



MOU SAMPLE PROVIDER AGREEMENT

Mental Health

(Please note: the following items are for guidance purposes only and does not replace efforts schools should make in consulting an attorney for their own legal advice)

This Agreement is entered into on this _____ day of _____, 20____, by and between the _____ School District ("the District") and _____ ("Provider").

PREAMBLE

WHEREAS, Provider is engaged in the business of providing individual, family, and/or group mental health counseling, and/or AODA services ("the Services") for student populations; and

WHEREAS, Provider wishes to have access to the District's facilities in order to provide mental health and/or AODA counseling services for students in the District, who would otherwise seek such services, subject to the terms and conditions contained herein; and

WHEREAS, the District recognizes that offering mental health and/or AODA counseling services on-site provides significant benefits to the students without substantial disruption to the educational process.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. INDEMNIFICATION AND INSURANCE

(a) Indemnity. Provider hereby holds harmless, defends and indemnifies the District (and all affiliates, officers, directors, employees and representatives) from and against each and every demand, claim, loss, liability, or damage of any kind, including actual attorney's fees and expenses, whether in tort or contract, whether personal injury or property damage, that the District may incur by reason of, or arising out of, (i) any claim made by any third party with respect to the Services or any work product provided as part of the Services, or (ii) any misrepresentation made in, or breach of the terms or warranties of, this Agreement, including without limitation any claim or action of any type or nature by or related to Provider's infringement or misappropriation of any copyright, trade secret, patent or other intellectual property right with respect to the distribution, use or creation of such work product.

Insurance. Provider shall, during the term of this Agreement, maintain, at his/her own expense, all necessary insurance, including but not limited to malpractice insurance and general liability insurance. Upon request, Provider shall provide the District with a certificate of insurance



evidencing such coverage. The District shall provide general liability insurance for the physical environment of the Provider's branch office and shall make reasonable efforts to ensure that the physical environment is free of hazards.

2. MAINTENANCE OF LICENSURE

Provider shall maintain all appropriate licenses required by the State of Oklahoma. If at any point Provider has allowed his/her licenses to lapse, expire, or otherwise become invalid, or if any other actions or omissions of Provider render him/her unfit or unable to perform the Services, this Agreement shall immediately terminate.

3. ASSUMPTION OF RISK

Provider assumes all risk of property loss or damage and of personal injury or death, other than that caused solely by the gross negligence of the District, or its employees, which may be sustained by Provider or as a result of or arising in connection with performing Services.

4. EQUIPMENT, SUPPLIES & RECORDS

(a) Equipment. Provider shall provide, at no cost to the District, all equipment and/or supplies necessary for Provider to perform the Services.

(b) Records. Provider shall maintain appropriate records for all patients and maintain such records according to the requirements of the Health Insurance Portability and Accountability Act and other applicable state and federal laws (45 CFR 164 Subparts C and E). Further, Provider shall not have access to any pupil records maintained by the District without express written consent in accordance with Board policies and Administrative Regulations.

(c) Notice. The District may provide periodic written notice to students and families about the Services offered by Provider and the method to be used to access the Services. If provider intends to share information with the public regarding the Services offered at the District's facility(ies), Provider must submit such information to the District and obtain written approval from the District before publishing/issuing it. Such information must include explicit language stating that the Services are NOT SCHOOL SPONSORED SERVICES.

(d) Fees. The District shall provide Provider with access to an adequate facility(ies) within the District, to provide the Services to the students in the District. However, Provider's access to such a facility is not use of District facilities, in accordance with Administrative Regulation. As such, Provider shall not be required to pay fees to the



District related to the use of the District's facilities. To the extent Provider charges a student (or parent/guardian) for the Services provided, the District shall not be involved in any recordkeeping or collection related thereto. The Provider is not responsible for operational costs (such as utilities) related to their use of the District facility(ies). The Provider will not be charged rent for use of the District facility(ies).

(e) Hours of Access. The District shall establish the schedule when Provider is permitted to offer the Services at the facility(ies) within the District, in order to avoid interfering with the operations of the District. Upon request, Provider shall provide the District with his/her schedule within those approved times. Nothing herein shall be interpreted as the District regulating or monitoring Provider's hours of work. Provider maintains control over his/her hours of work. Provider will not be issued any type of key or badge by the District to allow access to a locked area of the school facility, but will be given access to the area of the facility where services are to take place by District personnel.

5. RELATIONSHIP

(a) Independent Provider. Provider shall perform under this Agreement as an independent Provider, and not as an agent, employee, representative or partner of the District. Neither party shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as otherwise provided herein.

(b) Rights of Provider. Provider shall have the right to perform work for others as long as Provider fulfills Provider's obligations hereunder.

(c) Taxes of Provider: Indemnity. Provider shall pay and report all applicable taxes, fees, and assessments, including without limitation federal, state and local income tax withholding, social security, Medicare and similar taxes, and unemployment insurance, if applicable. Provider shall file all required forms and make all required payments, as applicable. Provider acknowledges that because Provider is not an employee of the District, the District will not provide Provider with any benefits of employment, such as health or disability insurance, retirement or welfare benefits, and the like. Provider shall maintain his/her own liability insurance. Provider hereby indemnifies the District, and each of its officers, directors and employees from and against all payments, losses, costs, liability, expenses, damages, fines, penalties or judgments (including without limitation actual attorney's fees and expenses) as a result of a failure by Provider: (i) to pay all the taxes due in connection with the compensation paid to Provider under this Agreement; (ii) to respond to any administrative inquiry concerning Provider's payment of such taxes; or (iii) to defend against any administrative or judicial proceeding with respect to Provider's payment of such taxes.



(d) Non-assignment of Rights or Obligations. Provider shall not assign his/her rights or obligations under this Agreement or any other Agreement entered into between Provider or the District.

(e) Compliance with Board Policies and Administrative Regulations. Provider shall comply with all applicable Board policies and Administrative Regulations, including, but not limited to those, governing his/her presence on school grounds and interactions with staff, students, and community members. Provider shall receive a copy of, and agree in writing to adhere to all District policies and procedures. Provider shall not, however, be obligated to disclose confidential information to the District, its officers or agents, except as required by law.

(f) Non-Exclusive Relationship. The District may enter into an Agreement with another individual/entity to provide similar (or the same) services to the students in the District, as those provided by Provider. The District has no obligation to notify Provider, in writing or otherwise, upon entering into such an Agreement with another individual/entity.

COMPLIANCE WITH STATUTES AND REGULATIONS

Both parties warrant and certify that in the performance of this Agreement, they will comply with all applicable statutes, rules, regulations and orders of the United States, and of any state or political subdivision thereof, including laws and regulations pertaining to labor, wages, hours and other conditions of employment; and that the Services delivered hereunder shall be produced in compliance with the Fair Labor Standards Act and any other applicable labor law. Provider is solely responsible for payments related to any medical, disability, retirement or other welfare or pension benefits to which he/she is entitled. Provider shall maintain any necessary liability insurance. Provider shall comply with all requirements of the Health Insurance Portability and Accountability Act, (42 U.S.C. § 1320d-2 note) (“HIPAA”) and the Family Educational Rights and Privacy Act, (20 U.S.C § 1232g; 34 CFR Part 99) (“FERPA”), and the Oklahoma Student Data Accessibility, Transparency, and Accountability Act of 2013, (70 O.S. § 3-168), and any other applicable Oklahoma laws. During the performance of this Agreement, both parties will comply with any applicable federal, state or municipal law or regulation governing non-discrimination and affirmative action in employment as may be applicable. The Provider certifies they are an Equal Opportunity Employer, a provider of services and/or assistance, and is in compliance with the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, as amended and Executive Orders 11246 and



11375. The Provider assures compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336), all amendments to, and all requirements imposed by the regulations issued pursuant to this act. Provider shall treat all persons he/she encounters on a work assignment with respect and dignity and will not engage in any type of harassment or discrimination prohibited by state, federal or local law. Provider hereby indemnifies the District for any expenses and/or damages arising from a lawsuit that may be brought against the District based on Provider's discriminatory or harassing behavior. Any records released from the provider to the District remain protected under any applicable state laws, as well as 42 CFR Part 2 if the released information is related to substance abuse treatment. Such information may not be re-disclosed without consent per 42 CFR 2.32.

7. WAIVERS

No waiver of any right or remedy with respect to any occurrence or event shall be deemed a waiver of such right or remedy with respect to such occurrence or event in the future. No waiver of any of Provider's obligations under this Agreement shall be effective unless in writing and signed by the District. No failure on the part of either party to exercise, and no delay in the exercising of, any right or remedy shall operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy hereunder preclude any other or future exercise thereof or the exercise of any other right or remedy granted hereby, by any related document or by law.

8. AMENDMENTS

This Agreement may not be and shall not be deemed or construed to have been altered, modified, clarified, amended, rescinded, canceled or waived in whole or in part, except by written instrument signed by the parties hereto.

9. SEVERABILITY

It is agreed that if any provision, or part of a provision, of this Agreement is held to be invalid or unenforceable under any applicable statute or rule of law, then the parties shall use their best efforts to replace the invalid or unenforceable provision with a provision that, to the extent permitted by applicable law, achieves the purposes intended under the original provision. The balance of this Agreement shall remain valid, unchanged and in full force and effect.

11. TERMINATION



Either party may terminate this Agreement with 60 days' notice, with or without cause, with or without a hearing, by providing written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Agreed and Accepted by:

Provider (Print full Name & Credentials)

Provider (Signature Name and Credentials)

School District

Name of District signing official (credentials/Title)
