

TEXAS SCHOOL MEDICAID DIRECT SERVICE AGREEMENT

This Texas School Medicaid Direct Service Agreement (collectively with its exhibits, hereinafter “Agreement”) is entered into by and between Levelland Independent School District (hereinafter “Customer”) and Texas Special Education Software Solutions, LLC, DBA Onward Learning (hereinafter “Onward”). Herein, “Parties” or “Party” shall refer to both Customer and Onward or either of the foregoing.

Onward offers various services to assist schools in administering Medicaid programs, such as training, claims processing, statistical reporting, audit assistant services, and other consulting services. Customer wishes to engage Onward to provide certain services related to the Federal School Medicaid Fee-For-Direct Service (FFS) program offered through the Texas School Health and Related Services (SHARS) program and the Medicaid Administrative Claiming (MAC) program.

Now, THEREFORE, for good and valuable consideration, the Parties hereby agree as follows:

I. TERM

- A. Effective Date. The effective date of this Agreement is July 1, 2025. (“Effective Date”).
- B. Initial Term & Automatic Renewal. The initial term of this Agreement is for a period of one (1) year, effective as of the Effective Date. Unless terminated beforehand pursuant to Section I.C below, this Agreement will automatically renew without any further action being required of the Parties and extend for up to two (2) additional one-year terms. Unless terminated beforehand pursuant to Section I.C below, upon expiration of the final renewal term.
- C. Termination. This Agreement may be terminated by either Party at any time with ninety (90) days written notice to the other. This Agreement will expire at the end of the second renewal term (i.e., three (3) years from the Effective Date of the Agreement) if not terminated prior to said expiration pursuant to this Paragraph or extended pursuant to Paragraph I.B.
- D. “Term.” “Term of this Agreement” or “Term” shall refer to the initial one-year term, as well as any renewal periods or extensions. “Term Year” shall refer to any year-long period commencing on the Effective Date for any year in which Agreement is in effect.
- E. Survival. Notwithstanding any termination or expiration of this Agreement, Subsections A, N, O, P, and Q of Section III, Sections V and VI, and Exhibit A shall survive and remain in full force and effect after the Term of this Agreement. Customer shall remain obligated to pay all fees in accordance with Exhibit A and III.P, even if said fees are based on revenue or settlement payments received by Customer after the termination or expiration of this Agreement. With respect to Section IV, the limited license granted to Customer to use and access Onward’s software and applications will terminate upon the expiration or termination of this Agreement as provided in Section IV, but all other terms of Section IV shall remain in full force and effect.

II. ONWARD SERVICES.

Onward will provide the following services to and/or on behalf of the Customer:

- A. Software and Setup. Onward will provide and set up its proprietary SHARS software and applications, which will enable Customer's providers, staff, and contractors to document and report services electronically.
- B. Onward Paper Log Process. Onward will also make paper logs available to the Customer for those providers, staff, and contractors who wish to document their services using a paper form, subject to the Paper Log Fee addressed in Exhibit A. Upon receipt of completed Onward-provided paper logs from Customer, Onward will review and enter the data from complete Onward-provided paper forms directly into its proprietary SHARS software system for the purpose of generating and submitting Medicaid claims. Onward has no obligation to enter or process data submitted to Onward in any format other than the Onward-provided paper forms.
- C. Provider Help Desk. Onward will maintain a Help Desk, with email and toll-free telephone access, to respond to technical support and user questions from the Customer during regular business operating hours. The Help Desk staff will provide technical assistance to Customer and its providers, whether they are documenting their services using the automated systems or the paper logs.
- D. Onward Training.
 - (1) Onward will offer up to two (2), six-hour, training sessions led by one trainer annually throughout the Term of this Agreement. Training sessions may be held remotely, via internet-based access, or onsite at Onward's election. If a single training session is led by two (2) trainers, that session will count as two (2) sessions for purposes of calculating the number of sessions remaining in Customer's total annual allotment.
 - (2) Onward may offer additional training sessions to Customer beyond its annual allotment for an additional fee as provided in Exhibit A.
 - (3) Onward will only offer training for the providers on Customer's participant list, Customer's transportation staff who provide SHARS-related services, and Customer's SHARS administrators (hereinafter, collectively "SHARS Users") who Customer has identified in writing on its Onward District Details and Contact Information sheet.
 - (4) Onward will offer training sessions on the use of the SHARS software and the processes for performing under this Agreement and specialized training for Customer's transportation staff regarding use of Onward's mobile application. Onward may provide additional, customized training sessions if agreed upon by the Parties.
- E. Student Eligibility Research. Onward will verify Medicaid eligibility for all students identified by Customer, whether through a data export of Customer's Individual Education Plan (IEP) system or otherwise.

- F. Interim Claims Processing. Upon completion of the tasks required to facilitate Onward's processing of claims, Onward shall provide interim claims processing services as provided herein. Onward will submit claim information and retrieve claim remittance information on behalf of the Customer based on all data and documentation provided by the Customer in accordance with the terms set forth herein. Customer will provide the requested data and information to Onward in the format requested by Onward. Onward will then format the data collected from providers and delivered by Customer in the proper format to Onward for submission of the Medicaid claims. Onward will provide assistance to Customer in researching denials, updating claims, and resubmitting claims on behalf of the Customer. In the case of any audit by a government agency, Onward will assist Customer in compiling the records associated with the claims that are the subject of the audit which are stored in Onward's SHARS software. Customer will be responsible for all audit-related data and documentation stored or maintained outside of Onward's SHARS software.
- G. Internal Reports. Onward will provide occasional internal reports to the Customer, advising of the amounts of claims paid to date in the year, the amounts of claims in process at the time of the report, and Customer's providers who are and who are not maintaining service logs.
- H. Cost Reports. SHARS participants are required to submit annual Cost Reports to the Health and Human Services Commission ("HHSC"). Upon receipt of the necessary information from Customer, Onward shall prepare the Cost Reports and provide related consultation services through preparation of the settlement statement. Onward shall prepare (i) the IEP ratio; (ii) the special transportation IEP student count; and (iii) the specialized transportation one-way trip ratio. In the case of any Informal Review or for any Cost Report support services requested after the settlement statement has been provided, Onward will provide consultation services for \$250 per hour, if requested. Onward will not provide legal advice or represent the Customer in any such proceeding with any government agency or any other dispute proceeding. Onward is not a law firm and does not provide legal services or legal advice. Onward will have no contractual obligation to provide Cost Report services for pre-Agreement fiscal years unless Customer timely provides notice of a request for such services in accordance with Sections III.H and VI.M.
- I. MAC Services.
- (1) Upon receipt of Customer's quarterly payroll reports for providers performing MAC activities, Onward shall format the payroll data and enter it into the state's financial reporting system. The Customer is responsible for ensuring that only providers performing MAC activities are included on the quarterly payroll report provided to Onward and that the information is current, accurate, and complete.
 - (2) After preparing and entering the data, Onward shall prepare a draft quarterly MAC report and deliver it to Customer for its review. Customer shall review the draft MAC report for accuracy and completeness.
 - (3) Upon Customer's verification and approval of the draft MAC report, if Customer requests, Onward shall prepare the MAC Quarterly Summary Invoice (QSI) and deliver it to Customer to be certified by an authorized Customer representative. Customer shall be responsible for submitting the QSI to HHSC.

III. CUSTOMER OBLIGATIONS

- A. General Support & Cooperation. Customer acknowledges and agrees that Onward cannot effectively provide services to Customer without Customer's cooperation and assistance. Customer hereby agrees to cooperate and assist Onward and to comply with all reasonable requests for information or assistance. Customer will require all providers and staff (both employees and contract workers) to comply with Onward's reasonable requests for information and assistance.
- B. Appointment of Onward District Manager. Customer shall designate up to two employees to serve as Onward's point of contact for Customer (the "District Manager(s)"). The District Manager(s) will have responsibility for the day-to-day management of Customer's SHARS and/or MAC programs and will be responsible for communicating with Onward and managing Customer's performance under this Agreement. At its election, Customer may appoint a single person to manage both the SHARS and MAC programs or Customer may appoint one person as District Manager of the MAC program and another person to be District Manager of the SHARS program.
- C. Access to Platforms & Systems and Delivery of Data/Files:
 - (1) Within five (5) days of the Effective Date, Customer shall provide Onward with Texas Medicaid & Healthcare Partnership (TMHP) administrator access and access to all requested government and partner websites, including but not limited to Fairbanks or the State of Texas Automated Information Reporting System (STAIRS).
 - (2) Within five (5) business days of the Effective Date, Customer shall provide Onward with access to all of Customer's systems for purposes of integration with Onward's SHARS software, including but not limited to Customer's Student Information System (SIS), Individual Education Plan (IEP), and nursing and transportation systems.
 - (3) Within five (5) business days of the Effective Date, Customer shall provide to Onward all data files exported from its systems in the format specified and requested by Onward. If necessary, Customer will request the data in the requested format from Customer's vendors. If Customer's vendors fail to provide the data in the requested format, Customer will provide Onward with direct access to its vendor accounts and authorize Onward to access said accounts. Customer represents and warrants that the terms of this Agreement and Customer's performance hereunder will not conflict with or constitute a default under any other agreements to which Customer is a party. Onward will provide assistance to Customer in procuring and formatting the data if requested, but securing and delivering the data in the proper format will be Customer's ultimate responsibility.
 - (4) If and to the extent data/files are subsequently requested from Onward and/or provided by Customer, Customer shall provide such data/files in the format specified and requested by Onward.
 - (5) To facilitate the processing of claims through electronic applications or electronic systems, Customer shall require its providers, staff and contractors to provide written authorizations to Onward to apply and utilize their electronic signatures.

- D. Government Communications. Customer shall promptly forward to Onward all communications regarding Customer's SHARS program from HHSC, TMHP, Texas Education Agency (TEA), or any other governmental agency.
- E. Changes in Customer Personnel. Customer shall promptly advise Onward of any personnel changes in (a) district contacts (e.g., the Customer's superintendent, director of finance and/or business manager, special education director, or similar executives), or (b) district providers.
- F. Account Management Meetings. Customer shall require a knowledgeable representative with authority to speak on behalf of and bind Customer, to attend regular account management meetings scheduled by Onward.
- G. SHARS Enrollment/Medicaid Licensure. To facilitate the enrollment and maintenance of Customer's participation in the SHARS and MAC programs, Customer shall designate a district employee with authority to act on behalf of and bind the Customer as the "owner" in connection with the Medicaid enrollment and who will be required to execute enrollment documents on behalf of the Customer. Customer shall provide all necessary information and documentation for completion and maintenance of Customer's enrollment. Customer shall request a National Provider Identifier (NPI). Customer is responsible for its enrollment and ensuring its compliance with all laws and regulations, licensing requirements, NPI, or individual enrollment in Texas Medicaid. However, Onward will assist and provide consulting services in connection with Customer's Texas Medicaid enrollment.
- H. Cost Report Responsibilities.
- (1) Customer shall provide all financial reports and other information and documents requested by Onward for any Cost Report no later than thirty (30) days prior to the due date for any report. Customer shall also timely complete any applicable state-mandated training, e.g., Random Moment Time Study (RMTS) and Cost Report trainings.
 - (2) Customer will promptly notify Onward of and forward to Onward all desk review communications.
 - (3) Customer shall permit Onward to prepare the Cost Report for any fiscal year which occurs, in part or in whole, within the Term of this Agreement. Customer shall not have the option of electing to independently prepare Cost Reports for fiscal years occurring, in whole or in part, within the Term of this Agreement. Customer shall be obliged to pay Onward as provided in Exhibit A for Cost Reports submitted for any fiscal year which occurs, in whole or in part, within the Term of this Agreement, even if Customer fails to accept Onward's consulting services in connection with the preparation of the Cost Reports.
 - (4) Customer may elect to utilize Onward services to prepare Cost Reports for fiscal years occurring entirely outside the Term of this Agreement. Within ten (10) days from the Effective Date, Customer shall provide written notice in accordance with Section VI.M if it wishes for Onward to provide Cost Report services for any pre-Agreement fiscal years (i.e. fiscal years occurring in their entirety prior to the Effective Date). Customer shall provide all ratio reports for any pre-Agreement fiscal years no later than December 1.

- (5) Notwithstanding any termination or expiration of this Agreement and regardless of whether Onward or another party prepares or submits the Cost Report, Customer shall be obliged to pay Onward as provided in Exhibit A for all Cost Reports submitted after the termination or expiration of this Agreement if the Cost Report relies on any claims data (i) for claims that were processed (partially or otherwise) or submitted by Onward during the Term of the Agreement; or (ii) maintained at any time in the SHARS software or applications provided by Onward.
- I. MAC Contact. Customer shall designate a district employee to act as the MAC district contact with authority to act on behalf of and bind the Customer in communications and interactions with HHSC and associated agencies and persons.
- J. RMTS and Cost Report Contacts. Customer shall designate the required number of district contacts to act as the Customer's RMTS and Cost Report contacts. The district contacts will have authority to act on behalf of and bind the Customer with respect to the RMTS and Cost Reports, respectively.
- K. MAC Reports.
- (1) Customer shall provide Onward with a quarterly payroll report that exclusively lists all providers performing MAC services and any other documents requested by Onward for any MAC report no later than thirty (30) days prior to the due date for any such report. The payroll report shall be limited to MAC providers and shall not contain information for any providers who do not perform MAC services.
 - (2) Customer shall review the draft MAC report and verify to Onward that the information is accurate and complete or specify any edits that need to be made.
 - (3) Upon approval of the draft MAC report, Customer shall generate the QSI or request that Onward generate the QSI. Customer shall have the QSI executed before a notary by an authorized representative.
 - (4) Customer shall submit the executed and notarized QSI to HHSC and deliver a copy of the completed QSI to Onward.
- L. Procedures for the Documentation of Provider Services.
- (1) Customer hereby agrees to require and ensure that all of its providers, staff, and contractors submit documentation of services via (a) Onward's applications; (b) Onward's electronic system integration import; or (c) the paper log forms provided by Onward to Customer.
 - (2) Electronic submissions through Onward's applications or electronic import system are preferred for the sake of efficiency, timeliness, completeness, and accuracy. Should Customer's providers, staff or contractors utilize paper logs, Customer will be assessed an annual Paper Log Fee as set forth in Exhibit A. Within five (5) days of the Effective Date of the Agreement, Customer shall provide written notice to Onward in accordance with Section VI.M if Customer intends to utilize paper logs. However, formal written notice shall not be a condition precedent to Onward's right

to collect the annual fee for any given year in which paper logs are utilized by Customer.

- (3) If Customer uses paper logs, Customer's providers, staff, and contractors may only use the paper log forms provided by Onward to Customer. Onward has no obligation to enter or process data submitted to Onward in any format other than the Onward-provided paper forms. Customer will require its providers, staff, and contractors to provide all information requested and fully complete the paper log forms. It is Customer's responsibility to ensure that the paper log forms provided are complete and properly executed by the provider, staff, or contractor.
- (4) Customer will implement quality assurance/quality control programs and procedures to ensure that providers document their services in compliance with all applicable laws and regulations and any applicable IEP.
- (5) All services will be documented by Customer's providers within seven (7) days of the date of service. Customer shall deliver complete and accurate documentation¹ to Onward in a timely manner within the timeframe allotted for claims submissions, whether this documentation is completed electronically or on paper. All paper logs must be submitted to Onward within thirty (30) days of the service. All paper log forms submitted must be completely filled out and executed.

M. Training.

- (1) Onward Training. Customer will require all of its providers, SHARS administrators, and transportation staff who provide SHARS-related services, i.e. Customer's SHARS Users, to attend at least one of the training sessions offered by Onward annually. Customer will make all reasonable efforts to secure all SHARS User's attendance. Customer shall pay the initial and annual training/maintenance fees as set forth in Exhibit A. Customer shall pay a fee as set forth in Exhibit A for any additional training sessions provided by Onward beyond Customer's annual allotment.
- (2) State-Mandated Training. Customer will require all district contacts to complete all stated-mandated training, including but not limited to RMTS training, MAC training, and Cost Report training.
- (3) RMTS. Customer shall assist and train Customer's time study participants on RMTS on a quarterly basis.
- (4) Training Materials. Customer will distribute to all providers and any staff involved in the SHARS program any training materials and training labs provided by Onward to the District Manager.

¹ With respect to transportation services, Customer shall document at a minimum: each one-way trip; the number of one way trips per day; the time for each trip; the route name or number; the driver's name; the aide or monitor's name; the dates of service and the day of the week; if a service is not provided on a school day, Monday-Friday, the student will be marked as absent; indication of whether a bus aide or monitor is required as provided in the student IEP; if Personal Care Services are provided on the bus, documentation of the type of personal care services (i.e. type of activity and group/individual) that was performed; the student's full name and Medicaid number; and dated signatures of the bus driver and bus aide/monitors.

- N. Customer's Management Responsibilities. Customer is responsible for collecting and maintaining all (a) parental consent forms required for students receiving services pursuant to the SHARS program; (b) the district's participants list; and (c) all referrals and prescriptions. The parental consent forms shall comply with the Family Educational Rights and Privacy Act (FERPA) and authorize Onward's receipt and use of student data so that Onward may perform services under this Agreement. Customer will store and maintain all necessary documentation and paperwork required for SHARS and MAC, including but not limited to original copies of all paper service logs; documentation of prescriptions and referrals; attendance records; parental consent forms; and Medicaid-compliant ARD/IEP records that prescribe all services of Customer's providers.
- O. Accuracy of Information. Customer is responsible for ensuring that Customer's financial, claims, and other data which it provides to Onward are accurate, complete, and current. Customer acknowledges that Onward is relying on Customer to provide current, accurate, and complete information. Customer represents and warrants that it has instituted and for the duration of this Agreement will maintain quality assurance/quality control programs and procedures to ensure that all data and information provided to Onward are current, accurate, and complete. Onward is not responsible for ensuring the accuracy or completeness of the data and information provided by Customer, nor ensuring that such data and information are current. ONWARD SHALL HAVE NO LIABILITY FOR ANY LOSSES OR INJURY SUFFERED ARISING FROM CUSTOMER'S TRANSMISSION OF INACCURATE, INCOMPLETE, OR OUTDATED DATA OR INFORMATION TO ONWARD.
- P. Fees. Customer agrees to pay Onward the fees set forth in Exhibit A.² Customer will pay the initial annual minimum administrative interim payment fee, the implementation/start-up fee, and initial annual training/maintenance fee within thirty (30) days of Customer's execution of this Agreement. For all subsequent Term Years, the annual minimum interim payment fee and the annual training/maintenance fee shall be paid at the beginning of the Term Year and shall be due and payable in full on the anniversary of the Effective Date for any Term Year in which Customer has failed to provide written notice of termination as provided herein at least ninety (90) days prior to beginning of the Term Year, i.e. the anniversary of the Effective Date.³ For all Cost Reports, Customer shall pay the minimum Cost Report fee in full within thirty (30) days of Onward's completion of the Cost Report for the applicable fiscal year. The minimum annual fees are due at the beginning of the Term Year. If additional amounts are owed beyond the minimum annual fees or the minimum Cost Report fees, Customer shall pay such sums within thirty (30) days of receipt of an invoice. Customer will pay any other fees in full within thirty (30) days of receipt of an invoice. With respect to any late payments, interest shall begin to accrue on the date payment becomes overdue and at the rate set forth in Section 2251.025(b) of the Texas Government Code on the Effective Date of this Agreement. Customer acknowledges and agrees that invoiced fees will be calculated and payable in full by Customer without regard to any offsets, penalties, or other deductions arising from or relating to Customer's participation in the relevant reimbursement programs in prior years. Fees will

² Upon notice to Customer, Onward may seek an adjustment of the pricing if market circumstances necessitate such a change.

³ To illustrate, for example, if the Effective Date is March 20, 2025 and Customer fails to provide notice of termination prior to December 20, 2026, the minimum fees for the Term Year starting on March 20, 2026 would be due in full on that date and no refunds shall issue due to any subsequent terminations.

apply to any claims or reports for which Onward has provided any services or which rely on claims data processed (partially or otherwise) by Onward or stored at any time on the SHARS software provided by Onward. It is acknowledged and understood that settlements/payments related to claims or reports for which Onward is entitled to payment may be due to or received by Customer after the Term of this Agreement. Customer's payment obligations will survive termination or expiration of this Agreement.

Q. Confidentiality.

- (1) Customer acknowledges and agrees that Onward's proprietary SHARS software and applications; Onward's pricing information; Onward's provider forms and logs; and Onward's guides, training materials, presentations, and videos (hereinafter collectively "Confidential Information") constitute sensitive and confidential information and trade secrets of Onward, which are not generally known or available to the public and which provide Onward with a competitive advantage in the marketplace.
- (2) Customer hereby agrees to hold all of Onward's Confidential Information in strict confidence; agrees not to disclose the information to any third parties unless Onward provides written authorization prior to any disclosure; and agrees to not disclose Onward's Confidential Information to anyone other than Customer's employees with a bona fide need to know and who themselves are bound by a contractual confidentiality obligation.
- (3) If Customer receives a public information request or subpoena or other legal process which may require disclosure of Onward's Confidential Information, before disclosing any Confidential Information, Customer shall provide notice to Onward and an opportunity for Onward to assess and respond to the request. Customer shall notify Onward immediately, but no later than three (3) days after Customer receives any request for information to which Onward's Confidential Information may be responsive, to permit Onward an opportunity to assess the request and assert objections or seek protection. Customer shall request a Texas Attorney General ruling for any request to which Onward's Confidential Information may be responsive as allowed by Texas law. Customer will use its best efforts to maintain the confidentiality of Onward's Confidential Information and will cooperate with Onward's efforts to lawfully protect such Confidential Information from disclosure.
- (4) Customer's confidentiality obligations survive any termination or expiration of this Agreement.

R. Notice Regarding Purchasing Cooperatives. Within ten (10) days from the Effective Date, Customer shall deliver the Purchasing Cooperative Notice addendum attached hereto as Exhibit B to provide written notice to Onward stating whether it is purchasing Onward's services through a purchasing cooperative and if so, identifying the purchasing cooperative and providing proof of membership.

IV. LIMITED SOFTWARE LICENSE

Customer acknowledges and agrees that Onward's proprietary SHARS software and applications constitute intellectual property for which Onward is only granting a non-exclusive, nontransferable, and limited license to Customer. Customer may use the software and applications exclusively in connection with the provision of services by Onward pursuant to this Agreement. Customer shall not sell, copy, reverse engineer, or redevelop the software or applications, or any components thereof. Customer may only use the software and applications, or any portions thereof, for purposes of obtaining services from Onward pursuant to this Agreement. This license will expire upon termination or expiration of this Agreement and Customer will have no rights to access or use the SHARS software or applications thereafter.

V. DISCLAIMER OF WARRANTIES & LIMITATIONS OF LIABILITY

A. DISCLAIMER OF WARRANTIES. Onward's services, software, and applications are provided "as is" and "as available," without warranties or conditions of any kind, express or implied, including but not limited to any implied warranties of merchantability or fitness for a particular purpose.

B. LIMITATIONS ON LIABILITY.

(1) LIMITATIONS ON PROPERTY & PERSONAL INJURY

LIABILITY. Onward, its officers, equity holders, employees, and agents, shall have no liability for any property damages or any personal injury (including, without limitation, death) to Customer's staff or employees or any third party resulting from any cause other than Onward's gross negligence or willful and intentional misconduct. To the extent Onward is liable for any damage to, or loss of, the Customer's equipment for any reason, such liability will be limited solely to the fair market value of the Customer's equipment and shall be subject to the cap set forth below.

(2) LIMITATIONS ON ALL OTHER LIABILITY.

Onward, its officers, equity holders, employees, or agents, shall have no obligation or liability to the Customer or any third party for any claim arising from or in any way related to this Agreement or Onward's services or program, whether based on contract, tort (including any theory of negligence or gross negligence), strict liability, or any other legal or equitable theory, for any alleged lost profits, lost funds, lost revenues, loss of business, loss of goodwill, replacement goods, loss of technology, loss of data, interruption or loss of use of service, or any other incidental, special, indirect or consequential damages, or punitive, exemplary damages, even if Onward is advised of the possibility of such damages, unless caused by Onward's intentional and willful misconduct. Onward shall have no liability for any losses or injury suffered arising from Customer's transmission of inaccurate, incomplete, or outdated data or information to Onward. Onward shall have no liability for any claims for attorney's fees or costs.

- (3) **ONWARD'S MAXIMUM LIABILITY.** To the extent that any claim is not barred by the agreed limitations on liability contained herein, Onward's sole and maximum aggregate liability for any claims arising from or in any way related to this Agreement, Onward's services, or Onward, including but not limited to any claims for attorney's fees or costs, shall be limited to the total amount actually paid by Customer to Onward within the twelve (12) month period preceding Customer's presentment of any claim. This shall be Customer's sole and exclusive remedy for any liabilities that are not entirely barred by the agreed limitations on liability contained herein.

- C. **REASONABLENESS.** Customer acknowledges and agrees that in connection with Onward's provision of services to Customer, Onward must necessarily rely on the accuracy and completeness of the information provided by Customer and on Customer's quality assurance and control programs. Customer further acknowledges and agrees that Onward will receive only the equivalent of a small percentage of Customer's anticipated revenue from the Medicaid programs at issue. Accordingly, Customer acknowledges and agrees that the limitations on liability contained herein are both reasonable and commercially necessary.

VI. **MISCELLANEOUS**

- A. **Force Majeure.** Onward will not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, (i) acts of God, floods, fires, hurricanes, pandemics, epidemics, viruses, and other natural occurrences; (ii) strikes, work stoppages, and accidents; (iii) acts of war or terrorism, and civil or military disturbances; (iv) acts of government, and material changes in law and regulation; and (v) loss of utilities, communications, internet, or computer services. In any such event, Onward will use commercially reasonable efforts to resume performance as soon as practicable.
- B. **Cooperation.** Customer will do and perform, or cause to be done and performed, all further acts, and will execute and deliver all other agreements, instruments, and documents, as Onward may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement.
- C. **Integration & Merger Clause.** The Parties intend this Agreement (including the exhibits) to constitute the complete, exclusive, and fully integrated statement of their agreement. As such, it is the sole expression of their agreement. They are not bound by any other alleged agreements, representations, or promises of whatsoever nature or kind. As of the Effective Date, all other agreements, written or oral, entered into prior to or contemporaneously with the execution of this agreement, are merged into and superseded by and/or excluded from this Agreement. Should the terms in the body of this Agreement conflict with any contemporaneous agreements executed between the Parties, the terms of this Agreement will govern. Should the terms in the body of this Agreement conflict any subsequently executed agreements or contracts between the Parties, the terms of this Agreement will govern unless the subsequent executed agreement specifically references this Agreement by title and date, expressly addresses the extent to which the parties intend it to be superseded, if at all, and the writing is executed as provided in Section VI.F below.

- D. Disclaimer of Reliance. The Agreement is the product of an arms-length negotiation. Each Party has been adequately and fairly represented by competent counsel in connection with the execution and delivery of this Agreement and in any and all matters relating thereto. Each Party hereby represents and warrants that it has freely and willingly executed this Agreement and that their respective consent to the terms of this Agreement was not procured, obtained, or induced by improper conduct or undue influence. The Parties hereby each expressly disclaim reliance upon any facts, promises, undertakings, or representations made regarding the subject matter of this Agreement and not contained herein, including but not limited to any estimates or projections of potential revenue. After investigation and/or consultation with such Party's attorneys and counsel of its choosing, each Party agrees that the terms of this Agreement, including but not limited to the limitations on liability, are fair, reasonable, and supported by good, valid, and adequate consideration.
- E. Binding Nature. This Agreement will be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.
- F. No Oral Modifications/No Implied Waiver. No provision of this Agreement (including the exhibits) may be waived other than by an instrument in writing signed by the Party making the waiver and expressly stating that it is waiving rights under this Agreement. No provision of this Agreement (including the exhibits) may be amended other than by an instrument in writing signed by both Parties which expressly states that it is amending this Agreement. Jeff Dominguez is the only person authorized to execute a waiver or amendment on behalf of Onward. With respect to the subject matter of this Agreement, Onward's contractual obligations may not be expanded beyond the scope of what is provided for in this Agreement (including the exhibits), nor its contractual rights under this Agreement (including the exhibits) limited or waived in the absence of a writing which post-dates this Agreement that is signed by Jeff Dominguez. Any purported waiver or amendment which fails to satisfy any of the requirements set forth in this Paragraph will be considered null and void and of no effect.
- G. Choice of Law & Venue. This Agreement will be governed by the laws of Texas, without giving effect to principles of conflicts of laws. Exclusive venue for legal action shall be in the state and federal courts located in Austin, Texas.
- H. Multiple Counterparts. This Agreement may be executed in two or more counterparts, all of which will be considered one agreement. This Agreement may be executed and delivered by the Parties by electronic methods, including email, electronic signature (e.g., DocuSign, HelloSign, and similar methods), and PDF transmission.
- I. Construction. The Parties hereto have worked closely together in drafting, negotiating, and reviewing this Agreement, and therefore agree that any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement. Whenever the context of this Agreement so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include all other genders.

- J. Reformation & Severability. If any one or more of the provisions of this Agreement, or the application of any such provision to any person, entity, or set of circumstances, shall be determined to be invalid, unlawful, or unenforceable to any extent at any time, the remainder of this Agreement and the application of such provision shall continue to be enforceable to the fullest extent permitted by law. Any invalid, unlawful, or unenforceable provision hereof shall be reformed to the extent necessary to render it valid, lawful, and enforceable in a manner consistent with the intentions of the Parties regarding such provision.
- K. Immunity. Customer expressly waives immunity from liability and suit with respect to any claims arising from or in any way related to this Agreement, Onward, or Onward's services, including claims for attorney's fees or costs associated with any breach of contract claims.
- L. Authority. Customer represents and warrants that it is authorized to enter into this Agreement and to contract to purchase the services from Onward. Customer represents and warrants that the terms of this Agreement and Customer's performance hereunder will not conflict with or constitute a default under any other agreements to which Customer is a party. Each Party represents and warrants that it is executing this Agreement in all of the representative capacities described in this Agreement and each signatory has the requisite authority and consent to execute the Agreement in all such capacities.
- M. Specific Notices. Any notice required by Section I (termination and extensions); Section III.H (request for Cost Report Services for pre-Agreement fiscal years); Section III.L(2) (notice of intent to use paper logs); and Section III.Q (notices regarding requests for Confidential Information), of this Agreement must be made in writing and delivered to the receiving Party by both (1) email and (2) mail or personal delivery as follows:

(1) To Customer Levelland Independent School District
c/o Lacey Doster, Special Education Director
704 11th Street
Levelland, TX 79336
Email: ldoster@levellandisd.net

or

(2) To Onward
c/o Jeff Dominguez
3112 Windsor Rd, A143
Austin, TX 78703
Email: jeff@onwardlearning.com

With copy to:

Dunham LLP
Isabelle Antongiorgi
919 Congress Avenue
Suite 910
Austin, Texas 78701
Email: isabelle@dunhamllp.com

Any required notice will be deemed to be delivered (whether actually received or not) when emailed and deposited with the United States Postal Service, postage prepaid, certified mail,

return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Such notices may also be given by personal delivery or courier delivery or other commercially reasonable means and will be effective when actually received. Any email or address for notice may be changed by written notice delivered as provided herein.

- N. Disclaimer of Legal Advice. In the course of providing services under this Agreement, Onward may interpret laws or regulations or their application. Onward is not a law firm and does not provide legal advice. Customer expressly acknowledges that Onward will not provide it with legal advice. Customer will not construe any communication or conduct of Onward as legal advice and will not rely on Onward in its construction or application of any law or regulation, but will make its own independent assessment. Customer agrees that it will seek the advice of its own legal counsel regarding any legal issues concerning interpretation of any laws or regulations or their application to its practices, including any issues that may arise with respect to services to be provided under this Agreement.

AGREED:

CUSTOMER LEVELLAND INDEPENDENT SCHOOL DISTRICT

By: David Foote
Title: Interim Superintendent

Date: _____

TEXAS SPECIAL EDUCATION SOFTWARE SOLUTIONS, LLC (ONWARD):

By: Jeffrey Dominguez, Managing Member

Date: _____

EXHIBIT A: FEES/PRICING

Implementation/Start-up Fee. Customer shall pay Onward an initial implementation fee of \$1,500.00 within thirty (30) days of Customer's execution of this Agreement.

Training & Maintenance Fees. Customer shall pay Onward an annual training/maintenance fee of \$5,000.00. The payment for the initial year will be due and payable in full within thirty (30) days of Customer's execution of this Agreement. For all subsequent Term Years in which Customer fails to provide written notice of termination as provided herein at least ninety (90) days prior to beginning of the Term Year (i.e. the anniversary of the Effective Date), Customer shall pay the annual training/maintenance in full at the beginning of the Term Year on the anniversary of the Effective Date. Annual training fees are not refundable, in part or in whole, due to any untimely midterm termination or if Customer refuses to accept Onward services. In addition to the annual training fee, Customer shall pay a fee of \$1,000.00 per trainer, per session for any sessions provided by Onward in excess of Customer's annual session allotment.

Interim Payments Fees. Customer shall pay Onward an annual administrative fee which is the greater of (a) the equivalent of five percent (5%) of all SHARS gross revenue (interim) for all claims processed (partially or otherwise) or submitted by Onward; or (b) a minimum annual fee of \$10,000.00. Customer shall pay Onward the first minimum annual payment of \$10,000.00 within thirty (30) days of its execution of this Agreement. For all subsequent Term Years in which Customer fails to provide written notice of termination as provided herein at least ninety (90) days prior to beginning of the Term Year (i.e. the anniversary of the Effective Date), Customer shall pay the annual minimum fee of \$10,000.00, which shall be due and payable in full at the beginning of the Term Year on the anniversary of the Effective Date. Minimum annual administrative fees are not refundable, in part or in whole, due to any untimely midterm termination or if Customer refuses to accept Onward services. Nor are the minimum annual administrative fees contingent upon Customer's receipt of revenue. Customer shall pay any additional amounts owed for any given Term Year within thirty (30) days of receipt of an invoice. It is acknowledged and understood that payments for claims processed (partially or otherwise) or submitted by Onward may be received by Customer after the Term of this Agreement. The calculation of Customer's payment obligations to Onward will be based on all revenue received by or due to Customer after the termination or expiration of this Agreement for any claims submitted or processed (partially or otherwise) by Onward. Customer's payment obligations shall survive termination or expiration of this Agreement.

Cost Report Fees:

1. **Cost Reports During the Term of Agreement.** For reports for fiscal years occurring in whole or in part during the Term of this Agreement, Customer shall pay Onward the greater of (a) the equivalent of **five percent (5%)** of all Cost Report settlements/payments due to Customer for any fiscal year which the Cost Report covered; or (b) a minimum fee of \$10,000.00 For all such Cost Reports, Customer shall pay the minimum Cost Report fee in full within thirty (30) days of Onward's completion of the Cost Report for the applicable fiscal year. If additional amounts are owed

Customer Initials

CONFIDENTIAL & PROPRIETARY

beyond the minimum fee, Customer shall pay such sums within thirty (30) days of receipt of an invoice from Onward.⁴

2. Cost Reports for Pre-Agreement Fiscal Years. For any pre-Agreement fiscal years (i.e. fiscal years which entirely predate the Effective Date) for which any Cost Report services are provided by Onward, Customer shall pay Onward the greater of (a) the equivalent of **five percent (5%)** of all Cost Report settlements/payments for the fiscal year which the Cost Report covered; or (b) a minimum fee \$10,000.00. Onward will have no contractual obligation to provide Cost Report services for pre-Agreement fiscal years if Customer does not timely provide notice of a request for such services. However, these fees will be due for any Cost Report for any pre-Agreement fiscal years for which Onward provides any services, even if Customer did not provide timely notice. Customer shall pay the minimum fee in full for any Cost Report within thirty (30) days of Onward's completion of the Cost Report. If additional amounts are owed beyond the minimum fee, Customer shall pay such sums within thirty (30) days of receipt of an invoice from Onward.
3. Post-Termination or -Expiration Cost Reports.
 - a. Notwithstanding any termination or expiration of this Agreement, Customer shall be obliged to pay Onward for Cost Reports submitted by Customer or on its behalf after the termination or expiration of this Agreement if the Cost Report relies on any claims data (i) for claims that were processed (partially or otherwise) or submitted by Onward during the Term of the Agreement; or (ii) maintained at any time in the SHARS software or applications provided by Onward.
 - b. For any Cost Reports submitted after the termination or expiration of this Agreement and covered by paragraph 3.a, Customer shall pay Onward the greater of (a) the equivalent of **five percent (5%)** of all Cost Report settlements/payments due to Customer for any fiscal year which the Cost Report covered; or (b) a minimum fee of \$10,000.00. Customer shall pay the minimum fee in full for any Cost Report within thirty (30) days of the submission of the Cost Report. If additional amounts are owed beyond the minimum fee, Customer shall pay such sums within thirty (30) days of receipt of an invoice from Onward.
 - c. The foregoing fees shall apply regardless of whether any post-termination or expiration Cost Report consulting services are actually provided by Onward or accepted by Customer.

Minimum annual Cost Report fees are not contingent upon Customer's receipt of revenue. Additionally, it is acknowledged and understood that Cost Report settlements/payments may be received by Customer after the Term of this Agreement. Calculations of the foregoing payment obligations will be based on revenue due to or received by Customer after the termination or expiration of this Agreement if (A) derived from any Cost Report for which Onward provided any

⁴ Customer may not elect to decline Onward's services for Cost Reports for fiscal years occurring in whole or in part during the Term of this Agreement and Customer shall be liable for the minimum fee even if Customer refuses said services. If Customer fails to fulfill its obligations to utilize Onward's services for the Cost Reports, Customer shall pay the minimum annual fee within thirty (30) days of the initial due date for the Cost Report for any given fiscal year and any additional amounts which may be owed within thirty (30) days of receipt of an invoice.

Customer Initials

CONFIDENTIAL & PROPRIETARY

services; or (B) if the Cost Report relies on any claims data (i) for claims that were processed (partially or otherwise) or submitted by Onward during the Term of the Agreement; or (ii) maintained at any time in the SHARS software provided by Onward, regardless of whether or not Onward provided any specific Cost Report services related to the Cost Report or Customer accepted any such services. These payment obligations shall survive termination or expiration of this Agreement.

Medicaid Administrative Claiming (MAC). For any given quarter for which Onward provides services in connection with the preparation of the MAC claims, Customer shall pay Onward as follows: (a) if the MAC quarterly claim amount is less than \$4,250, Customer will pay Onward \$250; and (b) if the MAC quarterly claim amount is equal to or greater than \$4,250, Customer shall pay Onward the equivalent of **five percent (5%)** of all revenue received by Customer from the MAC claims. The calculation of these payment obligations will be based on any quarterly MAC claim for which Onward provided services. It is acknowledged and understood that MAC revenue for MAC claims for which Onward provided services may be received by Customer after the termination or expiration of this Agreement. The calculation of these payment obligations will be based on all such revenue and these payment obligations will survive termination or expiration of this Agreement.

Paper Log Fees. Electronic submissions of documentation of services through Onward's applications or electronic import system are preferred for the sake of efficiency, timeliness, completeness, and accuracy. If any of Customer's providers, staff or contractors submit paper logs, Customer will pay Onward an annual fee of \$500.00 per year. The annual fee shall be due (a) upon receipt of notice of that Customer intends to use paper logs or (b) upon submission of any paper logs to Onward for processing during the relevant year.

Informal Review/Post-Settlement Statement Consultation Services. In the case of any Informal Review or for any Cost Report support services requested after the settlement statement has been provided, Onward will provide consultation services for \$250 per hour.

Not a Contingency Arrangement. The Parties agree that, although some fees are calculated by reference to the revenues due to the Customer, they are not contingency fees. Customer will not seek reimbursement from any government agency for such fees and such revenues will not be used as the source to pay Onward.

No Offsets. Customer acknowledges and agrees that the foregoing fees will be calculated and payable in full by Customer without deduction for any offsets, penalties, or other deductions arising from or relating to Customer's participation in the relevant reimbursement programs in prior years. Notwithstanding any termination of this Agreement which might occur prior to the anniversary of the Effective Date in any given year, no offsets, refunds, or deductions shall be made with respect to any annual or minimum fee. Annual interim minimum payments and training/maintenance fees shall be due and payable in full for any Term Year in which Customer fails to provide notice of termination at least ninety (90) days before the anniversary of the Effective Date for the Term Year and no refunds will issue due to any subsequent termination by Customer. The annual paper fee shall be due in full (a) upon receipt of notice of that Customer intends to use paper logs or (b) upon submission of any paper logs to Onward for processing during the relevant year.

Customer Initials

AGREED:

**CUSTOMER LEVELLAND INDEPENDENT
SCHOOL DISTRICT**

**TEXAS SPECIAL EDUCATION SOFTWARE
SOLUTIONS, LLC (ONWARD)**

By: David Foote

By: Jeffrey Dominguez, Managing Member

Date: _____

Date: _____

CONFIDENTIAL

Customer Initials

EXHIBIT B:

PURCHASING COOPERATIVE NOTICE

Pursuant to Paragraph III.R of this Texas School Medicaid Direct Service Agreement, Customer provides the following notices to Onward:

☐

By checking this box, Customer represents and warrants it is not purchasing Onward's services through any purchasing cooperative.

☐

By checking this box, Customer represents and warrants that it is purchasing Onward's services through the purchasing cooperative identified below:

Purchasing Cooperative: _____

Customer's Member ID: _____

Purchase Order (if applicable) _____

CUSTOMER LEVELLAND INDEPENDENT SCHOOL DISTRICT

By: David Foote
Title: Interim Superintendent

Date: _____