**MEMORANDUM OF AGREEMENT BETWEEN**
**THE SAN LEANDRO UNIFIED SCHOOL DISTRICT**
**AND**
**_____**

This Memorandum of Agreement ("the Agreement") is entered into on this ____ day of _____ by and between the San Leandro Unified School District ("the District") and _____ "the Contractor" for the purpose of disclosing personally identifiable information (PII) from student data records in order to facilitate the provision of behavioral health services to students within the District (hereinafter "services").

I. PARTIES. The San Leandro Unified School District is a local educational agency, authorized to collect and maintain student educational records consistent with applicable state and federal laws, including without limitation, the federal Family Educational Rights and Privacy Act (FERPA), as authorized by 20 U.S.C. § 1232g(b) and 34 CFR Part 99, California laws governing pupil records (Education Code §§ 49060, *et seq.*) as well as District policies, administrative regulations and procedures.

_____ is a provider of behavioral health services.

II. PURPOSE. The purpose of the Agreement is to document the terms under which the District is authorized to disclose to the Contractor personally identifiable student information for the provision of services, and to designate the Contractor as the authorized representative of the District consistent with applicable federal and state laws concerning access to and confidentiality of student record information including FERPA. As described herein, the Contractor, as the District's authorized representative, may have temporary, read-only access to PII within the District's AIRES Student Information System, for use in the provision of services identified in this Agreement and any addenda to it. A description of services, Exhibit A, is attached hereto.

III. AUTHORITY. Consistent with the federal Family Educational Rights and Privacy Act (FERPA) § 99.31, the District may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure meets one or more of the following conditions: (A) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests. (B) A contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official under this paragraph provided that the outside party—(1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) Is subject to the requirements of § 99.33(a) governing the use and re-disclosure of personally identifiable information from education records. California Education Code Section 49076(a)(2)(G) also permits the District to release information to a "contractor or consultant with a legitimate educational interest who has a formal written agreement or contract

DRAFT

with the school district regarding the provision of outsourced institutional services or functions by the contractor or consultant," provided however, notwithstanding Section 99.31(a)(1)(i)(B) of Title 34 of the Code of Federal Regulations, under this state law "disclosure pursuant to this subparagraph shall not be permitted to a volunteer or other party."

The District designates the Contractor as its authorized representative for the purposes of disclosing student information, including personally identifiable information, for use in the provision of services as described above.

All services referred to above shall be described in addenda to this Agreement, which shall include service information including but not limited to the scope of services, data that will be disclosed to the Contractor, temporary custodian appointed by the Contractor, applicable timelines, additional terms and conditions specific to the services, and requirements for communication and reporting to the District.

V. TERMS AND CONDITIONS. To effect the transfer of data and information that is subject to State and Federal confidentiality laws and to ensure that the required confidentiality of personally identifiable information shall always be maintained, the Contractor agrees to:

1. In all respects, comply with the provisions of FERPA and applicable state law. For the purposes of the Agreement and the specific services conducted pursuant to the Agreement and described in addenda to the Agreement, FERPA includes any amendments or other relevant provisions of federal law, as well as all requirements of 34 CFR Part 99 and 20 U.S.C. § 1232g. This Agreement may not be construed to allow either party to maintain, use, disclose, or share student record information in a manner not allowed under Federal law or regulation or applicable state law or regulation.

2. For purposes of services provided and for ensuing the Contractor's compliance with the terms of this Agreement and all applicable state and federal laws, the Contractor designates _____ (Provider Lead) as the temporary custodian of the District's data. The District shall provide read-only access to student data within the District's AIRES Student Information System for the provision of services to the named temporary custodian. For the purposes of this agreement, student data shall mean that data set (or a subset of the data set) defined in Exhibit B, attached hereto.

3. Use data shared under the Agreement for no purpose other than the services described in this Agreement, and as authorized under 34 CFR § 99.31(a)(6)(i). This Agreement or addenda shall not be construed to authorize the Contractor to have access to additional data from the District that is not included in the scope of the Agreement or under the terms of the services described in the addenda to it, or to govern access to the data by entities other than the Parties. The Contractor further agrees not to share data received under the Agreement with any other entity without prior written approval from the District. The Contractor understands that the Agreement does not convey ownership of data to the Contractor.

4. Require all employees, contractors, and agents of any kind to comply with the Agreement and all applicable provisions of FERPA and other federal and state laws with respect to the data and information shared under the Agreement. The Contractor agrees to require and maintain an appropriate confidentiality agreement from each employee, contractor, intern, or agency with access to data pursuant to the Agreement. The Contractor is not authorized to share data and information provided under the Agreement and addenda with any other individual or entity for any purpose other than completing the Contractor's work as authorized by the District consistent with this Agreement and addenda to it.

5. Not amend or alter the scope, design, format, or description of services provided by the Contractor, except as consistent with the Agreement and any addenda to it, without prior written notice to the District.

6. Maintain all data received pursuant to the Agreement separate from all other data files and not copy, reproduce, or transmit data obtained pursuant to the Agreement except to the Contractor's own agents acting for, or on behalf of the District and as necessary to fulfill the purpose of the services described in the attached addenda. All copies of data of any type, including any modifications or additions to data from any source that contains information regarding individual students, are subject to the provisions of the Agreement and addenda to it in the same manner as the original data disclosed by the District to the Contractor. The ability to access or maintain data under the Agreement shall not under any circumstances transfer from the District to any other individual, institution, or entity.

7. Not disclose data contained under the Agreement in any manner that could identify any individual student, except as authorized by FERPA, to any entity other than the District, or authorized employees, contractors, and agents of the Contractor working as the District's authorized representative on the services approved by the District consistent with this Agreement and described in addenda to it. Persons participating in the approved services on behalf of the Parties under this Agreement shall neither disclose or otherwise release data and reports relating to an individual student, nor disclose information relating to a group or category of students without ensuring the confidentiality of individual students in that group.

8. Not provide any data obtained under this Agreement to any entity or person ineligible to receive data protected by FERPA, or prohibited from receiving data from any entity by virtue of a finding under 34 CFR § 99.31(a)(6)(iii).

9. Destroy all data obtained under the Agreement and addenda to it when no longer needed for the purpose for which it was obtained. Nothing in this Agreement authorizes the Contractor to maintain data beyond the time period reasonably needed to complete the services described in the addenda to this agreement. Upon termination of the Agreement and addenda to it as authorized by the District, whichever occurs first, the Contractor will return all data files and hard copy records to the District and purge any copies of data from its possession and/or computer systems in compliance with 34 CFR §§ 99.31(a)(6)(ii)(b) and 99.35(b)(2). The Contractor agrees to require all employees, contractors, or agents of any kind working on the provision of services to comply with

this provision. No other entity is authorized to continue using data obtained under the Agreement upon termination of the Agreement and services described in addenda to it.

The District agrees to:

1. Provide reasonable notification to the Contractor of any changes in District policies regarding limits on the use of confidential data and, as agents of the District, shall either affirmatively agree to uphold these policies or relinquish access to the data.

VII: INDEMNIFICATION. The District agrees to indemnify, defend and hold harmless Contractor, its officers, agents, and employees from any and all claims and losses to the extent that they arise out of or are in connection with the negligence or intentional misconduct of the District or its officers, agents, or employees in their performance of this Agreement. Contractor agrees to indemnify, defend, and hold harmless SLUSD, its officers, agents, and employees from any and all claims and losses to the extent that they arise out of, or are in connection with, the negligence or intentional misconduct of Contractor or its officers, agents, or employees in their performance of this Agreement. This obligation to indemnify and defend is binding on the successors, assigns or heirs of Contractor and will survive the termination of this Agreement.

VIII. RELATED PARTIES. The Contractor represents that it is authorized to bind to the terms of the Agreement, including confidentiality, maintenance and destruction or return of data, all related or associated institutions, individuals, employees, interns or contractors who may have access to the data or may own, lease, or control equipment or facilities of any kind where the data is stored, maintained or used in any way.

IX. TERM. This Agreement takes effect upon signature by the authorized representative of each party and shall remain in effect until completion of the project described herein, or until canceled by either party upon 30 days written notice, whichever occurs first. The Agreement is renewable upon written approval by the authorized representative of each party.

X. NOTIFICATION. The Contractor shall immediately notify the District of any release and/or breach of any confidential data received from the District, and take immediate steps to limit and/or prohibit disclosure, or further disclosure, of the confidential data.

XI. This Agreement expresses the entire agreement of the parties and shall not be modified or altered except in writing executed by the authorized representatives of the District and the Contractor, and in a manner consistent with applicable State and Federal laws.

_____ _____

Mike McLaughlin, Ed.D
Superintendent of Schools
San Leandro Unified School District

Date

_____ _____

Representative
Title
Agency

Date

Attachments:

Exhibit A: Description of Services
Exhibit B: Definition of Student Data