

**AMENDED AND RESTATED INDEPENDENT CONTRACTOR AGREEMENT
FOR COVID-19 TESTING SERVICES – MALIBU MEDICAL CORPORATION**

THIS AMENDED AND RESTATED INDEPENDENT CONTRACTOR AGREEMENT FOR COVID-19 TESTING SERVICES (“Amendment”) is made and entered into this 23rd day of August, 2021 (“**Effective Date**”) by and between the Santa Monica-Malibu Unified School District of Los Angeles County, a public school district organized and existing under the laws of the State of California (“**District**” or “**SMMUSD**”), and Malibu Medical Corporation, a California corporation with a business address of 23661 Pacific Coast Highway, Malibu, CA 90265 (“**Contractor**”). District and Contractor may be individually referred to herein this Amendment as a “**Party**” or may be collectively referred to as the “**Parties.**”

RECITALS

WHEREAS, the Contractor is a California corporation with a principal place of business at 23661 Pacific Coast Highway, Malibu, CA 90265, engaged in performing medical testing, analytical evaluation, reporting, and other scientific and regulatory consulting services;

WHEREAS, the District is authorized by Government Code section 53060 to contract with and employ an independent contractor specially trained to perform special services required;

WHEREAS, the Contractor represents that it is specially trained, experienced, and competent to perform the special services pursuant to this Amendment;

WHEREAS, the District seeks to retain Contractor to coordinate, administer, and process COVID-19 tests and sample collection for tests with laboratory and medical oversight provided by Contractor;

WHEREAS, Contractor shall provide COVID-19 testing services to District students, and others designated by the District (collectively, “**Participants**”), at one or more District sites;

WHEREAS, the Parties entered into that certain Independent Contractor Agreement for COVID-19 Testing Services (“**Original Agreement**”; collectively with this Amendment, “**Agreement**”) on September 1, 2021, subject to authorization by the District’s Board of Education;

WHEREAS, the Parties seek to amend and restate that Original Agreement to modify and update certain terms and provisions of said Original Agreement, as more fully set forth herein; and

NOW, THEREFORE, for and in consideration of the Recitals above and the mutual covenants and conditions set forth herein, the Parties hereby agree as follows.

AGREEMENT

1. **Term of Agreement.** The term of this Agreement shall be from August 23, 2021 to December 31, 2021 (“**Term**”), unless terminated earlier in accordance with the terms herein.
2. **Type of Services; Contractor Duties.** Contractor shall provide medical services to the District and the Participants, as further set forth in the Contractor’s Services and Procedures, attached hereto as **Exhibit “A”** and incorporated herein by this reference, and in accordance with the terms and conditions contained herein.
3. **Payment by the District.** The District shall pay the Contractor at the rate of Twenty-Five Cents (\$0.25) per test, not to exceed a total of Five Thousand Five Hundred Dollars (\$5,500) per month for all tests and various COVID-19 testing expenses.
 - a. The Contractor shall submit a detailed, itemized invoice to the authorized District representative monthly, on a form furnished by the District, certifying that Contractor has personally performed the services required. Invoice must state Agreement number in order to receive payment.
 - b. The Contractor shall assume all expenses including, but not limited to, travel expenses, incurred by Contractor in performance of this Agreement, unless otherwise expressly authorized by the District herein.
4. **Authorized Expenses.** No expenses authorized.
5. **Coordination.** The District will provide informed consent documentation to Participants through the SMMUSD Covid-19 Testing Program Provided by Malibu Medical Corporation consent pages (“**Consent Form**”), which may include information regarding data privacy, confidentiality, government disclosure requirements, and a release of health information. The District may also require Participants to register through a secure system and provide demographic, brief health history information, current symptoms, and information on exposure to individuals diagnosed with COVID-19. As necessary for Contractor’s performance of services, and in accordance with applicable law, including but not limited to the health and safety emergency exception to the Family Educational Rights and Privacy Act (“**FERPA**”) at 20 U.S.C. § 1232g (34 CFR Part 99), Contractor will be accessing the data that the District gathers on the District’s website for testing, and Contractor will also be corresponding with the group health insurers of students’ parents for billing purposes.
6. **Liability.** The District shall not be liable to the Contractor for personal injury or property damage sustained by the Contractor in the performance of this Agreement, whether caused by the District, its employees, Participants, or pupils, or by any third persons. The District is not responsible for any property left or placed by Contractor on the District’s premises.
7. **Independent Contractor Not an Officer, Employee, or Agent of District.** While engaged in the performance of this Agreement, the Contractor is an independent contractor

and is not an officer, employee, or agent of the District. Nothing in this Agreement shall be deemed to create an employment or agency relationship between the Parties.

8. Indemnification. In lieu of insurance coverage, Contractor agrees to defend, indemnify and hold harmless the Santa Monica-Malibu Unified School District, its officers, agents, employees, elected and appointed officials, and volunteers from and against any and all claims including active and passive claims, losses, costs, attorney fees and expenses arising out of any liability or claim of liability for personal injury, bodily injury to person or death, contractual liability and damage to property sustained or claimed to have been sustained arising out of the acts, errors or omissions of Contractor, its subcontractors or those of any of its officers, agents or employees, whether such act is authorized by this Agreement or not. District assumes no responsibility for any property placed on the premises. Contractor further agrees to waive all rights of subrogation against the District. The preceding provisions do not apply to any damages or losses caused by the sole negligence or willful misconduct of the District or any of its officers, agents or employees.

9. Insurance.

- a. General Liability Insurance. During the entire Term of the Agreement and any extension or modification thereof, Contractor shall maintain insurance or a program of self-insurance acceptable to the District in its sole discretion, providing general liability insurance to cover Contractor's activities with a minimum Combined Single Limit for bodily injury, personal injury, and property damage as required: One Million Dollars (\$1,000,000). General Liability shall include Sexual Molestation Defense Liability.
- b. Professional Liability/Errors and Omissions. During the entire Term of the Agreement and any extension or modification thereof, Contractor shall maintain insurance acceptable to the District in its sole discretion, to cover Contractor's activities with a minimum Combined Single Limit of One Million Dollars (\$1,000,000).
- c. Automotive (Owned and Non-Owned). During the entire Term of the Agreement and any extension or modification thereof, Contractor shall maintain insurance acceptable to the District in its sole discretion, to cover Contractor's activities with a minimum Combined Single Limit for automobile operations, bodily injury, personal injury, and property damage as required by District: One Million Dollars (\$1,000,000).
- d. Cyber Liability Insurance and Indemnity. Contractor shall obtain and maintain for the Term of this Agreement Cyber Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) aggregate including but not limited to coverage for claims involving security and privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of information, business interruption, cyber extortion and corruption, and denial of service.

- e. No later than the Effective Date of the Agreement, Contractor shall provide District with a Certificate of Insurance and an original endorsement naming in Contractor's Certificate Holder Section: "Santa Monica-Malibu Unified School District, its members, officers, employees, agents, contractors and volunteers, the Santa Monica-Malibu Unified School District Board of Education, its members, officers, employees, agents, contractors and volunteers. 1651 Sixteenth Street, Santa Monica, CA 90404" as additional insured on all required policies including:
 - i. A provision for thirty (30) calendar days' written notice to the District before cancellation, suspension, or reduction in coverage or limits.
 - ii. The certificate shall also provide that the District's self-insurance and insurance programs shall be non-contributory.
 - iii. Insurance Certificate shall state the services and site to which the insurance coverage applies.
 - f. Worker's Compensation. Contractor agrees to carry worker's compensation insurance acceptable to the District in its sole discretion at a limit determined by the Labor Code of the State of California and Employer's Liability insurance in the amount of One Million Dollars (\$1,000,000) or its current limit of each, whichever is greater. Proof of such coverage shall be furnished by Contractor prior to the commencement of this Agreement.
10. **Other Requirements.** All individuals under this Agreement are required to comply with and provide requisite documentation in accordance with all applicable law and District policies regarding tuberculosis testing, fingerprinting, and criminal background checks.
11. **Assignment of Agreement.** Contractor shall not assign, transfer, or subcontract any of its rights, burdens, duties, or obligations under the Agreement without the prior written permission of the District.
12. **Americans with Disabilities Act.** It is the policy of the District to comply with all relevant and applicable provisions of the Americans with Disabilities Act. All organizations/individuals providing services under contract to the District must agree to provide services in a nondiscriminatory manner consistent with the Americans with Disabilities Act.
13. **Anti-Discrimination.** The District's Board has adopted an Affirmative Action Program for equal employment opportunities of all District contracts. The Contractor shall familiarize itself with these requirements and is to consider them as a binding part of this Agreement.
14. **Governing Law.** The Parties agree that this Agreement is entered into and will be construed, interpreted, and governed by the laws of California, without regard to choice of laws principles. Exclusive venue for any and all disputes, claims, or actions arising out of or relating to this Agreement will be the courts of Los Angeles County, California.

15. Adherence to all Local, State, and Federal Requirements.

- a.** The Contractor shall adhere to all applicable federal, state, and local laws, codes, and ordinances, including but not limited to those promulgated by California Division of Occupational Safety and Health (“**Cal/OSHA**”), Occupational Safety and Health Administration (“**OSHA**”), Environmental Protection Agency (“**EPA**”), the California State Department of Health Services, Cities of Malibu and Santa Monica Health Departments, and all applicable health and safety requirements for COVID-19 testing. With respect to any patient or medical record information regarding Participants, the Parties will comply with all federal and state laws and regulations, and all bylaws, rules, regulations, and policies of Contractor and District, regarding the confidentiality of such information, including, without limitation, all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) and any and all regulations and requirements thereunder, as they may be amended or promulgated from time to time. The Parties shall also comply with all applicable student data privacy laws and medical information laws, including but not limited to HIPAA, FERPA, the Children’s Online Privacy Protection Act (“**COPPA**”) at 15 U.S.C. § 6501-6506 (16 CFR Part 312), in the handling and reporting of testing data.
- b.** In accordance with applicable laws and regulations and the Student Data Privacy Agreement entered into between the Parties, Contractor agrees:

 - i.** Contractor shall maintain personally identifiable student information and other regulated data only to the extent necessary to provide the services during the Term of the Agreement.
 - ii.** Contractor shall not personally, nor permit any subcontractor or sub-processor to, monetize or mine any personally identifiable student information and other regulated data in any manner whatsoever.
 - iii.** Any and all labs, subcontractors, and sub-processors employed by Contractor shall comply with the terms of this Agreement.

16. Alcohol-Free, Drug-Free, and Smoke-Free Facilities. The District has declared that it is in the best interest of the District, its students and employees, and the public, to prohibit the use of alcohol, illegal drugs, and tobacco products within all District facilities, on all exterior grounds when pupils are on site, and in all District vehicles. (Board Policy 4020.) Contractors, subcontractors, and their respective employees are therefore not permitted to use, consume, or work under the influence of any alcohol, illegal drugs, or tobacco products while on District property.

17. Termination of Agreement. The Parties may terminate the Agreement at any time for any reason including, but not limited to, loss of funding for the Agreement. The termination of Agreement shall be in writing, with thirty (30) days’ notice. The District shall compensate the Contractor for services performed through the date of termination. Upon

termination, the District may request that Contractor return or destroy any personal medical information in its possession that it is not required by law to maintain.

- 18. **Prevailing Wages.** The Contractor and any subcontractor shall not pay less than the specified prevailing rates of wages to all workers employed by them in the execution of the Agreement as required by law.
- 19. **Taxes.** Contractor shall be liable and solely responsible for paying all required taxes and other obligations including, but not limited to, federal and state income taxes and social security taxes payable in connection with the Agreement. Contractor agrees to indemnify, defend, and hold the District harmless from and against any worker’s compensation or other tax liability which the District may incur to any federal or state governments with jurisdiction as a consequence of the Agreement. All payment made to Contractor shall be reported to the Internal Revenue Service.
- 20. **Head Start Project Requirement/Regulation.** Los Angeles County Office of Education Contract for Operation of Head Start / Early Head Start Program (C:12243;11:12). 17. ACCESS TO RECORDS/SITES. LACOE, HHS, the Comptroller General of the United States, or any of their duly authorized representatives, including any LACOE monitor or independent auditors, shall have the right to immediate, unannounced and unrestricted access to any Early Head Start / Head Start / State Preschool books, documents, papers, classrooms, and records of the DA or any other related documents associated with these programs or its transactions or which may affect the program operations whether funded by these programs or by other funds held by the agency, or a contractor, subcontractor, or financial institution, etc. of the DA when such records are determined by any of them to be pertinent to the project for the purpose of making audits, examinations, photocopies, excerpts, or transcripts. Such access shall be granted by the DA, and any contractor employed by the DA, at such reasonable times as may be determined by the Parties specified herein. This right to access exists as long as the records are retained, which may exceed the required retention period or Term of the Agreement.
- 21. **Post-Retirement Earnings.** I have read, understand, and will comply with Employing CalSTRS, Education Code section 22461, and CalPERS, Government Code section 21220, for retirees working as an independent contractor or as an employee of a third party. Is/are there any employees providing services who are retirees of CalSTRS or CalPERS?

Yes, CalSTRS CalPERS, or No

If yes, Contractor will provide an Excel spreadsheet **at time of invoicing** with the following information:

CalSTRS / CalPERS Employee Name	Social Security Number	Accrual Period Worked	Hourly Pay Rate	Hours Worked and Paid	Amount Earned
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- 22. **Additional Documents.** Each of the Parties hereto agrees to execute such other documents as may be reasonably necessary to effectuate the purposes of this Agreement.

23. Access to Books and Records.

- a.** To the extent required by applicable law, Contractor shall keep and maintain records, books of account, and other data (**but excluding any and all samples that are the subject of the services, whether tested in whole or in part**) necessary for the proper administration of this Agreement. Contractor shall keep and maintain such documentation for three (3) years after the expiration or termination of this Agreement.
- b.** If the value or cost of services rendered by the Contractor pursuant to this Agreement is Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, in accordance with section 1861(v)(1)(I) of the Social Security Act, if applicable, Contractor agrees that for at least four (4) years after the furnishing of such services, Contractor will, upon written request, make available to the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States, or their respective duly authorized representatives, such books, documents, and records as may be necessary to certify the nature and extent of the cost of such services.
- c.** The Parties recognize that as a public agency, the District may be compelled to produce records according to the California Public Records Act (Government Code Section 6250 et seq.) (“PRA”) or other applicable local, state, or federal law (“Public Disclosure Laws”).

24. Referrals. The Parties acknowledge that none of the benefits granted to District, Contractor, or any third party, including any physician, are conditioned on any requirement that District or any such third party make referrals to, be in a position to make or induce referrals to, or otherwise generate business for Contractor or its affiliates.

25. Notices. All notices and other communications given hereunder will be in writing. Notices will be effective when delivered, if delivered personally. Otherwise, they will be effective when sent to the Parties at the addresses listed below, as follows: (i) on the business day delivered (or the next business day following delivery if not delivered on a business day) if personally delivered or sent by overnight delivery courier; (ii) the next business day after transmission by confirmed electronic mail, facsimile or electronic means; or (iii) three (3) business days after mailing if mailed by registered or certified U.S. mail, postage prepaid and return receipt requested to the address listed below:

IF TO CONTRACTOR:

Malibu Medical Corporation
ATTN: Dr. Lisa Benya
23661 Pacific Coast Highway
Malibu, CA 90265
Phone: (310) 456-1603
Fax: (310) 456-5697
Email: drbenya@malibumedicalgroup.com

IF TO DISTRICT:

Santa Monica-Malibu Unified School District
ATTN: Mrs. Tara Brown
Director of Student Services
1651 16th Street
Santa Monica, CA 90404
Phone: (310) 450-8338 ext. 70217
Email: tbrown@smmusd.org

Any person or entity may change the address or number to which notices are to be delivered to him, her or it by giving the other persons or entities named above notice of the change in the manner set forth above:

26. **Headings.** The headings contained in this Agreement are for reference purposes only and will not affect the meaning or interpretation of this Agreement.
27. **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
28. **Force Majeure.** No liability hereunder will result to either Party by reason of delay or inability in performance caused by circumstances beyond its reasonable control, including, without limitation, acts of God, acts of governmental authority, fire, flood, war, terrorism, civil unrest, labor unrest, shortage of or inability to obtain material or equipment, government orders or guidelines, illness, or disease.
29. **Entire Agreement.** This Agreement and its Exhibits hereto constitute the complete agreement between the Parties with respect to the subject matter hereof, superseding and replacing all prior agreements, communications, and understandings (written and oral) regarding its subject matter. Any ambiguity in this Agreement shall be resolved in favor of the meaning that permits the Parties to comply with applicable law and any current regulations promulgated thereunder. Any failure of a Party to exercise or enforce any of its rights under this Agreement shall not act as a waiver of such rights.
30. **Amendments; Modifications.** Any amendments, modifications, or changes to this Agreement or the services hereunder may only be made if agreed to in writing and executed by the authorized representatives of the Parties.
31. **Construction.** The Parties have participated mutually in the negotiation and drafting of this Agreement. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted mutually by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

- 32. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which, when taken together, will constitute one and the same instrument.
- 33. **Authority to Enter into Agreement.** Each Party hereby represents and warrants that it has the power and authority to enter into this Agreement.
- 34. **District Board Approval.** The Agreement shall become effective upon approval or ratification by the District's Board of Education.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

MALIBU MEDICAL CORPORATION

Signature

Name

Title

Date

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT

Ms. Tara Brown

Signature

Tara Brown

Name

Director of Student Services

Title

9/20/2021

Date

EXHIBIT "A"

Contractor's Services and Procedures

1. Contractor's services under the Agreement shall include:

- a. General Protocols and Procedures.
 - i. Contractor shall perform the services in a manner consistent with that degree of care, skill, and diligence as is ordinarily exercised by a professional laboratory testing contractor under similar conditions and circumstances, and each individual whom Contractor intends to engage to perform the services will possess the qualifications, licenses, skills, and experience needed to perform such services.
 - ii. In performing the services, Contractor will be responsible for the professional quality, technical accuracy, completeness, and coordination of all tests, analyses, and reports performed, conducted, or prepared by or on behalf of Contractor as part of the services. Contractor shall use reasonable commercial efforts in a diligent manner to perform the services on a timely basis. Contractor shall have sole control and discretion over the means, methods, techniques, equipment, sequences, and procedures it uses to perform the services, without having to confer with, or obtain the consent or approval of, the District.
- b. Number and Type of Tests. Contractor shall provide all necessary supplies, shipping/logistics, sample processing, PPE, and professional collection services. Contractor shall collect, test, and process PCR COVID-19 tests under the Agreement. Contractor will conduct a PCR COVID-19 test collected via either (i) an Anterior Nares nasal swab that is self-administered by the participant unless the Contractor is directed otherwise; or (ii) a saliva sample. Contractor recommends a new specimen be collected if the first COVID-19 test generates indeterminate results.
- c. Testing Locations. Contractor shall provide the COVID-19 testing services for the following locations/staff: CDS Site staff, FUD staff, John Adams Middle School, Lincoln Middle School, Santa Monica High School, Special Ed. Preschool staff and respective Music Teacher staff. Contractor to be provided onsite materials, including but not limited to, registration tables, chairs, tents, trashcans, and other items necessary to diligently and prudently perform its services. Staffing will range from 8 to 12 employees onsite, depending on the anticipated testing volume.
- d. Testing Requisition Form Requirements. Participant must provide Contractor with all information expressly required for state reporting, including all information set forth in the SMMUSD Covid-19 Testing Program consent pages. In the event that additional information is expressly required for state reporting, Contractor must provide District with written notification of the additional information request.

e. Testing Procedures; Samples.

- i. Contractor will conduct a PCR COVID-19 test collected via either (i) an Anterior Nares nasal swab that is self-administered by the participant unless the Contractor is directed otherwise; or (ii) a saliva sample. Samples will be processed in Contractor's state-licensed lab, or partner lab if necessary. Test results will be available within 24 to 48-hours of test administration. In the event of an indeterminate test, Contractor will re process a participant's test.
- ii. While in Contractor's control or possession and while not undergoing testing, Contractor shall store all samples in accordance with Contractor's policies in effect, which may be modified from time to time.
- iii. In accordance with applicable federal and state law, Contractor will retain all samples following completion of the relevant services for at least two (2) days, depending on the nature of the relevant services. If District desires for Contractor to retain any samples for a longer period of time, such longer period of time must be agreed to by the Parties in writing.
- iv. District may request that Contractor re-perform any services completed, review the substance and accuracy of any related work product produced by or on behalf of Contractor hereunder, or correct any inaccuracies or errors in any such services and/or work product (collectively, "**Additional Work**"); provided, that District will have submitted such request to Contractor in writing, setting forth in reasonable detail the basis of District's request. If District submits any such written request to Contractor, Contractor will, within a commercially reasonable period of time, perform the Additional Work requested to the extent deemed necessary, advisable, or appropriate by Contractor, in its sole discretion. The District will be charged for the Additional Work performed by Contractor, at Contractor's rate as set forth in this Agreement.
- v. The Contractor may also be required to retain samples upon notification by a governing regulatory authority of its intent to undertake an investigation and/or inspection of the services being performed under this Agreement and/or the samples that are the subject of such services. If Contractor is subject to such investigation and/or inspection, Contractor will, to the extent permitted by applicable law, notify District thereof within a commercially reasonable period of time or as otherwise required by applicable law. The Parties shall comply with any such investigation and/or inspection, including but not limited to any retention of samples designated by the regulatory authority, in accordance with applicable law. Upon the completion of any regulatory investigation, Contractor will provide the District with a copy of any report of the regulatory authority's findings made available to Contractor by the relevant regulatory authority, but only to the extent such report relates to services performed under this Agreement and to the extent permitted by applicable law.

- vi. After the retention time set forth above has expired, Contractor shall retain sole responsibility for proper disposal of the samples.

- f. Reporting. In accordance with applicable federal, state, and local laws, including but not limited to requirements set forth by the California Department of Public Health, Contractor and/or District shall provide required disclosures of a positive test to state and local health departments. Additionally, Contractor will report all positive test results to the respective participant and/or participant's authorized guardian and the appropriate SMMUSD staff members, as directed by SMMUSD personnel. Negative test results will be communicated to the respective participant and/or participant's authorized guardian in the event said participant and/or participant's guardian requests the result.. The District will provide any required notification of exposed persons on a school campus, as directed by state and local health departments.

- g. Scheduling and Communications. Contractor and District will co-manage employee scheduling and communications.

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STANDARD STUDENT DATA PRIVACY AGREEMENT

**CA-NDPA Standard
Version 1.0 (10.25.20)**

SANTA MONICA MALIBU UNIFIED SCHOOL DISTRICT

and

Malibu Medical Corporation

8/16/21

This Student Data Privacy Agreement (“DPA”) is entered into on the date of full execution (the “Effective Date”) and is entered into by and between:

SANTA MONICA MALIBU UNIFIED SCHOOL DISTRICT , located at 1651 16th Street, Santa Monica, CA 90404

(the “Local Education Agency” or “LEA”) and

Malibu Medical Corporation , located at 23661 Pacific Coast Highway, Malibu, CA 90265

(the “Provider”).

WHEREAS, the Provider is providing educational or digital services to LEA.

WHEREAS, the Provider and LEA recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act (“FERPA”) at 20 U.S.C. § 1232g (34 CFR Part 99); the Children’s Online Privacy Protection Act (“COPPA”) at 15 U.S.C. § 6501-6506 (16 CFR Part 312), applicable state privacy laws and regulations

and

WHEREAS, the Provider and LEA desire to enter into this DPA for the purpose of establishing their respective obligations and duties in order to comply with applicable laws and regulations.

NOW THEREFORE, for good and valuable consideration, LEA and Provider agree as follows:

1. A description of the Services to be provided, the categories of Student Data that may be provided by LEA to Provider, and other information specific to this DPA are contained in the Standard Clauses hereto.
2. **Special Provisions. Check if Required**
 - If checked, the Supplemental State Terms and attached hereto as **Exhibit “G”** are hereby incorporated by reference into this DPA in their entirety.
 - If Checked, the Provider, has signed **Exhibit “E”** to the Standard Clauses, otherwise known as General Offer of Privacy Terms
3. In the event of a conflict between the SDPC Standard Clauses, the State or Special Provisions will control. In the event there is conflict between the terms of the DPA and any other writing, including, but not limited to the Service Agreement and Provider Terms of Service or Privacy Policy the terms of this DPA shall control.
4. This DPA shall stay in effect for three years. Exhibit E will expire 3 years from the date the original DPA was signed.
5. The services to be provided by Provider to LEA pursuant to this DPA are detailed in **Exhibit “A”** (the “Services”).
6. **Notices.** All notices or other communication required or permitted to be given hereunder may be given via e-mail transmission, or first-class mail, sent to the designated representatives below.

The designated representative for the LEA for this DPA is:

Name: Tara Brown Title: Director of Student Services

Address: 1651 16TH STREET, SANTA MONICA, CA 90404

Phone: 310-450-8338 Email: tbrown@smmusd.org

The designated representative for the Provider for this DPA is:

Name: Michael McCauley Title: CEO

Address: 23661 Pacific Coast Highway, Malibu, CA 90265

Phone: 310-433-2610 Email: mike@malibumedicalgroup.com

IN WITNESS WHEREOF, LEA and Provider execute this DPA as of the Effective Date.

LEA: SANTA MONICA MALIBU UNIFIED SCHOOL DISTRICT

By: *Mrs. Tara Brown* Date: 8/17/2021

Printed Name: Tara Brown Title/Position: Director of Student Services

PROVIDER: Malibu Medical Corporation

By: *[Signature]* Date: 8/12/21

Printed Name: Michael McCauley Title/Position: CEO

STANDARD CLAUSES

Version 3.0

ARTICLE I: PURPOSE AND SCOPE

- Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect Student Data including compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time. In performing these services, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. Provider shall be under the direct control and supervision of the LEA, with respect to its use of Student Data
- Student Data to Be Provided.** In order to perform the Services described above, LEA shall provide Student Data as identified in the Schedule of Data, attached hereto as **Exhibit "B"**.
- DPA Definitions.** The definition of terms used in this DPA is found in **Exhibit "C"**. In the event of a conflict, definitions used in this DPA shall prevail over terms used in any other writing, including, but not limited to the Service Agreement, Terms of Service, Privacy Policies etc.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

- Student Data Property of LEA.** All Student Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the LEA. The Provider further acknowledges and agrees that all copies of such Student Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Service Agreement, shall remain the exclusive property of the LEA. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the LEA as it pertains to the use of Student Data, notwithstanding the above.
- Parent Access.** To the extent required by law the LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Education Records and/or Student Data correct erroneous information, and procedures for the transfer of student-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a reasonably timely manner (and no later than forty five (45) days from the date of the request or pursuant to the time frame required under state law for an LEA to respond to a parent or student, whichever is sooner) to the LEA's request for Student Data in a student's records held by the Provider to view or correct as necessary. In the event that a parent of a student or other individual contacts the Provider to review any of the Student Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.
- Separate Account.** If Student-Generated Content is stored or maintained by the Provider, Provider shall, at the request of the LEA, transfer, or provide a mechanism for the LEA to transfer, said Student-Generated Content to a separate account created by the student.

4. **Law Enforcement Requests.** Should law enforcement or other government entities (“Requesting Party(ies)”) contact Provider with a request for Student Data held by the Provider pursuant to the Services, the Provider shall notify the LEA in advance of a compelled disclosure to the Requesting Party, unless lawfully directed by the Requesting Party not to inform the LEA of the request.
5. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions for the Provider in order for the Provider to provide the Services pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in a manner no less stringent than the terms of this DPA.

ARTICLE III: DUTIES OF LEA

1. **Provide Data in Compliance with Applicable Laws.** LEA shall provide Student Data for the purposes of obtaining the Services in compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time.
2. **Annual Notification of Rights.** If the LEA has a policy of disclosing Education Records and/or Student Data under FERPA (34 CFR § 99.31(a)(1)), LEA shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its annual notification of rights.
3. **Reasonable Precautions.** LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted Student Data.
4. **Unauthorized Access Notification.** LEA shall notify Provider promptly of any known unauthorized access. LEA will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance.** The Provider shall comply with all applicable federal, state, and local laws, rules, and regulations pertaining to Student Data privacy and security, all as may be amended from time to time.
2. **Authorized Use.** The Student Data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services outlined in Exhibit A or stated in the Service Agreement and/or otherwise authorized under the statutes referred to herein this DPA.
3. **Provider Employee Obligation.** Provider shall require all of Provider’s employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the Student Data shared under the Service Agreement. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Student Data pursuant to the Service Agreement.
4. **No Disclosure.** Provider acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, user content or other non-public information and/or personally identifiable information contained in the Student Data other than as directed or

permitted by the LEA or this DPA. This prohibition against disclosure shall not apply to aggregate summaries of De-Identified information, Student Data disclosed pursuant to a lawfully issued subpoena or other legal process, or to subprocessors performing services on behalf of the Provider pursuant to this DPA. Provider will not Sell Student Data to any third party.

5. **De-Identified Data**: Provider agrees not to attempt to re-identify de-identified Student Data. De-Identified Data may be used by the Provider for those purposes allowed under FERPA and the following purposes: (1) assisting the LEA or other governmental agencies in conducting research and other studies; and (2) research and development of the Provider's educational sites, services, or applications, and to demonstrate the effectiveness of the Services; and (3) for adaptive learning purpose and for customized student learning. Provider's use of De-Identified Data shall survive termination of this DPA or any request by LEA to return or destroy Student Data. Except for Subprocessors, Provider agrees not to transfer de-identified Student Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to the LEA who has provided prior written consent for such transfer. Prior to publishing any document that names the LEA explicitly or indirectly, the Provider shall obtain the LEA's written approval of the manner in which de-identified data is presented.
6. **Disposition of Data**. Upon written request from the LEA, Provider shall dispose of or provide a mechanism for the LEA to transfer Student Data obtained under the Service Agreement, within sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Upon termination of this DPA, if no written request from the LEA is received, Provider shall dispose of all Student Data after providing the LEA with reasonable prior notice. The duty to dispose of Student Data shall not extend to Student Data that had been De-Identified or placed in a separate student account pursuant to section II 3. The LEA may employ a "Directive for Disposition of Data" form, a copy of which is attached hereto as **Exhibit "D"**. If the LEA and Provider employ Exhibit "D," no further written request or notice is required on the part of either party prior to the disposition of Student Data described in Exhibit "D."
7. **Advertising Limitations**. Provider is prohibited from using, disclosing, or selling Student Data to (a) inform, influence, or enable Targeted Advertising; or (b) develop a profile of a student, family member/guardian or group, for any purpose other than providing the Service to LEA. This section does not prohibit Provider from using Student Data (i) for adaptive learning or customized student learning (including generating personalized learning recommendations); or (ii) to make product recommendations to teachers or LEA employees; or (iii) to notify account holders about new education product updates, features, or services or from otherwise using Student Data as permitted in this DPA and its accompanying exhibits

ARTICLE V: DATA PROVISIONS

1. **Data Storage**. Where required by applicable law, Student Data shall be stored within the United States. Upon request of the LEA, Provider will provide a list of the locations where Student Data is stored.
2. **Audits**. No more than once a year, or following unauthorized access, upon receipt of a written request from the LEA with at least ten (10) business days' notice and upon the execution of an appropriate confidentiality agreement, the Provider will allow the LEA to audit the security and privacy measures that are in place to ensure protection of Student Data or any portion thereof as it pertains to the delivery of services to the LEA . The Provider will cooperate reasonably with the LEA and any local, state, or federal

agency with oversight authority or jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or LEA, and shall provide reasonable access to the Provider's facilities, staff, agents and LEA's Student Data and all records pertaining to the Provider, LEA and delivery of Services to the LEA. Failure to reasonably cooperate shall be deemed a material breach of the DPA.

3. **Data Security.** The Provider agrees to utilize administrative, physical, and technical safeguards designed to protect Student Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. The Provider shall adhere to any applicable law relating to data security. The provider shall implement an adequate Cybersecurity Framework based on one of the nationally recognized standards set forth set forth in **Exhibit "F"**. Exclusions, variations, or exemptions to the identified Cybersecurity Framework must be detailed in an attachment to **Exhibit "H"**. Additionally, Provider may choose to further detail its security programs and measures that augment or are in addition to the Cybersecurity Framework in **Exhibit "F"**. Provider shall provide, in the Standard Schedule to the DPA, contact information of an employee who LEA may contact if there are any data security concerns or questions.
4. **Data Breach.** In the event of an unauthorized release, disclosure or acquisition of Student Data that compromises the security, confidentiality or integrity of the Student Data maintained by the Provider the Provider shall provide notification to LEA within seventy-two (72) hours of confirmation of the incident, unless notification within this time limit would disrupt investigation of the incident by law enforcement. In such an event, notification shall be made within a reasonable time after the incident. Provider shall follow the following process:
 - (1) The security breach notification described above shall include, at a minimum, the following information to the extent known by the Provider and as it becomes available:
 - i. The name and contact information of the reporting LEA subject to this section.
 - ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
 - iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
 - iv. Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided; and
 - v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
 - (2) Provider agrees to adhere to all federal and state requirements with respect to a data breach related to the Student Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
 - (3) Provider further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Student Data or any portion thereof, including personally identifiable information and agrees to provide LEA, upon request, with a summary of said written incident response plan.

- (4) LEA shall provide notice and facts surrounding the breach to the affected students, parents or guardians.
- (5) In the event of a breach originating from LEA's use of the Service, Provider shall cooperate with LEA to the extent necessary to expeditiously secure Student Data.

ARTICLE VI: GENERAL OFFER OF TERMS

Provider may, by signing the attached form of "General Offer of Privacy Terms" (General Offer, attached hereto as **Exhibit "E"**), be bound by the terms of **Exhibit "E"** to any other LEA who signs the acceptance on said Exhibit. The form is limited by the terms and conditions described therein.

ARTICLE VII: MISCELLANEOUS

1. **Termination.** In the event that either Party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or has been terminated. Either party may terminate this DPA and any service agreement or contract if the other party breaches any terms of this DPA.
2. **Effect of Termination Survival.** If the Service Agreement is terminated, the Provider shall destroy all of LEA's Student Data pursuant to Article IV, section 6.
3. **Priority of Agreements.** This DPA shall govern the treatment of Student Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the terms of the DPA and the Service Agreement, Terms of Service, Privacy Policies, or with any other bid/RFP, license agreement, or writing, the terms of this DPA shall apply and take precedence. In the event of a conflict between Exhibit H, the SDPC Standard Clauses, and/or the Supplemental State Terms, Exhibit H will control, followed by the Supplemental State Terms. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.
4. **Entire Agreement.** This DPA and the Service Agreement constitute the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the Parties relating thereto. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both Parties. Neither failure nor delay on the part of any Party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.

5. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the Parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.
6. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF THE LEA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR THE COUNTY OF THE LEA FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY.
7. **Successors Bound:** This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business. In the event that the Provider sells, merges, or otherwise disposes of its business to a successor during the term of this DPA, the Provider shall provide written notice to the LEA no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DPA and any obligations with respect to Student Data within the Service Agreement. The LEA has the authority to terminate the DPA if it disapproves of the successor to whom the Provider is selling, merging, or otherwise disposing of its business.
8. **Authority.** Each party represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Student Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof.
9. **Waiver.** No delay or omission by either party to exercise any right hereunder shall be construed as a waiver of any such right and both parties reserve the right to exercise any such right from time to time, as often as may be deemed expedient.

EXHIBIT "A"

DESCRIPTION OF SERVICES

HEALTH AND WELLNESS EVALUATIONS & COVID TESTING

At a cost of \$0.25 per student for 10 months -\$5000 per month

Contract dates: 8/23/2021 - 12/31/2021

COVID -19 testing services for the following locations:

All elementary sites, Olympic High School,
Facility Improvement Project (FIP), CDS Main Office Staff, Washington West
Preschool, Transportation Department, District Office Main Building Personnel,
Education Services Department, and SMMUSD Substitute staff.

EXHIBIT "B"
SCHEDULE OF DATA

Category of Data	Elements	Check if Used by Your System
Application Technology Meta Data	IP Addresses of users, Use of cookies, etc.	<input type="checkbox"/>
	Other application technology meta data-Please specify:	
Application Use Statistics	Meta data on user interaction with application	<input type="checkbox"/>
Assessment	Standardized test scores	<input type="checkbox"/>
	Observation data	<input type="checkbox"/>
	Other assessment data-Please specify:	
Attendance	Student school (daily) attendance data	<input type="checkbox"/>
	Student class attendance data	<input type="checkbox"/>
Communications	Online communications captured (emails, blog entries)	<input type="checkbox"/>
Conduct	Conduct or behavioral data	<input type="checkbox"/>
Demographics	Date of Birth	<input checked="" type="checkbox"/>
	Place of Birth	<input type="checkbox"/>
	Gender	<input checked="" type="checkbox"/>
	Ethnicity or race	<input type="checkbox"/>
	Language information (native, or primary language spoken by student)	<input type="checkbox"/>
	Other demographic information-Please specify:	Insurance Info & Other Pertinent Medical Information
Enrollment	Student school enrollment	<input type="checkbox"/>
	Student grade level	<input type="checkbox"/>
	Homeroom	<input type="checkbox"/>
	Guidance counselor	<input type="checkbox"/>
	Specific curriculum programs	<input type="checkbox"/>
	Year of graduation	<input type="checkbox"/>
	Other enrollment information-Please specify:	
Parent/Guardian Contact Information	Address	<input checked="" type="checkbox"/>
	Email	<input checked="" type="checkbox"/>
	Phone	<input checked="" type="checkbox"/>

Category of Data	Elements	Check if Used by Your System
Parent/Guardian ID	Parent ID number (created to link parents to students)	<input type="checkbox"/>
Parent/Guardian Name	First and/or Last	<input checked="" type="checkbox"/>
Schedule	Student scheduled courses	<input type="checkbox"/>
	Teacher names	<input type="checkbox"/>
Special Indicator	English language learner information	<input type="checkbox"/>
	Low income status	<input type="checkbox"/>
	Medical alerts/ health data	<input type="checkbox"/>
	Student disability information	<input type="checkbox"/>
	Specialized education services (IEP or 504)	<input type="checkbox"/>
	Living situations (homeless/foster care)	<input type="checkbox"/>
	Other indicator information-Please specify:	
Student Contact Information	Address	<input checked="" type="checkbox"/>
	Email	<input checked="" type="checkbox"/>
	Phone	<input checked="" type="checkbox"/>
Student Identifiers	Local (School district) ID number	<input type="checkbox"/>
	State ID number	<input type="checkbox"/>
	Provider/App assigned student ID number	<input type="checkbox"/>
	Student app username	<input type="checkbox"/>
	Student app passwords	<input type="checkbox"/>
Student Name	First and/or Last	<input checked="" type="checkbox"/>
Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	<input type="checkbox"/>
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	<input type="checkbox"/>
Student Survey Responses	Student responses to surveys or questionnaires	<input type="checkbox"/>
Student work	Student generated content; writing, pictures, etc.	<input type="checkbox"/>
	Other student work data -Please specify:	
Transcript	Student course grades	<input type="checkbox"/>
	Student course data	<input type="checkbox"/>
	Student course grades/ performance scores	<input type="checkbox"/>

Category of Data	Elements	Check if Used by Your System
	Other transcript data - Please specify:	
Transportation	Student bus assignment	<input type="checkbox"/>
	Student pick up and/or drop off location	<input type="checkbox"/>
	Student bus card ID number	<input type="checkbox"/>
	Other transportation data - Please specify:	
Other	Please list each additional data element used, stored, or collected by your application:	
None	No Student Data collected at this time. Provider will immediately notify LEA if this designation is no longer applicable.	<input type="checkbox"/>

EXHIBIT "C"
DEFINITIONS

De-Identified Data and De-Identification: Records and information are considered to be de-identified when all personally identifiable information has been removed or obscured, such that the remaining information does not reasonably identify a specific individual, including, but not limited to, any information that, alone or in combination is linkable to a specific student and provided that the educational agency, or other party, has made a reasonable determination that a student's identity is not personally identifiable, taking into account reasonable available information.

Educational Records: Educational Records are records, files, documents, and other materials directly related to a student and maintained by the school or local education agency, or by a person acting for such school or local education agency, including but not limited to, records encompassing all the material kept in the student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs.

Metadata: means information that provides meaning and context to other data being collected; including, but not limited to: date and time records and purpose of creation Metadata that have been stripped of all direct and indirect identifiers are not considered Personally Identifiable Information.

Operator: means the operator of an internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K–12 school purposes. Any entity that operates an internet website, online service, online application, or mobile application that has entered into a signed, written agreement with an LEA to provide a service to that LEA shall be considered an "operator" for the purposes of this section.

Originating LEA: An LEA who originally executes the DPA in its entirety with the Provider.

Provider: For purposes of the DPA, the term "Provider" means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Student Data. Within the DPA the term "Provider" includes the term "Third Party" and the term "Operator" as used in applicable state statutes.

Student Generated Content: The term "student-generated content" means materials or content created by a student in the services including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of student content.

School Official: For the purposes of this DPA and pursuant to 34 CFR § 99.31(b), a School Official is a contractor that: (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 Student Data including Education Records; and (3) Is subject to 34 CFR § 99.33(a) governing the use and re-disclosure of personally identifiable information from Education Records.

Service Agreement: Refers to the Contract, Purchase Order or Terms of Service or Terms of Use.

Student Data: Student Data includes any data, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to,

information in the student’s educational record or email, first and last name, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, individual purchasing behavior or preferences, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, geolocation information, parents’ names, or any other information or identification number that would provide information about a specific student. Student Data includes Meta Data. Student Data further includes “personally identifiable information (PII),” as defined in 34 C.F.R. § 99.3 and as defined under any applicable state law. Student Data shall constitute Education Records for the purposes of this DPA, and for the purposes of federal, state, and local laws and regulations. Student Data as specified in **Exhibit “B”** is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student’s use of Provider’s services.

Subscribing LEA: An LEA that was not party to the original Service Agreement and who accepts the Provider’s General Offer of Privacy Terms.

EXHIBIT "D"
DIRECTIVE FOR DISPOSITION OF DATA

SANTA MONICA MALIBU UNIFIED SCHOOL DISTRICT Provider to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between LEA and Provider. The terms of the Disposition are set forth below:

1. Extent of Disposition

Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:

[Insert categories of data here]

Disposition is Complete. Disposition extends to all categories of data.

2. Nature of Disposition

Disposition shall be by destruction or deletion of data.

Disposition shall be by a transfer of data. The data shall be transferred to the following site as follows:

[Insert or attach special instructions]

3. Schedule of Disposition

Data shall be disposed of by the following date:

As soon as commercially practicable.

By August 19, 2031

4. Signature

Ms. Tara Brown
Authorized Representative of LEA

8/17/2021
Date

5. Verification of Disposition of Data

[Signature]
Authorized Representative of Company

8/16/21
Date

EXHIBIT "E"
GENERAL OFFER OF PRIVACY TERMS

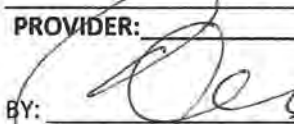
1. Offer of Terms

Provider offers the same privacy protections found in this DPA between it and
SANTA MONICA MALIBU UNIFIED SCHOOL DISTRICT

("Originating LEA") which is dated 8/16/21, to any other LEA ("Subscribing LEA") who accepts this General Offer of Privacy Terms ("General Offer") through its signature below. This General Offer shall extend only to privacy protections, and Provider's signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Provider and the Subscribing LEA may also agree to change the data provided by Subscribing LEA to the Provider to suit the unique needs of the Subscribing LEA. The Provider may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statutes; (2) a material change in the services and products listed in the originating Service Agreement; or three (3) years after the date of Provider's signature to this Form. Subscribing LEAs should send the signed **Exhibit "E"** to Provider at the following email address:

mike@malibumedicalgroup.com

PROVIDER: Malibu Medical Corporation

BY:  Date: 8/16/21

Printed Name: Michael McCauley Title/Position: CEO

2. Subscribing LEA

A Subscribing LEA, by signing a separate Service Agreement with Provider, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA and the Provider shall therefore be bound by the same terms of this DPA for the term of the DPA between the SANTA MONICA MALIBU UNIFIED SCHOOL DISTRICT and the Provider. ****PRIOR TO ITS EFFECTIVENESS, SUBSCRIBING LEA MUST DELIVER NOTICE OF ACCEPTANCE TO PROVIDER PURSUANT TO ARTICLE VII, SECTION 5. ****

LEA: SANTA MONICA MALIBU UNIFIED SCHOOL DISTRICT

BY: Ms. Tara Brown Date: 8/17/2021

Printed Name: Tara Brown Title/Position: Director of Student Services

SCHOOL DISTRICT NAME: SMMUSD

DESIGNATED REPRESENTATIVE OF LEA:

Name: Tara Brown

Title: Director of Student Services

Address: 1651 16TH STREET, SANTA MONICA, CA 90404

Telephone Number: 310-450-8338

Email: tbrown@smmusd.org

EXHIBIT "F"
SMMUSD DATA SECURITY
REQUIREMENTS

Adequate Cybersecurity Frameworks
2/24/2020

The Education Security and Privacy Exchange ("Edspex") works in partnership with the Student Data Privacy Consortium and industry leaders to maintain a list of known and credible cybersecurity frameworks which can protect digital learning ecosystems chosen based on a set of guiding cybersecurity principles* ("Cybersecurity Frameworks") that may be utilized by Provider.

Cybersecurity Frameworks

	MAINTAINING ORGANIZATION/GROUP	FRAMEWORK(S)
	National Institute of Standards and Technology	NIST Cybersecurity Framework Version 1.1
	National Institute of Standards and Technology	NIST SP 800-53, Cybersecurity Framework for Improving Critical Infrastructure Cybersecurity (CSF), Special Publication 800-171
	International Standards Organization	Information technology - Security techniques - Information security management systems (ISO 27000 series)
	Secure Controls Framework Council, LLC	Security Controls Framework (SCF)
	Center for Internet Security	CIS Critical Security Controls (CSC, CIS Top 20)
	Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S))	Cybersecurity Maturity Model Certification (CMMC, ~FAR/DFAR)

Please visit <http://www.edspex.org> for further details about the noted frameworks.

*Cybersecurity Principles used to choose the Cybersecurity Frameworks are located here

EXHIBIT "G"

Supplemental SDPC State Terms for California

Version 1.0

This Amendment for SDPC State Terms for California ("**Amendment**") is entered into on the date of full execution (the "**Effective Date**") and is incorporated into and made a part of the Student Data Privacy Agreement ("**DPA**") by and between:

SANTA MONICA MALIBU UNIFIED SCHOOL DISTRICT, located at 1651 16th Street, Santa Monica, CA 90404 (the "**Local Education Agency**" or "**LEA**") and Malibu Medical Corporation, located at 23661 Pacific Coast Highway, Malibu, CA 90265 (the "**Provider**").

All capitalized terms not otherwise defined herein shall have the meaning set forth in the DPA.

WHEREAS, the Provider is providing educational or digital services to LEA, which services include: (a) cloud-based services for the digital storage, management, and retrieval of pupil records; and/or (b) digital educational software that authorizes Provider to access, store, and use pupil records; and

WHEREAS, the Provider and LEA recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act ("**FERPA**") at 20 U.S.C. § 1232g (34 C.F.R. Part 99); the Protection of Pupil Rights Amendment ("**PPRA**") at 20 U.S.C. §1232h; and the Children's Online Privacy Protection Act ("**COPPA**") at 15 U.S.C. § 6501-6506 (16 C.F.R. Part 312), accordingly, the Provider and LEA have executed the DPA, which establishes their respective obligations and duties in order to comply with such applicable laws; and

WHEREAS, the Provider will provide the services to LEA within the State of California and the Parties recognizes the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable California laws and regulations, such as the Student Online Personal Information Protection Act ("**SOPIPA**") at California Bus. & Prof. Code § 22584; California Assembly Bill 1584 ("**AB 1584**") at California Education Code section 49073.1; and other applicable state privacy laws and regulations; and

WHEREAS, the Provider and LEA desire to enter into this Amendment for the purpose of clarifying their respective obligations and duties in order to comply with applicable California state laws and regulations.

NOW, THEREFORE, for good and valuable consideration, LEA and Provider agree as follows:

1. **Term**. The term of this Amendment shall expire on the same date as the DPA, unless otherwise terminated by the Parties.
2. **Modification to Article IV, Section 7 of the DPA**. Article IV, Section 7 of the DPA (Advertising Limitations) is amended by deleting the stricken text as follows:

Provider is prohibited from using, disclosing, or selling Student Data to (a) inform, influence, or enable Targeted Advertising; or (b) develop a profile of a student, family member/guardian or group, for any purpose other than providing the Service to LEA. This section does not prohibit Provider from using Student Data ~~(i) for adaptive learning or customized student learning (including generating personalized learning recommendations); or (ii) to make product recommendations to teachers or LEA employees; or (iii) to notify account holders about new education product updates, features, or services~~ or from otherwise using Student Data as permitted in this DPA and its accompanying exhibits.

[SIGNATURES BELOW]

IN WITNESS WHEREOF, LEA and Provider execute this Amendment as of the Effective Date.

LEA: SANTA MONICA MALIBU UNIFIED SCHOOL DISTRICT

By: Ms. Tara Brown Date: 8/17/2021

Printed Name: Tara Brown Title/Position: Director of Student Services

Provider: Malibu Medical Corporation

By: [Signature] Date: 8/16/21

Printed Name: Michael McCauley Title/Position: CEO