



**Consulting and Service Agreement
between
Total Education Solutions, Inc.
and
Near West Intergenerational School**

2023-2024

Total Education Solutions
CONSULTING AND SERVICES AGREEMENT

This Consulting and Services Agreement (“Agreement”) is entered into as of the Commencement Date set forth in Section 1 below by and between Total Education Solutions, Inc. (“TES”), a California corporation, and **Near West Intergenerational School (“Client”).**

RECITALS

- A. TES engages in the business of providing education and consulting services to nonprofit and for profit education and social services agencies.
- B. Client is a charter school that offers educational/therapeutic programs to students/patients at locations identified on Appendix A hereto (the “Service Locations”) or online.
- C. Client wishes to engage TES to provide certain services with respect to Client’s education and/or social service program (the “Program”) and TES wishes to provide such services, pursuant to the terms and conditions set forth below.

AGREEMENT

In consideration of the promises and covenants contained herein, the parties agree as follows:

1. COMMENCEMENT DATE AND TERM

This Agreement shall commence at 12:01 a.m. on **July 1, 2023**(the “Commencement Date”), and shall continue until 11:59 p.m. on:

June 30, 2024 (the “Term”).

June 30, 2025 (the “Two Year Term”).

2. SERVICES TO BE PROVIDED BY TES

During the Term of this Agreement, TES shall provide the services described on Appendix B hereto in connection with the Program (the “Services”) to students/clients assigned by Client and TES shall provide personnel as TES determines are reasonably necessary to provide the Services (the “TES Personnel”), according to the Client’s written or electronic Request for Service.

3. ADDITIONAL SERVICES

If Client requests any services from TES in addition to the Services, such additional services will be provided by TES only if the parties have mutually agreed in writing or by electronic request upon the specific additional services, the scope of such additional services, and the additional compensation to TES for such additional services.

4. CALENDAR

Services will not be provided by TES on Client holidays, Client breaks, or TES holidays. Client must provide a copy of the client’s calendar to TES prior to the start of commencement of this Agreement and provide at least 10 business days’ notice of other closures to avoid paying TES for missed sessions.

TES observes the following legal holidays: Independence Day, Labor Day, Veteran’s Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve, Christmas Day, New Year’s Eve, New Year’s Day, Martin Luther King, Jr. Day, Presidents Day, Cesar Chavez

Day, and Memorial Day. If TES holidays do not coincide with Client holidays, make-up services will be offered to Client's student/patients.

5. RECORDS

TES agrees that all files, documents, records, and materials created by TES in the course of providing the Services during the Term of this Agreement, other than TES' internal and business documents, shall be the property of Client. TES agrees that upon expiration or termination of this Agreement for any reason, TES shall deliver such property of Client to Client, subject to Sections 11(c) and 12(e)(ii) below. Both during and after the Term of this Agreement, TES shall be permitted to inspect and/or duplicate, at its own expense, any individual student/patient file or record regarding the Program to the extent necessary to assure proper provision of Services, to meet professional responsibilities to students/patients, to assist in the defense of any claim or threatened claim against TES or TES Personnel, and for the resolution of billing disputes, provided that such inspection or duplication is permitted and conducted in accordance with then applicable legal requirements and then prevailing standards for the confidentiality of student/patient and/or patient records. TES Personnel shall not disclose pupil records to any unauthorized person or entity without the consent required by The Family Educational and Privacy Act (20 U.S.C. §1232g; 34 CFR Part 99) and any other applicable laws, unless the disclosure is otherwise permitted by law.

6. RESPONSIBILITIES OF CLIENT

- (a) Student/patient Records. During the term of this Agreement, Client shall provide TES with such Student/patient records, including Individualized Education Plans ("IEP") or Individual Family Service Plan ("IFSP"), as may be reasonably necessary for the proper provision of the Services. In accordance with Federal laws, special education services, such as those provided by TES, cannot be delivered to special education student/patient without IEP/IFSPs. TES must verify an IEP/IFSP prior to provision of Services to students/patients. For other students/patients, written or electronic request is required in order to provide non-IEP/IFSP services.
- (b) Notice of Meetings. Client shall provide TES with no less than ten (10) business days advance written notice of any and all meetings involving student/patient in the Program provided by TES such as IEP/IFSP meetings, etc. For purposes of this Agreement, the term "business days" shall not include Saturdays, Sundays, or holidays.
- (c) Compliance with Laws. During the Term of this Agreement, Client shall comply in all respects with all applicable federal and state statutes, laws, regulations, ordinances, and rules relating to its business in general and the provision of special education services in particular.
- (d) Compliance with TES Policies. During the Term of this Agreement, Client shall comply in all respects with TES policies and procedures relating to student/patient absences, difficulty contracting/serving students/patients, and service refusal as described below in Section 7. TES may modify Section 7 from time to time on no less than thirty (30) business days advance written notice to Client.
- (e) Facilities. TES will provide Services to Client at Client's facility, TES Clinic, an agreed upon public location, or online, and Client shall provide a facility and furnishings reasonably necessary for TES to provide the Services. This includes **appropriate space that is away from distractions, facilities, appropriate size furniture**, and a locked filing cabinet for Special Education Records in accordance with FERPA Privacy Law. TES utilizes a web-based database to document services, including Student/patient attendance and progress notes. Workspace should be reasonably clean and free from insect or pest infestation, asbestos, or other contaminants that could be harmful to an employee's health. **Workspace should also be able to be locked by provider and/or administrator for student and staff safety in the event of a lockdown.**
- (f) Technology. Client shall provide all TES employees assigned to serve Client's student/patient access to an on-site computer with connection to school Internet and printing capabilities. Since ETR/IEP documents must be editable to include parent feedback, onsite printing must be available. The on-site computer does not need to be for the exclusive use of TES employees, and use of Client's computer(s) by TES employees will be solely for documentation and printing purposes. There shall be no charge to TES to utilize Client owned, controlled, or leased sites or facilities and equipment arising from or related to the provision of Services. Additional Client sites or facilities may be added only if the parties have mutually agreed in writing.
- (g) Postage: In the event documentation must be mailed home to parents to ensure compliant communications (e.g. PR-01s, Meeting Notifications, etc), postage will be paid by the school.

- (h) Payment. Client shall compensate TES for the Services as provided in Section 9 below.

7. ADDITIONAL RESPONSIBILITIES OF TES

- (a) Qualifications, Credentials, Licenses. All TES Personnel will be qualified in all material respects to provide the Services they provide on behalf of TES hereunder. All instructors and therapists provided by TES under this Agreement will meet State of Ohio requirements for providing the Services, such as holding an appropriate Ohio credential, certification or license and/or TB test clearance appropriate for providing the requested service. Upon written request, TES shall provide Client with a list of all TES Personnel that will serve student/patient enrolled in the Program. Such a list will identify the credentials/licenses held by each of the TES Personnel. TES shall notify Client within forty-five (45) business days of any change of TES Personnel that are providing Services directly to student/patient under this Agreement. An officer of TES shall certify to Client that TES Personnel providing instruction or therapy services hereunder are trained and accept responsibility as mandated child abuse reporters pursuant to Ohio law, which certification shall accompany the list described in this Section 7(a).
- (b) Fingerprinting Requirements. TES shall conduct such criminal background checks of all TES Personnel through the Department of Justice ("DOJ") as required by applicable law and, upon receipt of DOJ clearance, certify to Client that no TES Personnel working with student/patient of Client have been convicted of a violent or serious felony (as defined by applicable law), are disqualified pursuant to 3319.39 or 3314.41 of the Ohio Revised Code, or are the subject of a criminal action pending upon charges of commission of a violent or serious felony (as defined by applicable law). The list of TES Personnel described in Section 7(a) above shall identify those TES Personnel who have been so cleared by DOJ.
- (c) Commencement of Services. TES will contact student/patient and/or the student's/patient's parent or guardian if requested to do so by the Client, for the purpose of commencing services to such student/patient within ten (10) business days after written notification from the Client (in one of the manners permitted by Section 16(f) below, which include facsimile and electronic mail). TES shall have (5) business days following such notification to notify Client in writing if TES is unable to commence Services to a student/patient due to type of service requested or because the service requested is not otherwise consistent with the obligations of TES set forth in this Agreement.
- (d) Attendance Reporting. TES shall keep accurate records of Student/patient attendance and time spent by TES Personnel in providing Services to student/patient in the Program. Copies of such records will be provided to Client on a monthly basis with the invoices described in Section 9 below.
- (e) Service Logs. TES Personnel shall maintain auditable logs of Services provided. Such logs will be made available to Client, upon request, within five (5) business days. For purposes of this Agreement, the term "business days" shall not include Saturdays, Sundays or holidays. Should TES not be able to provide such requested Services, TES will notify Client in Writing, within ten (10) calendar days.
- (f) Program Monitoring. TES shall comply with Client's reasonable requests for periodic monitoring of student/patient progress. Client shall have access to observe student/patient in the instructional setting, to interview the TES Personnel providing instruction or therapy to Client's student/patients, and to review the progress of such student/patient, provided that TES shall be compensated (in accordance with Section 9) for all time spent by TES Personnel in such interview and review processes.
- (g) Progress Reports. For each student/patient assigned to the Program by Client, TES shall provide Client and the applicable Parent(s) with a written progress report which shall identify current levels of performance and suggested goals of such student/patient by agreed upon dates each school year.
- (h) Annual Reviews. For each student/patient assigned to the Program by Client, TES shall provide Client and the applicable parent(s) with a written progress report that shall identify current levels of performance and suggested goals of the student/patient at least five (5) business days prior mutually agreed upon dates such as scheduled IEP/IFSP meetings provided that TES has been given no less than ten (10) business days advance written notice of such IEP/IFSP meetings as required by Section 6(b) above.
- (i) Compliance with Laws. During the term of this Agreement, TES shall comply in all respects with all applicable federal and state statutes, laws, regulations, ordinances and rules relating to the provision of special education services.

- (j) Equal Treatment. TES and its employees shall not unlawfully discriminate against any person in the provision of services on account of disability, race, color, religion, ethnic origin, age, gender or sexual orientation.
- (k) Familiarity with student/patient Records. TES Personnel shall review and familiarize themselves with student/patient records such as IEP/IFSPs provided to TES pursuant to Section 6(a) above. TES Personnel shall review and become familiarized with documents provided to TES by Client or otherwise made available to TES relating to the individual needs of student/patient in the Program, including but not limited to evaluations, reports, observations, and family history.

8. CORPORATE INFORMATION/CONFLICTS OF INTEREST

TES and Client agree to furnish each other copies of their respective current corporate bylaws and a current list of their respective Boards of Directors and corporate officers. TES and Client mutually agree to take such actions as may be reasonable and necessary to avoid any actual or potential conflicts of interest.

9. COMPENSATION AND METHOD OF PAYMENT

- (a) Compensation. In consideration for the TES Services, Client shall compensate TES at the rates set forth on Appendix C, which rates shall be subject to adjustment as provided in Appendix C (the "Service Rates"). Compensation shall be payable by Client on a monthly basis as follows:
 - (i) A one-time Administrative and Materials Fee will be charged to all new and returning clients on the first invoice of the 2023-2024 fiscal year. This fee includes the following: Correspondence between TES Ohio and our school partners to assess annual services needs, inputting contracts into our billing system, networking billing codes for individual providers, and managerial facilitation of service initiation at the beginning of each year. The fee also supports the purchase of ETR assessment protocols for each discipline, which cost approximately \$45.00 per student. This one-time fee for returning schools (that previously contracted with TES in the 2022-2023 Academic Year) is \$400.00. For new schools that did not contract with TES during the 2022-2023 Academic year, this fee is \$600.00. Any school, new or returning, that submits their contract on or after September 1, 2023 will be charged an Administrative and Materials Fee of \$1000.00 to include late recruitment costs.
 - (ii) Within fifteen (15) business days of the last day of each month during the Term of this Agreement, TES shall submit an invoice to Client for Services provided during such month at the rates described in Appendix C, showing a credit to Client for the amount of the Prepayment for that month, and accompanied by true and complete copies of the attendance and time records described in Section 7(d) above. Each undisputed invoice so delivered shall be due and payable in full by Client within thirty (30) calendar days, subject to paragraph (ii) below.
 - (iii) If Client has a bona fide, good faith dispute with respect to whether a particular Service identified in a TES invoice hereunder was actually provided in accordance with the terms of this Agreement, Client shall give written notice to TES describing such dispute in reasonable detail within thirty (30) calendar days of the date of such invoice, accompanied by payment in full of all amounts shown on such invoice that are not the subject of the dispute(s) described on such notice. TES and Client shall use their best reasonable good faith efforts to resolve such dispute within the thirty (30) calendar day period following such notice, and Client will provide to TES all student/patient and other records relevant to the disputed charges. If such dispute cannot be resolved within such thirty (30) day period, either TES or Client may terminate this Agreement on not less than forty (40) business days written notice pursuant to Section 12(b) below, and either party, regardless of whether the Agreement is then terminated, shall have the right to submit the dispute to mediation and arbitration in accordance with Section 16(j) below. The failure of Client to notify TES as to any disputed invoice or portion thereof in writing within thirty days pursuant to this subsection shall be a stipulation by Client that the charges therein are accurate and a waiver of any objection to those charges.
 - (iv) For payments not received within thirty (30) calendar days as described in paragraph (i) above, Client shall pay a late charge of 3% interest on the outstanding balance, compounded monthly. Client also agrees to

pay TES all costs incurred in collecting past due amounts, including actual attorney fees, court fees, and dispute resolution fees.

- (b) Time for which Compensation is Payable. TES shall be compensated accordance with Appendix C for all time spent by TES Personnel providing Services which consist of instruction or therapy to student/patient in the Program, completion of Progress Reports and Session Progress Notes, and consultation to Client, Client's staff and parents of Program student/patients, and also for time scheduled for such instruction or therapy by Client or the parents of a student/patient in the Program even if the student/patient is not in attendance, unless TES or the affected TES Personnel has been given no less than 24 hours advance notice that the student/patient will not attend or that the scheduled instruction or therapy has been canceled.
- (c) Payment Address. Client will make all payments payable to: Total Education Solutions at 625 Fair Oaks Avenue, Suite 300, South Pasadena, CA 91030, Attn: Accounting Department.

10. INSURANCE

- (a) Insurance Obligations of TES. TES shall procure and maintain the following insurance while this Agreement is in effect:
 - (i) General Liability Insurance General Liability Insurance, including Professional Liability coverage, Sexual/Physical Abuse and Molestation, covering all activities of TES Personnel at Client's facilities in performance of TES' obligations under this Agreement with coverage of not less than One Million Dollars (\$1,000,000) for any incident and Three Million Dollars (\$3,000,000) general aggregate per incident, and Four Million Dollars (\$4,000,000) excess liability policy for a maximum of Seven Million Dollars (\$7,000,000) per total general aggregate limit. TES agrees to provide Client with a Certificate of Insurance.
 - (ii) Workers' Compensation And Employers' Liability Workers' disability compensation insurance covering each TES employee providing Services to Client hereunder, which insurance shall comply with all applicable legal requirements.
 - Part A. Statutory Limits
 - Part B. \$1,000,000/\$1,000,000/\$1,000,000 Employers' Liability
- (b) Insurance Obligations of Client. Client shall procure and maintain the following insurance while this Agreement is in effect:
 - (i) General Liability Insurance General Liability Insurance, including Professional Liability coverage, Sexual/Physical Abuse and Molestation with coverage of not less than One Million Dollars (\$1,000,000) for any incident and Three Million Dollars (\$3,000,000) general aggregate per incident, and Four Million Dollars (\$4,000,000) excess liability policy for a maximum of Seven Million Dollars (\$7,000,000) per aggregate limit.
 - (ii) Workers' Compensation and Employers' Liability Workers' disability compensation insurance which insurance shall comply with all applicable legal requirements.
 - Part A. Statutory Limits
 - Part B. \$1,000,000/\$1,000,000/\$1,000,000 Employers' Liability

11. INDEMNIFICATION

- (a) Indemnification by TES. TES shall defend, indemnify, and hold harmless Client and its officers, directors, agents and employees from all liabilities and claims for damages for death, illness, or injury to persons or damage to property (including without limitation, consequential damages) resulting from the negligence or willful misconduct of TES or its agents, employees, or subcontractors in performing TES' obligations hereunder.
- (b) Indemnification by Client. Client shall defend, indemnify, and hold harmless TES and its officers, directors, agents, shareholders, and employees from all liabilities and claims for death, illness, or injury arising to persons or damage

to property (including, without limitation, consequential damages) arising from Client's operation of its business and/or resulting from the negligence or willful misconduct of Client or its agents, employees, or subcontractors (other than TES).

- (c) Notice, Cooperation, and Opportunity to Defend. The party entitled to be indemnified under this Section 11 (the "Indemnified Party") shall promptly notify in writing the party required to provide indemnification under this Section 11 (the "Indemnifying Party") of any matter giving rise to an obligation to indemnify and the Indemnifying Party shall defend such claim at its expense with counsel reasonably acceptable to the Indemnified Party, provided that the Indemnifying Party may not settle any such claim without the consent of the Indemnified Party, which consent will not be unreasonably withheld, conditioned, or delayed. The Indemnified Party agrees to cooperate with the Indemnifying Party and to make reasonably available to the Indemnifying Party any records or documents in the possession of the Indemnified Party that are relevant to or necessary to defend such claim. If the Indemnified Party desires to participate in the defense of a claim being defended by the Indemnifying Party, it may do so at its sole cost and expense, provided that the Indemnifying Party shall retain control over such defense. In the event the Indemnifying Party does not defend and resolve such claim, the Indemnified Party may do so without the indemnifying Party's participation, in which case the Indemnifying Party shall pay the expenses of such defense and any settlement, award, or judgment arising therefrom, and the Indemnified Party may settle or compromise such claim without the Indemnifying Party's consent. The failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations hereunder except to the extent that the Indemnifying Party is actually prejudiced by such failure to give notice.
- (d) Without in any way limiting the foregoing, each party shall bear responsibility for receiving, replying to, and/or complying with any audit exceptions or compliance investigations made by any state or federal agencies that are the result of the acts, omissions or conduct of such party or its respective employees or agents.
- (e) The provisions of this Section 11 shall expressly survive the expiration or termination for any reason of this Agreement.

12. TERMINATION

- (a) Without Cause. Either party may terminate this Agreement, without cause, upon at least sixty (60) business days prior written notice.
- (b) Dispute Over Charges. Either party may terminate this Agreement upon no less than forty (40) business days' notice as provided in Section 9(a)(ii) above.
- (c) For Nonpayment. TES may terminate this Agreement for Client's breach of its obligations to timely pay amounts due to TES under Section 9(a)(i) or 9(b) above, provided that TES gives written notice of such breach and Client does not pay TES the amount due (plus any interest due thereon under Section 9(a)(iii) above) within five (5) business days of such notice.
- (d) With Cause. Either party may terminate this Agreement upon the other party's material breach of any term or condition of this Agreement (other than a breach described in paragraphs (b) or (c) above) by giving not less than twenty (20) business days written notice of termination to the other party.
- (e) Effect of Termination. Upon the expiration or termination for any reason of this Agreement,
 - (i) TES will, within twenty (20) business days of termination, present a final invoice for all TES Services provided through the effective date of termination, which shall be due and payable in full within twenty (20) business days of delivery to Client, subject to Section 9(a)(iii) above.
 - (ii) TES shall, upon receipt of the payment described in Section 12(e)(i) above, turn over to Client all records of Client maintained by or under the control of TES.
- (f) All obligations of the parties, except for those described in this Section 12 and those that, by the express terms of this Agreement, expressly survive its expiration or termination, shall cease.

13. INDEPENDENT CONTRACTORS

The parties hereto acknowledge and agree that the relationship created between TES and Client as a result of this Agreement is strictly that of independent contractors. Nothing contained herein shall be construed as creating a partnership or joint venture relationship between the parties. Each party hereto shall be responsible for all compensation, salaries, taxes, withholdings, contributions, benefits, and worker's disability compensation insurance with respect to all personnel employed or contracted by such party and shall indemnify, defend, and hold harmless the other party and its officers, directors, agents, contractors, representatives and employees, from and against any and all liability, loss, damages, claims, causes of action, and expenses associated therewith (including without limitation attorneys' fees) caused or asserted to have been caused, directly or indirectly, by or as a result of same. The provisions of this Section shall survive the expiration or termination for any reason of this Agreement.

14. NO HIRE AGREEMENT

(a) No Hiring by Client.

(i) Client recognizes that each of the TES Personnel are unique and valuable resources of TES who have been trained by TES, that the Services to be provided hereunder are feasible only if TES Personnel have access to and interaction with Client and its agents and representatives under the terms of this Agreement, and that, but for this Agreement, Client would not have access to TES' employees. Client further acknowledges that TES Personnel have certain legal obligations, arising in contract and otherwise, to TES, which include obligations not to accept positions with TES' clients without the prior written consent of TES, not to solicit any TES client for employment or a competing business, or otherwise take any action to interfere with the relationship between TES and its clients. Accordingly, Client agrees that during the No Hire Period, neither Client nor any person who serves as an officer, director, employee, or agent of Client at any time during the term of this Agreement ("Client-Affiliated Person") shall, without the prior written consent of TES (which TES may grant or deny in its sole and absolute discretion), hire, employ, or contract with any TES Personnel or any other person(s) employed by TES at any time during the six (6) months immediately preceding such hiring, employment, or contracting, or directly recruit or solicit any such person(s) to become employed by or to contract with Client or any other person or entity, unless Client pays to TES a Recruiting Fee (as defined in Section 14(b)(ii) below) for each such person Client or any Client-Affiliated Person hires, employs, or contracts with, or agrees to hire, employ, or contract with during the No Hire Period (herein, a "Hired TES Worker").

(ii) The Recruiting Fee for each Hired TES Worker will be the greater of (A) ten-thousand dollars (\$10,000.00), (B) 10% of the Hired TES Worker's annual salary at the time of termination of his or her employment or contract with TES, or (C) 10% of the total compensation paid by TES to the Hired TES Worker during the twelve (12) months immediately preceding termination of his or her employment or contract with TES. The Recruiting Fee shall be additional compensation due to TES under Section 9 herein, shall be invoiced to Client in accordance with Section 9, and shall be due and payable in full within ten (10) calendar days, notwithstanding the provisions of Section 9(a)(ii) and subject to the provisions for the payment of interest and collection costs in Section 9(a)(iii). TES shall be entitled to apply all payments received from Client to any unpaid Recruiting Fee prior to any other item of Compensation due to TES under Section 9 herein. The parties agree that the damages TES would suffer as a result of Client's or a Client-Affiliated Person's hiring, employment, or contracting with any Hired TES Worker would be difficult or impossible to quantify and that the Recruiting Fee constitutes a reasonable, good-faith estimate of those damages based on all information known and discoverable by the parties as of the date hereof. In the event Client challenges the enforceability of the Recruiting Fee and the Recruiting Fee is held to be unenforceable by a court or arbitrator, generally or with respect to a specific Hired TES Worker, TES shall be entitled to any and all damages or other relief provided in law or in equity, including attorney fees and costs.

(b) Notification, Costs. Upon a breach of any party's obligations under this Section 14, the non-breaching party shall be entitled to be indemnified by the breaching party from any loss or harm, including without limitation, attorney fees and collection costs, in connection with any breach or enforcement of the breaching party's obligations under this Section 14. Each party will notify the other party in writing immediately upon any breach of this Section 14 of which it is aware.

(c) Equitable Relief and Indemnification. Each party acknowledges that and agrees that due to the unique nature of TES Personnel and the employees of Client, respectively, and the competitively valuable nature of the trade secrets and confidential information of the other party to which its employees and contractors have access and knowledge,

any breach of a party's obligations under this Section 14 may allow the breaching party or third parties to compete unfairly with the non-breaching party, resulting in irreparable harm to the non-breaching party that cannot be adequately compensated. Therefore, upon any such breach or any threat thereof, the non-breaching party shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law. In addition, upon any breach of any party's obligations under this Section 14, the non-breaching party shall be entitled to be indemnified by the breaching party from any loss or harm, including without limitation, attorney's fees, in connection with any breach or enforcement of the breaching party's obligations under this Section 14. Each party will notify the other party in writing immediately upon any breach of this Section 14 of which it is aware.

- (d) Survival. The obligations of the parties under this Section 14 shall expressly survive the expiration or termination for any reason of this Agreement.

15. CONFIDENTIALITY

- (a) TES Proprietary Information. Client acknowledges and agrees that TES owns all right, title and interest in and to the TES materials and TES systems used in the performance of the Services hereunder, including, without limitation, all trade secrets, policies, procedures, know how, protocols, policies, operating manuals (expressly including the TES Client Manual), specifications, software, forms, education materials, financial information, as well as additions and modifications thereto developed and/or used by TES in the furtherance of TES operations and in performance of TES' obligations under this Agreement (collectively the "TES Proprietary Information"). Client shall maintain the confidentiality of all such TES Proprietary Information and shall not divulge such information to any third parties both during the term of this Agreement and after its termination except (i) as may be necessary for the discharge of its obligations under this Agreement, and (ii) as required by law. Client shall take reasonable precautions against disclosure of any TES Proprietary Information to unauthorized persons by any of its officers, directors, employees or agents. Client shall not directly or indirectly, without the express prior written permission of TES, use the TES Proprietary Information for any purpose except to the limited extent necessary for the provision of Services under this Agreement. Upon termination of this Agreement for any reason, Client shall cease all use of TES Proprietary Information and shall return to TES all manifestations and copies thereof in Client's possession or control except to the extent Client is allowed continued use of completed forms as set forth in Section 7(i).
- (b) Client Proprietary Information. TES acknowledges and agrees that in the course of performance of its obligations under this Agreement, TES will have access to certain information proprietary to Client, which may include but is not limited to trade secrets, policies, procedures, operating manuals, specifications, software, business or strategic plans, budgets, salary information, contractual arrangements or negotiations, financial information, and employee information (collectively, the "Client Proprietary Information"). All of such Client Proprietary Information shall be and remain the property of Client at all times, and TES shall have no right, title or interest therein. TES shall maintain the confidentiality of all Client Proprietary Information and shall not divulge such information to any third parties, except (i) as may be necessary for the discharge of its obligations under this Agreement and (ii) as required by law. TES shall take reasonable precautions against disclosure of any Client Proprietary Information to unauthorized persons by any of its officers, directors, employees or agents. Upon termination of this Agreement for any reason, TES shall cease all use of Client Proprietary Information and shall return to Client all manifestations and copies thereof in TES' possession or control except to the extent that the information is retained for TES' internal and business records.
- (c) Equitable Relief and Indemnification. Each of the parties acknowledges and agrees that due to the unique nature of its proprietary information there can be no adequate remedy of law for any breach of its obligations hereunder, and that any such breach may allow the breaching party or third parties to unfairly compete with the non-breaching party resulting in irreparable harm to the non-breaching party that cannot be adequately compensated. Therefore, upon any such breach or any threat thereof, the non-breaching party shall be entitled to temporary, preliminary, and permanent injunctive relief in addition to whatever other remedies it might have at law and equity and to be indemnified by the breaching party from any loss or harm, including without limitation, actual attorney fees, in connection with any breach or enforcement of the breaching party's obligations hereunder or the unauthorized use or release of any such proprietary information. Each party will notify the other party in writing immediately upon the occurrence of any unauthorized release or other breach of which it is aware.

- (d) Exceptions. Notwithstanding anything else in this Agreement, claims for monies, due, claims for services rendered, claims for injunctive relief as provided for in Section 15(c) above, and/or claims for grant or financial assistance reimbursement due may, at either party's option, be brought separately and immediately in a court of competent jurisdiction or pursued through mediation as set forth below. In the event that a party pursues claims for monies due in court, all other disputes herein shall be subject to good faith mediation.
- (e) Survival. The obligations of the parties under this Section 15 shall expressly survive the expiration or termination for any reason of this Agreement.

16. MISCELLANEOUS

- (a) No Third Party Beneficiaries. The parties intend that the benefits of this Agreement shall insure only to TES and Client and not to any third person.
- (b) Entire Agreement. This Agreement, together with all appendices hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, supersedes all other and prior agreements on the same subject, whether written or oral, and contains all of the covenants and agreements between the parties with respect to the subject matter hereof.
- (c) Successors and Assigns. This Agreement shall be binding upon and shall insure to the benefit of the parties and their respective successors and permitted assigns. No party may assign this Agreement or the rights, interests or obligations hereunder without the consent of the other party.
- (d) Counterparts. This Agreement, and any amendments thereto, may be executed in counterparts, each of which shall constitute an original document, but which together shall constitute one and the same instrument.
- (e) Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
- (f) Notices. Any notices required or permitted to be given hereunder by either party to the other shall be in writing and shall be deemed delivered: upon personal delivery or delivery by facsimile or electronic mail (provided that, in the case of facsimile the sender shall have obtained electronic or other confirmation of actual delivery, and in the case of electronic mail, the sender shall have delivered to both email addresses identified below and shall not have received an electronic notice of non-delivery); twenty-four (24) hours following deposit with a courier for overnight delivery; or seventy-two (72) hours following deposit in the U.S. Mail via registered or certified mail, postage prepaid, return-receipt requested, addressed to the parties at the following addresses or to such other addresses as the parties may specify in writing:

If to TES: Total Education Solutions
 3428 W. Market St.
 Fairlawn Ohio 44333
 Attention: Tawnia Novak, Regional Director
 Phone: 330 668 4041 or Facsimile: 330 666 5626
 E-mail: tnovak@tesidea.com

If to Client:

Near WestIntergenerational School
 3805 Terrett Ave
 Cleveland, OH 44113
 (216) 961-4308

- (g) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without regard to choice of law provisions.
- (h) Waiver, Amendment. No waiver, amendment, or modification of this Agreement shall be effective unless the waiver, amendment, or modification is in writing and signed by the party against whom the waiver, amendment, or modification is to be enforced. Any waiver of any provision of this Agreement shall only be effective for the specific instance and circumstance for which the waiver is given, and the waiver shall not affect the continuing enforceability of that provision in any other instance or circumstance.
- (i) Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions will nevertheless continue in full force and effect, unless such invalidity or unenforceability would defeat an essential business purpose of this Agreement.
- (j) Dispute Resolution.
 - (i) If any dispute, controversy, or claim arises out of or relates to this Agreement, or the breach, termination or validity thereof, the parties agree first to try in good faith to settle the dispute by mediation. If the parties are unsuccessful in their attempt to mediate the dispute, then such disputes will be settled by binding arbitration in accordance with the Commercial Arbitration Rules of JAMS/Endispute. Arbitration shall take place in Summit County, Ohio. The parties shall have full rights of discovery in any such arbitration, as set forth in the Ohio Rules of Civil Procedure.
 - (ii) The parties further expressly agree that if a dispute arises regarding the applicability of arbitration under this clause, then the issue of whether this dispute is subject to arbitration will also be decided by arbitration in accordance with the Commercial Arbitration Rules of JAMS/Endispute, in Summit County, Ohio.
 - (iii) The prevailing party in any arbitration arising out of this Agreement shall be entitled to recover reasonable attorney fees and costs.
 - (iv) The award of the arbitrator(s) shall be final and binding, and judgment upon the award may be entered in any court of competent jurisdiction. The prevailing party shall be entitled to recovery of reasonable attorney fees and costs in any court proceeding relating to this Agreement or the enforcement or collection of any award or judgment rendered under this Agreement.
 - (v) Notwithstanding this arbitration agreement, either party may seek and/or obtain injunctive relief (or any other provisional remedy) from any court having jurisdiction over the parties and the subject matter of the dispute (without reference to this arbitration agreement), and nothing in this Agreement shall be deemed or construed as preventing the same. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and reasonable attorney fees.
- (k) Further Assurances. The parties shall take such actions and execute and deliver such further documentation as may reasonably be required in order to give effect to the transactions contemplated by this Agreement.

IN WITNESS WHEREOF, the parties have each caused their duly authorized representatives to execute this Agreement as of the Commencement Date.

Total Education Solutions (TES)

Signature: _____ Date: _____

Tawnia Novak, Ohio Regional Director/Co-Owner

Client/School Name Near West Intergenerational School

Legal Signature: _____ Date: _____

Printed Name Brooke King, **Title** Executive Director

We are selecting a 1 year contract; rates are subject to increase annually.

We are selecting the multi-year contract which locks rates for 2 years.

Appendix A

TES Contract Information

Contract Information

TES Main Contact: **Mandy Coddling**
Full name as it should appear on contract

Mailing Address: **3428 W. Market Street**
Street Address Suite #
Fairlawn **OH** **44333**
City State ZIP Code

Legal Signer: **Tawnia Novak** Title: **Director**

Main Contact: **Mandy Coddling** Title: **Associate Director**

Phone Number: **330-668-4041** Email: **mcoddling@tesidea.com**

Accounting/Payment Information

Attention: **Billing Department**

Address: **625 Fair Oaks Ave** **300**
Street Address Suite #
South Pasadena **CA** **91030**
City State ZIP Code

Email Address: **billing@tesidea.com** Phone Number: **(323) 341-5580**

TES Corporate Office Information

Address: **625 Fair Oaks Ave** **300**
Street Address Suite #
South Pasadena **CA** **91030**
City State ZIP Code

President/CEO: **Meaghan Donahue** Phone Number: **(323) 341-5580** Email: **mdonahue@tesidea.com**

Appendix B

School Contract Information

Services to be provided at the following (mark all that apply): School Site Online TES Clinic Other

Contract Information

Legal Name/DBA: **Near West Intergenerational School**
Full name as it should appear on contract

Address: 3805 Terrett Ave
Street Address *Suite #*

Cleveland OH 44113
City *State* *ZIP Code*

Legal Signer: **Brooke King** Title: **Executive Director**
Main Contact: **April Maimone** Title: **Principal**
Phone Number: **216-961-4308** Email: **amaimone@nearwestschool.org**

Invoice/Billing Information

Invoice: *Select preferred invoice delivery method:* Mail Email Both

Attention: **Sarah Alonso**

Address: **3805 Terrett Ave**
Street Address *Suite #*

Cleveland OH 44113
City *State* *ZIP Code*

Email Address: **salonso@igschools.org** Phone Number: **216-961-4308**

School Site(s) Information

School Site Name: **Near West Intergenerational School**
Full name as it should appear on contract

Address: 3805 Terrett Ave
Street Address *Suite #*

Cleveland Oh 44113

City State ZIP Code

Main Contact:

April Maimone

Title

:

Email:

Phone Number:

School Site Name:

Full name as it should appear on contract

Address:

Street Address

Suite #

City

State

ZIP Code

Main Contact:

Title

:

Email:

Phone Number:

School Site(s) Information Continued

School Site Name:

Full name as it should appear on contract

Address:

Street Address

Suite #

City

State

ZIP Code

Main Contact:

Title

:

Email:

Phone Number:

School Site Name:

Full name as it should appear on contract

Address:

Street Address

Suite #

City

State

ZIP Code

Main Contact:

Title

:

Email:

Phone Number:

School Site Name:

Full name as it should appear on contract

Address:

Street Address

Suite #

	<i>City</i>	<i>State</i>	<i>ZIP Code</i>
Main Contact:	_____		Title : _____
Phone Number:	_____		Ema il: _____

School Site Name: _____
Full name as it should appear on contract

Address: _____
Street Address *Suite #*

City *State* *ZIP Code*

	<i>City</i>	<i>State</i>	<i>ZIP Code</i>
Main Contact:	_____		Title : _____
Phone Number:	_____		Ema il: _____

Appendix C
Services

Upon written or electronic request by Client, services can be provided in person or online. Below is an overview of available services.

- I. Case Management and Administrative Services—manage all special education administrative functions including oversight of the entire special education compliance and service delivery process: obtaining special education records; establishing and monitoring confidential student/patient special education files; monitoring compliance time-lines for 30-day, initial, annual and triennial IEP/IFSPs; scheduling, convening and running IEP/IFSP meetings; coordinating with parents, administrators, service providers to ensure adherence to the child’s IEP/IFSP; assisting in the establishment of the Child Find and student/patient Study Team and Response to Intervention (RTI) process and monitoring compliance with ADA, Section 504, etc.
- II. Professional Development and Training—develop and/or deliver training programs and/or materials for designated audience including but not limited to general education teachers, special education providers, administrators, and/or parents. Client recognizes that all trainings and related materials constitute property of TES and shall not be duplicated without written consent of TES.
- III. Psychological-Education (PSY) and Assessment Services—conduct initial assessments, re-evaluations, and triennial evaluations required by federal and state education codes in order to determine child’s level of functioning for the development of an initial IEP/IFSP or to evaluate the child’s annual or three year progress on his or her IEP/IFSP. All assessments conducted by licensed and/or credentialed personnel including School Psychologists, Speech and Language Specialists; Resource Specialists, etc. Written report included.
- IV. Instruction—provide all special education services, including Resource Specialist Program, Special Day Class and full-inclusion services, to eligible student/patient assigned by Client to TES. TES will work with Client to develop a full continuum of services as appropriate. Services shall include the following:
 - Pre-post testing to establish baseline and progress data.
 - Establishment/monitoring of individual goals and objectives in keeping with the school, the authorizing school district; and California Standards as necessary.
 - Daily, weekly, quarterly and/or annual progress reports.

- Individual, small group services.
- Services model delivery based on IEP/IFSP goals.

V. Designated Instructional Services—provide all Related Services including Speech and Language Therapy, Occupational Therapy, Physical Therapy, to those student/patient of Client eligible therefore and assigned by Client to TES. Services shall include the following:

- Pre-post testing to establish baseline and progress data.
- Establishment/monitoring of individual goals and objectives in keeping with the school, the authorizing school district; and California Standards as necessary.
- Daily, weekly, quarterly and/or annual progress reports.
- Individual, small group services.
- Service delivery model based on IEP/IFSP goals.

VI. Behavioral Intervention Services—provide an array of behavior intervention services including one to one classroom support as well as specific intervention strategies such as discrete trial training, floor time, play therapy, and sensory-motor therapy for eligible student/patient assigned by Client to TES. Services shall include the following:

- Functional Analysis Assessments
- Pre/post testing to establish baseline and progress data.
- Establishment of Behavior Intervention Plans.
- Establishment of individual goals and objectives in keeping with the school, the authorizing school district; and California Standards necessary.
- Daily, weekly, quarterly or annual progress reports as required.
- Individual, small group services
- Service delivery model based on IEP/IFSP goals.

In addition, TES service providers provide the following IEP/IFSP support services in their area of professional expertise, including:

VII. Compliance Review—ensures that client meets Federal, state, county, SELPA and local regulations regarding the provision of special education as authorized on each child’s IEP/IFSP; provides an audit of Individual Plans such as Individualized Education Programs (IEP/IFSP) including review and maintenance of files for all Special Education student/patient in assigned caseload to determine current IEP/IF status, eligibility and compliance needs; obtains missing Individual Plans and related records for Special Education student/patient in assigned caseload; and obtains required parent authorization for assessment and services in assigned caseload.

VIII. Individual Plan Development—provide administrative services to develop IEP/IFSPs/ITPs for eligible student/patient in assigned caseload to ensure compliance with state and federal requirements.

- Write quarterly and/or annual progress reports as required.
- Undertake other such Individual Plan development duties as determined by mutual agreement with the school.

IX. Individual Plan Meeting Attendance – Attendance by a TES representative at student/patient ITP/IEP/IFSP meetings for all students/patients assigned to TES, including students/patients assigned to TES for evaluations/assessments as described in above. Attendance by TES special education specialists may include writing of Individual Plans and establishment of individual goals and objectives if instructed in writing by Client.

X. Consultation – Consultation services include in-service training for your general education staff; developing a Child Find and/or student/patient Success Team model and Response to Intervention (RTI); behavior observation; electronic special education data input; consulting with general education teachers on accommodations in the general education program; consulting with parents or school administrators; consulting on compliance the Individuals with Disabilities Education Act; Parent’s Due Process Rights under the Individuals with Disabilities Education Act; the Americans with Disabilities Act; and Section 504, etc.

Service Location and Delivery Mode

Services can take place at one or more of the following locations:

- XI. School Site –in a space designated by the school and conducive to the service being requested. See Section 6.(e) above.
- XII. TES Clinic Location – services can be held at the TES Clinic sites upon request.
- XIII. Community Location –_services can be held at an agreed upon community location.
- XIV. Online – services can be held online using our HIPAA and FERPA compliant portal. Clients can attend sessions in their own home or at the school site. If the client is a minor, a responsible adult must be present throughout the online session and available for technical and therapeutic/academic support. Additional training and documentation is necessary to allow for successful implementation of this service delivery mode.
- XV. Blended Service Delivery Model: clients may choose to utilize a blended program in which services are provided both online and in person. Additional fees may apply.

Special Education Services shall also include Specialized Academic Instruction Program, Special Day Class Programs and Designated Instructional Services (“DIS”) as necessary, in the reasonable judgment of TES, to meet student/patient needs and legal requirements; provided that if TES, in its reasonable judgment, believes that any student/patient(s) may require such services or other similar services which, in quantity or scope, are beyond the levels of service which are contemplated hereunder or are otherwise cost prohibitive in light of the rates set forth in Appendix D (collectively, “Extraordinary Services”), TES shall identify such student(s)/patient(s) to Client in writing, and Client and TES shall, within fifteen (15) business days of such notice, meet and negotiate in good faith regarding additional compensation to TES for such Extraordinary Services.

Appendix D

Services	Early Contract Rate (Contracts submitted on or before July 1, 2023)	Standard Contract Rate (Contracts submitted from July 2-August 31, 2023)	Late Contract Rate (Contracts submitted on or after September 1, 2023)
Special Education Coordination/Consultation			
Special Education Compliance	\$82.00	\$85.00	\$90.00
Special Education File Review w/ Report	\$82.00	\$85.00	\$90.00
Charter School Operations Consult-start-up, EMIS compliance, school improvement, board relations, , policies and procedures, RTI Attendance	\$82.00	\$85.00	\$90.00
Resident Educator Mentor	\$82.00	\$85.00	\$90.00
Case Management- Write IEPs, Coordinate services	\$82.00	\$85.00	\$90.00
Academic Coaching	\$82.00	\$85.00	\$90.00
School Psychology			
Initial Evaluation - Approx. 11 hrs w/o meeting	\$88.00	\$95.00	\$100.00
Re-Evaluation - Approx. 8 hrs w/o meeting	\$88.00	\$95.00	\$100.00
Teacher Consult	\$88.00	\$95.00	\$100.00
Assessment – FBA	\$88.00	\$95.00	\$100.00
School Social Worker	\$65.00	\$70.00	\$75.00
Specialized Academic Instruction			
Intervention Specialist	\$72.00	\$75.00	\$80.00
ELL/TESOL	\$72.00	\$75.00	\$80.00
Title One- Reading	\$72.00	\$75.00	\$80.00
Title One- Math	\$72.00	\$75.00	\$80.00

Orton-Gillingham Tutor	\$75.00	\$75.00	\$80.00
Speech and Language			
Direct Services	\$83.00	\$88.00	\$95.00
Kindergarten Language Screenings	\$83.00	\$88.00	\$95.00
Assessment – Psycho-Educational	\$83.00	\$88.00	\$95.00
IEP / Meetings	\$83.00	\$88.00	\$95.00
RTI activities	\$83.00	\$88.00	\$95.00
Occupational Therapy			
Direct Services/Progress Reporting/ Meetings / Consult - OT and OTA	\$90.00	\$96.00	\$105.00
Assessment- Psycho-Educational/ IEP- OT	\$90.00	\$96.00	\$105.00
OT supervision of Occupational Therapy Assistant (OTA)	\$90.00	\$96.00	\$105.00
Physical Therapy			
Direct Services/Progress Reporting/ Meeting/Consult - PT	\$90.00	\$96.00	\$105.00
Assessment- Psycho-Educational/ IEP	\$90.00	\$96.00	\$105.00
PT supervision of Physical Therapy Assistant (PTA)	\$90.00	\$96.00	\$105.00
Direct Services/Progress Reporting Physical Therapy Assistant (PTA) (PTA when available)	\$69.00	\$72.00	\$77.00
Consult/ Meetings - PTA (PTA when available)	\$69.00	\$68.00	\$77.00
RTI activities - PTA (PTA when available)	\$65.00	\$65.00	\$77.00
Behavioral Support			

FBA (average 8 hours) and BIP(average 2-4 hours) by BCBA	\$110.00	\$115.00	\$125.00
Registered Behavior Technician (RBT) Direct Services	\$60.00	\$60.00	\$70.00
Supervision of RBT by BCBA	\$110.00	\$115.00	\$125.00
Consult w. teachers and team	\$110.00	\$115.00	\$125.00

Additional Fees	
One-Time Annual Contract Administration and Materials Fee	<p>Returning Schools (Schools that contracted with TES during the 2022-23 Academic Year, Contract submitted by August 31, 2023): \$400.00</p> <p>New Schools (Schools that did not contract with TES during the 2022-23 Academic Year, Contract submitted by August 31, 2023): \$600.00</p> <p>All Schools that return a contract on or after September 1, 2023: \$1000 which includes late recruiting fees</p>
Minimum Daily Service Requirement: 2 hour minimum required for all services, per day, per provider. Additional fee incurred for visits under 2 hours.	30 minutes added to billing using the provider's rate (e.g. Physical Therapist travels to your school for only one student, requiring a 30-minute visit. In accordance with the Minimum Daily Service Requirement, 30 minutes will be added to the visit.)

Additional Services*	
Professional Development	\$400 per hour
	\$1200 for 1/2 day Training
	\$2500 full day Training
Assessment – Bilingual	An additional 3-hour charge at the hourly rate for assessments within 21 calendar days
No Show - cancellation made within 24 hours of scheduled service, assessment or meeting	Half of the scheduled time at the hourly rate

These rates include Workers Compensation, Unemployment/Disability, and Professional Liability Insurances; and Payroll Taxes/Benefits.

I have reviewed the above rate schedule and agree with all fees as written. I understand that my contracted rate is determined by the date that the contract is submitted to TES.

Initials

