

**DIRECTOR OF SPECIAL EDUCATION PROFESSIONAL SERVICES AGREEMENT  
BETWEEN INDIGO EDUCATION AND NOVA CLASSICAL ACADEMY  
FY23**

This Professional Services Agreement (the "Agreement") is made this April 12, 2022, by and between Innovative Special Education Services, d/b/a INDIGO Education, a Minnesota nonprofit corporation, located at 451 Lexington Pkwy, Suite 1700, St. Paul, MN 55104 ("INDIGO Education"), and Nova Classical Academy (the "School") located at 1455 Victoria Way W., St. Paul, MN 55102. 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**

- A. INDIGO Education agrees to furnish the Director of Special Education professional services to the School for direct and/or indirect time, commencing on July 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.
- B. Non-discrimination. INDIGO Education is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, national origin, age, marital status, familial status, disability, public assistance status, veteran status, sexual orientation, gender identity, or any other status protected by law. INDIGO Education is committed to transacting business only with firms who follow these practices. INDIGO Education will apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. By accepting this Contract, the School certifies that it complies with all applicable federal and state laws as well as policies related to non-discrimination, equal employment opportunity, and affirmative action.

**2. SERVICES TO BE PROVIDED**

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

C. INDIGO Education retains the right to solely determine the specific duties of the Director and their supports, so long as they are consistent with the Services outlined in Exhibit A. If, during the Agreement Term the School's needs as related to its Director, and their supports 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. In this case, the Agreement and compensation schedule will be modified.

D. The School acknowledges that the Director 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 Director.

E. The School further agrees to make its business or fiscal manager available to meet with the Director no less than quarterly for the purpose of providing the Director with information regarding the financial management and operations of the School. The School agrees to provide the Director “EDIT” access, while other members of the team their at INDIGO Education have “read-only access” to data collection systems created by the Minnesota Department of Education Special Education Data Reporting Application (SEDRA) and Special Education Record View and Submission (SERVS).

### **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 Director and all associated service providers will maintain appropriate Minnesota licensure according to their role.

B. The Parties acknowledge and agree that the Director and all associated service providers are mandated reporters 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 expense. This includes reasonable attorney's fees, resulting directly or indirectly from any act or omission of the School, anyone directly or indirectly employed by the School, or anyone for whose acts or omissions, or both, 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 the 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, 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 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 Workers 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 the notice.

B. INDIGO Education maintains insurance coverage with minimum limits as follows:

- Commercial/General Liability
  - Combined Single Limit \$1,000,000.00
  - Personal Injury Limit \$1,000,000.00
  - Products Completed Operations \$2,000,000.00
  - General Aggregate \$2,000,000.00
  - Professional Liability Insurance with limits of \$2,000,000.00 each occurrence, \$2,000,000.00 aggregate

C. 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.

D. 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 coverage 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 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 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 School's administrator and the Director of Special Education are required by the Minnesota Department of Education to sign the Statement of Assurances annually. These Assurances require the school to follow all State and Federal laws regarding special education due process and fiscal compliance under the direction of a licensed Director.
- C. The Director 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 will outline the concerns in writing and request a meeting to discuss the concerns with the School's Director.
  - b. The Director of Special Education 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 of Special Education 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 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**

- A. 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.
- B. Force Majeure. Neither party shall be held responsible for any delay or failure in performance of any part of this agreement to the extent such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, an

act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party. The affected party will notify the other party in writing within ten (10) days after the beginning of any such cause that would affect its performance. Notwithstanding, if a party's performance is delayed for a period exceeding thirty (30) days from the date the other party receives notice under this paragraph, the non-affected party will have the right without any liability to the other party, to terminate this agreement.

**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 the 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:** Director of Special Education (the “Director”)

**SUPERVISOR:** Executive Director of INDIGO Education

#### **Position Summary**

As a member of the INDIGO Education team, the Director will provide programmatic and financial oversight of the School's special education programs.

#### **The essential functions of the Director shall include the following:**

- Diligently execute the Statement of Assurances and uphold the Code of Ethics for School Administrators (MN Rule 3512.5200)
- Assist contracted schools in complying with federal and state rules/regulations pertaining to students with disabilities
- Collaborate with school staff members to monitor programs regarding compliance with all laws, policies, regulations, and guidelines pertaining to special education as mandated by the state of Minnesota and the federal government
- Provide training and mentoring to teachers, administrators, and paraprofessionals regarding broad and specific concepts in the field of special education
- Maintain knowledge of legal and ethical requirements related to the special education programs
- Ensure that an adequate educational structure is in place to meet the emotional, physical, and cognitive needs of learners with Individualized Education Programs (IEPs)
- Oversee special education expenditures and revenue and third party reimbursement
- Review data entry within the following systems SEDRA / SERVS / UFARS / STAR / MARSS
- Provide guidance to school staff regarding the Tuition Acknowledgement process

- Provide training to client schools as they develop Procurement Procedures related to special education finance, thus meeting fiscal compliance standards as stated in UGG:
  - Personnel (time and effort reporting)
  - Equipment tracking
  - Third-Party Billing
  - Procurement Policies (Conflict of Interest, Record Retention, Nepotism, Nondiscrimination)
  - Special Transportation
- Participate in local, state, and regional special education meetings as necessary
- Interpret and complete, in a timely manner, special education applications and other essential forms as -required by the state and federal government
- Facilitate meetings pertaining to student-specific and district-level meetings
- Other job-related duties as assigned by INDIGO Education's Executive Director

**The Director shall be selected based on the following guidelines relating to experience, knowledge, characteristics, and abilities:**

- Current Minnesota license as a Director of Special Education
- Minimum of five years working within the field of special education as a special education teacher
- Minimum of one year working in a school leadership position
- Excellent verbal and nonverbal communication skills
- Knowledge and understanding of Minnesota K-12 Academic Standards, learning theory, and practice, curriculum, interventions, and programming
- 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

- Intersect the mission and vision of a school with the non-negotiable rules and regulations that drive special education
- 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
- Analyze financial reports created by the Minnesota Department of Education
- Report errors and provide solutions within financial systems to the Director of Special Education and appropriate school staff
- Provide guidance regarding the implementation and maintenance of Third Party Billing programming
- Review special education documentation in accordance with State/Federal guidelines

## **EXHIBIT B**

### **COMPENSATION SCHEDULE**

1. In exchange for the Services provided under this Agreement, the School agrees to compensate INDIGO Education \$26,250.00 (the "Fee") for Services provided over 47 weeks between July 1, 2022, and June 30, 2023. The school will receive 4 hours (direct and/or indirect) of service from the INDIGO Education team per week. The hourly rate for Services is \$139.63.

2. The general hourly rate for director's services is \$150.00. This rate will be applied and invoiced to the School in the instance that the Services exceed the agreed-upon hours per week. The Fee will not exceed the aforementioned amount unless agreed upon by the Executive Director of INDIGO Education and the School's Director (via a modified Agreement).

3. The hourly rate will be applied and invoiced to the School in the instance that the Services exceed the agreed-upon hours per week. The Fee will not exceed the aforementioned amount unless agreed upon by the Executive Director of INDIGO Education and the School's Director (via a modified Agreement).

4. Within 10 days of execution of the Agreement by both Parties, the School shall provide an initial, non-refundable payment of \$5,000.00 to INDIGO Education. This initial payment shall apply toward the Fee.

5. The remainder of the Fee will be paid in quarterly increments, per the schedule detailed below. However, in no event shall any amount of the Fee be paid after July 1, 2023.

- a. Payment One - by September 1, 2022
- b. Payment Two - by December 1, 2022
- c. Payment Three - by March 1, 2023
- d. Payment Four - by May 1, 2023

6. INDIGO Education agrees to furnish the Director of Special Education professional services to the School for 6 hours per week for direct and/or indirect time.

7. In the event that the Agreement is terminated by INDIGO Education, INDIGO Education shall be entitled to the prorated balance of the Fee (minus the non-refundable deposit of \$5,000.00) as of the last day of the month that the Agreement terminates.

8. In the event that the Agreement is terminated by the School on or before December 31, 2022, INDIGO Education shall be entitled to the prorated balance of the Fee (minus the non-refundable deposit of \$5,000.00) as of the last day of the month that the Agreement terminates. In the event the Agreement is terminated by the School after December 31, 2022, INDIGO Education shall be entitled to the entire Fee.

9. 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 the 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 with 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.