

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT made and entered into as of July 30, 2018, by and between Making Waves Academy, a non-profit organization whose principal place of business is 3220 Blume Dr. Ste 250, Richmond, CA 94806, (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 “BCHO”).

RECITALS

- (a) BCHO 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 services of BCHO for sports-related injuries of its student athletes.
- (c) BCHO 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

This 1 year agreement shall begin on August 1, 2018 and terminate on the final North Coast Section (“NCS”) sanctioned event for that academic school year (for 42 weeks); unless

earlier terminated by either party by providing written notice of termination by registered mail at least sixty (60) days prior to expiration of this agreement.

2. BCHO's Duties and Responsibilities

BCHO agrees to:

- A. Provide a certified athletic trainer ("ATC") at SCHOOL for the interscholastic athletic program for maximum of 25 hours per week for each week beginning no earlier than August 1, 2018 and through the final NCS sanctioned event of the year. 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, require ATC to attend home games and other athletic games as agreed between the Athletic Director and BCHO.
- 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 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 requirement 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 scope of 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 BCHO are required to abide by all applicable rules and regulations of SCHOOL, to the extent permitted by law and to the extent no in conflict with BCHO 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. BCHO will comply with the fingerprinting and criminal background investigation requirements of Education Code Section 45125.1 with respect to all BCHO'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 contract, BCHO 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 451221.1.

G. BCHO ensures that a tuberculosis screening is performed annually on all ATC's.

3. SCHOOL's Duties & Responsibilities

SCHOOL will:

- A. Cooperate with the ATC and BCHO in scheduling the hours for the ATC's presence at SCHOOL;
- B. Permit BCHO 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 BCHO 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.

4. Data Access and Security

SCHOOL permits BCHO 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 BCHO, or entered or uploaded under SCHOOL's user accounts, including determining who may access data and how it may be used (e.g., for legitimate

authorized purposes). BCHO 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, BCHO, and its subcontractors, may access SCHOOL data solely to fulfil its obligations under this agreement
- C. Third Party Access: Except in connection with BCHO's pre-approved subcontractor(s), BCHO 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. BCHO will ensure that approved subcontractors adhere to all provisions of this Agreement.
- D. SCHOOL grants to BCHO, its agents, and SCHOOL- approved subcontractors, a non-exclusive, worldwide, royalty-free right to use, copy, modify, make available, display, and adapt BCHO and User or SCHOOL data to provide certain subscription services to BCHO, SCHOOL and its Users, which may include students and/or parents.
- E. Third Party Request: Should a third party contact BCHO with a request for SCHOOL data, including law enforcement and government entities, BCHO shall take reasonable steps to redirect the third party to request the data directly from the SCHOOL, to notify the SCHOOL in advance of compelled disclosure to a third party, to the extent legally permissible.

5. 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, the Children’s Outline Privacy Protection Act (“COPPA”), the Protection of Pupil Rights Amdendment (“PRA”), 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 BCHO promptly of any known or suspected unauthorized access.

B. BCHO: BCHO 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 statuses referred to in subsection (a), above.
3. **Employees Bound:** Require all employees of BCHO, agent 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 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 and 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 reasonably agree. Nothing in this Agreement authorizes BCHO 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 BCHO or in facilities used by BCHO, BCHO 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: BCHO is requesting data for the following school year(s): 2018-2019

6. Compensation

SCHOOL will pay BCHO the sum of \$34,500 for the services agreed to be provided hereunder. Said sum shall be paid in two equal payments of \$17,250 on or before August

15th of year at issue, and March 15th of year at issue. In the event that this contract is executed after the above stated date, a pro-rated amount will apply. As a courtesy, BCHO will invoice SCHOOL 15 days prior to payment due date. However, SCHOOL's obligation to timely make said payments is not dependent on BCHO submitting said invoices.

7. 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 BCHO 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. BCHO shall promptly comply with any such request, in which event BCHO 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 BCHO's obligations under this Agreement.

8. Notices

Any notice required to be given herein shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, to the appropriate party at the addresses shown below:

For BCHO: 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
akriozere@mail.cho.org

with a copy to (not constituting notice):

Greta Schnetzler, Chief Campus Counsel
745 Parnassus Ave., 2nd Floor
Box 0986
San Francisco, CA 94143
Greta.schnetzler@ucsf.edu

For SCHOOL: Head of School
Making Waves Academy
3220 Blume Dr., Ste 250
Richmond, CA 94806

9. **Insurance**

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

- A. BCHO 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. BCHO shall provide Sexual Abuse/Molestation insurance with limits of not less than three million dollars (\$3,000,000) per occurrence or claim.
- C. BCHO shall provide commercial 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. BCHO shall maintain worker's compensation & employer's liability coverage, with limits of not less than one million dollars (\$1,000,000) per accident or disease.
- E. BCHO shall provide, as required by the Labor Code of the State of California, Workers' compensation insurance for all employees of BCHO.
- F. 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.
- G. Each party shall provide proof of all insurance required herein by providing certificate(s) of such insurance to the other party.

10. 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 attorney's 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.

11. 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.

12. Use of SCHOOL's Name

Use of the name "Making Waves Academy" by BCHO in advertising, promotions or publicity, or in any other manner, shall be made only with the prior written consent of the Business Officer.

13. Use of BCHO'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 BCHO: 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.

14. 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.

MAKING WAVES ACADEMY

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

By: _____
Name:
Title:

By: _____
DocuSigned by:
Michael Anderson, MD
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Michael Anderson, MD
President

Date: _____

Date: 12/5/2018 _____