

LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into as of this _____ day of _____, 2020 (the “Effective Date”), by and between the _____ (“Dental Provider”), and Albuquerque Municipal School District No. 12, counties of Bernalillo and Sandoval, New Mexico, a political subdivision of the State of New Mexico (“APS”), collectively with Dental Provider, the “Parties”.

RECITALS

WHEREAS, Dental Provider will operated a temporary Student Comprehensive Oral Health Program on real property owned by APS.

WHEREAS, Dental Provider desires to operate a temporary Student Comprehensive Oral Health Program in order address the needs of the current students of APS in accordance with quality standards determined by Association of State and Territorial Dental Directors Standards and Benchmarks, applicable federal and state law, and the terms and conditions of this Agreement.

WHEREAS, Dental Provider to provide temporary Comprehensive Oral Health Program,

WHEREAS, This temporary Comprehensive Oral Health Program includes prevention and control of tooth decay and to establish services needed for direct care that supports prevention, primary restorative care, and conduct follow up.

WHEREAS, APS desires to provide facilities for Dental Provider to operate a temporary Student Comprehensive Oral Health Program, Locations described in Exhibit A hereto;

WHEREAS, the Parties desire to enter into this Agreement to provide for the licensing by APS to Dental Provider for the right to use APS School designated in Exhibit A and to further set forth the terms of operation and use going forward.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. INCORPORATION OF RECITALS

1.1 Incorporation of Recitals. The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

2. LICENSE

- 2.1 License. APS hereby grants to Dental Provider and Dental Provider hereby accepts, a license to use and occupy the APS Schools designated in Exhibit A _____ (designated Area) within Schools to provide the Services, as defined below.

3. SCOPE OF SERVICES AND USE OF THE SCHOOL

- 3.1 Scope of Services. Responsibilities of Dental Provider
- A. Dental Provider shall operate a temporary Student Comprehensive Oral Health Program, which will serve and provide oral health care for students. The specific services that Dental Provider will provide are described on “Exhibit B” attached hereto and incorporated herein by reference (the “Services”).
 - B. Dental Provider will provide the Services in accordance with the standards and procedures similar to services provided to other patients and without discrimination as to sex, race, color, religion, marital status, sexual orientation, age, handicap, national origin or this Agreement.
 - C. Dental Provider employees working under this Agreement must submit and pass the APS background check in accordance with the APS policies and procedures. Dental Provider will ensure its employees adhere to the APS visitor guidelines as outlined by the APS Site Safety Plan. APS will provide to Dental Provider appropriate information concerning the APS Site Safety Plan in order to assure compliance with the plan. APS will facilitate the appropriate background check process.
- 3.2 Scope of Services. Responsibilities of APS:
- A. APS will provide to Dental Provider the facilities as described in Exhibit A (the “Facilities”) for the purposes of Dental Provider providing the Services.

4. TERM AND TERMINATION

- 4.1 Term. The term of this Agreement shall be from the start of school term 2020-2021 and through the last day of the 2020-2021 school year (the “Term”). Not to exceed 12 months. This Agreement may be renewed by Dental Provider, for additional terms by submitting in writing yearly, to APS their desire to continue the Student Comprehensive Oral Health Program. And providing all yearly Data requested per section 10.14.
- 4.2 Termination. Either party may terminate this Agreement at any time by providing ninety (90) days written notice to the other party, provided that if Dental Provider terminates this Agreement in accordance with this provision, it shall be required to finish providing the Services for the current school year during which such termination notice is provided.

5. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

- 5.1 Compliance. Dental Provider shall comply with all relevant laws, rules, regulations, orders, and ordinances in its use of the Student Comprehensive Oral Health Program.
- 5.2 APS Rules. Dental Provider agrees to comply with all APS rules and regulations, which are available on APS' website and require all employees working in the Student Comprehensive Oral Health Program to participate in selected online trainings determined by APS to assist employees in understanding the select APS policies and procedures.
- 5.3 Registration. Dental Provider shall register yearly on APS' facilities usage website. <https://www.aps.edu/community/facility-rentals/user-groups#Registration%20Process>
- 5.4 Representations. Dental Provider hereby represents that it has made its own determination that the zoning of the Student Comprehensive Oral Health Program allows for the use set forth herein and that the Dental Provider will be licensed and operated in compliance with all applicable DOH standards and regulations at all times.
- 5.5 Licensure and Certification. Dental Provider represents that it and its Service providers are duly licensed by the applicable licensing authority of the State of New Mexico, and have not been debarred or otherwise determined to be ineligible to participate in Medicare and Medicaid. The Parties will comply with all laws relating to its obligations hereunder and will maintain in effect all permits, licenses and governmental approvals that may be necessary for that purpose. The Parties will notify each other immediately of any material change in such permits, licenses, or government approvals.

6. COMPENSATION

- 6.1 The Services set forth herein will be provided at no cost to APS or APS students for consideration of Dental Providers' use of APS' property; however, Dental Provider may bill Medicaid and other appropriate third-party payers' for Services provided under this Agreement. Additionally, Dental Provider may accept state funding, grants, donations and other contributions from third parties to offset the costs of providing uninsured Services, to provide reimbursement for Services that are not covered or that have been denied by third-party payers'.
- 6.2 APS shall provide space, in the approved schools, free of charge to the Dental Providers.

7. MAINTENANCE

- 7.1 Maintenance. Dental Provider is responsible for all medical waste and sharps containers and all specialty services required due to licensee use.

8. LIABILITY AND COVERAGE

- 8.1 **Liability.** As between the Parties, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from the actions or negligence of that party's employees. APS understands that Dental Provider is not indemnifying APS for Dental Provider's acts or omissions to act. Dental Provider understands that APS is not indemnifying Dental Provider for APS' acts or omissions to act. The liability of the Parties will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 *et seq.* NMSA 1978, as amended. Anything to the contrary herein notwithstanding, UNMHSC agrees that APS will not be responsible for any loss or theft of, or damage to, any parts, equipment or other property stored or left in the Facility by Dental Provider, its agents, employees, representatives, contractors and invitees.
- 8.2 **Notification.** Dental Provider must notify APS at the time this Agreement is accepted if there will be any reasonable accommodations needed by a person(s) with a disability; however, APS shall not be responsible for providing any additional accommodations in excess of those required pursuant to applicable law by virtue of APS's status as a building owner.

9. GENERAL PROVISIONS

- 9.1 **Governing Law.** This Agreement shall be governed by and construed in accordance with the statutes, judicial decisions, and other laws of the State of New Mexico. If this Agreement is a subcontract under a U.S. Government prime contract, applicable clauses of the Federal Acquisition Regulations are incorporated herein by reference. Any provision required to be included in a contract of this type by any applicable and valid Executive Order, federal, state or local law, ordinance, rule or regulation also will be deemed to be incorporated herein.
- 9.2 **Severability.** The invalidity or unenforceability of any term or provision of this Agreement will in no way affect the validity or enforceability of any other term or provision to the extent permitted by law.
- 9.3 **Non-Assignability.** Except as contemplated pursuant to this Agreement, this Agreement will not be assigned by either party, nor will the duties imposed upon either party by this Agreement be delegated, subcontracted, or transferred by either party, in whole or in part, without the prior written consent of the other party. Further, UNMHSC shall have no right to allow a third party to use the Facility either by sublicense, sublease or any other arrangement without the express, written consent of APS, which consent may be withheld in its sole discretion.
- 9.4 **Notices.** Any notice required to be given pursuant to the terms and provisions of this Agreement will be made in writing and delivered either by: (i) actual delivery of the notice into the hands of the parties thereunto entitled, including by a nationally recognized overnight express common courier; or (ii) by the mailing of the notice in the U.S. mail to the addresses set forth below of the

party entitled thereto, registered or certified mail, return receipt requested. The notice shall be deemed to be received on the date of its actual receipt by the party entitled thereto.

If to Dental Provider:

Name
Attn:
Address
City State
Phone
Email address

and

Name
Attn
Address
City, State
Phone
Email address

If to APS: Interim Superintendent Scott Elder
Albuquerque Public Schools
6400 Uptown Blvd. NE, Ste. 600 East
Tel: (505) 880-3713
Email: superintendent@aps.edu

With copies to:

Real Estate Department
Albuquerque Public Schools
915 Locust St. SE, Suite 8
Tel: (505) 765.5950 ext. 67515
Email: realestate-staffdg@aps.edu; and

Robin E. James
500 4th St. NW
Suite 1000
Albuquerque, New Mexico 87102
robin.james@modrall.com

- 9.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same Agreement.
- 9.6 Condition. Dental Provider agrees to notify APS of any condition in designated space that Dental Provider deems hazardous or dangerous in any way; however, this provision shall not extend the liability of APS, and Dental Provider hereby expressly agrees and acknowledges that it has, prior to the execution of this Agreement, inspected the designated area, and hereby accepts this designated area in its “as is” “where is” condition. Upon the

expiration or termination of this Agreement, Dental Provider shall leave the designated areas in substantially as good condition as when received, excepting reasonable wear and tear. Any modifications of the designated areas must be approved in writing by APS.

- 9.7 Confidentiality of Records. The confidentiality of Dental Provider student and patient records will be maintained by the Dental Provider in accordance with federal and state laws and regulations, including the Family Education Rights and Privacy Act and regulations found at 34 CFR, Part 99, as appropriate, or the Health Insurance Portability and Accountability Act of 1996 and the Standards for Privacy of Individually Identifiable Health Information, 45 CFR §§160 and 164, and rules promulgated thereunder, as appropriate.
- 9.8 Relationship of Parties. Dental Provider and their respective employees are at all times acting as independent contractors. Dental Providers employees will not be considered employees of APS for any purpose, including, but not limited to, workers' compensation, insurance, bonding or any other benefits afforded to employees of APS. Neither party has any express or implied authority to assume or create any obligation or responsibility on behalf of or in the name of the other party.
- 9.9 Cooperation and Dispute Resolution. The Parties agree that, to the extent compatible with the separate and independent management of each, they will maintain effective liaison and close cooperation. If a dispute arises related to the obligations or performance of either party under this Agreement, representatives of the parties will meet in good faith to resolve the dispute.
- 9.10 Third Parties. Nothing in this Agreement, express or implied, is intended to confer any rights, remedies, claims, or interests upon a person not a party to this Agreement.
- 9.11 Eligibility for Participation in Government Programs. The Parties agree that neither APS nor any of its employees or independent contractors are providing any services under this Agreement that relate to governmental healthcare programs, as described below. Dental Provider represents that neither it, nor any of its management or any other employees or independent contractors who will have any involvement in the Services supplied under this Agreement, have been excluded from participation in any government healthcare program, debarred from or under any other federal program (including but not limited to debarment under the Generic Drug Enforcement Act), or convicted of any offense defined in 42 U.S.C. Section 1320a-7, and that it, its employees, and independent contractors are not otherwise ineligible for participation in federal healthcare programs. Further, each party represents that it is not aware of any such pending action(s) (including criminal actions) against it or its employees or independent contractors. Each party shall notify the other party immediately upon becoming aware of any pending or final action in any of these areas.
- 9.12 Affirmative Action. Dental Provider will not maintain or provide racially segregated facilities for employees at any establishment under its control. Dental Provider agrees to adhere to the principles set forth in Executive Order 11246 and 11375, and to undertake specifically to maintain employment policies and practices that affirmatively promote

equality of opportunity for minority group persons and women; to take affirmative steps to hire and promote women and minority group persons at all job levels and in all aspects of employment; to communicate this policy effectively to all persons concerned within Dental Provider, with outside recruiting services and the minority community at large; to provide APS on request a breakdown of its labor force by ethnic group, sex, and job category; and to discuss with APS its policies and practices relating to its affirmative action program.

- 9.13 Penalties. The New Mexico Procurement Code (NMSA 1978) imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose penalties for bribes, gratuities and kickbacks.
- 9.14 Retention of Records and Data. Dental Provider shall maintain detailed time records, indicating the date, time, and nature of the service provided under this Agreement for a period of at least three years after expiration or termination of this Agreement and will allow inspection by APS, the Secretary for Health and Human Services, the Comptroller General and the Inspector General to such records for the purpose of verifying costs associated with the provision of Services under this Agreement. Dental Provider will supply data to APS, within 30 day after Agreement has ended. Data may be submitted on a spread sheet developed by Dental Provider. Data shall include but not limited to:
- i. School name
 - ii. Student identifier number
 - iii. Student date of birth
 - iv. Student gender
 - v. Billing status: Medicaid, Self-pay, Private insurance, Uninsured-paid by grant, Uninsured-pro Bono
 - vi. Visit information (what was done)
- 9.15 Subcontracting. Dental Provider may not subcontract the Services to a subcontractor “Subcontractor” without written approval of APS, which may be withheld in APS’ sole discretion. If approved Dental Provider will be responsible for payment to the Subcontractor, and any costs for subcontracting will be included in charges billed pursuant to Section 6. of this Agreement.
- 9.16 No Inducement to Refer. Nothing contained in this Agreement will require APS to refer patients to Dental Provider. The Parties enter into this Agreement with the intent of conducting their relationship in full compliance with applicable federal, state and local law, including the Medicare/Medicaid Anti-Fraud and Abuse Amendments and the Physician Ownership and Referral Act (commonly known as the Stark Law). Notwithstanding any unanticipated effect of any of the provisions herein, neither party will intentionally conduct itself under the terms of this Agreement in a manner to constitute a violation of these provisions.
- 9.17 Right of Entry. APS has the right to enter the Student Comprehensive Oral Health Program designated area to inspect, make repairs, or for any other reasonable purpose.

- 9.18 Ownership of Improvements. All equipment and supplies brought in for this program, improvements or additions made to the Student Comprehensive Oral Health Program designated areas by Dental Provider which can be removed without damage to the School are and shall remain Dental Provider property, except as otherwise agreed to by the Parties in writing. All Property, either real property or trade fixtures purchased by APS, will remain APS' property.
- 9.19 Compliance with Environmental Laws. Dental Provider agrees to comply with any and all environmental laws and shall not cause or permit any hazardous materials to be brought upon, kept, or used in or about the Student Comprehensive Oral Health Program by Dental Provider, its agents, employees, contractors, or invitees in violation of any such laws.
- 9.20 Signs, banners, permits, etc. ("Signage") may not be erected on the outside of the School unless the permission of APS is obtained in advance in writing and only if such displays do not deface the school; however, before any such permission is given, Dental Provider must provide the content, including any writing or imaging, that will be contained on the Signage to APS administration responsible for this Facilities.
- 9.21 Entire Agreement. This Agreement represents the entire understanding between the Parties and supersedes any prior agreements or understandings with respect to the subject matter of this Agreement. No changes amendments or alterations to this Agreement will be effective unless in writing and signed by both parties.
- 9.22 Binding Effect. This Agreement is binding upon, and insures to the benefit of, the Parties to this Agreement and their respective successors and assigns.

[Signature page to follow]

DENTAL PROVIDER:

By: _____

Date: _____

**ALBUQUERQUE MUNICIPAL SCHOOL DISTRICT NO. 12,
COUNTIES OF BERNALILLO AND SANDOVAL, NEW MEXICO,
A POLITICAL SUBDIVISION OF THE STATE OF NEW MEXICO**

By: _____
Scott Elder, APS Chief Operations Officer

Date: _____

EXHIBIT A
SCHOOLS AND LOCATION WITH IN SCHOOLS OF
STUDENT COMPREHENSIVE ORAL HEALTH PROGRAM

EXHIBIT B
SCOPE OF SERVICES

Fill in Scope of work from RFA submitted/accepted.