

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (the “**Agreement**”) is made and entered into as of **September 1st, 2022** (the “**Effective Date**”), by and between **Dennis Township School District** (the “**District**”), with an address at 601 Hagan Road, Cape May Court House, NJ 08210 and **Catapult Learning, LLC** (hereinafter referred to as “**Catapult**”), with its principal place of business at PO Box 444, Elmsford, NY 10523.

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

### 1. TERM

- 1.1 This Agreement shall commence on the Effective Date and terminate on June 30th, 2023, unless terminated earlier in accordance with Section 6 hereof (the “**Term**”).

### 2. DESCRIPTION OF PROFESSIONAL SERVICES

- 2.1 Upon the terms and conditions set forth herein, Catapult shall provide special education and related services to students identified with disabilities between the ages of 3-21 years old (the “**Services**”) at Bishop McHugh (each a “**School**” and collectively, the “**Schools**”). Services shall be provided during the Term of this Agreement, by Catapult staff utilizing Catapult’s proprietary programs, systems, teaching techniques, diagnostic tests, diagnostic and academic courses and materials. When necessary, Catapult may deliver the Program, in whole or in part, via distance learning to the extent practicable, without any additional consent or authorization, using programs, systems, teaching techniques, diagnostic tests, evaluation, academic courses and materials adapted for distance learning at the fees, rates and payment schedules as set forth in this Agreement. In circumstances of government mandated actions impacting school operations, Catapult shall make reasonable good faith effort to provide continuous education via distance learning. The description of the Services to be provided at the School is listed in Schedule A attached hereto and incorporated by reference herein. Catapult will ensure that all policies, procedures and administrative practices associated with the delivery of these Services are consistent with the Individuals with Disabilities Act
- 2.2 Staff who provide Services in the Program (hereinafter referred to as “**Program Staff**”) shall at all times remain Catapult employees or independent contractors, subject to Catapult’s ultimate control and authority, including on issues of personnel conduct, discipline and termination.
- 2.3 Board will provide:
- Copy of funding allocation for nonpublic basic and preschool
  - List of all schools with eligible students
  - List of approved services on which funds may be expended
  - List of current providers of OT, PT and other related services
  - Meeting with non-public school representatives to begin planning process with Catapult
  - Guidance when necessary to best address the needs of students and District

Catapult will provide:

- Assistance to principals in developing plan for their students
- Assistance in the development of the district IDEIA application
- Personnel as needed to address the needs identified in Individual Service Plans (“ISP”)
- Communication with parents, principals district liaison
- Reports to the District on programs as required
- Supervision for all personnel assigned to the Program

2.4 During the Term of this Agreement and for a period of twelve (12) months thereafter (the “**Non-Solicitation Period**”), the District agrees not to, either directly or indirectly through a third party, hire, attempt to hire, nor solicit for employment any Catapult employee or independent contractor, unless such solicitation is agreed upon in advance and in writing by Catapult. In the event the District solicits a Catapult employee or independent contractor for hire pursuant to written permission from Catapult during the Term of this Agreement and for twelve (12) months, thereafter, and the Catapult employee or independent contractor accepts a position with the District, the District agrees to pay Catapult (a) for a Catapult employee, a commission of thirty percent (30%) of the employee’s base salary at the time the employee accepts employment, or (b) for a Catapult independent contractor, a fee of Ten Thousand and 00/100 (\$10,000.00) dollars at the time the independent contractor accepts employment (the “**Commission**”). The Commission is non-refundable even if the employee or independent contractor does not remain employed with the District for any length of time and no matter the reason the employee or independent contractor separates from the District. Notwithstanding the foregoing, the District may not, directly or indirectly, hire any Catapult employees or independent contractors for the benefit of a third-party vendor, in an effort to circumvent any agreements that Catapult has or may have with such employees or independent contractors.

### **3. FEES AND PAYMENT**

- 3.1 In consideration of the Services, materials and equipment provided by Catapult as described herein, the District assigns to Catapult all of its State School Year 2022-2023 nonpublic allocation designated for this Program for providing the Services consisting of Basic Funds and Preschool Funds as determined by the State (the “**Fee**”).
- 3.2 The Fee shall be paid on a monthly basis as actual Services are rendered by Catapult in accordance with the rates for services set forth on Schedule B attached hereto and incorporated by reference herein. Catapult shall submit an invoice to the District for actual Services provided in the prior month no later than the twentieth day of the following month in which the Services were rendered. The Fee shall be due and payable by the District thirty (30) days after receipt of such invoice from Catapult.

### **4. CONFIDENTIAL AND PROPRIETARY INFORMATION**

- 4.1 The District and the Schools acknowledge that Catapult’s Program (which includes but is not limited to, Catapult’s proprietary systems, teaching techniques, diagnostic tests, diagnostic and academic courses and materials) is proprietary in nature and the confidential and exclusive property of Catapult and that the

District/Schools have no right, by virtue of this Agreement or otherwise, to have access to or to disclose said property, except as may be required for monitoring purposes, in which case, prior written approval of disclosure must be obtained from an officer of Catapult.

- 4.2 In the event that any proprietary or confidential information is disclosed, intentionally or otherwise to the District/Schools, each of their employees, agents or assigns, the District/Schools agree to hold same in strictest confidence and not to disclose same to any other person for any reasons nor utilize same within the District without prior written approval by Catapult.
- 4.3 The District/Schools further agree to use all efforts at its disposal to assure that its employees, agents or assigns are aware of the confidential and proprietary nature of the subject matter, and do not disclose same to any other person for any reasons nor utilize same without prior written approval by Catapult. The District/Schools acknowledge that unauthorized disclosure of Catapult's proprietary and confidential information may cause Catapult irreparable harm and may entitle Catapult to injunctive relief in a court of competent jurisdiction. Upon expiration or early termination of this Agreement, the District shall return all proprietary and/or confidential information in its possession, custody or control to Catapult, including, but not limited to, any and all originals and/or copies of instructional materials, training materials, curriculum plans and lesson plans provided to the District by Catapult for or in connection with the Program.

## **5. STUDENT RECORDS AND PRIVACY**

- 5.1 "Catapult Student Records" for the purpose of this Agreement, shall constitute if applicable, all Catapult tests, attendance records and student diagnostic summaries. Access to student education records is subject to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, et seq.; and Catapult agrees to comply with all material respects of such laws and regulations. Catapult agrees that the confidentiality of student data shall be maintained in accordance with state and federal laws, including FERPA, and the policies on data security and privacy that protect the confidentiality of a student's personally identifiable information as defined by FERPA ("PII"). Catapult will only share such PII with additional third parties if those third parties have an educational purpose in knowing such PII and are contractually bound to adhere to the data protection set forth herein. If access to education records is sought by any third party that is not contractually bound with Catapult, whether in accordance with FERPA or other federal or state laws or regulations, Catapult will immediately notify the District in writing, unless expressly prohibited by judicial and/or administrative order. Should Catapult receive a court order or lawfully-issued subpoena seeking the release of such data or information, Catapult shall provide a copy of the order or subpoena to the District before releasing the requested data or information, unless prohibited by law or judicial/administrative order. Catapult will hold student records for a period of three (3) years or until the Program ends, whichever is longer. At the end such period, prior to destruction of such student records, Catapult will return the student records to the District at the District's written request.

## **6. BREACH AND TERMINATION**

- 6.1 This Agreement may be terminated by either party if the other party is in breach of any material provision of this Agreement, but only after written notice of default

and an opportunity to cure has been given to the breaching party. The notice of default must give the breaching party an opportunity to cure of at least thirty (30) days in the case of a non-monetary default and at least ten (10) days in the case of a monetary default. If the breaching party has not cured the breach before the cure date stated in the notice of default, the party giving notice may terminate this Agreement by giving the breaching party written notice of termination stating the date on which the termination is to be effective. Notwithstanding the delivery of a notice of default or notice of termination under this Section, the parties shall continue to observe and perform their respective obligations under this Agreement until the effective date of termination.

- 6.2 In the event either party elects to terminate this Agreement pursuant to Section 6.1, Catapult shall be entitled to an equitable adjustment hereunder. Said equitable adjustment shall include all fees for services rendered up to the date of termination and costs reasonably incurred by Catapult in connection with such termination. If adequate notice is not provided in accordance with Section 6.1, Catapult shall also be entitled to payment of any fees that would have been earned during the balance of the notice period.
- 6.3 Notwithstanding the foregoing, Sections 4, 5 and 7 and the obligations of the parties there under, shall survive termination of this Agreement.

## 7. INDEMNIFICATION

- 7.1 The District shall indemnify Catapult against and from all direct costs, expenses, damages, injury or loss (specifically excluding any incidental, consequential, special, punitive or indirect damages or lost profits of any kind) to which Catapult may be subject by reason of any wrongdoing, misconduct, want of care, skill, gross negligence, or default by District, its officers, directors, agents, employees, or assigns, in the execution or performance of this Agreement.
- 7.2 Catapult shall indemnify the District against and from all direct costs, expenses, damages, injury or loss (specifically excluding any incidental, consequential, special, punitive or indirect damages or lost profits of any kind) to which the District may be subject by reason of any wrongdoing, misconduct, want of care, skill, gross negligence, or default by Catapult, its agents, employees, or assigns, in the execution or performance of this Agreement.
- 7.3 If a claim for indemnification (a “**Claim**”) is to be made by a party entitled to indemnification hereunder against the indemnifying party, the party claiming such indemnification shall give written notice (a “**Claim Notice**”) to the indemnifying party as soon as practicable after the party entitled to indemnification becomes aware of any fact, condition or event which may give rise to damages for which indemnification may be sought under this Section. Such Claim Notice shall specify the nature and amount of the Claim asserted, if actually known to the party entitled to indemnification hereunder. If any lawsuit or enforcement action is filed against any party entitled to the benefit of indemnity hereunder, written notice thereof shall be given to the indemnifying party as promptly as practicable and in any event within fifteen (15) days after the service of the citation or summons. Subject to the limitations of this Section, the failure of any indemnified party to give timely notice hereunder shall not affect rights to indemnification hereunder, except to the extent that the indemnifying party demonstrates actual damage caused by such failure. After such notice, if the indemnifying party shall acknowledge in writing to the indemnified party that the indemnifying party shall be obligated under the

terms of its indemnity hereunder in connection with such lawsuit or action, then the indemnifying party shall be entitled, if it so elects at its own cost and expense, (A) to take control of the defense and investigation of such lawsuit or action, (B) to employ and engage attorneys of its own choice, who shall be reasonably satisfactory to the indemnified party, to handle and defend the same unless the named parties to such action or proceeding include both the indemnifying party and the indemnified party and the indemnified party has been advised in writing by counsel that there may be one or more legal defenses available to such indemnified party that are different from or additional to those available to the indemnifying party, in which event the indemnified party shall be entitled, at the indemnifying party's cost and expense, to separate counsel of its own choosing, and (C) to compromise or settle such claim, which compromise or settlement shall be made only with the written consent of the indemnified party, such consent not to be unreasonably withheld or delayed; provided, however, that any such compromise or settlement shall give each indemnified party a full, complete and unconditional release of any and all liability by all relevant parties relating thereto. If the indemnifying party fails to assume the defense of such claim within thirty (30) calendar days after receipt of the Claim Notice, the indemnified party against which such claim has been asserted shall (upon delivering notice to such effect to the indemnifying party) have the right to undertake, at the indemnifying party's cost and expense, the defense, compromise or settlement of such claim on behalf of and for the account and risk of the indemnifying party; provided, however, that such Claim shall not be compromised or settled without the written consent of the indemnifying party, which consent shall not be unreasonably withheld or delayed. In the event the indemnified party assumes the defense of the claim, the indemnified party will keep the indemnifying party reasonably informed of the progress of any such defense, compromise or settlement. The indemnifying party shall be liable for any settlement of any action effected pursuant to and in accordance with and subject to the limitations of this Section and for any final judgment (subject to any right of appeal).

In the event that any action, suit, proceeding or investigation relating hereto or to the transactions contemplated by this Agreement is commenced, the parties hereto agree to immediately notify each other in writing of the pending action, suit, proceeding or investigation, and to cooperate to the extent possible to defend against and respond thereto and make available to each other such personnel, witnesses, books, records, documents or other information within its control that are reasonably necessary or appropriate for such defense.

## **8. INSURANCE**

- 8.1 Catapult maintains and keeps in force such insurance as Commercial General Liability and Property Damage, as will protect it from claims under Workers' Compensation Acts and also such insurance as will protect it and the District from any other claims for damages for personal injury, including death, and claims for damages to any property of the District or of the public, which may arise from operations under this Agreement, whether such operations be by Catapult or by any subcontractor or anyone directly or indirectly employed by any of them.
- 8.2 Catapult shall maintain and keep in force liability insurance which shall under no circumstances be less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. The amount of property damage insurance shall not be less than One Million Dollars (\$1,000,000.00).

- 8.3 The District will maintain and keep in force such insurance as Commercial General Liability and Property Damage, as will protect it from claims under Workers' Compensation Acts and also such insurance as will protect it and Catapult from any other claims for damages for personal injury, including death, and claims for damages to any property of Catapult, which may arise from operations under this Agreement, whether such operations be by the District or by any subcontractor or anyone directly or indirectly employed by any of them.
- 8.4 Upon request, both parties shall exchange proofs of the insurances as necessitated in Sections 8.1, 8.2 and 8.3.

## 9. STATUS CHANGE

- 9.1 Catapult shall inform the District of any and all circumstances which may impede the progress of the services or performance under this Agreement. In the event of such change in circumstances by Catapult that renders Catapult unable to reasonably perform its obligations hereunder, Catapult may terminate this Agreement without penalty with thirty (30) days prior written notice to the District.
- 9.2 In addition, the District shall inform Catapult of any and all circumstances which may directly or indirectly affect the performance of this Agreement, including, but not limited to, change in District or the School administration, decrease in original funding source, etc.
- 9.3 In the case of a change in District or School administration, specifically a change in School principal, the District shall schedule a meeting with Catapult management and the new School principal within sixty (60) days of the start of tenure.

## 10. NOTICES

- 10.1 All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given to the party to whom intended if (i) delivered (with an acknowledgment) by hand, (ii) sent by facsimile machine or (iii) sent by certified or registered mail postage pre-paid, return receipt requested. Any notice so delivered or sent shall be deemed to have been duly given on the date of receipt.
- 10.2 Until changed by notice in the manner specified above, the addresses and telephone numbers of the parties to this Agreement for purposes of this Paragraph shall be the following: (i) for the District 601 Hagan Road, Cape May Court House, NJ 08210 (ii) for Catapult PO Box 444, Elmsford, NY 10523.

## 11. MISCELLANEOUS

- 11.1 Force Majeure. Neither party will be liable to the other party hereunder or in default under this Agreement for failures of performance resulting from acts or events beyond the reasonable control of such party, including, by way of example and not limitation, acts of God, disease outbreak or widespread illness, computer virus attack or infiltration, civil disturbances, war and strikes.
- 11.2 No Agency. Nothing in this Agreement shall be deemed to create or give rise to a partnership or joint venture between the parties. Neither party shall have the

authority to, or shall attempt to, bind or commit the other party for any purpose except as expressly provided herein.

- 11.3 Assignment. Neither Catapult nor District may assign or transfer any interest arising in or from this Agreement without the prior written consent of the other party. Provided however, the foregoing consent is not required when such assignment or transfer of any interest arising in or from this Agreement is to a subsidiary, parent company, or a corporate affiliate of Catapult or in connection with the sale of all, or substantially all the outstanding assets or equity of Catapult. In the event of an authorized assignment or transfer of interest, this Agreement will inure to the benefit of and be binding upon the parties hereto and their respective heirs, representatives, successors, and assigns.
- 11.4 Applicable Law. In providing all Services under this Agreement, Catapult shall abide by all applicable federal, state and local statutes, ordinances, rules, regulations, and standards, as well as the standards and requirements imposed upon the District by federal and/or state agencies providing funding to the District for the purchase of Catapult Services.
- 11.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.
- 11.6 Non-discrimination. Catapult is an equal opportunity employer. It conducts all business activities, including hiring, without regard to age, race, color, sex, disability, marital status, national origin, citizenship status, or other legally protected category.
- 11.7 No Waiver. No failure on the part of either party to exercise, no delay in exercising, and no course of dealing with respect to any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 11.8 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and all previous agreements or discussions between the parties relating to the subject matter hereof, written or oral, are hereby terminated and/or superseded by this Agreement. This Agreement may be amended or modified only by a written instrument signed by both parties. If any provision of this Agreement is held invalid, the validity of the remainder of this Agreement shall not be affected. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 11.9 Publicity. Each party may disclose the existence, subject matter, size, and/or value of this Agreement in press releases and public announcements and in such connection may refer by name to the other party, subject to the other party's consent which consent shall not be unreasonably withheld.
- 11.10 Number and Gender. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neutral genders.
- 11.11 Binding Effect. This Agreement will be binding upon the parties hereto and their

respective successors and assigns.

**[THE SPACE BELOW IS INTENTIONALLY LEFT BLANK]**




**IN WITNESS WHEREOF**, the parties hereto have entered into this Agreement as of the Effective Date first above written.

**Dennis Township School District**

**Catapult Learning, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By:  \_\_\_\_\_  
Name: Steve Quattrociochi  
Title: President  
Date: 8/17/2022

## **SCHEDULE A**

Following represents the specific services available from Catapult for nonpublic school students utilizing IDEA funds:

Additional Supplemental Instruction (SI) Services

Additional Speech Services

Materials and Equipment as required by the students' ISP

In-class Support

Occupational Therapy

Physical Therapy

Paraprofessionals

Counseling

Professional Development

These services will be provided based on the available funding and specific School requirements.

**SCHEDULE B**  
**Fees for Services**

Catapult's fees are based solely on direct service\* time to students at all-inclusive hourly rates\*\* of:

<b>Proposal</b>	<b>Service</b>	<b>2022-2023</b>
IDEA	Full Time Support Teacher	\$87.42
IDEA	Full Time Para-Professional	\$35.61
IDEA	Full Time School Counselor	\$104.25
IDEA	Occupational Therapy	\$225.87
IDEA	Speech Therapy	\$146.30
IDEA	Physical Therapy	\$225.87

\*Direct Service hours are defined as direct service time with students. This hourly rate includes all costs associated to operate the instructional program including but not limited to prep time, student and teacher materials, teacher and classroom supplies, progress reporting, and testing costs. The District will not be invoiced separately for additional hours or materials related to the operation of the Program.

\*\*All inclusive hourly rates are the same whether the Services are provided by Catapult or a subcontractor of Catapult.

**EXHIBIT A**

**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE  
N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)  
N.J.A.C. 17:27**

**GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS**

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2, or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.


The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302

The contractor and its subcontractors shall furnish such reports or other documents to the Div. of Contract Compliance & EEO as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Div. of Contract Compliance & EEO for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.**

DocuSigned by:  
  
039E908B0A5E428  
\_\_\_\_\_  
Steve Quattrociocchi, President

8/17/2022  
\_\_\_\_\_  
Date