



SAN JOAQUIN COUNTY OFFICE OF EDUCATION SEIS BILLING SERVICES AGREEMENT

This Agreement made and entered this **July 1, 2025** between **Redwood City Elementary School District, a public agency of the State of California** hereinafter referred to as “**CLIENT**”, having an address at 750 Bradford Street, Redwood City, California 94063 and **San Joaquin County Office of Education, a California County Office of Education**, hereinafter referred to as “**SJCOE**” having an address at 2922 Transworld Drive, Stockton, California 95206.

The parties hereto agree that **SJCOE** shall be considered a "Business Associate," and **CLIENT** shall be considered a "Covered Entity" as such terms are defined under the Privacy, Security, Breach Notification and Enforcement Regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, as set forth in the Code of Federal Regulations ("CFR") at Title 45, Parts 160 and 164, as may be amended (collectively, "HIPAA").

The parties hereto agree that **SJCOE** will provide the Local Education Agency (LEA claiming services outlined in the California State Plan under Title XIX of the Social Security Act. If **CLIENT** enters into subcontract agreements with other organizations for the purpose of incorporating their claiming with that of **CLIENT**, all terms and conditions of this Agreement will be binding for **CLIENT** and **CLIENT** shall hold **SJCOE** harmless from claims by its subcontracting organizations. **CLIENT** shall inform **SJCOE** within fourteen (14) days after **CLIENT** has entered into or terminated a contract with another organization.

1. COMMENCEMENT, DURATION, EVERGREEN CLAUSE AND TERMINATION OF SERVICES

This Agreement shall be effective for twelve (12) consecutive months commencing on **July 1, 2025 (Effective Date)**, for preparing LEA billing claims for **CLIENT**. Claims will be submitted on a monthly basis for such claims **SJCOE** receives from **CLIENT**.

This Agreement shall automatically renew for additional periods of twelve (12) months each year unless one party has provided written notice of cancellation to the other party not less than ninety (90) days prior to the renewal date.

CLIENT may terminate this Agreement, with or without cause, upon ninety (90) days written notice to **SJCOE**, provided that **CLIENT** agrees to pay **SJCOE** all fees for services provided by **SJCOE** through the date of termination.

The obligations of **SJCOE** to protect the confidentiality of the PHI (as defined hereinafter) in its possession and/or known to it, its employees, agents or subcontractors, shall survive termination of this agreement for any reason. In addition, at the termination of this Agreement for any reason, **SJCOE** shall return, destroy, or de-identify all PHI received from, created, maintained, or received by **SJCOE** on behalf of **CLIENT**. If de-identification or destruction of all or part of the PHI is not commercially feasible, **SJCOE** shall extend the protections of this Agreement for as long as necessary to protect the PHI

and to limit further access, use or disclosure of the PHI to those purposes that make the return or destruction of the PHI infeasible. If **SJCOE** elects to destroy the PHI it shall certify to **CLIENT** in writing that the PHI has been destroyed. Destruction of PHI must be in accordance with industry standards and processes for ensuring that reconstruction, re-use and/or re-disclosure of PHI is prevented after destruction, with the exact method of destruction dependent on the media in which the PHI is contained. To the extent applicable, **SJCOE** shall ensure any such destruction is consistent with state and/or federal record retention laws or regulations.

2. **SEIS BILLING INPUT DATA**

CLIENT shall be responsible for the input of all electronic entries into the Special Education Information System (SEIS), (IEP & Non-IEP) Billing, including electronic entries for the LEA Medi-Cal Billing Option Program and Multi-Payer Fee Schedule under the Children and Youth Behavioral Health Initiative (CYBHI), which **SJCOE** will process claims. Accurate, complete, and correct data necessary for **SJCOE** to perform its services hereunder shall be the sole responsibility of **CLIENT**. **SJCOE** will however make every reasonable effort to verify the completeness and accuracy of information underlying the claims it submits on the **CLIENT**'s behalf. **SJCOE** shall not be responsible for any delays or failure to prepare a claim because of incomplete, inaccurate, or incorrect data provided by **CLIENT**. Any errors, mistakes or liability in connection with the failure of **CLIENT** to electronically enter such data, shall be the sole responsibility of **CLIENT** and every reasonable effort shall be made to correct such data by **CLIENT**. **CLIENT** shall notify **SJCOE** of any incorrect data and in the event **CLIENT** requests **SJCOE** to complete the necessary Claim Inquiry Form (CIF) to retract and resubmit such claims **SJCOE** will charge **CLIENT** a processing fee of Forty-Five Dollars (\$45.00) per hour. Claim Submission for the LEA BOP must be received by the Department of Health Care Services (DHCS) Fiscal Intermediary (FI) by the Twelve-Month Billing Limit; within twelve (12) months following the month in which services were delivered. As such, for the LEA BOP, **SJCOE** must receive claims by or within twelve months of the service being rendered. For the Multi-Payer Fee Schedule, **SJCOE** must receive claims by or within one hundred (100) days after a service is rendered. Please note: claims submitted after the required time may become non-reimbursable or reimbursed at a significantly less amount. **SJCOE** will make every reasonable effort to submit each billing claim within forty-five (45) days of the claim input by **CLIENT**. **SJCOE** will also make every reasonable effort to bill any necessary retroactive claims in order to minimize revenue lost due to Department of Health Care Services one (1) year billing limit or the one hundred eighty (180) day billing limit established by the Third-Party Administrator for services billed under the Multi-Payer Fee Schedule. **CLIENT** acknowledges that in the event either entity denies reimbursement of a claim, such denials are common and **SJCOE** will randomly monitor these denials and make every attempt to re-bill for reconsideration of reimbursement.

3. **COST AND REIMBURSEMENT COMPARISON SCHEDULE SERVICES**

The Cost and Reimbursement Comparison Schedule (CRCS) is a mandatory requirement for participation in the LEA Medi-Cal Billing Option Program (LEA Program). The LEA Program requires that LEAs annually certify that the public funds expended for LEA

services provided are eligible for federal financial participation, in accordance with 42 CFR 433.51. **CLIENT** ensures that only employees and/or contractors providing direct health services (mental health, speech, nursing, occupational, physical therapy, etc.) whom are listed on the Time Study Participant (TSP) cost pool 1 in a given quarter, may be included on the CRCS for that quarter. **SJCOE** will prepare the required bridging document template required by DHCS to include the eligible participants per quarter and provide to **CLIENT** for fiscal data completion. Upon receiving the fiscal information from **CLIENT**, **SJCOE** will prepare the CRCS report on behalf of **CLIENT**. **CLIENT** will certify the CRCS for accuracy prior to **SJCOE**'s submission to DHCS. The submission of the CRCS is ultimately the responsibility of the **CLIENT**. Under DHCS' guidelines, failure to submit the CRCS may put the LEA at risk of future withholds of reimbursement and/or termination in the LEA BOP Program. If **CLIENT** participates in both the LEA Medi-Cal Billing Option Program (LEA BOP) and the CYBHI Multi-Payer Fee Schedule and chooses to use a different vendor for CYBHI billing services, **CLIENT** or its selected vendor shall be responsible for entering practitioner information required for CYBHI program participation.

4. **OPERATING PROCEDURES**

SJCOE shall be responsible for the processing of all claims for services rendered by **CLIENT** and its employees, which have been electronically submitted to **SJCOE** for processing. **SJCOE** will obtain and store pupil's Medi-Cal beneficiary eligibility in accordance with a signed, Agreement for Disclosure and Use of DHCS Data (hereinafter "Data Use Agreement" or "DUA") between the **CLIENT**, **SJCOE** and DHCS/Third-Party Administrator and hereby incorporated by reference.

SJCOE agrees to:

- a. Provide training and forms required by **CLIENT** staff for the preparation of data required for the submission of the claims for interim reimbursement.
- b. Maintain knowledge of current billing procedures, rules, and laws for California's Medi-Cal LEA Billing Option claiming program, CYBHI Multi-Payer Fee Schedule, School-Based Medi-Cal Administrative Activities and the Random Moment Time Survey Process. Maintain knowledge of the Centers of Medicare and Medicaid Services (CMS) guidelines as they pertain to the provision of services under this Agreement.
- c. Establish and maintain procedures for the timely preparation of claims to the DHCS Fiscal Intermediary/Third-Party Administrator. This includes setting time schedules that must be adhered to by **CLIENT**'s staff.
- d. Provide monthly management reports to **CLIENT** as support for the claims submitted to Medi-Cal DHCS/Third-Party Administrator. Prepare and submit

monthly claims to the DHCS Fiscal Intermediary/Third-Party Administrator for payment.

- e. **SJCOE** will provide technical assistance to **CLIENT** with gathering and maintaining data required for claiming. **SJCOE** will provide program support to **CLIENT** and will direct other resources to **CLIENT** as required. **SJCOE** will coordinate training support activities with the **CLIENT** either virtually or on-site as needed.
- f. The Department of Health Care Services Audits and Investigations unit (A&I) conducts multiple audits ranging from random claims audits, CRCS audits (most common) to field audits. In the event of any of these audits, **SJCOE** will act as the liaison between the **CLIENT** and the auditor via email, phone, and virtual meetings to support the **CLIENT** in the audit process. Upon receiving an audit entrance letter from the DHCS, **SJCOE** will provide in a timely manner to the **CLIENT** the requested documentation to include production logs showing all processed claims for the audit year. Potential fees owed by, or returned, to the district will be based upon the specific final audit findings and circumstances.

CLIENT agrees to:

- a. Ensure that all covered services are furnished by qualified practitioners acting within their scope of practice, in accordance with CCR Title 22; Business and Professions Code, Division 2, Sections 500 through 4998; and Education Code Section 44000. **CLIENT** will ensure that all qualified practitioners' licensure and credentials are current and in good standing with the respective licensing agent. **CLIENT** will notify **SJCOE** in writing of any changes in staffing both of employed and contracted practitioners.
- b. As of July 1, 2021 in order to be eligible to receive interim reimbursement under the LEA Medi-Cal Billing Option Program, **CLIENT** shall follow all guidelines set forth by CMS and DHCS in participation and cooperation in School-Based Medi-Cal Administrative Activities (SMAA) Random Moment Time Study (RMTS) unless otherwise acting as a model 2 SJCOE contracting out for ALL direct health service practitioners. **CLIENT** agrees to ensure that claims and costs are necessary for the proper and efficient administration of LEA billing services. **CLIENT** agrees to ensure that individuals submitting claims for LEA Medi-Cal Billing Option Program are also included on the quarterly SMAA Cost Pool as a direct service provider (Cost Pool 1) and participates in the SMAA program in accordance with DHCS and CMS guidelines.
- c. **SJCOE** recommends **CLIENT** implement a compliance plan in accordance with the Centers for Medicaid Services (CMS) and the Affordable Care Act. The Compliance plan is intended to assist Local Education Agencies (LEA) in developing and implementing effective compliance programs that promote,

adherence to, and allow for, the efficient monitoring of compliance with all applicable statutory, regulatory and Medicaid program requirements. An effective compliance plan should both articulate and demonstrate the LEAs commitment to ethical and legal business conduct and create a culture of compliance Federal Register / Vol. 63, No. 243 /. **CLIENT** agrees to adhere to all Policy and Procedure letters (PPL) relating to the LEA Medi-Cal Billing Option Program, School-Based Medi-Cal Administrative Activities and Targeted Case Management. **CLIENT** agrees to share the SMAA Quarterly Time Survey Participant lists with **SJCOE** Compliance staff to ensure accurate billing claims.

- d. Provide a contact person(s) who shall serve as coordinator(s) for all **CLIENT** activities (LEA BOP/CYBHI Multi-Payer Fee Schedule and SMAA). These person(s) will work directly with **SJCOE**'s management and support staff to ensure program compliance and authenticity.
- e. Arrange for **CLIENT** staff to attend training sessions related to the electronic data input of SEIS billing and form/documentation completion. **CLIENT** will assume the responsibility of overseeing the participation of electronic entries and/or paper forms submitted to **SJCOE**.
- f. In accordance with Title 42 of the Code of Federal Regulations (CFR), Sections 455.410 & 455.440, **CLIENT** agrees to include the National Provider Identifier (NPI) number of the Ordering Referring and Prescribing (ORP) practitioner on claims for treatment health care services. **CLIENT** also agrees that all practitioners who order, refer or prescribe treatment services must be individually enrolled as a Medi-Cal ORP provider.

The Parties Agree as follows pertaining to the electronic storage of PHI pursuant to this Agreement:

a. **Use and Disclosure of PHI by CLIENT; Responsibilities.** For purposes of this Agreement the parties acknowledge that regulations applicable to this Agreement include both the federal privacy regulations, as amended from time to time, issued under HIPAA and codified at 45 CFR Parts 160 and 164 (Subparts A & E) (the "**Privacy Rule**") and the federal security regulations, as amended from time to time, issued under HIPAA and codified at 45 CFR Parts 160 and 164 (Subparts A & C) (the "**Security Rule**"). **CLIENT** shall not include Protected Health Information in any Services other than as permitted by this Agreement.

i. **CLIENT** is responsible for implementing appropriate privacy and security safeguards to protect **CLIENT**'s PHI in compliance with HIPAA and this Agreement. **CLIENT** acknowledges and agrees that **CLIENT** controls how the Covered Services are used and configured and is responsible for ensuring, where applicable, that such usage and configuration is in compliance with HIPAA, and that **CLIENT** shall Use and Disclose PHI only as permitted by HIPAA. Without limiting the generality of the foregoing, **CLIENT** shall do the following:

1. Not authorize, request or require SJCOE to Use or Disclose PHI in any manner that would violate HIPAA if the Use or Disclosure were carried out by **CLIENT**, except as permitted under HIPAA and set forth in this Agreement.
 2. Not agree to any restriction requests or place any restrictions in any notice of privacy practices that would cause **SJCOE** or one of its Subcontractors to violate this Agreement or any applicable law.
 3. Use and retain a level of audit logging sufficient to record all activity related to use of and access to PHI in **CLIENT**'s information systems.
 4. Ensure that the use of any notation feature in the services, which **CLIENT** agrees and acknowledges is under **CLIENT**'s sole control, discretion and liability, is compliant with HIPAA
- b. **Use and Disclosure of PHI by SJCOE; Responsibilities.** SJCOE shall Use or Disclose PHI only in the manner and for the purposes set forth in this Agreement or in accordance with the Agreement and not in any other manner or for any other purposes. Without limiting the generality of the foregoing, **CLIENT** hereby authorizes **SJCOE** to do the following:
1. Use and Disclose PHI as necessary to provide and maintain the HIPAA Covered Services, to prevent or address service or technical problems, and to perform **CLIENT** support services for **CLIENT**;
 2. Use and Disclose PHI as Required by Law; and
 3. Use and Disclose PHI as necessary for the proper management and administration of **SJCOE** and to carry out the legal responsibilities of **SJCOE**.
- c. **Protection of PHI.** In connection with its receipt, maintenance or transmission of PHI on behalf of **CLIENT**, **SJCOE** agrees to do the following:
1. in accordance with 45 CFR § 164.502(e)(1), **SJCOE** may disclose PHI to Subcontractors and such Subcontractors shall have the rights to Use and Disclose PHI under the agreement between SJCOE and each Subcontractor, provided that SJCOE shall ensure that any Subcontractors that receive, maintain or transmit PHI on behalf of **SJCOE** agree to restrictions and conditions no less restrictive than those that apply to **SJCOE** in this Agreement with respect to such PHI;
 2. use appropriate administrative, technical and physical safeguards, and comply, where applicable, with the Security Rule with respect to any PHI that constitutes Electronic Protected Health Information, to prevent Use or Disclosure of PHI other than as provided for by this Agreement; and
 3. to the extent **SJCOE** carries out the **CLIENT**'s obligations under the Privacy Rule, if applicable, comply with the requirements of the Privacy Rule that apply

to the **CLIENT** in the performance of those obligations; notwithstanding the foregoing, the parties acknowledge that, under the Agreement and this Agreement, unless otherwise agreed upon by the parties in writing, SJCOE has no obligations to carry out any of **CLIENT**'s obligations under the Privacy Rule.

i. Breach Notification.

5. SJCOE shall report to **CLIENT** any Use or Disclosure of PHI not provided for in this Agreement of which **SJCOE** becomes aware, including any Breach of Unsecured Protected Health Information in accordance with 45 CFR § 164.410. **SJCOE** shall provide to the **CLIENT** all information required by 45 CFR § 164.410(c) to the extent known and provide any additional available information reasonably requested by **CLIENT** for purposes of investigating the Breach as required by HIPAA. For purposes of this Agreement, "**Breach**" means the acquisition, access, Use or Disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI as defined, and subject to the exclusions set forth, in 45 CFR § 164.402.
6. **SJCOE** shall be required to report to **CLIENT**, without unreasonable delay, only successful Security Incidents pertaining to PHI of which **SJCOE** becomes aware. **SJCOE** hereby provides **CLIENT** with notice in this Section 4(ii) of the ongoing existence and occurrence of attempted but unsuccessful Security Incidents, which include, but are not limited to, pings and other broadcast attacks on **SJCOE**'s firewall, port scans, unsuccessful log-in attempts, denial of service attacks and any combination of the above, so long as such incidents do not result in unauthorized access, Use or Disclosure of PHI. The parties agree that no further notice of unsuccessful Security Incidents is required.
 - ii. **Access by HHS.** SJCOE shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary of the United States Department of Health and Human Services for purposes of determining **CLIENT**'s compliance with HIPAA.
 - iii. **Individual Access Requests.** SJCOE shall forward to **CLIENT** any requests **SJCOE** receives from an Individual for access to the Individual's PHI that is entered in the HIPAA Covered Services by **CLIENT** to which **CLIENT** shall respond in accordance with the requirements of 45 CFR § 164.524. The parties agree that, by providing the HIPAA Covered Services, when properly configured by **CLIENT** to the extent required by the BAA Restrictions, **SJCOE** will make available to **CLIENT** all PHI then contained in the HIPAA Covered Services by **CLIENT**, including PHI about an Individual, to facilitate **CLIENT**'s compliance with the requirements of 45 CFR § 164.524.
 - iv. **Non-Compliance.** If either party becomes aware that the other party has engaged in a pattern of activity or practice that constitutes a material

breach or violation of this Agreement, the non-breaching party may request in writing that the breaching party cure the breach or violation. If the breach or violation is not cured within 30 days of the written notice, the non-breaching party may terminate this Agreement and the Agreement.

5. FEE SCHEDULE

CLIENT shall pay **SJCOE** by the number of processing and administrative hours worked. In accordance with regulations 42 CFR §447.10 and 22 CCR § 51502.1, **SJCOE** will validate the number of hours worked on the project by assuming approximately twenty percent (20%) of the LEA Coordinator's time at Eighty-Four Dollars (\$84.00) per hour and eighty percent (80%) of the LEA Project Liaison's time at Fifty-One Dollars (\$51.00) per hour. For **CLIENT** convenience, this typically amounts in and around to twelve percent (12%) charged to the LEA, however a percentage charge is prohibited by Federal regulations.

SJCOE anticipates receiving periodic reports from Medi-Cal regarding which **CLIENT'S** claims, submitted by **SJCOE**, were paid by Medi-Cal. Based on such reports, **SJCOE** shall submit invoices to **CLIENT**, which shows the amount **CLIENT** must pay **SJCOE** for claims submitted by **SJCOE** and paid to **CLIENT**. **CLIENT** must remit payment to **SJCOE** for the claims paid, as reflected on **SJCOE'S** invoice to **CLIENT**, within sixty (60) days of the date of invoice. A Seventy-Five Dollar (\$75.00) late fee will be applied to each monthly invoice where **SJCOE** has not received payment within the ninety (90) days of the date of invoice.

6. OWNERSHIP OF PROGRAMS AND CONFIDENTIALITY OF DATA

All computer hardware, operating system software, application software, programs, documentation, specifications, tapes, instruction manuals and similar material utilized and/or developed by **SJCOE** in connection with its systems and all patents, trade secrets, copyrights, trademarks, and other intellectual property rights are, as between **SJCOE** and **CLIENT**, the sole and exclusive property of **SJCOE**. **CLIENT** agrees to make no unauthorized use of these materials and systems and to preserve these materials and maintain the confidentiality of any and all of these materials in its possession.

CLIENT will abide by all Recitals as set forth in **CLIENT'S** (SEIS) Technology Agreement specific to AB 1584.

WHEREAS, SJCOE provides digital education software that is authorized to access, store and use Pupil Records and/or provides services, including cloud-based services, for the digital storage, management and/or retrieval of Pupil Records;

WHEREAS, CLIENT is a "local educational agency" under California Education Code Section 49073.1(3), which defines "local educational agency" as including "school districts, county offices of education, and charter schools;"

WHEREAS, SJCOE is a “third party” under California Education Code Section 49073.1(6), which defines “third party” as a **SJCOE** of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Pupil Records;

WHEREAS, California Education Code Section 49073.1 requires that any contract for the provision of services entered into between **SJCOE** and **CLIENT** contain provisions specified in sections (b)(1) through (b)(9) of California Education Code Section 49073.1;

WHEREAS, SJCOE and **CLIENT** desire to amend the terms of the Agreement to satisfy the requirements of California Education Code section 49073.1; and now therefore, **SJCOE** and **CLIENT** agree to the terms in compliance with California Education Code Section 49073.1:

- I. Definitions: As used herein the following terms are defined as follows:
 - a. “Adult Pupil” means a Pupil who has reached 18 years of age.
 - b. “De-identified Information” means information that cannot be used to identify an individual pupil.
 - c. “Parent” means a natural parent, an adopted parent or legal guardian of a Pupil.
 - d. “Pupil” or “Pupils” means a student or students of **CLIENT**.
 - e. “Personally Identifiable Information” includes: 1) the Pupil’s name, 2) the name of the Pupil’s parent or other family members, 3) the address of the Pupil or Pupil’s family, 4) a personal identifier, such as a Pupil’s social security number, Pupil’s number, or biometric record, 5) other indirect identifiers, such as the Pupil’s date of birth, place of birth, and mother’s maiden name, 6) other information that, alone or in combination, is linked or linkable to a specific Pupil that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the Pupil with reasonable certainty, or 7) information requested by a person who the educational agency or institution reasonably believes knows the identity of the Pupil to whom the Pupil Record relates.
 - f. “Pupil Records” means both of the following: 1) any information directly related to a Pupil that is maintained by **SJCOE**, including Personally Identifiable Information, and 2) any information acquired directly from the Pupil through the use of instructional software or applications assigned to the Pupil by a teacher or other **CLIENT** employee. “Pupil Records” does not mean aggregated de-identified Information used by **SJCOE** for the following purposes: to improve educational products for adaptive learning purposes and for customizing Pupil learning; to demonstrate the

effectiveness of **SJCOE's** products in the marketing of those products; or for the development and improvement of educational sites, services, or applications.

- II. Ownership and Control of Client Data, Including Pupil Records. At all times during the term of this Agreement and after termination of this Agreement, all Pupil Records remain the exclusive property of **CLIENT** and **CLIENT** retains exclusive rights, ownership and control thereto.
- III. Use of Pupil Records. **SJCOE** shall not use any Pupil Records to which it has access by way of this Agreement for any purpose other than those required or specifically permitted by this Agreement.
- IV. Review and Correction of Pupil Records. A Parent or Adult Pupil may review his/her Pupil Records that are retained, stored, hosted, accessed or used by **SJCOE** by making a request in writing to **CLIENT** for access to the subject Pupil Records. Subject to **CLIENT** verification of identity, approval of disclosure and redaction of any Personally Identifiable Information of a Pupil other than the Pupil of the Parent or Adult Pupil, who is making the request, **CLIENT** will direct **SJCOE** to provide access to any/all requested Pupil Records within five (5) business days or as otherwise required by law, by issuing the Parent or Adult Pupil a temporary user name and password to log on to the **SJCOE's** software/information system to review the requested Pupil Records. This time frame may be extended by written consent of the Parent or Adult Pupil. A Parent or Adult Pupil may submit written corrections to Pupil Records retained, stored, hosted, accessed or used by **SJCOE** to **CLIENT**. **CLIENT** shall have exclusive authority over **SJCOE** with respect to authorizing disclosure of Pupil Records pursuant to this Agreement.
- V. A Parent or Adult Pupil may correct erroneous information identified upon review of Pupil Records by making a written request to **CLIENT**. Subject to **CLIENT's** verification of identity and approval of such a request to correct the erroneous information, **CLIENT** shall notify **SJCOE** of the approved request and direct **SJCOE** to correct the erroneous information. **SJCOE** will not make any modification to Pupil Records unless specifically directed to do so by **CLIENT**. **SJCOE** shall direct all requests to review and/or correct erroneous information to **CLIENT**.
- VI. Targeted Advertising Prohibited. **SJCOE** shall not use any **CLIENT** Data, including Pupil Records, to engage in targeted advertising during the term of this Agreement, and this provision survives the termination of this Agreement.
- VII. Security and Confidentiality of Pupil Records. **SJCOE** will do the following to ensure the security and confidentiality of Pupil Records:

- a. Designate an employee responsible for the training and compliance of all **SJCOE** employees, agents, and assigns on compliance with security and confidentiality provisions detailed in this Agreement.
- b. **SJCOE** will protect the confidentiality of Pupil Records and take all reasonably necessary measures consistent with industry standards to protect **CLIENT** Data from any and all unauthorized access and disclosures.
- c. **SJCOE** has designated an individual responsible for training **SJCOE** employees, agents and assigns on reasonable protection measures and the confidentiality of Pupil Records consistent with state and federal law.
- d. **SJCOE** shall not disclose Pupil Records, except as specified under the terms of this Agreement or as required by law.
- e. **SJCOE** shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all stored, managed, retained, accessed or used Pupil Records received from or on behalf of **CLIENT** and/or Pupils.
- f. **SJCOE** warrants that all confidentiality and security measures identified in this Agreement will be extended by contract to any and all subcontractors used by **SJCOE**, if any, to execute the terms of this Agreement.
- g. **SJCOE** warrants that all Pupil Records will be encrypted in transmission and storage.
- h. **SJCOE** will use appropriate and reliable storage media, which shall include weekly backup of all input provided by **CLIENT** and offsite storage of backup material for a thirty (30) day period.

VIII. Unauthorized Disclosure Notifications. In the event of an unauthorized disclosure of Pupil Records, the following process will be followed:

- a. Immediately upon becoming aware of a compromise of Pupil Records, or of circumstances that could have resulted in an unauthorized access to or disclosure of Pupil Records, **CLIENT** and **SJCOE** agree to notify the other Party, fully investigate the incident and fully cooperate with the other Party's investigation of the incident, implement remedial measures and respond in a timely manner.
- b. Parent or Adult Pupil will be immediately notified of:
 - v. The nature of the unauthorized use or disclosure (e.g., security breach, nonconsensual re-disclosure, etc.);

- vi. The specific Pupil Records that were used or disclosed without authorization;
- vii. What **SJCOE** and **CLIENT** have done or will do to mitigate any effects of the unauthorized use or disclosure; and
- viii. What corrective action **SJCOE** and **CLIENT** have taken or will take to prevent future occurrences.

Except as otherwise required by law, **SJCOE** will not provide notice of the incident directly to the Parent or Adult Pupil whose Pupil Records were involved, regulatory agencies, or other entities, without prior written permission from **CLIENT**.

IX. Compliance with Applicable Laws. **CLIENT** Data includes Pupil Records subject to the Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g). **SJCOE** recognizes that as a county office of education and public entity, **SJCOE** is considered a “School Official” (as the term is used in FERPA and its implementing regulations) for any and all software, hosting and services provided to **CLIENT** through this Agreement. The Parties agree that the services provided to **CLIENT** through this Agreement serve a “legitimate educational interest,” as defined and used in FERPA and its implementing regulations. The Parties agree to jointly ensure compliance with FERPA, its implementing regulations and Pupil privacy and confidentiality requirements of California law, including but not limited to California Education Code Section 49060 et. seq. The Parties shall comply with the following process for compliance with FERPA and California law:

- a. **SJCOE** and **CLIENT** warrant that they are familiar with the confidentiality, security and disclosure requirements of FERPA, its implementing regulations and Pupil privacy and confidentiality requirements of California law, including but not limited to Education Code Section 49060 et. seq., and have designated an individual responsible for ensuring compliance therewith.
- b. **SJCOE** and **CLIENT** shall abide by the disclosure, security, breach notification, retention/destruction and use provisions contained in this Agreement and as required by law.

By the signature of its authorized representative or agent below, **SJCOE** hereby acknowledges that **CLIENT** has provided notice under California Education Code Section 49075(a) and 34 C.F.R. section 99.33(d) that **SJCOE** is strictly prohibited from disclosing Pupil Records from **CLIENT** to any third party without the prior written consent and direction to authorize disclosure by **CLIENT**.

- X. Within thirty (30) days of the Effective Date of termination of this Agreement, or within thirty (30) days from completion of this Agreement, **SJCOE** warrants that it will securely transmit all **CLIENT** Data, including Pupil Records, to **CLIENT** in ASCII delimited file format or other mutually agreed format, without retaining any copies of **CLIENT** Data. In the alternative, and subject to a written request from **CLIENT**, **SJCOE** will securely destroy all **CLIENT** Data, including Pupil Records, upon termination of this Agreement. **SJCOE** will then provide verification to **CLIENT** that the **CLIENT** Data not otherwise returned to **CLIENT** was destroyed subject to **CLIENT**'s written request, the date of destruction and the method of destruction.

The parties agree that, because of the sensitive nature of data and in view of the proprietary nature of business information, it is essential that all information, data and materials, whether transmitted in hard copy or in electronic media form, be maintained in each party's confidence. Each party agrees for itself, its employees, agents and independent contractors, that all information and/or data and/or materials received from the other party shall be held in confidence and each part agrees not to reproduce, disclose, or relinquish any data, information or materials to any party other than an authorized representative of the other party. Both parties agree to utilize a SFTP secure network to exchange all sensitive information.

The parties agree that, because of the unique nature of the data and/or information and/or materials to be transmitted that money damages for breach of the foregoing provision shall be wholly inadequate to fully compensate the aggrieved party and therefore the aggrieved party shall be entitled to full temporary and/or permanent injunctive relief against any breach or threat of breach of the foregoing provisions.

7. HIPAA OBLIGATIONS:

The parties agree that some of the data specified in this Agreement may constitute Protected Health Information (PHI), including protected health information in electronic media (ePHI), under federal law, and personal information (PI) under state law. The parties agree to comply with the applicable provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act) and their implementing privacy and security regulations, which include the Final Omnibus Rule, at 45 CFR Parts 160 and 164 (HIPAA regulations), the provisions of the California Information Practices Act (IPA) at Civil Code section 1798 et. seq., Confidentiality of Substance Use Disorder Patient Records at 42 CFR Part 2, and the provisions of other applicable federal and state laws as required by the Data Use Agreement. The PHI subject to this Agreement shall be and remain the property of **CLIENT**. **SJCOE** shall acquire no title or rights to the PHI as a result of this Agreement.

- a. **SJCOE** shall be permitted to use or disclose PHI provided or made available from **CLIENT** to perform any function on behalf of **CLIENT** with regard to the use and disclosure of, and/or access to, PHI that is

required, necessary or desirable for **SJCOE** to carry out its Contractual Obligations under this Agreement and/or other business responsibilities on behalf of **CLIENT** provided such function would not violate HIPAA if done by **CLIENT**. **SJCOE** may use or disclose PHI as required by law.

- b. Except as otherwise limited in this Agreement, **SJCOE** is permitted to use and disclose PHI received from **CLIENT** if necessary for the proper management and administration of **SJCOE**, to carry out the legal responsibilities of **SJCOE**, or otherwise in a manner which does not identify individual patients, provided:
 - i. The disclosure is required by law;
 - ii. **SJCOE** obtains reasonable assurance from the person or entity to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity; the person or entity will use appropriate safeguards to prevent unauthorized access to, use or disclosure of the PHI, and the person or entity in possession of the PHI immediately notifies **SJCOE** of any instance in which it is aware that the confidentiality of PHI has been breached; or
 - iii. the PHI is de-identified.
- c. **SJCOE** shall ensure that its uses and disclosures of, and requests for PHI to or on behalf of **CLIENT**, are consistent with the minimum necessary requirement under HIPAA and **CLIENT's** minimum necessary policies and procedures.
- d. **SJCOE** may use PHI to de-identify the information in accordance with 45 CFR 164.514 (a)-(c).
- e. **SJCOE** may provide data aggregation services relating to the Health Care Operations of **CLIENT**.

8. BUSINESS ASSOCIATE HIPAA OBLIGATIONS

- I. **SJCOE** shall not use or further disclose the PHI provided or made available by **CLIENT** other than as permitted or required by this Agreement or as required by law.
- XI. As of the Agreement Effective Date, **SJCOE** shall establish and thereafter maintain appropriate safeguards, including but not limited to those necessary for compliance with 45 CFR Part 164 (c), to prevent any access to, or use or disclosure of the PHI, other than as provided for in this Agreement and shall

implement Administrative, physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of **CLIENT**.

- XII. **SJCOE** shall provide HIPAA compliance education to its existing employees and all new hires who may have access to PHI.
- XIII. As of the Agreement Effective Date, **SJCOE** shall implement reasonable and appropriate policies and procedures, as set forth in 45 CFR 164.316, to comply with the standards, implementation specifications, and/or other security requirements for the protection of electronic PHI.
- XIV. Any time that **SJCOE's** subcontractor or agent creates, receives, maintains, or transmits the PHI on behalf of **SJCOE**, **SJCOE** shall first enter into a written Agreement with the subcontractor or agent that contains the same terms, conditions, and restrictions on the access, use and disclosure of PHI as contained in this Agreement. **SJCOE** shall also ensure that any subcontractor or agent to whom **SJCOE** provides electronic PHI agrees to implement reasonable and appropriate safeguards to protect such electronic PHI.
- XV. **SJCOE** shall make available PHI in a Designated Record Set to **CLIENT** as necessary to satisfy **CLIENT's** obligation under 45 CFR 164.524. In the event **SJCOE** receives a request for access to PHI directly from the individual, **SJCOE** shall forward such request to **CLIENT** promptly, and in no case later than five (5) business days following such request.
- XVI. **SJCOE** shall use reasonable efforts to facilitate **CLIENT's** obligation to make PHI in a Designated Records Set available for appropriate amendment by an Individual pursuant to 45 CFR 164.526. In the event that **SJCOE** receives a request to amend such PHI directly from the Individual, **SJCOE** shall forward such request to **CLIENT** promptly, and in no case later than five (5) business days following such request.
- XVII. **SJCOE** shall maintain and make available the information required to provide an accounting of disclosure of PHI to **CLIENT** as necessary to satisfy **CLIENT's** obligation under 45 CFR 164.528. In the event that **SJCOE** receives a request for an accounting directly from an Individual, **SJCOE** shall forward such request to **CLIENT** promptly, and in no case later than five (5) business days following such request.
- XVIII. To the extent **SJCOE** is to carry out one or more of **CLIENT's** obligations under 45 CFR 164(e), **SJCOE** shall comply with the requirements of such Subpart that apply to **CLIENT** in the performance of such obligation(s).

- XIX. **SJCOE** shall make its internal practices, books, and records relating to the use or disclosure of PHI received by **SJCOE** on behalf of **CLIENT**, available to the Secretary of the Secretary's designee for the purpose of determining compliance with HIPAA.
- XX. **SJCOE** shall have procedures in place for mitigating, the maximum extent practicable, any deleterious effect from the access, use or disclosure of PHI in a manner contrary to or inconsistent with this Agreement and HIPAA.
- XXI. **SJCOE** shall establish and implement a system of sanctions, including documentation of the sanctions that are applied, if any, for any employee, agent or subcontractor who violates this Agreement or HIPAA.

9. **COVERED ENTITY HIPAA OBLIGATIONS**

- I. **CLIENT** shall notify **SJCOE** of **CLIENT's** Notice of Privacy Practices, including any limitation(s) in accordance with 45 CFR 164.520, to the extent the Notice of Privacy Practices and/or such limitation(s) may affect **SJCOE's** use or disclosure of PHI.
- XXII. **CLIENT** shall notify **SJCOE** of any changes in, or revocation of, the permission by an individual to use or disclose PHI, to the extent that such changes may affect **SJCOE's** use or disclosure of PHI.
- XXIII. **CLIENT** shall notify **SJCOE** of any amendment or restriction to use or disclosure of PHI that **CLIENT** has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect **SJCOE's** use or disclosure of the PHI.
- XXIV. **CLIENT** shall not request **SJCOE** to use or disclose PHI in any manner that would not be permissible under 45 CFR 164(e) if done by **CLIENT** (except as set forth in Section 7 above).

10. **LIMITATION OF LIABILITY ARISING FROM DEFAULT IN SERVICES**

SJCOE SHALL NOT BE LIABLE OR DEEMED TO BE IN DEFAULT FOR ANY DELAYS OR FAILURES IN PERFORMANCE OR NON-PERFORMANCE OR INTERRUPTION OF SERVICE UNDER THIS AGREEMENT RESULTING FROM ANY CAUSE BEYOND THE REASONABLE CONTROL OF SJCOE. SJCOE'S LIABILITY, UNDER THIS AGREEMENT, IS LIMITED TO THE AMOUNT PAID BY CLIENT FOR THE SERVICES. SJCOE SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF THIS AGREEMENT.

SJCOE IS PROVIDING THE SEIS BILLING PROGRAM FOR CLIENT'S USE. ACCORDINGLY, SJCOE SHALL NOT BE LIABLE FOR CLIENT'S CONDUCT, INCLUDING ANY VIOLATION OF APPLICABLE LAWS OR REGULATIONS, RESULTING FROM CLIENT'S USE OF THE SEIS BILLING PROGRAM.

11. **GENERAL**

- b. **ENTIRE AGREEMENT** – This Agreement constitutes the entire Agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith.
- c. **SUCCESSORS** – This Agreement shall be binding upon and inure to the benefit of the successors, assigns and legal representatives of the respective parties hereto. Each party agrees that there are no third-party beneficiaries to this Agreement. Neither party may assign this Agreement in whole or in part, without the prior written consent of the non-assigning party except in connection with the sale of all or substantially all of its assets or outstanding capital stock.
- d. **ATTORNEYS** – In the event that either **SJCOE** or **CLIENT** commences a legal proceeding, each party shall pay their own attorney's fees.
- e. **SEVERABILITY** – In the event that any term or provision of this Agreement is held to be illegal, invalid or unenforceable under the laws, regulations or ordinances of any federal, state or local government, such term or provision shall be deemed severed from this Agreement and the remaining terms and provisions shall remain unaffected thereby.
- f. **CHANGE IN LAW/REGULATION** – In the event that any new laws, regulations, or interpretations applicable to the laws or regulations referenced herein are promulgated, **CLIENT** and **SJCOE** shall use reasonable efforts to promptly amend this Agreement to comply with such change without any financial concession.
- g. **AMENDMENT** – This Agreement may only be amended by a written Agreement between **SJCOE** and **CLIENT**.
- h. **NOTICES** – Any notice sent pursuant to this Agreement shall be sent by certified mail to the parties at their respective addresses.
- i. **STATE LAW** – This Agreement shall be governed by and construed in accordance with the laws of California.
- j. **SURVIVAL OF NON-DISCLOSURE OBLIGATION** - The obligation of non-disclosure and confidentiality recited in this Agreement shall survive the termination

of this Agreement and shall be in full force and effect notwithstanding such expiration or termination.

- k. **ANTI-FRAUD AND ABUSE** – Notwithstanding anything to the contrary herein this Agreement shall be subject to all applicable federal, state and local laws, regulations and directives concerning the Medicare/Medicaid and other medical reimbursement fraud and abuse limitations. To the extent anything contained herein purportedly herein or actually violates or is challenged as violating any of the above laws, statutes, regulations or interpretations, then the provision in question or this entire Agreement, if necessary, shall be automatically void and of no effect whatsoever.
- l. **DESCRIPTIVE HEADINGS** - The descriptive headings in the Agreement are for convenience and reference only and in no way affect or alter the intent or effect of this Agreement.

12. **EQUAL EMPLOYMENT OPPORTUNITY**

It is and has been the policy of **SJCOE** to provide equal employment and individual opportunity to all job applicants and employees without regard to race, color, religion, sex, sexual orientation, gender, gender identity, gender expression, age, ethnicity, nationality, national origin, ancestry, medical condition, marital status, veteran or disability status. It is **SJCOE's** policy not to violate Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Americans with Disabilities Act, or any other local, state or federal law, regulation or ordinance prohibiting discrimination in employment.

SJCOE MAKES NO REPRESENTATION OR WARRANTIES EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARISING BY OPERATION OF LAW OR OTHERWISE, EXCEPT AS EXPRESSLY STATED HEREIN.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date. Further, the client's signature below affirms he/she is an authorized representative for the **CLIENT**.

San Joaquin County Office of Education

BY: _____

NAME: Warren Sun

TITLE: Division Director, Operations

Redwood City Elementary School District

BY: _____

NAME: John R. Baker, Ed.D

TITLE: Superintendent

BY: _____

NAME: Rick Edson RE

TITLE: Chief Business Official

Approved by Board Date: _____

Please attach a copy of Board approved minutes.