



**AMENDMENT ONE  
EXTENSION OF TERM**

This Amendment ("Amendment Four"), between Kelly Services, Inc. ("Kelly"), with its principal offices located at 3001 Metro Drive, Suite 200, Bloomington, MN 55425, and Hastings Public Schools ("Customer"), is for the purpose of extending the term of their Agreement.

**RECITALS**

- A. Kelly and Customer entered into Agreement ("Agreement"), dated October 25, 2024.
- B. The term of the Agreement expires on June 30, 2026.
- C. Kelly and Customer wish to modify the Agreement to extend the term of the Agreement, as set forth below.

**AGREEMENT**

Kelly and Customer therefore agree as follows:

- 1. **Extension of Term.** The term of the Agreement is extended until June 30, 2028, unless terminated earlier, as set forth in the Agreement.
- 2. **Miscellaneous.** This Amendment will become effective when both parties have signed it. The date on which the last party has signed this Amendment (as indicated by the date associated with that party's signature) will be deemed the date of this Amendment. Kelly and Customer restate all other provisions of the Agreement and agree that all such provisions remain in effect.

**Kelly Services, Inc.**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Hastings Public Schools**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## AGREEMENT FOR EDUCATIONAL STAFFING

**THIS AGREEMENT**, dated October 23rd, 2024, is between Teachers on Call, a Kelly® Education Company, ("TOC") with its principal offices located at 3001 Metro Drive, Suite 200, Bloomington, MN 55425, and Hastings Public Schools, with its principal offices located at 1000 West 11<sup>th</sup> Street, Hastings, MN 55033 ("Customer").

### 1) DESCRIPTION, LOCATION AND PRICING OF SERVICES

TOC will assign to the Customer, TOC temporary employees ("Assigned Employees"), to provide education-related services, under the Customer's operational supervision, at the location(s) and for the pricing (and other related costs) described in Exhibits A and C ("Pricing"). Exhibit C, the Customer Information Sheet, will be completed with Customer's collaboration and will provide detailed business requirements necessary to assist with meeting Customer needs. For instructional positions, Customer agrees that TOC shall be the exclusive contract provider of Assigned Employees to Customer. The Pricing in Exhibit A is confidential between TOC and Customer. Customer will be permitted to use the Exhibit in connection with its business operations, responses to Freedom of Information Act requests, and other uses as required by law. Should Customer determine that it may be legally obligated to disclose this information, Customer shall provide notice to TOC at least five (5) business days in advance of producing any such information

### 2) TOC GUARANTEE

TOC guarantees that the Assigned Employees it places with the Customer will satisfactorily perform the services ordered by Customer. If not, TOC will cancel charges for unsatisfactory services and furnish a replacement as soon as possible when the Customer has provided notice of its dissatisfaction within the first day of an Assigned Employee's assignment. If TOC receives notice after an Assigned Employee's first day, TOC will furnish a replacement as soon as possible, but not cancel the charges for the unsatisfactory services.

### 3) TOC'S RESPONSIBILITIES

As the provider of staffing services, TOC will be the employer of Assigned Employees, and will be responsible for the staffing services listed below.

- (a) Source, recruit, select, and hire Assigned Employees;
- (b) At TOC's expense, conduct an annual background check on all Assigned Employees;
- (c) Place Assigned Employees according to Customer's requirements;
- (d) Instruct Assigned Employees to verify time worked in TOC's timekeeping system;
- (e) Pay Assigned Employees their wages and provide them the benefits that TOC offers, inclusive of any government mandated benefits, as TOC employees;
- (f) Pay or withhold payroll taxes (e.g., FICA) and insurance premiums (e.g., Medicare) and fulfill its obligations for unemployment compensation (e.g., FUTA, SUTA);
- (g) Provide workers' compensation benefits and coverage for Assigned Employees;
- (h) Maintain Assigned Employees' personnel and payroll records related to their employment by TOC;
- (i) Comply with laws, rules or regulations applicable to providers of staffing services;
- (j) Require Assigned Employees to agree in writing to protect the confidentiality of Customer's proprietary information;
- (k) Require Assigned Employees to execute agreements that Customer requests regarding intellectual property developed by them in performance of their work for Customer;
- (l) Require Assigned Employees to acknowledge in writing that they have no right to participate in Customer's employee benefit plans;
- (m) Require Assigned Employees to comply with all rules and policies of Customer (e.g., those relating to premises access and security);
- (n) Make legally required employment law disclosures to Assigned Employees; and
- (o) Comply with the Patient Protection and Affordable Care Act ("Affordable Care Act") and its regulations, as applicable, and have established internal procedures to review and maintain its compliance with the Affordable Care Act.



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#### 4) CUSTOMER'S RESPONSIBILITIES

As the recipient of TOC's staffing services, the Customer will be responsible for controlling the environment in which Assigned Employees perform their work, the details of their work, and, teaching board-approved curriculum and approved lesson plans. The Customer also will:

- (a) Promptly invite all Assigned Employees to apply with TOC and attend a training session, so that TOC may enter their information into the TOC database. If a large enough pool of the Customer's subbase does not sign up to work with TOC in the initial training sessions, the start date with TOC may have to be delayed;
- (b) Provide Assigned Employees with a safe and suitable workplace, including all required site-specific training related to the chemical, physical and biological hazards in the workplace, emergency procedures, safe use of equipment, school rules and protocols, policies and procedures regarding student disciplinary actions, and the confidentiality of student records and information;
- (c) Provide TOC with prompt notice of any injury suffered by an Assigned Employee;
- (d) Use Assigned Employees only in assignments that match the job descriptions for which TOC places them, and will not give duties to Assigned Employees that the Assigned Employee must perform outside of Customer's premises, and will take full responsibility for assignments or duties that differ from the Assigned Employees' mutually agreed upon job duties, responsibilities, work environment or location, unless mutually agreed to pursuant to paragraph 14(f) of this Agreement;
- (e) Notify TOC as early as possible (either, for example, prior to 6:00 a.m. or three (3) hours prior to the start of the class, through the protocols established by TOC for such notice, of the need for Assigned Employees for a given day; however, TOC and Customer recognize that the need for a substitute may occur later than anticipated and that in such cases, TOC will use its best efforts to find an Assigned Employee for such Customer requests;
- (f) Provide adequate internal controls, security and instructions for Assigned Employees;
- (g) Supervise the performance of Assigned Employees using the same degree of diligence used to supervise its own employees;
- (h) Assume responsibility for the conduct of the Assigned Employees when they are required to handle keys, cash, confidential information and records of students and the Customer's regular employees;
- (i) Not allow Assigned Employees to drive any students in any vehicle as part of their assignment;
- (j) Assume responsibility for driving related to the assignment, the use of any vehicle, training and safe use of machinery, and/or equipment used by Assigned Employees in connection with their assignment (except for workers' compensation claims);
- (k) Assume sole responsibility for any bodily injury claims asserted against TOC or its Assigned Employees by students, their parents or representatives, Customer personnel or business invitees, or other third parties (except to the extent that such claims are based on the negligence of TOC or the failure of TOC full time staff personnel to fulfill their obligations regarding the recruitment, screening, and hiring of the Assigned Employees);
- (l) Ensure that the Assigned Employees do not have sole custody of a single student, be solely responsible for supervising more than one classroom of students at a time, or administer or maintain custody of any student medications;
- (m) Provide TOC with prompt, written notice of any concern or complaint about the conduct of an Assigned Employee by the end of the same day that it learns of the concern or complaint, and permit TOC to actively participate in Customer's investigation of such a concern or complaint;
- (n) Provide TOC with written notice within one business day after the Customer learns of any formal or informal complaint, litigation, potential litigation, or an administrative or governmental charge, that involves an Assigned Employee, and permit TOC a reasonable opportunity to participate actively in the matter, as TOC sees fit;
- (o) Ensure that Assigned Employees do not work at heights, actively or competitively participate in any physical activities, exercises, competitive games or sports with students or other faculty members at any time, including in school gymnasiums, classrooms, or on the playground. In the event an Assigned Employee is assigned to a physical education class, physical activity shall be limited to non-participation instructional purposes only;
- (p) Ensure Assigned Employees who are placed at Customer through TOC shall not work directly for Customer, or a third party contracted by Customer, in any capacity where such Assigned Employees receive compensation during the same time period from TOC, Customer or third party;



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- (q) Provide a list of employees Customer has employed prior to this Agreement that Customer wishes to remain in pool of Assigned Employees placed by TOC to Customer. Customer shall provide a written list of such employees and may update said list, by written addition or deletion of all changes, as appropriate. If Customer utilized another vendor prior to this Agreement, Customer will make a good faith effort to produce a list of employees who provided services through such vendor;
- (r) Assume responsibility for the conduct of its own officers, employees, and agents; and
- (s) Comply with duties imposed on it by law, rule, or regulation.

## 5) CUSTOMER REPRESENTATIONS

The Customer represents and warrants that:

- (a) Its actions under this Agreement do not violate or overlap its obligations under any agreement that Customer has with any labor union;
- (b) TOC's responsibilities listed in this Agreement regarding screening, the payment of wages, and the provision of benefits to the Assigned Employees do not violate a policy or practice of the Customer;
- (c) The Customer has disclosed to TOC all screening requirements that Customer would use for the positions covered by this Agreement if the Customer were directly employing individuals in such positions;
- (d) When applicable, and if Customer, not TOC, is the recipient of the Assigned Employees' fingerprint background check clearance/suitability letter, Customer will provide TOC with the clearance information and any updated information in a timely manner;
- (e) The Customer has the right, power, requisite authorization and has satisfied any applicable procedural requirements necessary for it to be authorized to enter into this Agreement;
- (f) At the beginning of the school year, but at a minimum, not less than thirty (30) days prior, Customer will use best efforts to advise TOC of all scheduled professional development days;
- (g) Customer acknowledges that TOC is responsible for recruiting of Assigned Employees, however, Customer and TOC will collaborate on marketing, advertisement, and recruitment methods;
- (h) The Customer representative who is signing this Agreement has been delegated authority by the school board or district to execute this Agreement; and
- (i) The Customer neither requests nor requires that the Assigned Employees perform duties outside of Customer's premises (e.g., participate on field trips) unless TOC gives its written consent in advance.

## 6) INTELLECTUAL PROPERTY/ASSIGNED EMPLOYEES' DATA

All TOC and Customer intellectual property, including processes, procedures, trademarks and copyrights, are and shall remain the sole property of each respective party.

Customer will only use Assigned Employees' Data ("Assigned Employees' Data") being defined as personal information, including, but not limited to, Assigned Employees' identity, U.S. mail or email address, contact information, social security number, phone number or personal health information) in connection with Services provided by TOC in accordance with this Agreement. Customer acknowledges that Assigned Employees' Data is proprietary, personal and highly confidential, and Customer shall not disclose the information to any third parties unless legally required to do so. Should Customer determine that it may be legally obligated to disclose Assigned Employees' Data, Customer shall provide notice to TOC at least five (5) business days in advance of producing any such information.

## 7) BILLING & PAYMENT TERMS

### (a) Invoices.

- i) The Customer will be invoiced for Assigned Employees only when they are confirmed for an assignment. (An assignment is confirmed when it is created in Absence Management; a confirmation number is assigned. If changes are made to the assignment before the Assigned Employee drives to the Customer location, TOC



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- will not pay the Assigned Employee nor invoice the Customer. However, if changes are made after the Assigned Employee drives to the Customer location, TOC or the Customer will try to re-assign them. If the Assigned Employee cannot be re-assigned, the Assigned Employee will be paid and the Customer will be invoiced for a half day.)
- ii) TOC will invoice Customer each week for all compensable time in accordance with applicable laws, including but not limited to hours worked on assignment, training, testing or screening completed by Assigned Employees after hire, at agreed-upon rates; the rates at which TOC will invoice the Customer (and any reimbursable expenses) are listed in Pricing Exhibit A. Service lines may be added by mutual agreement of the parties via amendment to this agreement and Exhibit A. Payment terms are net fifteen (15) days from receipt of TOC invoice. TOC reserves the right to charge past due accounts 1.5% interest per month from due date. Any dispute to an invoice must be communicated within fifteen (15) days of issuance of such invoice, or the Customer waives the right to object to the invoice and will be held accountable for payment.
  - iii) Customer will not use any kind of procurement card for payment to TOC.
  - iv) In the event of termination of this Agreement, Customer will pay TOC promptly for services performed up to the time of termination. If the Customer's rates are not set out in Pricing Exhibit A, TOC and the Customer will agree on rates at the time of an order, which TOC will record electronically in its systems.
- (b) **Disputed Amounts.** If this Agreement is terminated by TOC or Customer or Customer disputes any amount invoiced by TOC, TOC shall be timely paid (in accordance with the payment terms in Section 7 (a)) by Customer for all fees/services that are not in dispute. If Customer fails to pay TOC any fee when due, Customer shall be liable for a late charge equal to one- and one-half percent (1 ½%) per month on the outstanding amounts beginning on the due date and Customer shall be responsible for reasonable attorneys' fees incurred by TOC to collect the outstanding amount.
- (c) **Taxes.** Any sales or use taxes that apply to sales to Customer will be added to Customer's invoices as a separate item.
- (d) **Pricing Adjustments.** With a sixty (60) day prior written notice, TOC may adjust pricing:
- i. To reflect the impact of inflation upon our costs by an amount not to exceed the year over year change in the Consumer Price Index for the preceding 12 months; or
  - ii. If any law, regulation and/or policy is enacted that is applicable to either TOC or Customer that requires an increased and/or additional compensation and/or benefits to Assigned Employees, TOC may change the pricing for the current school year(s) contained in Exhibit A. The pricing in Exhibit A shall be adjusted to reflect the actual cost increase to TOC reasonably calculated on a direct or pro rata basis; or
  - iii. For changes in sales, use, or gross receipts taxes; or
  - iv. For changes in (A) the Customer's requirements (e.g., requisition, billing and invoicing processes; the introduction of third-party software systems and processes), (B) service levels, or (C) service delivery method; or
  - v. If market conditions dictate that TOC must pay a higher wage in order to attract Assigned Employees; or,
  - vi. To ensure that the pay rates comply with federal and state laws and regulations regarding minimum wages and overtime compensation.
- (e) **Record of Time Worked; Automated Scheduling.** Customer agrees to verify the Assigned Employee's time through TOC's online Customer Portal every Monday between 1 PM and 6 PM Central time. By approving the timecard, the Customer agrees that the hours submitted are accurate and the Customer is responsible for payment. If a timecard in the Customer Portal is not approved by 6 PM Central time Monday but was appropriately submitted, TOC will tacitly approve and process for payment, the Assigned Employee will be paid, and the invoice will be submitted for full payment by the Customer.



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- (f) **Expenses.** Expenses (e.g., mileage) and all costs and administrative fees associated with required screenings and drug tests will be charged to the Customer, passed through without mark up.

#### 8) WORKERS' COMPENSATION AND LIABILITY INSURANCE

TOC will, at its own expense, provide and keep in full force and effect during the term of this Agreement the following kinds and minimum amounts of insurance:

- (a) **Workers' Compensation.** Workers' compensation statutory coverage as required by the laws of the jurisdiction in which the services are performed and includes alternate employer endorsement;
- (b) **Commercial General Liability.** Commercial general liability insurance with a \$1,000,000 combined single limit per occurrence and includes contractual liability and personal injury coverage;
- (c) **Umbrella Liability Insurance.** Umbrella liability insurance to be used in excess of the liability policies with \$15,000,000 combined single limit per occurrence; and
- (d) **Commercial Blanket Bond.** A commercial blanket bond with limits of \$3,000,000 in the aggregate per occurrence and includes coverage of employee dishonesty to the extent TOC failed in its responsibilities in Section 3 of the Agreement.

TOC will provide Customer with a certificate of this insurance coverage upon request.

#### 9) INDEMNIFICATION BY TOC

- (a) TOC will indemnify, defend and hold harmless Customer and its directors, officers, employees and agents, from and against all demands, claims, actions, losses, judgments, costs and expenses (including reasonable attorney fees) (collectively "Damages") imposed upon or incurred by Customer to the extent arising out of any of the following:
  - i) TOC's failure to comply with its obligations under applicable employment-related laws, regulations or orders in TOC's capacity as the general employer of the Assigned Employees;
  - ii) Breach of any obligation of TOC contained in this Agreement; or
  - iii) Any direct claim for workers' compensation benefits for job-related bodily injury or death asserted against Customer by any TOC employees or, in the event of death, by their personal representatives.
- (b) TOC's obligation to indemnify, defend and hold harmless will not apply to: (i) indirect, special or consequential Damages, (ii) claims that do not result in a finally adjudicated claim of damages against Customer brought by a third party, (iii) the extent that Damages are due to Customer's failure to fulfill its duties under Section 4, (iv) the extent that any Damages, except for the payment of workers' compensation benefits, are the result of any negligent act or omission or intentional misconduct of Customer, its officers, employees or agents, or (v) the extent that Customer is required to indemnify TOC against such Damages under Section 10.

#### 10) INDEMNIFICATION BY CUSTOMER

- (a) To the extent permitted by law, Customer will indemnify, defend and hold harmless TOC and its directors, officers, employees and agents from and against all damages imposed upon or incurred by TOC, other than for job-related bodily injury or death of an Assigned Employee, arising out of any of the following:
  - i) Customer's failure to comply with its obligations under applicable laws, regulations or orders; or
  - ii) Breach of any obligation of Customer contained in this Agreement;
- (b) Customer's obligation to indemnify, defend and hold harmless will not apply (i) to indirect, special or consequential damages or (ii) to the extent any damages are caused by any negligent act or omission or intentional misconduct of TOC, its officers, employees or agents.

#### 11) NOTIFICATION OF CLAIMS

- (a) Customer and TOC agree (i) to notify each other in writing of any asserted claim within ten (10) days of either discovery of the occurrence upon which the claim may be based or learning of the claim, whichever occurs first, and



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- (ii) to permit TOC or Customer, as the case may be, to defend the claim at the option of the party against whom the claim is asserted, with counsel acceptable to such party, which consent will not be unreasonably refused.
- (b) Neither party will pay or agree to pay any asserted claim under this Agreement without prior written approval from the party against whom the claim is asserted, which approval will not be unreasonably withheld; provided that approval on behalf of TOC must be obtained from the TOC Law Department in Troy, Michigan.

## 12) TERM; TERMINATION

The term of this Agreement begins as of the date first shown above with a first date of service of 2/3/25 if all deadlines are met, and will continue in effect until canceled by either party upon allowing not less than sixty (60) days prior written notice to the other. TOC reserves the right to terminate this Agreement immediately in the event of non-payment. Further, TOC has the right to terminate this Agreement should any student or Customer employee physically or verbally assault or injure an Assigned Employee and Customer does not respond to the incident to TOC's satisfaction. In the event of termination, this Agreement will continue to govern the parties' rights and obligations with respect to services performed prior to termination.

## 13) NON-SOLICITATION

Unless otherwise agreed to in writing, neither party shall hire or solicit the employment of the other party's regular, full-time employees during the term of this Agreement and for a period of twelve (12) months thereafter. This provision shall not apply to a party's generalized recruiting practices.

## 14) MISCELLANEOUS

### (a) Notices

- i) Any notices, consents or other communications required or permitted under this Agreement must be in writing (including telecommunications) and delivered personally or sent by e-mail or other transmission (with request for assurance in a manner typical with respect to communication of that type), overnight air courier (postage prepaid), registered or certified mail (postage prepaid with return receipt requested), addressed as shown on the first page of this Agreement.
- ii) Unless otherwise stated in this Agreement, notices, consents or other communications will be deemed received (a) on the date delivered, if delivered personally or by wire transmission; (b) on the next business day after mailing or deposit with an overnight air courier; or (c) three business days after being sent, if sent by registered or certified mail.

### (b) Severability; Waiver

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. Any delay or waiver by a party to declare a breach or seek any remedy available to it under this Agreement or by law will not constitute a waiver as to any past or future breaches or remedies.

### (c) Assignment

Neither TOC nor Customer may assign this Agreement without the prior written consent of the other party. TOC may use secondary vendors to fulfill any or all of its obligations hereunder without securing Customer's consent. This Agreement will be binding upon the parties hereto, and their successors, heirs and assigns, as permitted.

### (d) Independent Contractor

In its performance of this Agreement, TOC will at all times act in its own capacity and right as an independent contractor, and nothing contained herein may be construed to make TOC an agent, partner or joint venturer of Customer.

### (e) Force Majeure

No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results



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from acts beyond the affected party's reasonable control, including, without limitation: (i) acts of God; (ii) flood, fire, pandemic, earthquake or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order or law; (v) actions, embargoes or blockades in effect on or after the date of this Agreement; (vi) action by any governmental authority; (vii) national or regional emergency; (viii) strikes, labor stoppages or slowdowns or other industrial disturbances; and (ix) shortage of adequate power or transportation facilities. The party suffering a force majeure event shall give notice within five (5) days of the force majeure event to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such force majeure event are minimized.

(f) **Amendments**

This Agreement may not be amended or supplemented in any way except in writing, dated and signed by authorized representatives of both parties.

(g) **Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(h) **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of MN without giving effect to any choice or conflict of law provision or rule.

(i) **Entire Agreement**

This Agreement, its exhibits (and any job descriptions signed by the Customer) are the entire understanding and agreement between the parties with respect to the subject matter covered, and all prior agreements, understandings, covenants, promises, warranties and representations, oral or written, express or implied, not incorporated in this Agreement are superseded.

**Teachers on Call, a Kelly® Education Company**

**Hastings Public Schools**

By: Brad Beckner

By: Tammy Champa

Name: Brad Beckner

Name: Tammy Champa

Title: Vice President

Title: Superintendent

Date: 25-Oct-2024 | 11:14 AM PDT

Date: 25-Oct-2024 | 10:23 AM PDT