by the School pursuant to this Agreement, will have no contractual relationship with the School and shall not be considered an employee(s) of the School.

C. INDIGO Education shall not be responsible for any claims that arise out of the employment or alleged employment under the Minnesota Unemployment Insurance Law or the Workers' Compensation Act of the State of Minnesota on behalf of any school personnel, including, without limitation, claims of discrimination against the School, its officers, agents or employees. Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind from INDIGO Education including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, workers' compensation, unemployment compensation, disability, severance pay, and retirement benefits.

8. INDEMNIFICATION

A. To the fullest extent permitted by law, the School agrees to defend, indemnify, and hold harmless INDIGO Education, its officials, officers, agents, volunteers, and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from any act or omission of the School, a sub-School, anyone directly or indirectly employed by the School, or anyone for whose acts or omissions, or both, he/she may be liable in the delivery of education services, or any combination thereof, and against all loss by reason of the failure of the School or its employees to adhere to any applicable state and federal law. For clarification and not limitation, this obligation to defend, indemnify and hold harmless includes, but is not limited to, any liability, claims or actions resulting directly or indirectly from alleged infringement of any copyright or any property right of another, the employment or alleged employment of School personnel, the unlawful disclosure or use of protected data, or both, or other noncompliance with the requirements of the data privacy provisions of this Agreement. This provision shall not be deemed as a waiver of any statutory immunities or liability limits available to any party under law.

B. The School shall promptly notify INDIGO Education of any claim, action, cause of action, or litigation brought against the School, its employees, officers, agents, or sub-School, which arises out of the Services provided under this Agreement. The School shall also notify INDIGO Education whenever the School has a reasonable basis for believing that the School or its employees, officers, agents or sub-Schools, or any combination thereof, or INDIGO Education, or both, might become the subject of a claim, action, cause of action, criminal arrest, criminal charge, or litigation arising out of or related to the Services contained in this Agreement. Failure to provide notices required by this section is a material violation of the terms and conditions of this Agreement.

9. INSURANCE

A. The School will maintain insurance coverage for: Worker's Compensation (statutory limits), General Liability, Professional Liability, and Excess or Umbrella Liability in an amount of not less than \$1,000,000.00 (one million dollars and no/100) per occurrence (except with regard to Professional Liability, which will be written on a claims made basis) and will provide information as to specific limits upon the Parties' execution of this Agreement. Such certificate of liability insurance shall list INDIGO Education as an additional insured, with the exception of Worker's Compensation and Professional Liability certificates, and contain a statement that such policies of insurance shall

not be canceled or amended unless 30 days' written notice is provided to INDIGO Education, or 10 days' written notice in the case of non-payment. If the School receives notice of cancellation or termination from an insurer, the School shall provide a copy of the notice to INDIGO Education within two business days of the School's receipt of notice.

B. The above establishes minimum insurance requirements. It is the sole responsibility of the School to determine the need for and to procure additional insurance that it may need.

C. The Parties shall provide updated certificates during the term of this Agreement as insurance policies expire. If a party fails to furnish proof of insurance coverages the other party may pursue any other right or remedy allowed under the contract, law, equity, or statute, or all. Each Party does not waive any rights or assume any obligations by not strictly enforcing the requirements set forth in this section nine.

D. Each party waives all rights against the other party, including the other party's officials, officers, agents, volunteers, and employees, for recovery of damages to the extent that damages are covered by the party's own insurance coverages.

10. DATA PRACTICES

A. INDIGO Education understands that the School, its officers, agents, owners, partners, employees and volunteers must abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (MGDPA) and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality, which may include the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH) adopted as part of the American Recovery and Reinvestment Act of 2009. INDIGO Education understands that if it creates, collects, receives, stores, uses, maintains or disseminates data because it performs functions of the School pursuant to this Agreement, then INDIGO Education must comply with the requirements of the MGDPA as if it were a government entity.

B. The School agrees to promptly notify INDIGO Education if it becomes aware of any potential claims, or facts giving rise to such claims under the MGDPA. The terms of this section ten shall survive the expiration, cancellation or termination of this Agreement.

11. MERGER AND MODIFICATION

A. Entire Agreement. The entire agreement between the Parties is contained herein and supersedes all oral agreements and negotiations between the Parties relating to the subject matter. All items that are referenced or that are attached are incorporated and made a part of this Agreement. If there is any conflict between the terms of this Agreement and referenced or attached items, then the terms of this Agreement shall prevail.

B. Modification. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the Parties.

12. TERMINATION

- A. Either party may terminate this Agreement, with or without cause, with 30 days' written notice to the other party. If the Agreement is terminated and the School does not have a director of special education under contract as of the date the Agreement ends, the Parties acknowledge that INDIGO Education will be required by law to report and it will report the School's failure to provide a director of special education to the Minnesota Department of Education.
- B. The Director and DCD Specialist will provide the School with guidance that is timely, accurate and ethical. Should the School elect to not follow this guidance, the following steps will be implemented:
- a. The Director and DCD Specialist will outline the concerns in writing and request a meeting to discuss the concerns with the School's Director.
 - b. The Director, DCD Specialist, and the School Director will meet, discuss concerns and establish a plan of resolution within a mutually agreed upon timeframe.
 - c. If, after two failed attempts to schedule a meeting with the school director, the Director will request a meeting including the School's board chair and the authorizer.
 - d. After meeting with the School Director, board chair and authorizer, the concerns are not resolved, INDIGO Education will provide a notice of termination of services (as outlined in Section 12A of this agreement) to the School.

13. WAIVER

Either party's failure to insist upon strict performance of any provision or to exercise any right under this Agreement shall not be deemed a relinquishment or waiver of the same, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the Agreement.

14. SURVIVAL OF PROVISIONS

Provisions that by their nature are intended to survive the Agreement Term and/or the termination of this Agreement include the following: SERVICES TO BE PROVIDED; CONFIDENTIALITY; INDEMNIFICATION; INSURANCE; DATA PRACTICES; TERMINATION; and MINNESOTA LAW GOVERNS.

15. NOTICES

Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, return receipt requested, addressed to party at the address stated in the opening paragraph of this Agreement, or such other address as either party may provide to the other by notice given in accordance with this provision. The Parties agree that notices permitted or required by this Agreement may be made by email when also made contemporaneously by United States mail as set forth in this paragraph.

16. MINNESOTA LAWS GOVERN

The Laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the Parties and their performance.

17. ASSIGNMENT

The Parties agree that neither party may assign any interest in this Agreement without the written consent of the other party.

18. SEVERABILITY

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.

19. THIRD PARTY RIGHTS

The Parties to this Agreement do not intend to confer on any third party any rights under this Agreement.

[signature pages to follow]

IN WITNESS WHEREOF, the Parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective dates indicated below.

THE SCHOOL:

By: _____

Its: _____

Date: _____

INDIGO EDUCATION:

By: _____

Its: Executive Director

Date: _____

EXHIBIT A

DESCRIPTION OF SERVICES

POSITION TITLE: Developmental Cognitive Delay Specialist (the “Specialist”)

SUPERVISOR: Executive Director of INDIGO Education

Position Summary

INDIGO Education is a nonprofit organization that is driven by service, leadership, and integrity.

As a member of the INDIGO Education team, the Developmental Cognitive Delay Specialist will support IEP teams within client schools as they work to serve students with Developmental Cognitive Delays (PI).

Currently, the majority of INDIGO Education’s clients are charter schools. Individuals successful in this role are ethical, organized, and exhibit the ability to work independently and within a group structure. INDIGO Education seeks candidates who are highly motivated and demonstrate the initiative necessary to improve the educational programming for English Learners throughout Minnesota.

The essential functions of the Developmental Cognitive Delay Specialist shall include the following:

- Participate in Child Find / Study meetings, suggesting pre-referral interventions and observations
- Engage in the student evaluation process, including observation, assessment, and report writing
- Assist in Individual Education Program (IEP) plan development and individual progress reporting
- Contribute guidance regarding specialized instructional services (direct and indirect) for students
- Provide indirect Developmental Cognitive Delays services based on Individual Education Programs
- Train school staff about ways to support students who meet Minnesota disability criteria for Developmental Cognitive Delays

- Evaluate and suggest curriculum, assistive technology and adaptations for individuals working with students with Developmental Cognitive Delays
- Support IEP teams in the development of Behavior Intervention Plans
- Share community resources with school staff and family members
- Other duties as assigned by the INDIGO Education Executive Director

The Developmental Cognitive Delay Specialist shall be selected based on the following guidelines relating to experience, knowledge, characteristics, and abilities:

- Demonstrate the ability to prioritize and respond to needs across multiple settings
- Exhibit the ability to work both independently and within a group structure
- Resolve conflict with keen problem solving skills
- Maintain a professional demeanor in difficult and/or emotional situations
- Appreciate diversity and strive for cultural competency
- Respect school choice options
- Articulate the rationale for assessments, their intended purpose, results, and implications
- Demonstrate knowledge of Minnesota and Federal regulations guiding Special Education programming
- Demonstrate excellent written and verbal communication skills
- Current Minnesota license in the area of Developmental Cognitive Delay
- Minimum of three years working within the field
- Excellent verbal and nonverbal communication skills
- Knowledge and understanding of Minnesota K-12 Academic Standards
- Demonstrate the ability to organize and synthesize verbal and written data
- Respond quickly to a variety of stakeholder requests

- Work cooperatively and effectively in a multi-disciplinary environment with various staff and related service providers

EXHIBIT B

COMPENSATION SCHEDULE

1. In exchange for the Services provided under this Agreement, the School agrees to compensate INDIGO Education at a rate of \$115.00 per hour (the "Fee"). The Parties agree that total compensation over the duration of this contract will not exceed \$2,300.00 without the written consent of the Parties. Failure to pay the Fee within 30 days of the times agreed to herein will result in the immediate termination of this contract.

2. INDIGO Education agrees to furnish Developmental Cognitive Delay Specialist professional services to the School for up to twenty (20) hours per year for direct and/or indirect time.

3. In the event that the Agreement is terminated by INDIGO Education, INDIGO Education shall be entitled to the balance of the Fee as of the last day of the month that the Agreement terminates.

4. In the event that the Agreement is terminated by the School, INDIGO Education shall be entitled to the balance of the Fee as of the last day of the month that the Agreement terminates.

5. In the event that the School is delayed in paying for services outlined in this Agreement, the following steps will be taken:

- a. A payment plan will be established with approval by the Executive Director of INDIGO Education, its business manager, and the Director of the School.
 - i. A notice will be provided to the School if payment is 30 days late.
 - ii. The School will pay a service fee of 1.5% of the past due amount ([MN Statute 471.425](#))
- b. If payment is not received within 45 days of the due date or in accordance to the agreed-upon payment plan, notice will be provided to the School, board chair, authorizer, and the Minnesota Department of Education (MDE).
- c. If payment or payment according to the agreed-upon payment plan is not received within 60 days, INDIGO Education will issue a termination of services notice to the School.
 - i. INDIGO Education will inform the School's board, authorizer, and MDE of the termination of the partnership.