

MEMORANDUM OF AGREEMENT
BETWEEN
DEKALB COUNTY SCHOOL DISTRICT AND
VIEW POINT HEALTH
WITNESSETH:

This Memorandum of Agreement, hereinafter referred to as the "Agreement," is made and entered into this 1st day of January 2023, pursuant to 1983 Ga. Const., Art. IX, Sec. III, Para. I, by and between the DeKalb County School District located at 1701 Mountain Industrial Boulevard Stone Mountain, Georgia 30083, a political subdivision of the State of Georgia created under authority of Chapter 2 of Title 20 of the O.C.G.A. (hereinafter referred to as "DCSD"), and View Point Health, the provider of an Adolescent Crisis Stabilization Program located at 2591 Candler Road Decatur, Georgia 30032, a public corporation, public agency and instrumentality of the State of Georgia created under authority of Chapter 2 of Title 37 of the O.C.G.A. (hereinafter referred to as the "VPH" or "VPH Residential Facility"). The DCSD and the VPH may be referred to jointly herein as "Parties" and individually as a "Party."

WHEREAS, the VPH is a public agency created by state law to provide mental health, developmental disabilities, and addictive diseases services and is not created to operate a school system or to provide educational services;

WHEREAS, the VPH will operate a residential facility located within the boundaries of the DCSD which shall provide public healthcare services to children placed in its care by the Georgia Department of Human Services (hereinafter referred to as "DHS"), and others;

WHEREAS, the DCSD is authorized and required, pursuant to O.C.G.A. § 20-2-133, to provide educational services to eligible students assigned to the VPH's residential treatment facility;

WHEREAS, this Agreement provides for collaborative procedures between the Parties concerning the educational requirements for students placed by DHS, pursuant to O.C.G.A. § 20- 2-133, in the VPH Residential Facility;

NOW THEREFORE, the Parties hereto, for and in consideration of the mutual promises, agreements, covenants, and benefits contained herein and other good and valuable consideration, the sufficiency of which is hereby agreed upon by the Parties, do agree as follows:

1.

Effective Date.

This Agreement shall be effective on and after the 1st day of January 1, 2023 (hereinafter the "Effective Date"), and shall expire on December 31, 2023.

2.

Personnel.

On or by the Effective Date, the DCSD shall, subject to the DCSD's standard hiring procedures, employ and assume responsibility for hiring qualified and certificated teachers to teach on the campus of the VPH Residential Facility. If deemed necessary by the DCSD, it will also employ and assume responsibility for one part-time administrator for the campus of the VPH Residential Facility. Any teacher or administrator hired under this Agreement is an employee of the DCSD, and the DCSD will be responsible for and will pay the salaries and benefits of any teacher or administrator assigned to the VPH Residential Facility under this Agreement.

The DCSD shall provide educational services outside of the DCSD's regular 10 month/190 day school calendar only if it has a legal obligation to provide such services to a particular student under state or federal law, such as a student who is entitled to extended school year services under the Individuals with Disabilities Education Act.

Any teacher or administrator assigned to the VPH Residential Facility by the DCSD is subject to all state rules and regulations and all DCSD disciplinary policies, rules and regulations. Any teacher or administrator shall also comply with the policies, rules, and procedures of the VPH. In the event a DCSD policy, rule, or procedure conflicts with a VPH policy, rule, or procedure, the DCSD's policies, rules and procedures shall control.

3.

Eligible Students.

The DCSD is obligated to provide educational services to students with disabilities placed at the VPH Residential Facility whom the DCSD is required to serve pursuant to O.C.G.A. § 20-2-133. As deemed appropriate, DCSD teachers shall also provide educational services to other students placed at the VPH Residential Facility. VPH shall provide the DCSD with documentation demonstrating that a student is eligible to receive educational services from the DCSD under O.C.G.A. § 20-2-133. For every student the DCSD provides educational services for at VPH Residential Facility, teachers will provide VPH with documentation of clients served for their fidelity reports.

4.

Safety and Security.

VPH shall contract for or otherwise provide security services at the VPH Residential Facility and shall maintain their ordinary security procedures and processes during all times in which DCSD personnel are providing educational services at that facility. The DCSD shall not be required to provide any employees or resources in order to provide security or safety for the DCSD's personnel, and in no case shall DCSD personnel be required to physically intervene with students.

5.

Facilities.

All educational services provided by the DCSD will occur in the VPH Residential Facility. No fees will be charged to the DCSD for the use, upkeep, or maintenance of the VPH Residential Facility.

6.

Technology.

The DCSD shall provide DCSD teachers who work at VPH Residential Facility with access to the internet to utilize Infinite Campus and other DCSD applications. The VPH shall grant reasonable access, as necessary, to electrical and data utilities.

7.

Curriculum.

The DCSD shall have sole responsibility for determining the appropriate method of delivering educational services to each student assigned to the VPH Residential Facility

who the DCSD is required to serve under O.C.G.A. § 20-2-133. The DCSD shall provide such services in accordance with its obligations under state and federal law.

The DCSD will be responsible for providing all software, books, lesson plans, and other instructional materials it deems necessary to provide educational services to students at the VPH Residential Facility. VPH also will make available to the DCSD all curriculum, including textbooks and software and other instructional materials, VPH has in its possession on the campus of the VPH Residential Facility.

8.

Records.

Subject to state and federal laws, the DCSD, its agents, and the state auditor's office shall have the right to examine and copy all education records, education reports, and documents and files relating to any education activity, education program or student (but only to the extent that they relate to the student's education or related services) at the VPH Residential Facility or maintained or possessed by a private entity on behalf of VPH. VPH shall cooperate with the DCSD in obtaining any documentation, including medical referrals, required for enrollment or participation in DCSD educational programs. The DCSD and VPH recognize that they may have obligations with regard to student and patient privacy under state and federal law, including but not limited to 42 U.S.C. § 290dd-2; 42 C.F.R. Part 2; O.C.G.A. § 37-3-166; O.C.G.A. § 37-7-166; O.C.G.A. § 37-4-125; Ga. Comp. R. & Regs. R. 290-4-9-. 5; O.C.G.A. § 24-9-2 1; the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d ("HIPAA"), and the privacy regulations promulgated thereunder (45 C.F.R. Parts 160 and 164); and the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA"), and the privacy regulations promulgated thereunder, 34 CFR Part 99. Taking into account their obligations under state and federal law regarding student and patient privacy, the Parties agree to cooperate fully to share all education records, Individualized Education Programs ("IEPs"), education-related evaluations, education assessments, education social histories, and education observations. Under FERPA, prior consent by a parent or guardian to disclose personally identifiable information from an education record is not required when such information is being disclosed to other school officials, including teachers or administrators, within the agency or institution whom the agency or institution has determined to have legitimate educational interests, or where the disclosure is to officials of another school, school system or institution where the student seeks or intends to enroll. See 34 C.F.R. § 99.31(a)(I) and (2).

9.

IEP Meetings.

When necessary to meet the requirements of the Individuals with Disabilities Education Act ("IDEA"), the DCSD shall provide the following individual(s) at IEP meetings: (a) surrogate; (b) a regular education teacher (if the child is, or may be, participating in the regular education environment); (c) a special education teacher; (d) a representative of DCSD who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; is knowledgeable about the general education curriculum; and is knowledgeable about the availability of resources of the local educational agency; and/or (e) an individual who can interpret the instructional implications of evaluation results (who may be a member of the team as described above). VPH and the DCSD will cooperate fully in scheduling, conducting, and providing necessary staff to attend IEP meetings to insure compliance with the timelines and procedural and substantive requirements of applicable law. VPH will be responsible for providing necessary meeting space available for all IEP meetings.

10.

Special Education Monitoring and Complaints.

In order to comply with federal and state law regarding special education, the DCSD shall monitor students with disabilities in the VPH Residential Facility. This may include, but is not limited to, facility reviews, records reviews, timeline reports, focused monitoring, and any other activities for compliance monitoring. The DCSD shall be responsible for ensuring that a free appropriate public education ("FAPE") is provided to these students. All education complaints filed against the DCSD shall be responded to by the DCSD. VPH shall cooperate fully with DCSD in its performance of the activities described in this Agreement, including monitoring, responding, investigating, and defending against any complaints, and obtaining information required to make any required reports.

11.

Non-discrimination.

VPH agrees it shall not discriminate against students based on disability, age, race, creed, color, gender, sexual orientation, national origin, religion, ancestry, marital status or for special education services. Furthermore, VPH agrees it shall not discriminate on any basis that would be illegal for a public school district.

12.

Audit/Expenditure controls.

The DCSD has oversight of all funds received under O.C.G.A. § 20-2-161. No fees will be exchanged between the Parties under this Agreement.

13.

Non-agents and Third-Party Beneficiary Rights.

Neither the DCSD nor the VPH is a partner, joint venture, agent, or servant of the other. In respect of all terms of this Agreement the VPH and the DCSD each binds itself and its principals, agents, successors, and assigns. Except as expressly authorized herein, neither the VPH nor the DCSD may assign, license, transfer, or otherwise communicate its rights under this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officers or agents of either Party, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the Parties for this Agreement.

The Parties do not intend to create in any other individual or entity the status of a third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties to this Agreement and shall inure solely to the benefit of the Parties to this Agreement. The provisions of this Agreement are intended only to assist the Parties in determining and performing their obligations under this Agreement. The Parties intend and expressly agree that only Parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.

14.

Severability.

In the event that any term or provision of this Agreement or the application hereof to any person or in any circumstances shall be determined by operation of law to be invalid, unenforceable, or void to any extent, the remainder of the terms and provisions of the Agreement shall not be affected thereby, and each remaining provision of this Agreement shall remain in full force and effect, to the fullest extent permitted by law, unless contrary to the obvious intention of the Parties in respect of the subject matter hereof, and the invalid, unenforceable or void term or provision shall be deemed not to be a part of this Agreement.

15.

Delegation.

The Parties agree and acknowledge that the functions and powers of each Party may be exercised only by each Party and may not be delegated to a third party without written agreement by the other Party.

16.

Termination.

Either Party shall have the right to terminate this Agreement at any time, with or without cause, by providing to the other Party written notice not less than sixty (60) days in advance of the effective date of such termination.

17.

Notice.

All notices required or authorized under this Agreement shall be in writing and sent by certified mail return receipt requested, overnight courier, personal delivery, or facsimile (if confirmed by certified mail, overnight courier, or personal delivery) to the addresses indicated below, or such other address as either may indicate by at least ten (10) days prior written notice to the other Party. Notice will be effective three (3) days after the date sent

DEKALB COUNTY SCHOOL DISTRICT
ATTENTION: INTERIM
SUPERINTENDENT
Dr. Vasanne S. Tinsley
1701 Mountain Industrial Boulevard
Stone Mountain, GA 30083

VIEW POINT HEALTH
ATTENTION: CEO
Jennifer S. Hibbard, L.P.C.
175 Gwinnett Drive, Suite 260
Lawrenceville, GA 30046

18.

Liability.

Each Party will be responsible for the injury or property damage caused by negligent or other wrongful act(s) or omission(s) of its own employees acting within the scope of employment and subject to such limitations as may be prescribed by applicable laws. Neither VPH, nor any of its employees or others providing services through VPH, shall have any claims under this Agreement against the DeKalb County Board of Education or the DCSD for vacation pay, sick leave, salary or other forms of compensation, retirement benefits, social security, worker's compensation, disability benefits, unemployment insurance benefits, or employee benefits of any kind.

19.

Insurance.

- (1) On or before the Effective Date of this Agreement, VPH shall at VPH's own expense procure the insurance policies required pursuant to this Agreement, and shall furnish to DCSD, to the attention of the Director of Risk Management, DeKalb County School District, 1701 Mountain Industrial Boulevard, Stone Mountain, Georgia, 30083, certificates of insurance evidencing such coverage, as set forth in further detail below.

- (2) No placement will commence without the written statement of approval of insurance coverage from the DCSD Risk Management Unit. VPH shall procure and maintain throughout the Term of this Agreement, the policies of insurance providing coverage as set forth herein and that shall protect DCSD, its officers, agents, and employees, as well as the members of the DeKalb County Board of Education ("Board"), and their past, present, and future officials, officers, employees, volunteers, assigns, and agents. Hereinafter, DCSD, its officers, agents, and employees, as well as the members of the Board and their past, present, and future officials, offers, and employees shall be referred to as the "Indemnitees." VPH shall protect the Indemnitees from any claims for bodily injury, property damage, errors and omissions, or personal injury which may arise out of VPH's operations under this Agreement.

- (3) VPH is required to maintain the following insurance coverage during the Term of this Agreement:

- (a) Workers Compensation Insurance in the amounts of the statutory limits established by the General Assembly of the State of Georgia. VPH shall have the ability to self-insure its required workers' compensation coverage if VPH is an approved self-insurer in the State of Georgia.
- (b) Commercial General Liability Insurance to include coverage for property damage, personal injury (including medical expenses and wrongful death) and contractual liability. The Commercial General Liability Policy shall have dollar limits sufficient to ensure that there is no gap in coverage between this policy and the excess or Commercial Umbrella Policy required under this Agreement.
- (c) Comprehensive Auto Policy to include but not be limited to liability coverage on any owned, non-owned and hired vehicle used by VPH or VPH's personnel in the performance of this Agreement. The Comprehensive Automobile Policy shall have dollar limits sufficient to ensure that there is no gap in coverage between this policy and the excess or Commercial Umbrella Policy required under this Agreement. In the event VPH does not own or lease any vehicles, this requirement may be met by coverage for non-owned and hired vehicles being included under the Commercial General Liability Policy.
- (d) Professional Liability (Errors and Omissions) insurance coverage for professional liability arising out of all professional services VPH proposes to provide.
- (e) Commercial Umbrella or Excess Liability Policy, which must provide the same or broader coverage than those provided for in the above Commercial General Liability Policy and Comprehensive Auto Policy. Policy limits for the Commercial Umbrella Policy or Excess Liability Policy shall have an annual aggregate limit not less than \$3,000,000.
- (f) The foregoing insurance policies shall be obtained from insurance companies approved to do business in the State of Georgia and companies acceptable to DCSD.
- (g) Under all coverage and certificates required hereunder, policies shall or be endorsed to include the following terms and conditions:
 - i. All policies and coverage shall be on an "occurrence" basis and not on a "claims made" basis.
 - ii. The foregoing policies shall contain a provision that coverage afforded under the policies will not be canceled, or not renewed, or allowed to lapse for any reason until at least sixty (60) days prior written notice has been given to DCSD.
 - iii. Shall waive all right of subrogation against Indemnitees for losses arising out of this Agreement.
 - iv. A severability of interest or cross liability clause or endorsement applies to commercial general liability and excess liability policies.

- v. Certificates of insurance showing such coverage to be in force shall be filed with DCSD prior to commencement or continuation of any work under this Agreement, as set forth further below.
 - vi. All such coverage shall remain in full force and effect during the Term and any renewal or extension of this Agreement.
- (h) Under coverage and certificates required under Paragraph 19(3)(b), (c), and (d) above, policies shall be endorsed to include the following terms and conditions:
- i. Minimum limits of \$1,000,000 per occurrence, \$3,000,000 in the annual aggregate. Primary limits of coverage in the amount of \$1,000,000 per occurrence must be with insurers approved to conduct business in the State of Georgia. Excess or umbrella liability insurance may be placed with any insurer submitted by VPH, including captive or self-insured programs, which the prior written approval of DCSD.
 - ii. Contractual liability coverage, specifically referencing this Agreement, applies to liability assumed by the named insured.
 - iii. Shall include the Indemnitees as additional insured.
 - iv. Shall waive all right of subrogation against Indemnitees for losses arising out of this Agreement.
 - v. A severability of interest or cross liability clause or endorsement applies to commercial general liability and excess liability policies.
 - vi. Shall be primary and not excess to any other coverage provided by or available to the Indemnitees.
- (4) All certificates of insurance evidencing primary and excess layers of coverage shall be renewed and kept current and up to date on an annual basis. The certificate of insurance provided to DCSD and evidencing the insurance policies VPH is required to maintain pursuant to this Agreement shall contain the following:
- (a) Name and address of authorized agent;
 - (b) Name and address of insured;
 - (c) Name of insurance company;
 - (d) Description of coverage in standard terminology;
 - (e) Policy period;
 - (f) Policy Number;
 - (g) Limits of liability;
 - (h) Name and address of certificate holder;
 - (i) Acknowledgment to the DCSD of notice of expiration or cancellation
 - (j) Signature of authorized agent;

- (k) Telephone number of authorized agent; and
- (l) Details of policy exclusions applicable to this Agreement in comments section of insurance certificate.

(5) VPH shall require any and all subcontractors performing work under this Agreement to carry insurance of the types and with limits of liability as VPH shall deem appropriate and adequate for the work being performed. However, the obligations of VPH to Indemnitees assumed in this Agreement shall not be reduced or diminished by the standards set for any subcontractors. Further, VPH agrees that its obligations to indemnify and insure the Indemnitees, as set forth below in Paragraph 20, shall pertain to all losses arising out of a subcontractor's acts or negligence in the same manner and to the same extent as if committed by VPH. VPH shall obtain and make available for inspection by DCSD, current certificates of insurance evidence insurance coverage by such subcontractors.

20.

Indemnification and Hold Harmless.

VPH agrees to be responsible for the acts and /or omissions of its own agents and employees performed within the scope of employment. VPH, a statutorily created public corporation of the State of Georgia, cannot waive immunity conferred by the Georgia Constitution. VPH maintains insurance coverage through the State's risk management plan applicable to the negligent acts and omissions of its officers and employees, which occur within the scope of their employment by VPH. VPH has no coverage applicable to third-party acts or omissions and can undertake no obligation that might create a debt on the state treasury.

21.

Re-evaluation/Renewal

On an annual basis, and at least ninety (90) days prior to the end of each year of this Agreement, the Parties will meet for the purpose of evaluating the performance of the Parties and the other factors involved in the operation of the Agreement. Following these discussions, the Parties may: (1) agree to renew the Agreement for an additional one (1) year term, on the same basis as the then current term; or (2) agree to renew the Agreement for an additional one (1) year term, but upon different terms and provisions to be agreed upon by the Parties and included as an amendment to this Agreement.

22.

Modifications in Writing.

This Agreement may not be changed, modified, amended, or altered except in a written agreement signed by the Parties.

23.

Governing Law.

This Agreement shall be governed by, subject to and construed under the laws of the State of Georgia.

24.

Force Majeure.

The Parties shall not be liable for any loss arising out of the delay or interruption of performance of their respective obligations under this Agreement due to any act of God, war, terrorism, civil disturbance, court order, or natural disaster.

25.

Venue

The exclusive venue for any action arising out of or related to this Agreement shall be in the federal, superior, or state courts of DeKalb County, Georgia.

26.

Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the matters set forth herein and supersedes all prior, contemporaneous, written, or oral negotiations, agreements, or understandings between the Parties regarding such matters.

27.

Waiver

No failure or delay by the DCSD in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the DCSD hereunder are

cumulative and are not exclusive of any rights or remedies which it would otherwise have hereunder.

28.

No Violation.

The VPH Residential Facility represents and warrants that the execution of, and performance under, this Agreement will not be a breach of, violation of, or conflict with any other contract or agreement to which it is a party or subject.

29.

Headings/Interpretation of Agreement.

The headings contained in this Agreement are for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. The Parties agree that this Agreement was fairly negotiated at arm's length, and neither Party shall be considered to have been the drafter of the Agreement for purposes of any rules of construction.

30.

Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all counterparts so executed shall constitute one agreement binding upon all the Parties.

This Agreement is entered into this 1st day of January in the year 2023.

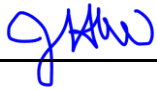
DEKALB COUNTY SCHOOL DISTRICT

By: _____
Dr. Vasanne S. Tinsley

As: Interim Superintendent, DeKalb County School

District Date: _____

VIEW POINT HEALTH

By: 

Print Name: Jennifer S. Hibbard

As: Chief Executive Office

Date: 09/06/2022