SAN JOAQUIN COUNTY OFFICE OF EDUCATION
James A. Mousalimas, County Superintendent of Schools

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SAN JOAQUIN COUNTY OFFICE OF EDUCATION
SEIS BILLING SERVICES AGREEMENT

This Agreement made and entered this July 1, 2018 between **San Leandro Unified School District** hereinafter referred to as **"CLIENT"**, having an address at 2255 Bancroft Ave, San Leandro, California, 94577 and **San Joaquin 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** will provide LEA Medi-Cal Billing Option Claiming Services outlined in the California State Plan under Title XIX of the Social Security Act including all future approved Amendments to the California State Plan (SPA 15-021) to **CLIENT**. 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 AND TERMINATION OF SERVICES

This Agreement shall be effective for twelve (12) consecutive months commencing on July 1, 2018, for preparing LEA Medi-Cal Billing Option 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 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.

2. SEIS BILLING INPUT DATA

CLIENT shall be responsible for the input of all electronic entries into SEIS Billing, which **SJCOE** will process claims for. 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 $45.00 per hour.

Claim Submission and LEA claims must be received by the DHCS Fiscal Intermediary (FI) Twelve-Month Billing Limit within (12) months following the month in which services were rendered. **SJCOE** will make every reasonable effort to submit each Medi-Cal claim within thirty (30) 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 Medi-Cal's one (1) year billing limit. **CLIENT** acknowledges that in the event Medi-Cal 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 by Medi-Cal.

3. SJCOE LOGS

If **CLIENT** elects to submit paper billing logs for the documentation of medically necessary services (excluding transportation trip logs), **SJCOE** will charge **CLIENT** an annual baseline fee of $2,500.00 for secured storage and processing. A $45.00 fee per hour for staffing of data input will be applied on the monthly invoice sent to **CLIENT**. **SJCOE** will review paper logs submitted for processing based on the minimum standards set forth by the Department of Health Care Services (DHCS) for accuracy and completeness and will return such logs when incomplete. CLIENT agrees to provide **SJCOE**, on a timely basis, all forms and documentation in a manner prescribed by **SJCOE** and as required for the successful preparation and submission of claims.

4. 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 providing direct health services (Participant Pool 1) in a given quarter, may be included on the CRCS for that quarter. **CLIENT** is ultimately responsible for the preparation and submission of the CRCS. **SJCOE** will provide support to **CLIENT** in conjunction with the recommendations set forth by DHCS.

5. OPERATING PROCEDURES

SJCOE shall be responsible for the processing of all claims for services rendered by **CLIENT** and its employees, which have been turned over to **SJCOE** for processing. SJCOE will obtain and store pupil's Medi-Cal beneficiary eligibility in accordance with a signed Data Use Agreement (DUA) between the **CLIENT, SJCOE** and DHCS.

SJCOE agrees to:

a. Provide training, continuing education, 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. 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 Medi-Cal. 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. Prepare and submit weekly claims to Medi-Cal for payment.

e. **SJCOE** will provide technical assistance to **CLIENT** with gathering and maintaining data required for claiming. **SJCOE** will provide all program support to **CLIENT** and will direct other resources to **CLIENT** as required. **SJCOE** will coordinate all training and on-site support activities for **CLIENT**.

CLIENT agrees to:

a. Ensure that all Medi-Cal 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, 2018 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 Survey (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 Medi-Cal Billing Option Services.

c. **SJCOE** recommends **CLIENT** implement a compliance plan in accordance with the Centers for Medicaid Services (CMS). 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 relating to the LEA Medi-Cal Billing Option Program, School-Based Medi-Cal Administrative Activities and Targeted Case Management.

d. Provide a contact person who shall serve as coordinator for all **CLIENT** activities. This person will work directly with **SJCOE's** management and support staff to ensure program compliance and authenticity.

e. Arrange for **CLIENT** staff to attend mandatory 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**.

6. **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 20% of the LEA Coordinator's time at $84.00/hour and 80% of the LEA Project Liaison's time at $51/hour. For **CLIENT** convenience, this typically amounts in and around to 10.0 percent 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 $75 late fee will be applied to each monthly invoice where **SJCOE** has not received payment within the sixty (60) days of the date of invoice.

7. **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** Special Education Information System (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 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:

i. The nature of the unauthorized use or disclosure (e.g., security breach, nonconsensual re-disclosure, etc.);

ii. The specific Pupil Records that were used or disclosed without authorization;

iii. What **SJCOE** and **CLIENT** have done or will do to mitigate any effects of the unauthorized use or disclosure; and

iv. 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 FileZilla, 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.

I. HIPAA Obligations The following terms used shall be defined as follows:

a. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

b. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

c. Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by **SJCOE** from or on behalf of **CLIENT**.

SJCOE agrees to:

a. Not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law.

b. Use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

c. Mitigate, to the extent practicable, any harmful effect that is known to **SJCOE** of a use or disclosure of Protected Health Information by **SJCOE** in violation of the requirements of this Agreement.

d. Report to **CLIENT** any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

e. Ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by **SJCOE** on behalf of **CLIENT** agrees to the same restrictions and conditions that apply through this Agreement to **SJCOE** with respect to such Information.

f. Provide access within fourteen (14) days of receipt of a written request from **CLIENT** to Protected Health Information in a Designated Record Set, to **CLIENT** or, as directed by **CLIENT**, to an Individual in order to meet the requirements under 45 CFR 164.524.

g. Make any amendment(s) to Protected Health Information in a Designated Record Set that **CLIENT** directs or agrees to pursuant to 45 CFR 164.526 at the request of **CLIENT** or an Individual within fourteen (14) days of receipt of a written request from **CLIENT**.

h. Make internal practices, books, and records, including policies and procedures and Protected Health Information relating to the use and disclosure of Protected Health Information received from, or created or received by **SJCOE** on behalf of, **CLIENT** available to Secretary within fourteen (14) days of receipt of a written request from **CLIENT**, for purposes of the Secretary determining **CLIENT's** compliance with the Privacy Rule.

i. Document such disclosures of Protected Health Information and information related to such disclosures as would be required for **CLIENT** to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

j. Provide to **CLIENT** or an Individual, within fourteen (14) days of receipt of a written request from **CLIENT**, information collected in accordance with Section i of this Agreement, to permit **CLIENT** to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

k. Hold harmless, indemnify and defend **CLIENT** and any of its officers, directors, or employees, from all claims, costs (including costs of settlement and attorneys' fees) demands, losses, damages, or liability, including civil and criminal penalties, arising out of or in connection with the breach by **SJCOE** or any of its officers, directors, agents, subcontractors or employees, of **SJCOE's** obligations under the Agreement solely with respect to PHI. This provision shall survive the termination of the Agreement.

SJCOE shall obtain and maintain all necessary and proper insurance applicable to protecting the PHI pursuant this Agreement, including general liability insurance and errors and omissions insurance. Such insurance shall be in the minimum amounts of $1,000,000 per occurrence/$3,000,000 aggregate, either self-insured or from an insurance company acceptable to **CLIENT**. Is such insurance is on a "claims made" basis, and such coverage is later terminated, or converted to an "occurrence" coverage, or vice versa, **SJCOE** shall also acquire "prior acts" or "tail" coverage (as applicable), in the above amounts, covering all periods that this Agreement is or has been in force. **SJCOE** shall procure an endorsement whereby its insurer shall immediately notify **CLIENT** in the event of any changes or termination of coverage that affects coverage during the term of this Agreement.

Notwithstanding any other rights or remedies provided in this Agreement, **CLIENT** retains all rights to seek injunctive relief to prevent or stop the director, agent, subcontractor, or employee of **SJCOE** that maintains PHI for **CLIENT**. This provision shall survive termination of the Agreement.

In the event that **SJCOE** is served with legal process (e.g. a subpoena) or request from a government agency (e.g. the Secretary) that potentially could require the disclosure of PHI, **SJCOE** shall provide prompt (i.e. within twenty-four (24) hours) written notice of such legal process (including a copy of the legal process served) to **CLEINT**. In addition, **SJCOE** shall not disclose the PHI without the consent of **CLEINT** unless pursuant to a valid and specific court order or to comply with a requirement for review of documents by a governmental regulatory agency under its statutory or regulatory authority to regulate the activities of either party.

II. Permitted Uses and Disclosures by **SJCOE**

a. General Use and Disclosure Provisions.

i. Except as otherwise limited in this Agreement, **SJCOE** may use or disclose Protected Health Information on behalf of, or to perform functions, activities, or services for, **CLIENT** as specified in this Agreement or incidental to the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by **CLIENT** or the minimum necessary policies and procedures of the Covered Entity.

b. Specific Use and Disclosure Provisions.

i. Except as otherwise limited in this Agreement, **SJCOE** may use Protected Health Information for the proper management and administration of **SJCOE** as it pertains to **SJCOE's** obligations pursuant to the Agreement or to carry out the legal responsibilities of **SJCOE.**

ii. Except as otherwise limited in this Agreement, **SJCOE** may disclose Protected Health Information for the proper management and administration of **SJCOE,** provided that disclosures are Required By Law, or **SJCOE** obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies **SJCOE** of any instances of which it is aware in which the confidentiality of the information has been breached.

iii. Except as otherwise limited in this Agreement, **SJCOE** may use Protected Health Information to provide Data Aggregation services to **CLIENT** as permitted by 42 CFR 164, 504(e)(2)(i)(B).

iv. **SJCOE** may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164,502(j)(l).

III. Obligations of **CLIENT**

a. **CLIENT** shall notify **SJCOE** of any limitation(s) in its notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect **SJCOE's** use or disclosure of Protected Health Information.

b. **CLEINT** shall notify **SJCOE** of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes affect **SJCOE's** use or disclosure of Protected Health Information.

c. **CLIENT** shall notify **SJCOE** of any restriction to the use or disclosure of Protected Health Information that **CLIENT** has agreed to in accordance with 45 CFR 164.522, to the extent that such information may affect **CLIENT's** use or disclosure of Protected Health Information.

IV. Permissible Requests by **CLIENT**

CLIENT shall not request **SJCOE** to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by **CLIENT**.

V. Term and Termination

a. Term. The term of this Agreement shall be effective as of the effective date set forth above, and shall terminate when all of the Protected Health Information provided by **CLIENT** to **SJCOE**, or created or received by **SJCOE** on behalf of **CLIENT**, is destroyed or returned to **CLIENT**, or, if it is not feasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

b. Termination for Cause. Upon **CLIENT's** knowledge of a material breach by **SJCOE**, **CLIENT** shall either:

i. Provide an opportunity for **SJCOE** to cure the breach or end the violation and terminate this Agreement, if **SJCOE** does not cure the breach or end the violation within thirty (30) days of receipt of written notice from **CLIENT**.

ii. Immediately terminate this Agreement if **SJCOE** has breached a material term of this Agreement and cure is not possible.

iii. If neither termination nor cure is feasible, **CLIENT** shall report the violation to the Secretary.

iv. Require **SJCOE** to take such other action as **CLIENT** may request, at **SJCOE's** expense.

v. **CLIENT's** remedies under this provision shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other. If **CLIENT** elects to terminate the Agreement, **CLIENT** shall be relieved of any further obligations under the Agreement and shall be immediately entitled to a refund of any amounts prepaid from the date of termination through the end of payment period, on a pro rata basis.

c. Effect of Termination.

Except as provided in subparagraph (2) of this section, upon termination of this Agreement, for any reason, **SJCOE** shall return or destroy all Protected Health Information received from **CLIENT**, or created or received by **SJCOE** on behalf of **CLIENT**. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of **SJCOE**. **SJCOE** shall retain no copies of the Protected Health Information.

In the event that **SJCOE** determines that returning or destroying the Protected Health Information is not feasible, **SJCOE** shall provide to **CLIENT** notification of the conditions that make return or destruction not feasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is not feasible, **SJCOE** shall extend the protections of this Addendum to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction not feasible, for so long as **SJCOE** maintains such Protected Health Information.

VI. Miscellaneous

SJCOE and **CLIENT** agree to take such action as is necessary to amend this Agreement from time to time as is necessary for **CLIENT** to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.

The respective rights and obligations of **SJCOE** under Section 5.c, Effect of Termination, shall survive the termination of this Agreement.

Any ambiguity in this Agreement shall be resolved to permit **CLIENT** to comply with the Privacy Rule.

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

SJCOE SHALL NOT BE LIABLE OR DEEMED TO BE IN DEFAULT FOR ANY DELAYS OR FAILURE 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.

10. **GENERAL**

a. **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.

b. **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.

c. **ATTORNEYS** – In the event that either **SJCOE** or **CLIENT** commences a legal proceeding, each party shall pay their own attorney's fees.

d. **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.

e. **NOTICES** – Any notice sent pursuant to this Agreement shall be sent by certified mail to the parties at their respective addresses.

f. **STATE LAW** – This Agreement shall be governed by and construed in accordance with the laws of California.

g. **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.

h. **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.

i. **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.

11. **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, age, national origin, 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.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year below written. Further, parties signature below affirm they are an authorized representative for the **CLIENT**.

~~Are you, any of your employees or sub-contractors a CalSTRS or CalPERS retiree?~~
~~☐ Yes ☐ No~~ N/A

~~If yes, are they paid through a payroll system that reports to both CalSTRS and CalPERS?~~
~~☐ Yes ☐ No~~ N/A

San Joaquin County Office of Education

BY: _____

NAME: Ron Estes, Ed.D.

TITLE: Division Director, Operations

DATE: 5/10/18

San Leandro Unified School District

BY: _____

NAME: _____

TITLE: _____

DATE: _____