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## SERVICES AGREEMENT

**THIS SERVICES AGREEMENT**, including the exhibit attached hereto and incorporated herein by this reference (the “**Agreement**”), is made and entered into effective as of September 17, 2020 (the “**Effective Date**”) by and between Mountain View - Los Altos High School District, a(n) high school district (“**Client**”) and BSquared Works LLC DBA HAERT, a Delaware limited liability company (“**HAERT**”). Client and are sometimes herein referred to herein singularly as a “**Party**” and collectively as the “**Parties**.”

### RECITALS

A. Client desires, subject to the terms and conditions of this Agreement, to engage HAERT to perform certain services as described herein; and

B. HAERT wishes to accept such engagement by Client and agrees that the engagement shall be subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the Parties’ mutual covenants and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, further agree as follows:

### 1. SERVICES

- a. **Scope of Work.** Subject to the terms and conditions of this Agreement, including without limitation payment of all fees when due, HAERT shall provide certain mental wellness curriculum to Client in accordance with the scope and specifications of each project as described in Exhibit A attached hereto and each and every additional project proposed by Client under this Agreement as an amendment to Exhibit A and expressly accepted in writing by HAERT during the Term of this Agreement, as defined in Section 3 below, (singularly and collectively as the “**Services**”). HAERT is not required to perform the Services during specified hours, but shall perform the Services at such times as are mutually agreeable between the Parties.
- b. **Business Conflicts.** HAERT may provide similar services for other parties, provided that the services provided by HAERT to third parties do not conflict with HAERT’s obligations under this Agreement. HAERT shall use commercially reasonable efforts to promptly disclose possible conflicts to Client.

### 2. COMPENSATION

- a. **Fees.** HAERT’s fees for Services shall be as set forth in Exhibit A. Fees and payment terms for any agreed upon additional project described in Section 1(a) above shall be set forth in Exhibit A. If Exhibit A does not set forth specific fees or payment terms for a project, HAERT’s then-current standard fees shall apply and all fees shall be due upon delivery of the applicable invoice to Client.

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- b. **Reimbursement of Expenses.** Client shall reimburse HAERT for all reasonable out-of-pocket expenses pre-approved in writing by Client or listed in Exhibit A. Unless otherwise provided in Exhibit A, all expense reimbursements shall be due upon delivery of the applicable invoice to Client.
3. **TERM AND TERMINATION.** This Agreement commences upon the Effective Date and continues for the period set forth in Exhibit A, unless terminated as hereinafter provided (the “Term”). HAERT may terminate this Agreement upon fifteen (15) days prior written notice to Client pursuant to Section 8(a) below if Client fails to pay any fees owed hereunder when due and fails to cure such breach within the 15-day notice period. If HAERT breaches any material provision of this Agreement, Client may give HAERT notice of such failure pursuant to Section 8(a) below, and HAERT shall have a period of thirty (30) days following receipt of such notice to cure or substantially cure the material breach. If HAERT does not cure or substantially cure the material breach within the foregoing thirty (30) day period, Client may terminate the Agreement. Upon termination of this Agreement for any reason whatsoever, Client shall pay HAERT amounts owed under this Agreement for the Services that HAERT performed prior to the termination.
4. **RELATIONSHIP and authority.** The Parties agree that HAERT’s relationship to Client is that of an independent contractor and neither this Agreement nor the Services shall create an employer-employee relationship, partnership, co-ownership or joint venture between Client and HAERT. Accordingly, neither Party shall have any authority to bind the other Party.
5. **REPRESENTATIONS AND WARRANTIES.** HAERT hereby represents and warrants that it: (i) is not a party to any written agreement that will conflict with any of HAERT’s obligations hereunder; (ii) shall not, during the Term, make any commitment or obligation or engage in any activity that will conflict with any of HAERT’s obligations hereunder, without obtaining Client’s prior written approval; (iii) is a limited liability company duly formed and in good standing under the laws of the State of Delaware.
6. **INDEMNIFICATION**
- a. **HAERT Indemnification.** HAERT agrees to defend, indemnify, and hold Client harmless from and against any and all damages, losses, liabilities, costs and expenses incurred by Client as a result of any claim, judgment or proceeding against Client related to any breach of a representation or warranty of HAERT set forth in Section 5 of this Agreement, provided, however, that HAERT’s total cumulative liability to Client under this Agreement, including without limitation pursuant to this Section 6(a), shall not exceed the total amount of fees actually paid to HAERT by Client under this Agreement as set forth in Section 2. If Client seeks indemnification under this Section 6(a) it shall promptly notify HAERT in writing and tender the defense thereof to HAERT. Notwithstanding the foregoing, Client may, at its sole option and expense, participate in the defense of any claim, action, suit or proceeding by a third party with additional counsel of its own choosing.
- b. **Client Indemnification.** Client agrees to defend, indemnify, and hold HAERT harmless from and against any and all damages, losses, liabilities, costs and expenses incurred by

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HAERT as a result of any claim, judgment or proceeding against HAERT related to, arising out of or in connection with Client's business operations, Client's specifications, the Services or any breach or failure or alleged breach or failure of any of the covenants, representations, warranties, or obligations of Client under this Agreement, except to the extent HAERT is obligated to indemnify Client under Section 6(a) above. If HAERT seeks indemnification under this Section 6(b) it shall promptly notify Client in writing and tender the defense thereof to Client. Notwithstanding the foregoing, HAERT may, at its sole option and expense, participate in the defense of any claim, action, suit or proceeding by a third party with additional counsel of its own choosing.

#### **7. DISCLAIMER & LIMITATION OF LIABILITY**

EXCEPT FOR HAERT'S EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 5 or EXHIBIT A, all services provided by HAERT under this agreement are provided on an "as is" basis without warranty of any kind and HAERT MAKES NO warranties or conditions of any kind, express, implied or statutory, related to or arising in any way out of THE services. HAERT specifically disclaimS any implied warranty of merchantability, NON-INFRINGEMENT or fitness for a particular purpose. In no event shall HAERT be liable for indirect, consequential, incidental, punitive, or special damages (including, but not limited to, damages for loss of business profits, business interruption, delays, loss of business information and the like) arising out of the use, or the inability to use, or any defects in SOFTWARE, systems OR services pursuant to this agreement, regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose or otherwise and even if HAERT has been advised of the possibility of such damages.

WITHOUT LIMITING THE ABOVE, HAERT'S TOTAL CUMULATIVE LIABILITY UNDER THIS AGREEMENT OR ARISING FROM THE SERVICES SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID TO HAERT BY CLIENT UNDER THIS AGREEMENT. As used in this Section 7, "HAERT" includes BSquared Works LLC, its AFFILIATES, subcontractors, and their respective partners, MEMBERS, MANAGERS, officers, directors, shareholders, OWNERS, AGENTS and employees.

#### **8. GENERAL PROVISIONS**

- a. **Notice.** Any notice required, permitted, or given in connection with this Agreement shall be in writing and shall be deemed validly given if personally delivered, sent by Fedex or similar nationally recognized overnight delivery service or mailed by registered or certified prepaid mail, and addressed as follows:



In the case of HAERT, to:

In the case of Client, to:

HAERT Program  
15732 Los Gatos Blvd  
#416  
Los Gatos, CA 95032

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Attn: Bill Lennan

Such notice shall be effective immediately upon personal delivery, upon properly evidenced confirmation of receipt if sent by Fedex or similar nationally recognized overnight delivery service or five (5) business days after sent by registered or certified prepaid mail.

- b. **Governing Law, Consent to Jurisdiction & Venue.** This Agreement shall be exclusively interpreted, construed and governed under the laws of the State of California, without reference to its conflict of laws principles. Any action brought by the Parties to enforce or interpret any provision of this Agreement shall be exclusively commenced and maintained in either the appropriate state court in Santa Clara County, or in the United States District Court for the District of Northern California. Each party hereby irrevocably consents to such venue and the exclusive personal jurisdiction of such court(s) and expressly waives any objection to same.
- c. **Legal Expenses.** In any dispute between the Parties arising from compensation owed to the HAERT under this Agreement, the prevailing Party shall be entitled to reimbursement of its reasonable costs and expenses incurred in connection therewith, including without limitation attorneys' and expert witness fees and costs.
- d. **Counterparts / Electronic Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed an original (but all of which shall collectively constitute the same instrument). Facsimile or other electronic copies (e.g., pdf) of signatures shall bind the Parties and do not affect this Agreement's validity.
- e. **Force Majeure.** Neither Party hereto shall be liable for failure to perform its obligations under this Agreement if, and only for so long as, such failure is due to acts beyond its control, which include without limitation acts of God or public enemy, acts of federal, state, or local government in either its sovereign or contractual capacity, fires, floods, earthquakes, power outages, strikes, lockouts, freight embargoes, or inclement weather.
- f. **Waiver / Breach.** No delay, omission, or failure by either Party in exercising any right and/or remedy under this Agreement shall operate as a waiver or an acquiescence of that or any other right or remedy. Each such right and/or remedy may be exercised, from time to time, as may be deemed expedient by the Party permitted to exercise such right and/or remedy, and any waiver or consent shall be effective only if it is in writing and signed by both HAERT and a duly authorized officer of Client. Any such written waiver or consent

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shall be effective only in that instance and shall not constitute the waiver of any subsequent breach or default.

- g. **Enforceability.** If any term of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, void, voidable, or otherwise unenforceable, this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term were never included.
- h. **Entire Agreement / Modification.** With respect to the subject matter hereof, this Agreement sets forth the entire Agreement between the Parties and merges and supersedes all prior oral or written proposals, communications, representations, understandings, undertakings or agreements by or between the Parties. Each Party acknowledges that no representation, inducement, promise, or agreement, orally or otherwise, has been made by any Party, or anyone acting on behalf of any Party, concerning the subject matter of this Agreement which is not embodied herein. Any modification of this Agreement shall be effective only if it is in writing and signed by both Parties. In the event of a conflict between the terms and conditions of the main body of this Agreement and Exhibit A, the provisions of Exhibit A shall control.
- i. **Successors and Assigns.** Neither this Agreement nor either Party's rights and obligations arising out of it shall be assigned or transferred by either Party to or by any third party under any circumstances, including without limitation, by court order, operation of law, statute, regulation, ordinance, or otherwise without the other Party's prior express written consent; provided, however, that HAERT may utilize the services of subcontractors as HAERT deems necessary and each such subcontractor shall be entitled to the protections of Section 7 above. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns.
- j. **Miscellaneous.** The defined terms used in this Agreement shall have the meanings ascribed to them. The title of this Agreement, section headings and/or the terms used to reference each Party as used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement nor shall they be used to explain or aid in the interpretation, construction or meaning of this Agreement. The variable use of words in their singular and plural also shall not be construed to alter their substantive meaning or to affect this Agreement in any way. In interpreting this Agreement it shall be construed fairly and with no inference against the drafting Party. Each Party sought, or had the opportunity to seek, the advice of an attorney of its choice before signing this Agreement, and the Parties understand the terms, consequences and binding effect of this Agreement. Each Party acknowledges receipt of a copy of this Agreement.



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**IN WITNESS WHEREOF**, the Parties have executed this Agreement personally or by a duly authorized representative and acknowledge that they understand and agree to be bound by this Agreement's terms and conditions.

**“HAERT”**

**“CLIENT”**

HAERT™ Program

By: \_\_\_\_\_

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

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

By: \_\_\_\_\_

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

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

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**EXHIBIT A****SERVICES**

Subject to payment of all applicable fees when due, HAERT agrees to provide the following :

- Ten modules of Social Emotional curriculum focused on Self Awareness and Self Management per the attached proposal
  - Module 1: Introduction: Stress Physiology and Mindfulness
  - Module 2: Taking Advantage of Stress
  - Module 3: Maintaining Your Resilience Battery
  - Module 4: Hacking Anxiety
  - Module 5: Your Emotional Dashboard
  - Module 6: Supporting Healthy Brain Chemistry
  - Module 7: Managing your Emotions
  - Module 8: Reality Acceptance
  - Module 9: The Power of Distraction
  - Module 10: Distress Tolerance & Emotional Regulation: Tying it All Together
- One introduction video for students and one introduction video for teachers
- Modules are digitally delivered via the <https://haertprogram.courses> website
- Individual user accounts for students, teachers, and administrators
  - School to provide a CSV for account creation
- Two “in service” training sessions for teachers and administrators
- Students receive certificates at the end of the curriculum
- Reporting on individual student completion

**First Year Fee: \$50,000**

**“HAERT”**

**“CLIENT”**

By: \_\_\_\_\_

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

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

By: \_\_\_\_\_

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

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