esi EDUCATIONAL SERVICES, INC

Employee Staffing Agreement

This Agreement for Employee Staffing Services ("Agreement") is entered into in the State of Arizona effective July 1, 2018 ("Effective Date"), by and between Sedona Oak Creek USD ("Client"), and Educational Services, Inc., an Arizona corporation ("ESI").

RECITALS

A. ESI is a corporation in the business of providing employee staffing services.

B. Client is an entity within the State of Arizona and desires to obtain certain staffing services ("Services") from ESI. ESI is willing to provide Services to Client upon the terms and conditions contained in this Agreement.

C. This Agreement provides for the allocation between Client and ESI of responsibilities with respect to covered employees ("Workers" pursuant to Section 2 below).

D. This Agreement shall not diminish, abolish, or remove any rights of Workers against the Client, or obligations of the Client to any Workers, if any, that existed before the Effective Date of this Agreement.

E. Client and ESI agree to be bound by the terms and conditions set forth in any applicable cooperative contract purchasing agreement.

AGREEMENT

In consideration of the foregoing recitals, and mutual promises contained herein, Client and ESI agree as follows:

1. RELATIONSHIP OF THE PARTIES

ESI is an independent contractor and shall perform its obligations under this Agreement as an independent contractor. All Workers provided by ESI to perform Services for Client pursuant to this Agreement shall be employees of ESI and not of Client. Client has the right to direct Workers only to the extent necessary to conduct the Client's business, and operations, and to comply with licensing and certification requirements that apply to the Client, or to any Worker. In all other respects, ESI retains full control over the employment, direction, supervision, evaluation, compensation, discipline, and discharge of Workers performing Services under this Agreement.

2. **WORKER**

In this Agreement, the term "Worker" or "Workers" means an individual(s) (a) employed by ESI in Arizona to work in Arizona, (b) who is performing Services for Client pursuant to this Agreement, (c) who has completed ESI's required hiring and onboarding process forms, and, where applicable, is certificated or licensed as required by law for the position in which ESI places the Worker.

ESI will not place into employment positions with the Client any Worker who does not possess, or have the ability to possess, all necessary certification and endorsements or licenses for the position assigned.

ESI will maintain equal employment opportunity and anti-discrimination policies, including complaint procedures that address discrimination, and/or harassment claims. ESI retains the right to make a final determination as to whether or not to hire a Worker.

3. **TERM OF AGREEMENT**

The initial term of this Agreement will be one (1) year following the Effective Date. Upon the expiration of the initial term, this Agreement may be renewed annually upon mutual agreement of both parties. This Agreement does not automatically renew at the end of each year.

4. **TERMINATION**

A. Workers, Without Cause. Notwithstanding any other provision of this Agreement, Client may request termination of, and ESI may terminate, any Worker at any time without cause upon the submission of at least thirty (30) calendar days advance written notice.

B. Workers, With Cause. Notwithstanding any other provision of this Agreement, Client may request termination of, and ESI may terminate, any Worker by written notice to ESI upon the occurrence of any of the following:

(1) A material breach by ESI, or a Worker of any of ESI's or Worker's obligations under this Agreement, or under the Worker Contract.

(2) If a Worker embezzles or misappropriates Client funds or property, defrauds Client, is convicted of a felony, or of any crime involving moral turpitude, has his or her certification or other licensing required for the position for which employed by ESI revoked or suspended, fails to maintain a valid fingerprint card if one is required by Client, commits an act or omission which constitutes a breach of the Worker Contract, violates the policies of the Client applicable to Client's own employees, commits

an act of unprofessional conduct, or commits an act that adversely affects the reputation of Client.

(3) Death or permanent disability of a Worker occurring any time during the term of this Agreement, in which event this Agreement (as it relates to the Worker) shall terminate as of his or her death or permanent disability.

(4) If it is later discovered that a Worker has made any material misrepresentations or has failed to provide any material representations in connection with the information provided to ESI.

C. Agreement. This Agreement may be terminated by either party, for any reason, at any time prior to the expiration of the Term, by providing ninety-day (90) written notice to the other Party, in the manner described in Section 21.

5. **SCOPE OF SERVICES**

ESI shall supply Workers and shall perform the following services:

A. Recruit, hire, train, evaluate, compensate, place, replace, supervise, discipline, and terminate Workers.

B. Maintain a recruiting and hiring program that is in compliance with federal and state laws, rules and regulations, equal opportunity, and anti-discrimination policies applicable to, and restricting, the hiring and selection process, including, but not limited to, Title VII of the Civil Rights Act of 1964 ("Title VII"), the Americans With Disabilities Act ("ADA"), the Age Discrimination in Employment Act ("ADEA"), the Fair Credit Reporting Act ("FCRA"), the Arizona Civil Rights Act ("ACRA"), and the Arizona Employment Protection Act ("AEPA").

C. Maintain a system of statewide background checks on all Workers provided to Client to include: pre-screening, credentialing, licensure, statewide criminal background check, and fingerprinting, the results of which shall be made available to Client upon request to the extent permitted by law. ESI shall ensure that all Workers possess all certifications and licenses necessary to perform their assignments.

D. Maintain a system of evaluation, which can be the Client's evaluation systems and instruments.

E. Maintain a program of supervision that enforces appropriate policies and procedures. In order to maintain the program, ESI may designate one or more on-site ESI employees as the supervisor, and/or, ESI contact responsible for addressing and responding to Workers.

F. Provide each Worker with information regarding his or her obligation to comply with appropriate safety, drug/alcohol, anti-harassment, anti-discrimination, anti-retaliation, and conduct policies.

G. Inform each Worker in writing that s/he is employed by ESI, and not employed by the Client.

H. Inform each Worker in writing that job related illness/injury reports are to be made to the Client, and ESI's on-site supervisor, or ESI contact, and provide information on where and how reports are to be made to the Client and ESI supervisor or contact.

I. Pay Workers in compliance with applicable wage and hour laws, including, but not limited to the Fair Labor Standards Act ("FLSA"), the Fair Wages and Healthy Families Act (formerly Prop 206), and Arizona Labor Code. ESI shall maintain complete and accurate records of all wages paid to a Worker assigned to provide services to Client. ESI shall be exclusively responsible for, and will comply with, applicable law governing the reporting and payment of wages, payroll-related, and unemployment taxes attributable to wages paid to Workers assigned to provide services to Client.

For SubSource Workers (substitutes), ESI will track, account and pay for paid sick time in accordance with the Fair Wages and Healthy Families Act. These costs will not be invoiced to the District and will be ESI's responsibility.

Hourly employees will not be allowed to accrue comp time, and will be paid overtime rate, 1 ½ times their regular hourly rate, for any hours worked over 40 hours in a work-week. The ESI work-week runs from Sunday through Saturday. If an authorized timesheet approver (employee of Client) approves a Worker timesheet with overtime hours on it, ESI must pay that overtime, and will bill Client accordingly for that overtime.

J. Be responsible for the adequacy of the services provided by Workers pursuant to this Agreement.

K. ESI shall perform all other responsibilities with respect to Workers otherwise required of an employer, and not assumed by Client pursuant to this Agreement.

6. **APPROVAL OF SUPPLIED WORKERS**

Client has the right, but not the obligation, to pre-approve any Worker provided by ESI to fill a position for which the Client has contracted with the ESI to provide a Worker. The Client has the right to reject any Worker prior to, or, at the time of placement. Client may recommend that ESI impose discipline upon any Worker, and ESI may, in its own right, impose discipline, up to and including dismissal, upon any Worker.

7. **ADMINISTRATIVE FEES**

Client will pay ESI an administrative fee in accordance with the Fee Schedule, attached as **Exhibit A**.

Client will also pay for all associated employer's payroll liabilities for the Workers. Payroll liabilities are subject to adjustment with any changes in job functions, or positions of Workers, increases in payroll taxes, including, but not limited to changes in FICA (OASDI/Medicare), federal or state unemployment tax rates, workers' compensation rates, or any government mandated insurance requirement that is not already known or currently required, or any government mandated wage increases. Any such adjustments will be effective on the date of the increase or change.

8. **PRE-PAYMENT INCENTIVE**

ESI pays Workers for their services to Client before receiving corresponding payment from Client. Therefore, ESI offers a pre-payment incentive of 0.25 percentage point reduction in the Contract Administrative Fee if Client pre-pays for Services. (For example: If Administrative Fee is 5.00%, the discounted Administrative Fee will be 4.75%.)

9. **PAYMENT TERMS**

ESI will bill Client with invoices as "net 30." An 8% late payment charge will be assessed for any payment that is not received within 30 days of invoice.

10. **WORKERS' COMPENSATION**

A. ESI will be considered the "employer" of all Workers for the purposes of providing workers' compensation insurance within the meaning of A.R.S. § 23-901. ESI shall provide workers' compensation and employer's liability insurance in accordance with the statutory requirements of the State of Arizona, including Employer's Liability insurance with limits of liability of not less than $1,000,000 each accident, and $1,000,000 bodily injury or disease. The workers' compensation policy shall be endorsed to include the Alternate Employer Endorsement, and shall include a waiver of subrogation in favor of Client from the workers' compensation insurer.

B. Client and ESI understand, agree, and acknowledge that no individual will be covered by ESI's workers' compensation insurance, or be issued a payroll check unless and until that individual has, prior to commencing work for the Client, satisfied the requirements and definition of a "Worker" under Section 2 of this Agreement.

C. Client understands, agrees, and acknowledges that the workers' compensation insurance that ESI will provide under this Agreement will only cover individuals who are employed by ESI, and that such ESI's workers' compensation insurance will not cover other individuals who might perform services for Client, whether as employees, independent contractors, or otherwise. Client agrees to provide workers' compensation insurance, or maintain a program of approved self-insurance covering Client's own employees.

11. **CLIENT'S LIABILITY INSURANCE**

Client will provide liability indemnity protection to the Workers performing Services under this Agreement, and ESI, to the extent that the Worker is providing services for the Client, and the Worker is acting within the course and scope of the authorization granted. The provision of liability indemnity protection shall not be construed as evidence that the relationship between the parties and Workers is other than specifically provided for and agreed to in this Agreement.

12. **ESI'S LIABILITY INSURANCE**

ESI shall maintain in full force and effect at all times during the term of this Agreement Commercial General Liability ("CGL") insurance with limits of liability of not less than one million dollars ($1,000,000) per occurrence, and if such Commercial General Liability insurance contains a general aggregate limit of liability, the limit of liability shall be at least two million dollars ($2,000,000). The CGL policy shall be written on an occurrence form and shall cover liability arising from the independent negligence or other wrongful act, error or omission of ESI and its employees that is not the direct consequence of the Services provided by Workers under the terms of this Agreement. The Client shall be added as an additional insured to the CGL policy, but only to the extent that the covered liability-causing event is not related to the Services provided by Workers under the terms of this Agreement.

13. **PATIENT PROTECTION AND AFFORDABLE CARE ACT (PPACA)**

ESI offers several medical benefit plan options that meet both "Minimum Value" and "Minimum Essential Coverage." ESI is the employer of record for its Workers, and is the applicable large employer (ALE) with the risk for 4980H penalty exposure. ESI is responsible for determining the hours of service as a full-time employee status for variable-hour Workers for purposes of section 4980H through the look-back measurement method requirements.

14. **ADMINISTRATION**

A. All Workers assigned to fill positions with the Client are employees of ESI. ESI is responsible for administrative employment matters, such as transmission of all federal, state, and local employment tax payments, providing workers' compensation insurance, as well as, management of fringe benefit programs for Workers. ESI agrees to pay, and hold harmless, Client from any and all tax penalties, assessments, or governmental charges in connection with all or any of the Services provided under the terms of this Agreement. Client is responsible for payment of the Alternative Contribution to the Arizona State Retirement System for any amounts that may be due for individual Workers.

B. Client will immediately forward to ESI any garnishment orders, involuntary deduction orders, notices of IRS liens, and other forms of legal process received by Client affecting payment of wages to Workers and will cooperate with ESI in responding thereto.

C. Workers will receive compensation for services rendered pursuant to this Agreement solely through ESI. It is a material breach of this Agreement for Client to pay any Worker in cash, or by any other means for any Services rendered. Any individual whom a Client pays directly for any Services rendered will not be considered a Worker under this Agreement as to the Services for which the Client provides payment.

D. ESI shall warrant compliance with all federal immigration laws and regulations that relate to Workers, and that it has verified employment eligibility of each Worker through the e-verify program.

E. Upon Client's reasonable request, ESI will provide documentation showing compliance with Section 16(D) with respect to any Worker.

15. **PROTECTED LEAVES OF ABSENCE**

A. The Uniformed Services Employment and Reemployment Rights Act of 1994 protects civilian job rights, and benefits for veterans, and members of Reserve components. Client agrees to provide for necessary employment, and/or reemployment positions in the event that Workers are called away for military service.

B. The Family and Medical Leave Act protects re-instatement rights of eligible employees after the employee has been on approved Family and Medical Leave. Client agrees to provide necessary employment and/or reemployment positions in the event that Workers are returning from FMLA.

16. **SAFE WORK ENVIRONMENT**

A. ESI and its Workers will comply with all health and safety laws, regulations, ordinances, directives, and rules imposed by controlling federal, state, or local governments, and will immediately report all work related accidents involving the Worker within 24 hours to Client.

B. If applicable, and appropriate, Client will provide the Workers with personal protective equipment as required by federal, state, local law, regulations, ordinance, directive, or rule.

C. ESI or its workers' compensation carrier has the right to inspect the Client's premises and operation, but is not obligated to conduct any inspections. ESI reserves the right to audit safety activities. ESI, or its insurers, may give reports to Client on the conditions found at Client's worksites. Client will supply documentation related to safety activities as prescribed by law (e.g., safety meeting, training maintaining OSHA log). Neither ESI's insurer nor ESI warrants the result of the inspections, or the absence thereof, or that the operations or premises are in compliance with any laws, regulations, codes, or standards.

D. Client will ensure that all facilities where the Workers perform services are in compliance with any and all applicable federal, state, and/or local laws, regulations, codes, or standards.

17. **SUPERVISION**

A. ESI will provide direction, supervision, training, and control of each Worker in the performance of the Services. The Client will provide only daily monitoring of the Workers, and will report to ESI. ESI may designate at least one (1) on-site supervisor from among the Workers assigned to complete the Services. This on-site supervisor may direct the operational and administrative matters relating to the Services, and may be under the direct supervision of ESI. If ESI fails to designate an on-site supervisor, Workers assigned to perform Services for the Client shall remain responsible to ESI or designee.

B. ESI shall determine the procedures to be followed by Workers regarding the time and performance of the Workers' job functions and duties, and these will coincide with Client requirements regarding time and performance of same. Client agrees to cooperate with ESI in the formation of such policies and procedures and permit ESI to implement its policies and procedures relating to the Workers.

C. Client may make all non-routine directives through ESI's on-site supervisor, or if an on-site supervisor is not provided, then through ESI or designee.

18. **INDEMNIFICATION**

Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney fees), hereinafter collectively referred to as "claims," arising out of bodily injury to any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. For Workers operating Client vehicles, Client hereby agrees to indemnify, defend, and hold harmless ESI for any and all claims, losses, liability, costs, or expenses (including reasonable attorney fees) resulting from a vehicular incident, but only to the extent that the Workers are operating Client's vehicles within the course and scope of authorization granted by the Client.

ESI will indemnify Client for any assessment, assessable payment, fine, or penalty imposed upon Client arising out of any Worker performing services under this Agreement pursuant to 26 U.S.C. §4980H, or any successor statutes, or any regulations enacted thereunder.

19. **ADJUDICATION OF AGREEMENT**

If any court or arbitrator of competent jurisdiction holds that any provision of this Agreement is invalid or unenforceable, the parties desire and agree that the remaining parts of this Agreement will nevertheless continue to be valid and enforceable.

20. **MODIFICATIONS OR WAIVER OF AGREEMENT**

No modification or waiver of this Agreement will be valid unless the modification or waiver is in writing, and signed by the designated representative of the Client and a principal of ESI. The failure of either party at any time to insist upon the strict performance of any provision of this Agreement will not be construed as a waiver of the right to insist upon the strict performance of the same provision, at any future time.

21. **NOTICES**

All notices or other communication required or permitted under this Agreement shall be in writing, and shall be made by hand delivery, or overnight courier, or prepaid first class certified mail. Notice to ESI shall be sent to:

Educational Services, Inc.
14614 N. Kierland Blvd, Suite 230
Scottsdale, AZ 85254

Notice to Client shall be sent to Client at the address set forth on the signature page hereto.

22. **NO RULE OF STRICT CONSTRUCTION**

Both parties have approved the language of this Agreement, and no rule of strict construction will be applied against either party.

23. **HEADINGS**

The descriptive headings of the paragraphs and subparagraphs of this Agreement are intended for convenience only, and do not constitute parts of this Agreement.

24. **COUNTERPARTS**

This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

25. **ARBITRATION**

In the event of any dispute between the parties to this Agreement arising out of, relating to, or in connection with the provisions of this Agreement, or the performance hereunder, the parties hereby agree that any such dispute may be submitted to binding arbitration. The arbitrator shall be selected by mutual agreement. The arbitrator's decision and/or award shall be final and binding. The prevailing party, if any, shall be entitled to reasonable attorney's fees and costs. Arbitration shall take place in Maricopa County.

26. **GOVERNING LAW**

This Agreement shall be construed under the laws of the State of Arizona, and shall incorporate by reference all mandatory contract provisions of state agencies required by statue or executive order.

No Israel Boycott. The Parties agree that they are not currently engaged in, and agree that for the duration of the Agreement they will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.

27. **VALIDITY**

This Agreement shall be valid and enforceable only after the designated representative of both Client and ESI has signed it.

28. **CANCELLATION FOR CONFLICT OF INTEREST**

Pursuant to A.R.S. § 38-511, the Client may, within three (3) years after its execution cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract on behalf of the Client is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity, or a consultant to any other party to the contract with respect to the subject matter of the contract.

29. **RECORD RETENTION**

ESI agrees that it shall maintain all books, accounts, reports, files, and other records relating to the performance of this Agreement for a period of five (5) years after the completion of this Agreement, and to make such documents open to the Client for inspection and audit at reasonable times.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated at their respective signatures below.

Effective Date: July 1, 2018.

"Client"	EDUCATIONAL SERVICES, INC., an Arizona corporation
_____	Philip Tavasci
By: _____	By: Philip Tavasci
Its: _____	Its: President

CLIENT ADDRESS FOR NOTICE:
Street Address: _____
City, State, Zip Code: _____

esi EDUCATIONAL SERVICES, INC

EXHIBIT A
FEE SCHEDULE

ESI Cooperative Contracts

IGovernment Procurement Alliance (IGPA) Contract No. 17-14PV-02

RetireRehire
ASRS Retired Member Leased Employees: excludes Substitutes and Coaches
- 5.00% of gross salary

FlexTeach
Recruited Employees: Non-ASRS Retired Members
- 15.00% of gross salary

SubSource
Certified and Classified Substitutes
- 10.00% of gross salary

Mohave Educational Services Cooperative Contract No. 17A-ESI-0518

RetireRehire
ASRS Retired Member Leased Employees: excludes Substitutes and Coaches
- 5.00% of gross salary
- 4.00% of gross salary (volume discount: 100+ RetireRehire employees)

FlexTeach
Recruited Employees: Non-ASRS Retired Members
- 15.00% of gross salary

SubSource
Certified and Classified Substitutes
- 10.00% of gross salary