

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT made and entered into as of the date the last Party signs, by and between Alameda Unified School District, a non-profit organization whose principal place of business is 2060 Challenger Dr, Alameda, CA 94501, (hereinafter referred to as “SCHOOL”), and CHILDREN’S HOSPITAL & RESEARCH CENTER AT OAKLAND d/b/a UCSF BENIOFF CHILDREN’S HOSPITAL OAKLAND, whose principal place of business is 747 Fifty Second Street, Oakland, California, 94609 (hereinafter referred to as “BCH-O”). (Individually referred to as “Party” Collectively referred to as “Parties”) (“Agreement.”)

### **RECITALS**

- (a) BCH-O personnel have the experience and expertise to identify, care for, and rehabilitate certain sport-related injuries and have developed a program through its Sports Medicine Center for Young Athletes that provides a “team centered” approach to providing such services.
- (b) SCHOOL desires to utilize the services of BCH-O for sports-related injuries of its student athletes.
- (c) BCH-O desires to provide services to identify, treat, and rehabilitate the sports-related injuries of SCHOOL’s student athletes under the terms and conditions described herein.

### **NOW THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:**

#### **1. Term of Agreement**

The start date of Services shall be determined by the Parties based on the High School’s COVID-19 guidelines. Once Services start date is determined by the Parties the Agreement will be pro-rated according to Section 7 below .

### **Termination.**

The Parties may agree to a mutual written termination at any time. One Party may terminate by providing the other Party with at least sixty (60) days written notice.

### **3. BCH-O's Duties and Responsibilities**

BCH-O agrees to:

- A. Provide a certified athletic trainer ("ATC") at SCHOOL for the interscholastic athletic program for maximum of 30 hours per week for each week beginning no earlier than November 1 , 2020 and through the final NCS sanctioned event of the year ("Services".) The specific hours the ATC will be present at SCHOOL will be mutually agreed upon in writing in advance by the ATC and the SCHOOL's Athletic Director ("Athletic Director"). The ATC's schedule will follow the approved school calendar. Services will not be provided during school holidays without prior approval.
- B. Subject to the foregoing, provide Services at home games and other athletic games as agreed between the Athletic Director and BCH-O.
- C. Require the ATC to:
  - 1. Establish policies for emergency contact with first responders, ambulances, and other health care providers or emergency personnel appropriate to sports-related injuries to student athletes.
  - 2. Provide a regular injury status report to the SCHOOL head coach of the team involved, as information is available ;
  - 3. As requested, direct the injured SCHOOL athlete to the appropriate team physician, family physician, or health care facility, bearing in mind the

requirements of the particular athlete's medical insurance plan to the extent possible;

4. Provide reasonable follow-up care on injured SCHOOL athletes as requested and in accordance with the Services provided hereunder;
  5. As requested, make reasonable attempts to coordinate and facilitate rehabilitation of SCHOOL's injured athletes with the team physician, therapist and/or family physician;
  6. Complete taping and strapping, as necessary, for the SCHOOL athletes;
  7. Give emergency first aid to injured SCHOOL athletes within the scope of the ATC's Certification;
  8. Inform the Athletic Director and SCHOOL coach(es) when an athlete is ready to return to practice or competitive arena;
  9. Make recommendations to the Athletic Director concerning appropriate training supplies and equipment.
- D. Ensure that the ATC maintains qualifications from the National Athletic Training Association and is certified in Cardiopulmonary Resuscitation and Basic First Aid.
- E. Ensure personnel supplied by BCH-O are required to abide by all applicable rules and regulations of SCHOOL, to the extent permitted by law and to the extent not in conflict with BCH-O policies, rules and regulations, while on SCHOOL's campus or while providing services hereunder, including but not limited to rules pertaining to prohibitions on alcoholic beverages, tobacco or unlawful drugs.

- F. BCH-O will comply with the fingerprinting and criminal background investigation requirements of Education Code Section 45125.1 with respect to all BCH-O's employees who may have contact with SCHOOL's students in the course of providing services pursuant to the Agreement at SCHOOL facilities, ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by SCHOOL. As of the effective date of the Agreement, BCH-O is not aware of any information from the Department of Justice regarding conviction of a felony of any ATC as the term is defined the Education Code Section 45122.1.
- G. BCH-O ensures that a tuberculosis screening is performed annually on all ATC's.

**4. SCHOOL's Duties & Responsibilities**

SCHOOL will:

- A. Cooperate with the ATC and BCH-O in scheduling the hours for the ATC's presence at SCHOOL;
- B. Permit BCH-O to promote its program with banners at all athletic events and within training facilities with prior approval of SCHOOL administration, which approval shall not be unreasonably withheld or delayed.
- C. Provide BCH-O with free advertising in programs, sports calendars, as mutually agreed upon and with prior approval of SCHOOL administration, which approval shall not be unreasonably withheld or delayed.
- D. Have the responsibility to obtain whatever necessary consents, notifications, and/authorizations necessary for BCH-O to provide the Services set forth herein.

**5. Data Access and Security**

SCHOOL permits BCH-O and its subcontractors access to athlete demographic and contact information for the sole purpose of electronic record keeping in the athletic training room. For the purposes of SCHOOL subcontractor approval, approval may be provided by email.

- A. Data Ownership: All information, data, and other content transmitted by SCHOOL to BCH-O, or entered or uploaded under SCHOOL's user accounts, including on any third-party hosted cloud locations, remain the sole property of the SCHOOL. SCHOOL retains exclusive control over student and staff data, including determining who may access data and how it may be used (e.g., for legitimate authorized purposes). BCH-O and SCHOOL shall establish reasonable procedures by which a parent, legal guardian or eligible student may review personally identifiable information in the student athlete's records, correct erroneous information, and procedures for the transfer of student athlete generated content to a personal account.
- B. Data Access: Except as otherwise provided in this section 4, BCH-O, and its subcontractors, may access SCHOOL data solely to fulfill its obligations under this Agreement.
- C. Third Party Access: Except in connection with BCH-O's pre-approved subcontractor(s), BCH-O may not distribute SCHOOL data or content to a third party without SCHOOL's express written consent, unless otherwise required by law. Use of subcontractors and subcontractor access to data must be approved in writing by the SCHOOL. BCH-O will ensure that approved subcontractors adhere to all provisions of this Agreement.

- D. SCHOOL grants to BCH-O, its agents, and SCHOOL-approved subcontractors, a non-exclusive, worldwide, royalty-free right to use, copy, modify, make available, display, and adapt BCH-O and User or SCHOOL data to provide certain subscription services to BCH-O, SCHOOL and its Users, which may include students and/or parents.
- E. Third Party Request: Should a third party contact BCH-O with a request for SCHOOL data, including law enforcement and government entities, BCH-O shall take reasonable steps to redirect the third party to request the data directly from the SCHOOL, to the extent legally permissible. BCH-O shall take reasonable steps to notify the SCHOOL in advance of a compelled disclosure to a third party, to the extent legally permissible.

**6. Duties**

- A. SCHOOL: SCHOOL will perform the following duties:
  - 1. Provide Data: Provide data for the purposes of the Agreement in compliance with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. section 1232 g. SCHOOL shall comply with all applicable laws, including FERPA, COPPA, PPRA and AB 1584 (Education Code section 49073.1).
  - 2. Precautions: Take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted data.
  - 3. Notification: Notify BCH-O promptly of any known or suspected unauthorized access.

B. BCH-O: BCH-O will perform the following duties:

1. Privacy Compliance: Comply with all applicable laws, including FERPA, COPPA, PPRA and AB 1584 (Education Code section 49073.1). These duties shall include the following:
2. Authorized Use: The data shared under the Agreement shall be used for no purpose other than the work stated in this Agreement and or otherwise authorized under the statutes referred to in subsection (a), above.
3. Employees Bound: Require all employees of BCH-O, agents of any kind and subcontractors to comply with all applicable provisions of FERPA laws with respect to the data shared under this Agreement.
4. Secure Environment: Maintain all data obtained pursuant to this Agreement in a secure computer environment and not copy, reproduce or transmit data obtained pursuant to this Agreement except as necessary to fulfill the purpose of the original request, which contemplates use of a pre-approved subcontractor. No Disclosure: Except as otherwise permitted in this agreement, not disclose any data obtained under this Agreement in a manner that could identify an individual student to any other entity as authorized by this Agreement. Deidentified information may be used by the vendor for the purposes of development and improvement of educational sites, services or applications.
5. Disposition of Data: Destroy all personally identifiable data obtained under this Agreement when it is no longer needed for the purpose for which it was obtained, or transfer said data to the SCHOOL or

SCHOOL's designee, according to a schedule and procedure as the Parties may reasonable agree. Nothing in this Agreement authorizes BCH-O to maintain personally identifiable data beyond the time period reasonably needed to complete the disposition.

6. Data Breach Notification: Upon becoming aware of any unlawful or unauthorized access to SCHOOL data stored on equipment used by BCH-O or in facilities used by BCH-O, BCH-O will: promptly notify SCHOOL of the suspected or actual incident; promptly investigate the incident and provide SCHOOL with information regarding the incident

C. Data Request

School Year: BCH-O is requesting data for the following school year(s): 2020-2021

**7. Compensation**

SCHOOL will pay BCH-O the sum of \$1,128 per week for the services agreed to be provided hereunder. Said sum shall be paid in two equal payments based on the total amount of weeks of service provided, on or before January 15th and March 15th of year at issue of year of Services. In the event that this Agreement is executed after the above stated date, a pro-rated amount will apply. As a courtesy, BCH-O will invoice SCHOOL 15 days prior to payment due date. However, SCHOOL's obligation to timely make said payments is not dependent on BCH-O submitting said invoices.

**8. Mutual Agreements**

- A. The parties will use reasonable efforts to establish a student athletic trainer education program as mutually agreed upon and to the extent feasible.



- B. On information regarding grounds for removal from the SCHOOL, Athletic Director may request that BCH-O remove any individual ATC who Athletic Director demonstrates is incompatible with SCHOOL's program goals or staff on the condition that such request is not based on grounds prohibited by state or federal law, including, but not limited to laws prohibiting discrimination based upon race, gender, ethnicity, age, disability, sexual orientation and/or religion. Any such notice shall be given as set forth in Section 6 of this Agreement. BCH-O shall promptly comply with any such request, in which event BCH-O shall be afforded up to sixty (60) days from the date of such notice to provide an alternative ATC. Any lapse in services occasioned by such removal/replacement shall not be deemed a breach of BCH-O's obligations under this Agreement.

**9. Notices:**

BCH-O Notices. Any notice required under this Agreement shall be in writing and shall be sent by U.S. mail, email, or express delivery service and be addressed to the persons set forth below:

If to BCH-O to: :

Jodi Hirsch, Vice President for Legal Affairs, Children's Hospital & Research Center at Oakland d/b/a UCSF Benioff Children's Hospital Oakland, 747 52nd Street, Oakland, CA 94609, [Jodi.hirsch@ucsf.edu](mailto:Jodi.hirsch@ucsf.edu)

With a copy to: Ann Kriozere, Director of Contracting, Children's Hospital & Research Center at Oakland d/b/a UCSF Benioff Children's Hospital Oakland, 747 52nd Street, Oakland, CA 94609, [Ann.kriozere@ucsf.edu](mailto:Ann.kriozere@ucsf.edu)

If to SCHOOL to:

ALAMEDA HIGH SCHOOL  
Principal  
2200 Central Ave  
Alameda, CA 94501

**10. Insurance**

At all times during the performance of this agreement, each Party shall maintain in effect the following insurance:

- A. BCH-O shall provide professional liability insurance for all of its activities arising out of or in connection with this Agreement, professional liability, and personal injury, in an amount no less than one million dollars (\$1,000,000) each occurrence, three million dollars (\$3,000,000) aggregate.
- B. BCH-O shall provide, as required by the Labor Code of the State of California, Workers' compensation insurance for all employees of BCH-O.
- C. SCHOOL shall provide general liability insurance, including but not limited to, premises and operations, and personal injury insurance in an amount no less than one million dollars (\$1,000,000) each occurrence, three million dollars (\$3,000,000) aggregate.
- D. BCH-O shall provide liability insurance in case of sexual harassment and or molestation including any BCH-O personnel in an amount no less than one million dollars (\$1,000,000) each occurrence, three million dollars (\$3,000,000) aggregate.
- E. Each Party shall provide proof of all insurance required herein by providing certificate(s) of such insurance to the other Party.

**11. Indemnification**

Each Party shall defend, indemnify, and hold the other Party, its officers, employees, agents, affiliates, and subcontractors, harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees and consequential damages), or claims for injury or damages, whether to person(s) or property, arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying Party, its officers, employees, agents, affiliates and subcontractors.

**12. Independent Contractor**

This Agreement is by and between two independent contractors and is not intended to and shall not be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture, or association.

**13. Use of SCHOOL's Name**

Use of the name "Alameda High School" by BCH-O in advertising, promotions or publicity, or in any other manner, shall be made only with the prior written consent of the Business Officer.

**14. Use of BCH-O's Name**

Use of any or all of the following by SCHOOL in advertising, promotions or publicity, or in any other manner, shall be made only with the prior written consent of BCH-O: Children's Hospital & Research Center at Oakland; Children's Hospital & Research Center Oakland; Children's Hospital Oakland; Oakland Children's Hospital; UCSF Benioff Children's Hospital.

**15. Force Majeure Events**

Neither BCH-O nor SCHOOL shall have any liability for breach of this Agreement for failing to perform the Services when performance is prevented by Force Majeure. The term

“Force Majeure” shall mean any government requirement or request; war; public disorders; acts of enemies; terrorism; sabotage; strikes; lockouts; picketing; protected, concerted labor activity or other labor or employment difficulties; fires; floods; earthquakes; pandemics or epidemics; acts of God; natural disasters; accidents or breakdowns (whether or not preventable); declared national or state emergencies or any other cause beyond the reasonable control of either Party. BCH-O and SCHOOL understand and agree that Force Majeure events may, instead of preventing performance, interfere with the efficient performance of the Services or Hospital’s obligations under this Agreement, and will result in direct and indirect costs not reflected in the Compensation. The parties agree that under such conditions, the Parties agree to work together in good faith to provide Services and develop appropriate responses and courses of action, including payment, as is practical and reasonable under the circumstances. If SCHOOL requests that BCH-O provide the Services during a force majeure event, then the parties will work in good faith to mutually agree on any changes to any financial guarantees, performance guarantees, Service penalties, and payment amounts and timing that may need to be modified to meet the conditions engendered by the Force Majeure.


**16. Choice of Law**


This Agreement and the terms and conditions contained herein shall be governed by the laws of the State of California. Any litigation brought to enforce the terms of this agreement or arising hereunder shall be filed in the Superior Court of the County of Alameda.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day  
and year first above written.

ALAMEDA HIGH SCHOOL  
Alameda Unified School District

CHILDREN'S HOSPITAL & RESEARCH  
CENTER AT OAKLAND d/b/a UCSF  
BENIOFF CHILDREN'S HOSPITAL  
OAKLAND

By:   
Shariq Khan (Nov 16, 2020 13:07 PST)  
Name: Shariq Khan  
Title: Chief Business Officer

By:   
DocuSigned by:  
Matthew Cook  
E019CF77D99C472  
Matthew Cook  
President, Benioff Children's Hospitals

Date: Nov 16, 2020

Date: 2/19/2021