Master Contract No. **901072**
Procurement Contract No. **18787**

# COMMUNITY-BASED ORGANIZATION (CBO) MASTER CONTRACT AMENDMENT COVERSHEET

This Master Contract Amendment, effective as of July 1, 2020, is a part of the Community Based Organization Master Contract (No. 901072) made and entered into by and between the County of Alameda ("County"), and San Leandro Unified School District, hereinafter referred to as the ("Contractor").

The Master Contract is hereby amended by adding the following described exhibits, all of which are attached and incorporated into the Master Contract by this reference, and hereinafter referred to as "Procurement Contract No. 18787", the "Procurement Contract"

1. **Exhibit A** – Program Description and Performance Requirements;
2. **Exhibit B** – Terms of Payment;
3. **Exhibit C** – Insurance Requirements;
4. **Exhibit D** – Debarment and Suspension Certification;
5. **Exhibit E** – HIPAA Business Associate Agreement

The Exhibits above replace and supersede any and all previous Exhibits entered by both parties for this Procurement Contract. Except as herein amended, the Master Contract is continued in full force and effect.

The Term of this Amendment shall be from July 1, 2020 through June 30, 2021. The compensation payable to Contractor hereunder shall not exceed $45,112 for the term of this Procurement Contract.

Dept. Contact Kate Graves Phone (510) 542-6942 Email Kate.graves@acgov.org

The signatures below signify that the attached Exhibits have been received, negotiated, agreed to, and finalized. The Contractor continues to be bound by all provisions of the Master Contract. IN WITNESS WHEREOF and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Contractor agree hereto have executed this Procurement Contract, effective as of the date of execution by the County. By signing below, signatory warrants and represents that he/she executed this Procurement Contract in his/her authorized capacity and that by his/her signature on this Procurement Contract, he/she or the entity upon behalf of which he/she acted, executed this Procurement Contract.

**COUNTY OF ALAMEDA**

By _____ Date _____
Signature

Name Colleen Chawla

Title Director, Health Care Services Agency

**SAN LEANDRO UNIFIED SCHOOL DISTRICT**

By _____ Date _____
Signature

Name Joanne Clark

Title Director of Prevention and Intervention

**APPROVED AS TO FORM**

By _____
Signature

Name K. Joon Ohh

Title Deputy County Counsel

**EXHIBIT A**
**DEFINITION OF SERVICES**

| | |
|---|---|
| Contractor: | San Leandro Unified School District |
| Contract Period: | 7/1/2020 to 6/30/2021 |
| Contract Amount: | $45,112 |

## I. Contracted Services

**Mental Health Consultation in Schools Program services under the School Based Behavioral Health Initiative.**

### A. Services and Funding

San Leandro Unified School District (SLUSD), Contractor, shall provide Mental Health Consultation in Schools program services to students & their families, and staff of San Leandro Unified School Districts on behalf of the Alameda County Health Care Services Agency Center for Healthy Schools and Communities (CHSC). The goals for the program are to build a system of health supports for students and their families, increase capacity of staff and strengthen coordination of service delivery.

The Mental Health Consultation in School Program is funded by the Prevention and Early Intervention (PEI) Mental Health Access and Linkage to Services programs under Alameda County Mental Health Services Act (MHSA). The PEI MHSA program aims to connect students experiencing behavioral health issues to supports including, but not limited to, prevention, early intervention, treatment and recovery services.

This Procurement Contract provides partial funding for teams providing access and linkage to services (SLUSD Coordination of Services Teams) and direct mental health services to students (contracted 2.5 FTE mental health interns).

### B. Program Overview

#### 1. The Center for Healthy Schools and Communities (CHSC) Goal

The overall goal of the CHSC is for all youth in Alameda County to graduate from high school healthy and ready for college and career.

#### 2. CHSC Results Framework

a) Youth are physically, socially and emotionally healthy
b) Youth succeed academically
c) Environments are safe, supportive and stable
d) Families are supported and supportive
e) Systems are integrated and care is coordinated and equitable

**3.** The **Alameda County School Based Behavioral Health Initiative** defines School-Based Behavioral Health (SBBH) as the infrastructure, programs, and relationship within a school and

district that promote the health social-emotional development of all students and address barriers to learning. The six core components of our SBBH model are:

- Three tiers of support
- District Capacity
- Cultural Responsiveness
- Coordination strategies
- School-wide responsibility
- Ongoing Assessment

**C. Program Goals**

**Mental Health Consultation in Schools** program goals:

- Enhanced capacity of schools to identify and track individuals and families with social, emotional and behavioral issues and ensure proper referral and linkage to treatment;
- Increased number of school staff trained in the recognition of early indicators of mental illness and how to refer students for screening and intervention;
- Increased knowledge of social, emotional and behavioral issues; and
- Reduced suspensions, expulsions, drop-out rates, violence, social isolation, and involvement with law enforcement/courts among students.

**D. Target Population**

Contractor shall serve the following populations.

**1. Service Groups & Program Eligibility**

Contractor shall serve any student within the San Leandro Unified School District. Contractor shall make it a priority to serve students who are at high risk for serious mental health issues and school failure. The interventions shall also target the school staff and families who provide support to these students. Families are defined broadly and include non-custodial parents and guardians.

**2. Referral Process to Program**

Contractor shall accept self-referrals and referrals from teachers, school administrators and family members. Contractor shall also conduct some activities that serve the entire school community.

**3. Limitations of Service**

Not applicable.

**E. Program Description**

**1. Program Design**

Contractor shall develop collaborative partnerships with teachers, school staff, parents, and other providers to create school environments that promote healthy emotional development, make social-emotional learning supports available to all students, and

facilitate effective problem-solving among adults and students through a Multi-Tier System of Supports (MTSS). MTSS is defined as an approach to integrate a continuum of system-wide resources, strategies, structures, and practices to offer a comprehensive and responsive framework for systemically addressing barriers to student learning.

Contractor shall facilitate Coordination of Services Team (COST) meetings and participate in or coordinate efforts around linkage to community resources, including preventative check-in visits, individual/group services, case management sessions, restorative justice (RJ) circles or other RJ activities, screening services, Student Attendance Review Team (SART), Student Attendance Review Board (SARB), Student Success Team (SST), and conflict mediation.

Contractor shall collaborate with various County efforts including the other Prevention and Early Intervention programs. Contractor shall make presentations, prepare reports, and attend meetings (including SBBH monthly meetings) and/or trainings as required by CHSC.

**2. Discharge Criteria and Process**

Not applicable.

**3. Hours of Operation**

Contractor shall maintain the following hours of operation:
Monday through Friday, 8:00 a.m. to 3:00 p.m.

**4. Service Delivery Sites**

Contractor shall provide services at schools throughout San Leandro Unified.

Contractor shall obtain written approval from CHSC through the CHSC Program Contract Manager prior to implementing any changes in service delivery sites.

**F. Minimum Staffing Qualifications**

Contractor shall notify the CHSC Program Contract Manager of any change and/or vacancy in direct service staffing which is anticipated to decrease contracted service delivery by more than 25 percent during the contract period.

Contractor shall maintain a minimum of 1.0 Full-Time Equivalent (FTE) position dedicated to this program.

## II. Deliverables

Contractor shall provide the following core services during the period of 7/1/2020 – 6/30/2021:

| Strategy/Activities | Time Frame | Outcomes and Reporting |
|---|---|---|
| **A. Develop structures and protocols for coordinating health and wellness supports**.<br><br>Activities include:<br><br>a) Implement COST at 12 San Leandro Unified sites, which includes developing a plan for training of staff and program improvement. | August, 2020-June, 2021 | Effort measures & targets:<br>• 100% of staff and administrators trained on COST referral process<br>• 80% of behavioral health providers participate in school site COST teams<br>• Number of students served through COST |

| | | |
|---|---|---|
| b) Implement behavioral health services across the district<br><br>c) In collaboration with School Health Center planning team, lead planning efforts to develop protocols and procedures for integrated coordination of services and continued participation of health center staff in COST<br><br>d) Train SLUSD school site staff on overview of COST referral process and early warning signs of Mental Health issues<br><br>e) Provide technical assistance and consultation to improve integrated coordination of services and COST functioning across SLUSD schools<br><br>f) Provide mental health consultation to faculty, staff, and families; preventive counseling to individuals and groups, and referrals and linkages to mental health services<br><br>**2.** Administration<br><br>a) Representative will attend monthly Alameda County School Based Behavioral Health Initiative District lead meetings. | | • COST tracker/ School Based Behavioral Health Services ("SBBH") semi-annual reports<br><br>Quality measures & targets:<br>• Maintain the 12 school sites utilizing COST model to coordinate services<br>• Existing COST teams show improvement in at least two areas of functioning (CHSC COST rubric)<br>• COST tracker/SBBH semi-annual reports<br><br>Impact Measures:<br>• At least 75 % of students/families referred through COST for a behavioral health early intervention or treatment service shall be connected with that early intervention or treatment service<br>• At least 75 % of students/families referred through COST for a behavioral health prevention service shall be connected with that service |
| **B. Provide Direct Services**<br><br>Activities:<br>a) Mental Health Interns will be placed at San Leandro Unified School District schools | August, 2020--June, 2021 | Effort Measure<br>• 95% of students referred will be served by interns through individual and group therapy (semi-annual reports)<br><br>Quality measure:<br>• Satisfaction rates<br><br>Impact Measure:<br>• Youth Satisfaction surveys |

**III. Reporting and Evaluation Requirements**

Between July 1, 2020 and June 30, 2021, Contractor will fully cooperate with the Center for Healthy Schools & Communities evaluators and **participate in the School Based Behavioral Health Initiative (SBBHI) evaluation**.

**A. Evaluation Tools.** Contractor shall submit the School District Behavioral Health Programs Semi-annual Progress Report into the electronic data entry system designated CHSC. Contractor implements required evaluation tools which may vary depending on services provided, and participate in pre and post data sharing meetings as applicable. Contractor will cooperate with CHSC planning efforts for and adoption of a revised method of data collection, i.e. Salesforce database. Evaluation tools may include but are not limited to:

- Youth Satisfaction Surveys
- Staff Satisfaction Surveys
- Parent/Caregiver Surveys

**B. Reporting.** Contractor shall comply with the reporting requirements of County, State, or Federal agencies, and applicable law and regulations as a condition of funding. Contractor completes and submits all required data tracking and reports. The format for data tracking and reports may change during the year, e.g. from tracking sheets to a Salesforce platform. Either way, Contractor shall provide the Center for Healthy Schools & Communities Evaluators with electronic copies of semi-annual reports for the preceding 6 months utilizing the Report template according to the following schedule:

❑January 15, 2021 (for the period covering July 1, 2020 through Dec 31, 2020)
❑July 15, 2021 (for the period covering Jan 1, 2021 through June 30, 2021)

If reporting requirements cannot be met by above deadlines, Contractor shall immediately contact the Center for Healthy Schools & Communities (CHSC) and Evaluators with the reason for delay and the estimated date for report completion. It is within the discretion of CHSC to extend any due date. Lack of notification or failure to meet a deadline will result in fund reduction. Contractor shall include hardcopies of the quarterly report and data reports with each invoice in order to receive payment.
Contractor shall provide additional information if requested by County.

**C. Quality Assurance & Monitoring Requirements**

1. County representatives may perform site visits to directly observe operations at any contractor with 48-hour notification. In the performance of site visits, County representatives shall conduct inspections and manage information in a manner consistent with applicable laws relating to confidentiality of records and in a manner that will minimize disruption of Contractor's work and will not interfere with patient care.

2. The scope of review may include, but is not limited to: availability and accessibility of care; utilization review; waiting time for services; and review of third-party billing and reimbursement.

3. All medical records related to services rendered under this Exhibit A, shall be accessible to County for inspection and audit as required for public health related conditions and as provided under HIPAA exclusion.

4. All business records related to services rendered under this Exhibit A, shall be accessible to County for inspection and audit as a part of the administrative monitoring and evaluation.

5. County representatives will maintain the confidentiality of any patient records or protected health information made available to them pursuant to this Exhibit A in accordance with all applicable state and federal statutes and regulations relating to confidentiality.

## IV. Additional Requirements

### A. Certification/Licensure/ Confidentiality/Communication

1. Contractor will maintain all required licenses and special permits issued by federal, state, and local agencies related to the services it provides.
2. Contractor shall notify The Center for Healthy Schools & Communities staff immediately by telephone and in writing within five days, when there is a change in the license and/or certification of any program, service, department, or facility providing services under this Exhibit A.
3. Contractor shall conform to all federal and state laws relating to confidentiality of patients' medical information, including but not limited to the Health Insurance Portability and Accountability Act when applicable.
4. Communication is vital in our collective work with schools. In matters related to schools, Contractor and The Center for Healthy Schools & Community staff shall notify and inform each other about communication with school board, district and school site staff.
5. Contractor shall provide additional agreed upon services as other funding emerges.

## V. Contact Information

| | Health Care Services Agency | Contractor |
|---|---|---|
| Signatory | Colleen Chawla | Joanne Clark |
| Title | Director | Senior Director of Educational Services |
| Email | Colleen.chawla@acgov.org | joanneclark@slusd.us |
| Program Contact | Kate Graves | Kevin Collins |
| Email | Kate.graves@acgov.org | kcollins@slusd.us |
| Address | 1000 san Leandro Blvd., Ste. 300<br>San Leandro CA, 94578 | 835 E 14th Street Suite 200<br>San Leandro, CA 94577 |
| Phone | (510) 542-6942 | (510) 667-3504 |

**EXHIBIT B**
**TERMS OF PAYMENT**
**SAN LEANDRO UNIFIED SCHOOL DISTRICT**

In addition to all terms of payment described in the Master Contract Terms and Conditions and any relevant exhibits and attachments, the parties to this Procurement Contract shall abide by the following terms of payment:

I. **Budget (July 1, 2020-June 30, 2021)**

| Budget Item | FTE | Maximum Reimbursement |
|---|---|---|
| **Personnel (position)** | 12 COST Coordinators (1 per site) | $24,750 |
| **Operations (Non-Personnel)** | Subcontract with Davis Street for 2.5FTE behavioral health interns | $20,362 |
| **Not to Exceed Amount Total** | | $45,112 |

**II. Conditions of the Funding Source**

This contract provides for funding to support the Mental Health Consultation in Schools Program at San Leandro Unified School District (SLUSD). In awarding this contract, the County in no way guarantees any future funding.

**III. Terms and Conditions of Payment**

A. Reimbursement

1. The total amount of reimbursement under the terms of this Agreement shall not exceed $45,112.00. Funds shall be used solely in support of the Mental Health Consultation in Schools program budget.
2. Contractor shall invoice the County twice a year during the contract period, not to exceed $22,556.00 per invoice, based on actual expenditures incurred and per completion of each deliverable. The final invoice shall be based on actual expenditures after the completion of all deliverables, shall not exceed the remaining balance of the contract, and must be received no later than July 15, 2021.
3. Required reports must be submitted with the invoices in order for Contractor to receive payment.
4. County shall use best efforts to process invoice submitted for reimbursement by Contractor within forty-five (45) days from receipt of invoice, reports and any other back up documentation as requested

B. Invoicing Procedures

Contractor shall invoice County bi-annually. Required reports and Invoices with a remittance address, an invoice number, PO number and service period should be sent by email to:

Kate Graves: [kate.graves@acgov.org] and/or Connie Yale: [connie.yale@acgov.org]
If necessary, invoices and reports can also be mailed to:
Attn: Kate Graves/Connie Yale
Center for Healthy Schools & Communities
Alameda County Health Care Services Agency
1000 San Leandro Blvd., Suite 300
San Leandro, CA 94577

**EXHIBIT D**

**COUNTY OF ALAMEDA**
**DEBARMENT AND SUSPENSION CERTIFICATION**

(Applicable to all agreements funded in part or whole with federal funds and contracts over $25,000).

**The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named and unnamed subcontractor:**

- **Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;**
- **Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;**
- **Does not have a proposed debarment pending; and**
- **Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.**

**If there are any exceptions to this certification, insert the exceptions in the following space.**

**Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.**

**Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.**

CONTRACTOR: San Leandro Unified School District

PRINCIPAL: Joanne Clark TITLE: Senior Director of Educational Services

SIGNATURE: _____ DATE: _____

**EXHIBIT E**

**HIPAA BUSINESS ASSOCIATE AGREEMENT**

This Exhibit, the HIPAA Business Associate Agreement ("Exhibit") supplements and is made a part of the underlying agreement ("Agreement") by and between the County of Alameda, ("County" or "Covered Entity") and San Leandro Unified School District, ("Contractor" or "Business Associate") to which this Exhibit is attached. This Exhibit is effective as of the effective date of the Agreement.

## I. RECITALS

Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI");

Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the "HITECH Act"), the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations"), and other applicable laws; and

The Privacy Rule and the Security Rule in the HIPAA Regulations require Covered Entity to enter into a contract, containing specific requirements, with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314(a), 164.502(e), and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and as contained in this Agreement.

## II. STANDARD DEFINITIONS

Capitalized terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those terms are defined in the HIPAA Regulations. In the event of an inconsistency between the provisions of this Exhibit and the mandatory provisions of the HIPAA Regulations, as amended, the HIPAA Regulations shall control. Where provisions of this Exhibit are different than those mandated in the HIPAA Regulations, but are nonetheless permitted by the HIPAA Regulations, the provisions of this Exhibit shall control. All regulatory references in this Exhibit are to HIPAA Regulations unless otherwise specified.

The following terms used in this Exhibit shall have the same meaning as those terms in the HIPAA Regulations: Data Aggregation, Designated Record Set, Disclosure, Electronic Health Record, Health Care Operations, Health Plan, Individual, Limited Data Set, Marketing, Minimum Necessary, Minimum Necessary Rule, Protected Health Information, and Security Incident.

The following term used in this Exhibit shall have the same meaning as that term in the HITECH Act: Unsecured PHI.

## III. SPECIFIC DEFINITIONS

*Agreement.* "Agreement" shall mean the underlying agreement between County and Contractor, to which this Exhibit, the HIPAA Business Associate Agreement, is attached.

*Business Associate.* "Business Associate" shall generally have the same meaning as the term "business associate" at 45 C.F.R. section 160.103, the HIPAA Regulations, and the HITECH Act, and in reference to a party to this Exhibit shall mean the Contractor identified above. "Business Associate" shall also mean any subcontractor that creates, receives, maintains, or transmits PHI in performing a function, activity, or service delegated by Contractor.

*Contractual Breach.* "Contractual Breach" shall mean a violation of the contractual obligations set forth in this Exhibit.

*Covered Entity. "*Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 C.F.R. section 160.103, and in reference to the party to this Exhibit, shall mean any part of County subject to the HIPAA Regulations.
*Electronic Protected Health Information*. "Electronic Protected Health Information" or "Electronic PHI" means Protected Health Information that is maintained in or transmitted by electronic media.

*Exhibit.* "Exhibit" shall mean this HIPAA Business Associate Agreement.

*HIPAA.* "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

*HIPAA Breach.* "HIPAA Breach" shall mean a breach of Protected Health Information as defined in 45 C.F.R. 164.402, and includes the unauthorized acquisition, access, use, or Disclosure of Protected Health Information which compromises the security or privacy of such information.

*HIPAA Regulations.* "HIPAA Regulations" shall mean the regulations promulgated under HIPAA by the U.S. Department of Health and Human Services, including those set forth at 45 C.F.R. Parts 160 and 164, Subparts A, C, and E.

*HITECH Act.* "HITECH Act" shall mean the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the "HITECH Act").

*Privacy Rule and Privacy Regulations.* "Privacy Rule" and "Privacy Regulations" shall mean the standards for privacy of individually identifiable health information set forth in the HIPAA Regulations at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

*Secretary.* "Secretary" shall mean the Secretary of the United States Department of Health and Human Services ("DHHS") or his or her designee.

*Security Rule and Security Regulations*. "Security Rule" and "Security Regulations" shall mean the standards for security of Electronic PHI set forth in the HIPAA Regulations at 45 C.F.R. Parts 160 and 164, Subparts A and C.

## IV. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE

Business Associate may only use or disclose PHI:

A. As necessary to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or Disclosure would not violate the Privacy Rule if done by Covered Entity;

B. As required by law; and

C. For the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is

aware in which the confidentiality of the information has been breached.

## V. PROTECTION OF PHI BY BUSINESS ASSOCIATE

A. *Scope of Exhibit*. Business Associate acknowledges and agrees that all PHI that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording and electronic display, by Covered Entity or its operating units to Business Associate, or is created or received by Business Associate on Covered Entity's behalf, shall be subject to this Exhibit.

B. *PHI Disclosure Limits.* Business Associate agrees to not use or further disclose PHI other than as permitted or required by the HIPAA Regulations, this Exhibit, or as required by law. Business Associate may not use or disclose PHI in a manner that would violate the HIPAA Regulations if done by Covered Entity.

C. *Minimum Necessary Rule.* When the HIPAA Privacy Rule requires application of the Minimum Necessary Rule, Business Associate agrees to use, disclose, or request only the Limited Data Set, or if that is inadequate, the minimum PHI necessary to accomplish the intended purpose of that use, Disclosure, or request. Business Associate agrees to make uses, Disclosures, and requests for PHI consistent with any of Covered Entity's existing Minimum Necessary policies and procedures.

D. *HIPAA Security Rule*. Business Associate agrees to use appropriate administrative, physical and technical safeguards, and comply with the Security Rule and HIPAA Security Regulations with respect to Electronic PHI, to prevent the use or Disclosure of the PHI other than as provided for by this Exhibit.

E. *Mitigation*. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or Disclosure of PHI by Business Associate in violation of the requirements of this Exhibit. Mitigation includes, but is not limited to, the taking of reasonable steps to ensure that the actions or omissions of employees or agents of Business Associate do not cause Business Associate to commit a Contractual Breach.

F. *Notification of Breach*. During the term of the Agreement, Business Associate shall notify Covered Entity in writing within twenty-four (24) hours of any suspected or actual breach of security, intrusion, HIPAA Breach, and/or any actual or suspected use or Disclosure of data in violation of any applicable federal or state laws or regulations. This duty includes the reporting of any Security Incident, of which it becomes aware, affecting the Electronic PHI. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized use or Disclosure required by applicable federal and/or state laws and regulations. Business Associate shall investigate such breach of security, intrusion, and/or HIPAA Breach, and provide a written report of the investigation to Covered Entity's HIPAA Privacy Officer or other designee that is in compliance with 45 C.F.R. section 164.410 and that includes the identification of each individual whose PHI has been breached. The report shall be delivered within fifteen (15) working days of the discovery of the breach or unauthorized use or Disclosure. Business Associate shall be responsible for any obligations under the HIPAA Regulations to notify individuals of such breach, unless Covered Entity agrees otherwise.

G. *Agents and Subcontractors*. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions, conditions, and requirements that apply through this Exhibit to Business Associate with respect to such information. Business Associate shall obtain written contracts agreeing to such terms from all agents and subcontractors. Any subcontractor who contracts for another

company's services with regards to the PHI shall likewise obtain written contracts agreeing to such terms. Neither Business Associate nor any of its subcontractors may subcontract with respect to this Exhibit without the advanced written consent of Covered Entity.

H. *Review of Records.* Business Associate agrees to make internal practices, books, and records relating to the use and Disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to Covered Entity, or at the request of Covered Entity to the Secretary, in a time and manner designated by Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Regulations. Business Associate agrees to make copies of its HIPAA training records and HIPAA business associate agreements with agents and subcontractors available to Covered Entity at the request of Covered Entity.

I. *Performing Covered Entity's HIPAA Obligations.* To the extent Business Associate is required to carry out one or more of Covered Entity's obligations under the HIPAA Regulations, Business Associate must comply with the requirements of the HIPAA Regulations that apply to Covered Entity in the performance of such obligations.

J. *Restricted Use of PHI for Marketing Purposes.* Business Associate shall not use or disclose PHI for fundraising or Marketing purposes unless Business Associate obtains an Individual's authorization. Business Associate agrees to comply with all rules governing Marketing communications as set forth in HIPAA Regulations and the HITECH Act, including, but not limited to, 45 C.F.R. section 164.508 and 42 U.S.C. section 17936.

K. *Restricted Sale of PHI.* Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement.

L. *De-Identification of PHI.* Unless otherwise agreed to in writing by both parties, Business Associate and its agents shall not have the right to de-identify the PHI. Any such de-identification shall be in compliance with 45 C.F.R. sections 164.502(d) and 164.514(a) and (b).

M. *Material Contractual Breach.* Business Associate understands and agrees that, in accordance with the HITECH Act and the HIPAA Regulations, it will be held to the same standards as Covered Entity to rectify a pattern of activity or practice that constitutes a material Contractual Breach or violation of the HIPAA Regulations. Business Associate further understands and agrees that: (i) it will also be subject to the same penalties as a Covered Entity for any violation of the HIPAA Regulations, and (ii) it will be subject to periodic audits by the Secretary.

## VI. INDIVIDUAL CONTROL OVER PHI

A. *Individual Access to PHI.* Business Associate agrees to make available PHI in a Designated Record Set to an Individual or Individual's designee, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. section 164.524. Business Associate shall do so solely by way of coordination with Covered Entity, and in the time and manner designated by Covered Entity.

B. *Accounting of Disclosures.* Business Associate agrees to maintain and make available the information required to provide an accounting of Disclosures to an Individual as necessary to satisfy Covered Entity's obligations under 45 C.F.R. section 164.528. Business Associate shall do so solely by way of coordination with Covered Entity, and in the time and manner designated by Covered Entity.

C. *Amendment to PHI.* Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. section 164.526. Business Associate shall do so solely by way of coordination with Covered Entity, and in the time and manner designated by Covered Entity.

## VII. TERMINATION

A. *Termination for Cause.* A Contractual Breach by Business Associate of any provision of this Exhibit, as determined by Covered Entity in its sole discretion, shall constitute a material Contractual Breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. Contracts between Business Associates and subcontractors are subject to the same requirement for Termination for Cause.

B. *Termination due to Criminal Proceedings or Statutory Violations.* Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which Business Associate has been joined.

C. *Return or Destruction of PHI.* In the event of termination for any reason, or upon the expiration of the Agreement, Business Associate shall return or, if agreed upon by Covered Entity, destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
If Business Associate determines that returning or destroying the PHI is infeasible under this section, Business Associate shall notify Covered Entity of the conditions making return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Exhibit to such PHI and limit further uses and Disclosures to those purposes that make the return or destruction of the information infeasible.

## VIII. MISCELLANEOUS

A. *Disclaimer.* Covered Entity makes no warranty or representation that compliance by Business Associate with this Exhibit, HIPAA, the HIPAA Regulations, or the HITECH Act will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate is or will be secure from unauthorized use or Disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
B. *Regulatory References*. A reference in this Exhibit to a section in HIPAA, the HIPAA Regulations, or the HITECH Act means the section as in effect or as amended, and for which compliance is required.
C. *Amendments*. The parties agree to take such action as is necessary to amend this Exhibit from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, the HIPAA Regulations, and the HITECH Act.
D. *Survival*. The respective rights and obligations of Business Associate with respect to PHI in the event of termination, cancellation or expiration of this Exhibit shall survive said termination, cancellation or expiration, and shall continue to bind Business Associate, its agents, employees, contractors and successors.
E. *No Third Party Beneficiaries.* Except as expressly provided herein or expressly stated in the HIPAA

Regulations, the parties to this Exhibit do not intend to create any rights in any third parties.

F. *Governing Law.* The provisions of this Exhibit are intended to establish the minimum requirements regarding Business Associate's use and Disclosure of PHI under HIPAA, the HIPAA Regulations and the HITECH Act. The use and Disclosure of individually identified health information is also covered by applicable California law, including but not limited to the Confidentiality of Medical Information Act (California Civil Code section 56 *et seq.*). To the extent that California law is more stringent with respect to the protection of such information, applicable California law shall govern Business Associate's use and Disclosure of confidential information related to the performance of this Exhibit.

G. *Interpretation*. Any ambiguity in this Exhibit shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA, the HIPAA Regulations, the HITECH Act, and in favor of the protection of PHI.

This EXHIBIT, the HIPAA Business Associate Agreement is hereby executed and agreed to by

**CONTRACTOR:**

**Name: San Leandro Unified School District**

**By (Signature): _____**

**Print Name: Joanne Clark**

**Title: Senior Director of Educational Services**