

## AGREEMENT FOR STAFFING SERVICES

AGREEMENT made this 26<sup>th</sup> day of January 2023 and between Aspire Educational Services, Inc ("Aspire") and Reach Cyber Charter School ("Client") with an address of 750 East Park Drive, Harrisburg, PA 17111 and WITNESSETH:

WHEREAS, Aspire is engaged in the business of supplying highly skilled Independent Contractors to Clients in need of such Independent Contractor services on a limited basis; and

WHEREAS, Client desires to engage Aspire to assist Client with its staffing needs for one or multiple locations as required to satisfy overall staffing needs;

NOW, THEREFORE, in consideration of the promises set forth above, and the mutual covenants and undertakings herein contained, and intending to be legally bound hereby, IT IS AGREED:

### TERMS

1. Engagement. Client engages Aspire to provide contracted staffing services to Client on an "as needed" basis throughout the duration of this Agreement as required by Client. Unless otherwise specified and agreed to, Aspire will not require Client to provide a guaranteed number of fixed hours for Independent Contractor services.

2. Duration. The respective duties and obligations of the parties shall be effective beginning on the date in which this Agreement was executed by the Client. Either party may terminate this Agreement by giving sixty (60) days written notice to the other party prior thereto. In the absence of such notice, this agreement shall continue from year to year upon the same terms and conditions.

3. Qualifications/Hiring/Supervision. Aspire will only refer to Client qualified Independent Contractors who possess the requisite skills within the guidelines of their respective governing body and who fulfill professional standards necessary for Client to meet the standards of the Department of Education and any other applicable accrediting agency. It shall be the responsibility of Aspire to initially screen all Independent Contractors to ensure that any referral meets the foregoing requirements. It is the decision of Client, not Aspire, whether to hire the Independent Contractor. Aspire shall not be responsible for, control, or supervise the rendition of services by Independent Contractor to Client.

4. Client Policies and Procedures. Client will provide to Independent Contractor all pertinent information concerning Client's policies and procedures, including but not limited to, Client's policies in the Independent Contractor's specified department and other clinical areas, general information necessary for Independent Contractor to render services to Client, and all emergency procedures.

5. Proof of Qualifications. Aspire shall require Independent Contractor to produce a proof of license or license eligibility, CPR certification (when required), child abuse clearance, FBI and state background checks, Act 24, Act 168 and any other certification required by the

state accreditation body. Aspire agrees to provide said information to Client within 24 hours from the time of request. If an Independent Contractor subcontracts all or part of the services provided to Client, the Independent Contractor will require all subcontractors to provide the information under paragraph 5 to Aspire.

6. Compensation. Client shall receive invoices from Aspire on a weekly basis, and Client agrees to pay such invoices within fifteen (15) days of receipt of invoice. Nonpayment or delinquent payment could result in an interest charge of 1.5% monthly to Client and or the right of Aspire to discontinue providing referrals under the Agreement until payment is received. The rates to be charged Client for referrals are set forth in Exhibit A and Aspire agrees to maintain these rates for the duration of the Term of service, after which they may be modified at Aspire' discretion upon thirty (30) days' notice. Said rates include the compensation to be paid Independent Contractor for their provision of services to Client. In the event that Aspire uses legal counsel to collect any amount owed under the terms of this Agreement, Client agrees to pay all of Aspire' costs and expenses in connection therewith, including attorneys' fees and costs.

7. Independent Contractor Relationship.

A) Aspire and Client hereby agree that the relationship of Aspire to Client is at all times that of an independent contractor and not that of an employee, partner, agent or joint-venturer of or with Client. Aspire and Client further acknowledge and agree that the relationship between any Independent Contractor and Aspire and any Independent Contractor engaged by Client is at all times that of an independent contractor and not that of an employee, partner, agent or joint-venturer of or with either Aspire or Client.

B) At no time shall any Independent Contractor possess the authority to charge items or incur debts or other financial obligations on behalf of Aspire or bind Aspire to any contracts, agreements, covenants or obligations of any kind whatsoever.

C) Each Independent Contractor referred by Aspire shall perform the duties required by Client consistent with their professional obligations. To the extent that any direction or supervision is required, such direction or supervision shall be provided by Client and not Aspire.

D) In recognition of each Independent Contractor's independent contractor status, Client acknowledges that each Independent Contractor is not prohibited from providing his or her services to others or from engaging in other business(es) during the term of this Agreement, so long as such other activities do not unreasonably interfere with the Independent Contractor's obligations to Client.

E) Neither Aspire nor Client assume any liability or responsibility for any liability incurred by or judgments entered against Independent Contractor for their provision of professional services on behalf of Client. Aspire and Client agree to hold each other harmless for any personal injury or property damage directly or indirectly arising out of or relating to the professional services rendered by Independent Contractor to Client.

8. Aspire Insurance. Aspire agrees that during the term of this Agreement, it shall maintain, at its sole cost and expense, liability insurance with minimum limits of \$1 million/\$3 million. The Certificate of Insurance is available for inspection upon request.

9. Impossibility of Performance. This Agreement is subject to force majeure, and is contingent upon strikes, accidents, acts of God, weather conditions, regulations or restrictions

imposed by any government or governmental agency, or other impediments beyond the control of the parties. If performance hereunder is prevented by any cause of force majeure, then performance of this Agreement shall be excused without penalty to either party for the performance not rendered.

10. No Conflicting Agreements. Client warrants and represents that the execution and performance of this Agreement does not and will not violate or conflict with any contracts, agreements or restrictions to which Client may be a party, or by which Client may be bound and that Client will indemnify, save, defend and hold Aspire harmless for any liability related to a breach of this warranty.

11. Notice. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given to a party hereto if hand-delivered, or if mailed, postage pre-paid, by certified mail, return receipt requested, to such party, or to such other address as such party shall designate by notice provided herein:

If to Aspire:  
Aspire Educational Services Inc  
1800 Byberry Road, Suite 1404  
Huntingdon Valley, Pa 19006  
Attn: Corporate Counsel

If to Client:  
Reach Cyber Charter School  
750 E Park Ave  
Harrisburg, PA 17111

12. Governing Law. This Agreement shall be governed in all respects, including without limitation, validity, interpretation, effect, performance and enforcement, by the laws of the Commonwealth of Pennsylvania (without application of any principles of conflicts or choice of law that may otherwise be applicable).

13. Non-solicitation/non-circumvention. Client recognizes that Aspire has devoted considerable time, effort and great expense in establishing independent contract relationships with the Referred Professionals it refers to Client and that Aspire can recoup that effort and expense only through making repeated referrals of such Referred Professionals to Client and/or other clients of Aspire. In the event that Client, directly or indirectly does anything to cause a Referred Professional of Aspire to cease or reduce accepting assignments from Aspire to Client or to other clients of Aspire, Client shall pay to Aspire an “interference fee” of one hundred percent (100%) of the Referred Professional’s annual employment compensation including, without limitation, annual base compensation any bonus, and benefits equal to thirty percent (30%) of base compensation. Such fee shall be due and paid within thirty (30) days after Aspire notifies Client that an independent contractor has modified or ceased its relationship with Aspire, which notice shall state the basis for asserting that an act of Client was the cause of such cessation or modification.

14. Confidentiality. Client shall take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, but in no event less than reasonable care, to keep confidential the confidential information of Aspire. Client may disclose Confidential Information or Materials, as defined below, only to its employees on a need-to-know-basis. For purposes of this Agreement, "Confidential Information or Materials" means information designated as confidential or which ought to be considered as confidential from its nature or from the circumstances surrounding its disclosure. Confidential Information or Materials includes, without limiting the generality of the foregoing, information: (1) relating to Aspire' methodologies, techniques, tools, or know how; (2) relating to Aspire' business, marketing, and sales and corporate policies, strategies, operations, finances, plans, or opportunities including the identity of, or particulars about, Aspire' clients or suppliers; and (3) marked or otherwise identified as confidential, restricted, secret, or proprietary including, without limiting the generality of the foregoing, information acquired by inspection or oral or visual disclosure. The parties shall execute and comply with the terms of the Business Associate Agreement as set forth in Exhibit B attached hereto.

15. Hold Harmless/Indemnification. Client and Aspire shall indemnify, defend, and hold harmless the other against any claims by any Independent Contractor based on the alleged existence of an employment, contractual, or agency relationship with the other, including claims for Worker's Compensation and Unemployment Insurance. Client shall promptly notify Aspire in writing of any claim, loss, or damage to which this indemnity provision may apply.

16. Warranties. ASPIRE WARRANTS THAT THE SERVICES RENDERED BY THE INDEPENDENT CONTRACTOR WILL BE PERFORMED IN ACCORDANCE WITH CURRENTLY ACCEPTED PROFESSIONAL STANDARDS AND PRACTICES FOR SERVICES OF A SIMILAR NATURE. EXCEPT AS SPECIFICALLY STATED HEREIN, ASPIRE MAKES NO OTHER WARRANTIES AND EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED BY LAW, USAGE OF TRADE, COURSE OF DEALING OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

17. Limitation of Liability. ASPIRE'S LIABILITY WITH RESPECT TO ANY CLAIM OF A BREACH OF WARRANTY, BREACH OF CONTRACT, OR FOR INDEMNIFICATION UNDER SECTION 15 HEREUNDER SHALL BE LIMITED TO THE AMOUNT OF THE SPECIFIC REMEDY STIPULATED IN THIS AGREEMENT, WHERE APPLICABLE, BUT IN NO EVENT SHALL EXCEED THE SERVICE FEES ACTUALLY PAID UNDER THIS AGREEMENT FOR THE MOST RECENT TWELVE-MONTH PERIOD. IN NO EVENT SHALL ASPIRE BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, HOWSOEVER CAUSED OR ARISING, INCURRED BY CLIENT OR ANY OTHER PERSON EVEN IF ASPIRE HAS BEEN ADVISED OF THE POSSIBILITY OF SAME OR EVEN IF SAME WERE REASONABLY FORESEEABLE.

18. Integration. This Agreement contains and represents the entire understanding and agreement of Aspire and Client with respect to its subject matter, superseding, canceling and voiding all prior agreements, understandings, negotiations, warranties, commitments, and representations in such regard.

19. Severance. In the event that a specific provision of this Agreement, or any portion thereof, is determined to be invalid by statute or administrative or judicial decision — provided the time for appeal of such decision has expired with no appeal having been made — the parties shall conform their conduct to satisfy the requirements of such statute or administrative or judicial decision. The remainder of the Agreement shall not be affected by any such determination and shall continue in full force and effect as provided herein.

20. Modification. This Agreement may be modified or amended only in a writing executed by both Aspire and Client.

21. Binding Effect and Assignability. The rights and obligations of both parties under this Agreement shall inure to the benefit of and shall be binding upon their respective successors, assign, heirs, legal representatives and devisees, but shall not be assigned without the written consent of both parties.

EXHIBIT A  
2022-2023 REFERRAL RATES

Aspire Educational Services Inc shall receive payment based upon the following schedule which is valid for 12 months, in accordance to the terms of the Agreement for Staffing Services:

Contracted Services	Cost
<b>CERTIFIED SCHOOL PSYCHOLOGIST</b>	
<b>Psycho-Educational Evaluations (Initial)</b> (cognitive, achievement, case record review, rating scales within 45/60 days)	\$1,250.00
<b>Psycho-Educational Re-evaluations (Re-evaluation)</b> (cognitive, achievement, case record review, rating scales within 45/60 days)	
<b>Independent educational evaluation (IEE)</b> comprehensive evaluations	\$4,000.00
<b>Expedited Evaluation</b> , add on fee (turn around 5 to 15 school days)	\$250.00
<b>Risk Assessment</b>	\$600.00
<b>Classroom Observation / Case Consultation / IEP Meetings / Hourly Rate (No Call/No Show)</b>	\$175.00 per hour
<b>Court Proceedings</b>	\$400.00 per hour
<b>BEHAVIORAL HEALTH SERVICES</b>	
<b>Functional Behavior Assessment (FBA) &amp; Positive Behavior Support Plans – Board Certified Behavioral Analysts / Licensed Behavior Specialists</b>	\$1,050.00
<b>Case Consultation / IEP Meetings</b>	\$150.00 per hour
<b>SPECIALISTS</b>	
<b>Speech Pathologist</b>	\$85.00 per hour
<b>Occupational Therapist</b>	\$80.00 per hour
<b>Physical Therapist</b>	\$80.00 per hour
<b>School Nurse</b>	\$65.00 per hour
<b>School Counselor / Mental Health Counselor</b>	\$60.00 per hour
<b>Special Education Teacher</b>	\$47.00 per hour
<b>General Education Teacher</b>	\$45.00 per hour
<b>Long Term Substitute</b>	\$37.00 per hour
<b>PCA/1-1</b> (Min of High School Diploma)	\$26.00 per hour
<b>PCA/RBT with 40-hour training</b>	\$29.00 per hour
<b>Paraprofessional</b> (Min of Associates Degree or 60 credits)	\$30.00 per hour

Rates are calculated in increments of quarter hours and rounded up to the nearest quarter hour. Services include, but not limited to, evaluation, report writing, therapy services, documentation, progress notes, meetings, conferences, billing, breaks and travel time between facilities when necessary.

Client agrees to be billed for one (1) hour of service or travel time (whichever is longer) if scheduled therapy session(s) were cancelled or Client would be closed and the assigned Therapist was not notified, via mail, telephone, form notice or electronic mail, 4 hours in advance. This cancellation policy does not apply to publicized weather-related cancellations.

## EXHIBIT B

### **HIPAA Business Associate Agreement**

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT (this “Agreement”) is by and between Aspire Educational Services, Inc. (“Covered Entity”), with corporate headquarters located at 1800 Byberry Road, Suite 1404, Huntingdon Valley, PA 19006, and Reach Cyber Charter School (“Business Associate”), with an address at 750 E Park Dr, Harrisburg, PA 17111 (hereinafter, Covered Entity and Business Associate are, at times, referred to individually each as a “Party” and together as “the Parties”).

#### **RECITALS:**

WHEREAS, Covered Entity has engaged Business Associate for the purpose of performing certain functions and engaging in certain activities *for and on behalf of* Covered Entity (the “BA Services”), as set forth in the underlying Services Agreement between the Parties (hereinafter, the “Services Agreement”);

WHEREAS, in connection with such BA Services, it may become necessary for Covered Entity to disclose information to Business Associate, some of which may constitute protected health information (“PHI”), including electronic protected health information (“e-PHI”). (PHI and e-PHI are, collectively, referred to hereinafter as “Covered Entity’s PHI”) as defined below;

WHEREAS, the Parties intend to protect the privacy and security of Covered Entity’s PHI disclosed to Business Associate in connection with the BA Services, in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (the “HIPAA Statute”), its related “Privacy Rule” (45 CFR Part 164 Subpart E) and “Security Rule” (45 CFR Part 164 Subpart C) (collectively, the Privacy Rule, Security Rule and HIPAA Statute are, hereinafter, referred to as “**HIPAA**”), all as amended by the Health Information Technology for Economic and Clinical Health Act (the “HITECH Statute”) and any regulations promulgated thereunder (collectively, the “HITECH Rules,” and together with the HITECH Statute, referred to hereinafter simply as “**HITECH**”), as well other applicable federal or state laws concerning the privacy and security of health information;

WHEREAS, the Parties agree that this Agreement sets forth the terms and conditions under which Business Associate shall protect the privacy and security of Covered Entity’s PHI and under which Business Associate may use and disclose Covered Entity’s PHI during the Term of the underlying Services Agreement and after its termination.

**NOW THEREFORE**, in consideration of the foregoing, the mutual representations, covenants, promises and Services Agreements set forth below and in the underlying Services Agreement, and for other good and valuable consideration, the Parties, intending to be legally bound, hereby agree as follows:



## **TERMS:**

1. **Definitions.** Any terms not otherwise specifically defined in this Agreement shall have the meanings ascribed to them in HIPAA and HITECH.

(a) “Business Associate” (45 C.F.R. §160.103) means a person or entity who, on behalf of a Covered Entity, creates, receives, maintains or transmits PHI for a function, activity or service regulated by HIPAA, and which includes a Subcontractor that creates, receives, maintains or transmits PHI on behalf of a Business Associate.

(b) “Designated Record Set” (45 C.F.R. § 164.501) means a group of records maintained by or for a covered entity that is (i) the medical records and billing records about individuals maintained by or for a covered health care provider; or (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for a covered entity to make decisions about individuals.

(c) “Electronic Protected Health Information” or “EPHI” (45 C.F.R. § 160.103) means individually identifiable health information transmitted by Electronic Media or maintained in Electronic Media.

(d) “Electronic Media” (45 C.F.R. § 160.103) means (1) electronic storage material on which data is or may be recorded electronically, including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as a magnetic tape or disk, optical disk, or digital memory card; or (2) transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media.

(e) “Individual” (45 C.F.R. § 160.103) means the person who is the subject of Protected Health Information.

(f) “Individually Identifiable Health Information” (45 C.F.R. § 160.103) means information, including demographic information, collected from an individual and (i) is created or received by a healthcare provider, health plan, employer or healthcare clearinghouse; and (ii) relates to the past, present or future physical or mental health or condition of an individual, the provision of healthcare to an individual, or the past, present or future payment for the provision of healthcare to an individual; and (a) identifies the individual, or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(g) “Protected Health Information” (“PHI”) (45 C.F.R. § 160.103) means Individually Identifiable Health Information that is (i) transmitted by electronic media; (ii) maintained in any medium constituting electronic media; or (iii) transmitted or maintained in any other form or medium.

(h) “Security Breach” has such specific definition as set forth under HITECH, including certain exceptions, and *generally* means the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of such information.

(i) “Security Incident” (45 C.F.R. § 164.304) means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system.

(j) “Subcontractor” (45 C.F.R. §160.103) means a person to whom a Business Associate delegates a function, activity or service, other than in the capacity of a member of the workforce of such Business Associate.

2. Compliance with HIPAA and HITECH. Business Associate shall at all times comply with all requirements applicable to Business Associates under HIPAA and HITECH, including but not limited to the requirements of the Security Rule and Privacy Rule, which requirements are incorporated by reference as though fully set forth in this Agreement. Any subsequent amendments of HIPAA or HITECH that impact business associates or their obligations shall automatically be incorporated herein and apply to Business Associate. To the extent that HIPAA or HITECH imposes a requirement different than one set forth in this Agreement, then HIPAA or HITECH shall control unless the specific HIPAA or HITECH requirement is specifically identified and waived/modified in this Agreement.

3. Security Requirements. Without in any way limiting section 2, Business Associate shall at all times comply with all applicable provisions of the HIPAA Security Rule. As of the Effective Date of this Services Agreement and continuing thereafter, Business Associate shall have in place reasonable and appropriate administrative, technical and physical safeguards to provide for the security, confidentiality, integrity and availability of Covered Entity’s PHI. Business Associate represents to Covered Entity that as of the Effective Date and during the term of this Agreement, it has performed and/or completed the actions required by the HIPAA Security Rule, including but not limited to the assessments, implementations, evaluations, reviews, documentations, and development of policies and procedures, as more fully set forth therein.

4. Uses and Disclosures of Covered Entity’s PHI.

(a) General. Business Associate shall at all times use and disclose Covered Entity’s PHI only as permitted by this Agreement and applicable federal and state law. Business Associate shall comply with the HIPAA Security Rule, and as applicable, the HIPAA Privacy Rule, at all times when using and disclosing Covered Entity’s PHI to perform the BA Services.

(b) Permitted Uses and Disclosures. Business Associate may use and/or disclose Covered Entity’s PHI as follows:

(i) Business Associate may use and disclose Covered Entity’s PHI to furnish or perform the BA Services set forth in the underlying Services Agreement, as permitted by and in accordance with HIPAA, HITECH and other applicable federal or state laws. Business Associate shall not use or disclose Covered Entity’s PHI in any manner that would constitute a violation of this Agreement, the underlying Services Agreement, HIPAA, HITECH or other

applicable law, or use or disclose Covered Entity's PHI in any manner that would violate HIPAA if done by Covered Entity;

(ii) Business Associate may use Covered Entity's PHI for internal management and administration purposes of Business Associate only if the use is necessary for Business Associate to perform internal management and administration functions, or to carry out its own internal legal responsibilities;

(iii) Business Associate may disclose Covered Entity's PHI for internal management and administration purposes of Business Associate only if: (1) the disclosure is required by law (as described by 45 C.F.R. § 164.103), or (2) Business Associate obtains from the third party recipient to which Covered Entity's PHI would be disclosed reasonable assurances, in writing: (a) that such recipient will hold Covered Entity's PHI confidential and (b) that such recipient will notify the Business Associate, without unreasonable delay, of any instances of which such recipient becomes aware of a Breach or other incident that compromises the confidentiality of Covered Entity's PHI;

(iv) Business Associate may use and disclose Covered Entity's PHI to perform data aggregation services to Covered Entity as permitted by HIPAA and the Services Agreement.

(v) In the performance of the BA Services, Business Associate must request, use and disclose only the minimum amount of Covered Entity's PHI necessary to perform the BA Services.

(vi) To the extent Business Associate is to carry out a function or obligation of Covered Entity with respect to the Privacy Rule, comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligation.

(c) HIPAA Authorization. Business Associate agrees that it shall not use in any other manner or disclose to any other person or entity Covered Entity's PHI, except as otherwise provided by this Agreement, without first obtaining a HIPAA-compliant authorization ("HIPAA Authorization") from the Individual about whom the information pertains, including, but not limited to, whenever Covered Entity would be required to do so in accordance with federal or state laws and regulations.

(d) "Sale of PHI" and Marketing. Business Associate shall not directly or indirectly accept remuneration or other consideration in exchange for using or disclosing any of Covered Entity's PHI, except as permitted by HIPAA, including in exchange for services or functions performed pursuant to the Services Agreement. Business Associate shall not use or disclose Covered Entity's PHI for marketing except for or on behalf of Covered Entity with Covered Entity express written consent and the Individual's Authorization.

(i) Business Associate shall report to Covered Entity any unauthorized use or disclosure of PHI not permitted by this Agreement, including any Security Incident or Breach affecting Covered Entity's PHI of which Business Associate becomes aware in accordance with Section 4 of this Agreement.

5. Obligation to Provide Notice of Unauthorized Use or Disclosure, Security Incident and Security Breach.

(a) Business Associate shall comply with the standards and requirements under the Breach Notification Laws, which for purposes of this Agreement include, collectively, the provisions relating to breach as set forth in the HITECH Statute and its related Interim Final Rule for Breach Notification for Unsecured Protected Health Information (45 CFR Parts 160 and 164), as may be amended, and any other applicable state laws and regulations;

(b) Business Associate shall report to Covered Entity any unauthorized use or disclosure of Covered Entity's PHI, including a Security Incident, as soon as practicable and in no case later than five (5) business days from the date of discovery by Business Associate. Business Associate shall report to Covered Entity any Breach of Covered Entity's PHI as soon as practicable and in no case later than seventy-two (72) hours from the date of discovery of such Breach. For purposes of this Agreement, a Breach or Security Incident shall be deemed "discovered" by Business Associate as of the first day on which such Breach or Security Incident is actually known to any person, other than the individual committing the Breach/Incident, that is an employee, officer, or other agent of Business Associate. Business Associate shall provide Covered Entity with all information as required by 45 CFR Part 164 Subpart D and any other applicable state laws and regulations.

(c) In accordance with § 164.402, any acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule is presumed to be a Breach unless Business Associate or Covered Entity can demonstrate that a low probability exists that the PHI has been compromised. Business Associate shall conduct and document any risk assessments required by the Breach Notification Laws in order to determine whether a Breach has occurred.

6. Request for Restrictions. Business Associate shall implement any restrictions on use or disclosure of Covered Entity's PHI as agreed to and directed by Covered Entity in accordance with § 164.522 of the Privacy Rule, as modified by HITECH and its implementing rules and regulations.

7. Subcontractors. In the event Business Associate desires to use a Subcontractor to perform any part of the BA Services, then Business Associate must, prior to disclosing Covered Entity's PHI to said Subcontractor, (a) secure Covered Entity's approval of the use of a Subcontractor, and (b) secure an executed Business Associate Agreement from Subcontractor (Subcontractor Agreement) in a form acceptable to Covered Entity. Said Subcontractor Agreement shall at minimum require Subcontractor to comply with and perform the terms of this Agreement as though Subcontractor was a Business Associate of Covered Entity.

8. Access Rights of Individual. To the extent Business Associate maintains PHI in a Designated Record Set, Business Associate agrees to make Covered Entity's PHI available to Covered Entity as required by § 164.524 of the Privacy Rule, as amended by HITECH, to provide an individual with access or a copy of such individual's PHI including electronic copies where such is maintained in an electronic Designated Record Set.

9. Amendment of PHI. Business Associate shall make Covered Entity's PHI available to Covered Entity as required under §164.526 of the Privacy Rule relating to an Individual's request for amendment of his or her Protected Health Information, as applicable. Business Associate agrees to incorporate any amendments, as agreed to and directed by Covered Entity, into copies of Covered Entity's PHI maintained by Business Associate.

10. Accounting of Disclosures. Business Associate shall maintain and provide such information and documentation as required under § 164.528 of the Privacy Rule, as modified by HITECH and its implementing rules and regulations, to allow Covered Entity to respond to an Individual's request for an accounting of disclosures (AOD) by Business Associate.

11. Internal Practices. Except for information that is considered legally protected as privileged or otherwise, each Party agrees to make its internal practices, books and records relating to the use and disclosure of Covered Entity's PHI available to the Secretary of HHS if access to such information is necessary for HHS to determine either Party's compliance with HIPAA and HITECH.

12. Termination.

(a) Noncompliance. If Covered Entity notifies Business Associate regarding an activity or practice that constitutes a material breach or violation of an obligation under this Agreement, HIPAA or HITECH, and Business Associate does not take reasonable steps to or otherwise does not successfully cure the breach or end the violation, as applicable, within thirty (30) days of notice to Business Associate of such breach or violation, Covered Entity may terminate this Agreement and Business Associate's authority to access, use and/or maintain possession of Covered Entity's PHI.

(b) Judicial or Administrative Proceedings. Covered Entity may terminate this Agreement immediately if: i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA or HITECH, or other criminal law or, ii) a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, HITECH or other law is made in any administrative or civil proceeding in which Business Associate has been joined.

(c) Return of Covered Entity's PHI. Upon termination of the underlying Services Agreement or this Agreement, Business Associate shall return to Covered Entity and/or destroy Covered Entity's entire PHI that Business Associate still maintains in any form. If return or destruction is not feasible, Business Associate agrees to continue to extend the protections of this Agreement to such information, and limit further use of Covered Entity's PHI to those purposes that make the return or destruction of such PHI infeasible.

13. Assistance in Litigation or Administrative Proceedings. Each Party agrees to reasonably assist the other in the performance of its obligations under this Agreement including, if necessary, to testify as witnesses in the event that any litigation or administrative proceedings are commenced against a Party based upon a claimed violation of HIPAA, HITECH, except where the other Party, or its subcontractor, employee or agent may be named as an adverse Party.

14. Indemnification.

(a) Business Associate agrees to and shall indemnify and hold harmless Covered Entity from and against any and all losses, damages, liabilities and claims of any nature whatsoever, including reasonable legal fees and costs (collectively, “Losses”) arising out of, based upon, resulting from or in any way relating to any act or omission of Business Associate (to include Business Associate and its principals, officers, directors, employees, agents, independent contractors and Subcontractors) in violation of this Agreement or that in any way that otherwise constitutes or directly or indirectly causes or results in any use or disclosure not permitted by this Agreement, any Security Incident and any Breach of Unsecured PHI. Business Associate agrees to and shall reimburse Covered Entity for any and all Losses immediately upon demand by Covered Entity.

(b) Without limiting subsection (a), immediately above, Business Associate agrees that, in the event of a Breach or suspected Breach of Unsecured PHI caused by Business Associate (to include Business Associate and its principals, officers, directors, employees, agents, independent contractors and Subcontractors), Business Associate shall, in addition to any other obligations hereunder or under the HIPAA Standards, provide reasonable assistance to Covered Entity in any investigation undertaken by Covered Entity related to such Breach. In addition, if Covered Entity determines that notification must be made to individuals and/or the media as required under 45 C.F.R. §§ 164.404 and 164.406, Business Associate shall provide reasonable assistance to Covered Entity in notifying individuals and the media, including, if requested by Business Associate, (i) preparing or assisting in the preparation of notification letters for review and approval by Covered Entity, (ii) preparing or assisting in the preparation of media notices for review and approval by Covered Entity, (iii) printing and mailing approved notification letters to affected individuals, and (iv) coordinating and making (or assisting Covered Entity in coordinating and making) approved media notifications, all at the expense of Business Associate. Business Associate shall, within ten (10) business days of receipt of a written request from Covered Entity, reimburse Covered Entity for (A) costs and expenses incurred by Covered Entity not already paid by Business Associate related to Covered Entity's investigation of the Breach and the notifications described in (i), (ii), (iii) and (iv) of this paragraph, and (B) any and all legal fees and costs incurred by Covered Entity as a result of the Breach.

15. Insurance. Business Associate agrees to purchase and maintain throughout the term of this Agreement an insurance policy or policies that provide(s) protection to Business Associate and to Covered Entity on the terms set forth herein:

(a) Covered Persons. The policy shall cover Business Associate, its members, and managers (Covered Business Associate Persons), and shall name Covered Entity as an Additional Insured (together the Insured Persons). Policy limits shall be separately applied to Covered Business Associate Persons and Covered Entity.

(b) Definitions. For purposes of this section:

(i) Data Laws shall mean any federal, state, or foreign laws, regulations, or rules—now existing or hereinafter constituted or amended—that impose data security and/or privacy protection standards and/or breach notification obligations, including but not limited to HIPAA and HITECH, as well as any federal or state laws (including common laws)



through which an actor may be held civilly liable for data breaches and/or invasions of privacy, such as breach of contract, negligence and privacy torts.

(ii) Protected Data shall mean at minimum (a) any individual's data protected by any federal, state, or foreign laws, regulations, or rules, including but not limited to personally identifiable information, protected health information (including but not limited to Covered Entity PHI), biometric data, and/or financial information such as account identifiers, healthcare coverage identifiers, and credit card data; (b) passwords or other information or data used to authenticate authorized users of systems and data; and (c) Covered Entity's financial information such as account identifiers and its confidential business information transmitted to Business Associate in connection with performing the services.

(iii) Unauthorized Activity(ies) shall at minimum include the following, whether done by an unknown actor, third party, Covered Business Associate Person, or agent or employee of a Covered Business Associate Person, irrespective of the means used to accomplish it:

- a. Any unauthorized access to any networks, electronic devices, or other places where any Covered Business Associate Person stores or maintains Protected Data, even if it is unclear that the actor actually engaged in the activities described in (b) below (hereafter Data Breach);
- b. Any unauthorized: access, viewing, copying, use, disclosure, taking, theft, destruction, corruption, sale, ransom, transmission, transfer, seizure, and/or encryption of, and/or denial of access to, Protected Data.
- c. Any fraud, manipulation, deceit or other means (including without limitation phishing, spear phishing, social engineering, telecommunications fraud) that victimizes an Insured Person by causing them to download malware, to unknowingly provide access to the actor that results in a Data Breach, to unknowingly engage in the activities described in (b) above, and/or to unknowingly transfer funds to another person;
- d. Any infringement of a right of privacy;
- e. Any identity theft;
- f. Any transmission of a computer virus or other type of malicious code;
- g. Any participation in a denial of service attack on third party computer systems;
- h. Any loss or denial of service;
- i. Any ransomware; and
- j. Any acts of cyber terrorism.

- (c) The policy must insure against losses arising from:
  - (i) Alleged/actual violations of Data Laws;
  - (ii) Alleged/actual errors, omissions, and/or negligence in establishing, implementing, maintaining, performing, or monitoring Business Associate's data security and privacy protection obligations or measures;
  - (iii) Alleged/actual Unauthorized Activities;
  - (iv) Business Associate's indemnity obligations owed to Covered Entity under this Agreement;
- (d) The policy shall have a minimum limit of \$1,000,000 for each and every claim and \$2,000,000 in the aggregate.
- (e) The policy shall provide indemnity for:
  - (i) the cost of defense of any civil action or government enforcement action based in whole or in part on any Data Laws;
  - (ii) liability arising from any civil action or government enforcement action, including but not limited to damages, fines, and/or penalties;
  - (iii) payment of costs or penalties imposed by any financial institution or credit card issuer in connection with account closures or reissuance of credit cards;
  - (iv) Data Breach response costs (including without limitation, attorneys' fees, notification costs, forensic examinations, data recovery services, credit protection services, call center services, website creation/management; identity theft detection or protection services, crisis management/public relations services, ransom payments (if insurable));
  - (v) Losses arising from a business interruption caused by any Unauthorized Activities, including but not limited to a Data Breach;
  - (vi) Losses arising under Business Associate's indemnity obligations to Covered Entity under this Agreement.
- (f) Policy must provide coverage for wrongful acts, claims, and lawsuits anywhere in the world.
- (g) The Policy shall be primary and not excess.
- (h) Business Associate must at least annually provide a certificate of insurance demonstrating that Covered Entity is an Additional Insured under the policy.
- (i) Business Associate must notify Covered Entity if the policy is in danger of lapse, termination, or cancelation. Without in any way limiting the foregoing, Business Associate must promptly forward to Covered Entity any insurer-issued or broker-issued notice that states that the policy will lapse, be terminated, or be canceled for any reason.



16. Amendment. Upon either Party's request, the Parties agree to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA and HITECH or other applicable laws. Either Party may terminate this Agreement and Business Associate's right to continued access to or possession of the PHI upon 30 days written notice in the event that either Party, or any of its agents and subcontractors: (i) does not promptly enter into negotiations to amend this Agreement when requested pursuant to this paragraph or (ii) does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI sufficient to satisfy the standards and requirements of HIPAA and HITECH. This Agreement may be amended, superseded, terminated or extended, and the terms hereof may be waived, only by a writing signed by the Parties.

17. Independent Contractor. Nothing in the Agreement is intended as, or shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of employer and employee, principal and agent, partners, joint ventures, or any similar relationship. Covered Entity and Business Associate acknowledge and agree that Business Associate is an independent contractor, and not an agent of Covered Entity, under federal agency law or otherwise.

18. No Waiver. Neither the failure or any delay on the part of a Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence.

19. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania, except to the extent that HIPAA or HITECH is at issue, in which case federal law will apply.

20. Notices. All notices to be made under this Agreement shall be given in writing and shall be deemed to have been duly given if personally delivered or sent by confirmed facsimile transmission, e-mail, certified or registered mail, return receipt requested, to the other Party at the address set forth in the underlying Services Agreement.

21. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be deemed severed from this Agreement, and the remainder of the provisions will remain in full force and effect.

22. Interpretation. The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and HITECH. If any provision of this Agreement conflicts with a provision in the underlying Services Agreement, the terms of this Agreement will control. The use of headings in this Agreement are for convenience only and shall not affect the interpretation hereof.

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement effective as of the 26<sup>th</sup> day of January 2023 (the “Effective Date”):

**Aspire Educational Services Inc.**

**Reach Cyber Charter School**

By:

By:

Print Name:

Print Name:

Title:

Title:

Date:

Date: