

## TEXAS SCHOOL MEDICAID DIRECT SERVICE AGREEMENT

This Texas School Medicaid Direct Service Agreement (“Agreement”) is entered into by and between Galveston 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 or either Customer or Onward.

Onward offers various services to assist schools in administering Medicaid programs, such as training, claims processing, statistical reporting, audit preparation 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, 2023 (“Effective Date”).
- B. Initial Term & Automatic Renewal. The initial term of this Agreement is on (1) year, effective as of the Effective Date. Unless terminated pursuant to Section I.C, upon expiration of the initial term 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.
- C. Termination. This Agreement may be terminated by either Party at any time with sixty (60) 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.
- D. 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. Customer shall remain obligated to pay for all services in accordance with Exhibit A and III.P, even if amounts due are based on revenue or settlement payments received after termination or expiration of this Agreement. With respect to Section IV, the limited license granted to Customer will terminate upon the expiration or termination of this Agreement as provided therein, 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 system or the paper logs.
- D. Onward SHARS Training: Onward will coordinate with Customer and provide one or more live SHARS training session(s) to the Customer to train providers on the use of the software and the processes for performing under this Agreement. This training may take place either onsite at the Customer's location or via remote, internet-based access, a matter to be determined in Onward's sole discretion. Customer agrees that it will require all providers and other employees or contractors who perform services related to Customer's SHARS program to attend the SHARS training session(s) and will make all reasonable efforts to secure said employees' attendance. With respect to training sessions beyond the first session, Onward will assess the needs of the program and determine in its sole discretion whether any additional SHARS training sessions should be provided.
- 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. 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”). Onward will provide consulting services to assist Customer in its preparation of the Cost Reports in accordance with the terms set forth herein.

Customer may elect to opt out of full Cost Report services and select minimal Cost Report services by indicating this election on the form attached hereto as Exhibit C. The form must be executed and delivered to Onward on or before the Effective Date for the election of minimal Cost Report services to be effective.

- (1) Full Cost Reports services will include Onward’s management of the preparation of the Cost Report. Onward shall prepare (i) the IEP ratio; (ii) the special transportation IEP student count; and (iii) the specialized transportation one-way trip ratio. Onward shall provide audit support services and consultation services.
- (2) If Customer elects to opt out of the full Cost Report services, Onward will only provide minimal Cost Report services, which will be limited to Onward’s preparation of (i) the IEP ratio for data in the Onward system; (ii) the special transportation IEP student count for data in the Onward system; and (iii) the specialized transportation one-way trip ratio for data in the Onward system. Onward will not be responsible for retrieving data from any sources other than Onward’s SHARS software. No audit services or consultation services will be provided if Customer elects the minimal Cost Report services.
- (3) For Cost Reports related to fiscal years which pre-date this Agreement or Customer’s engagement of Onward, if Customer chooses to utilize Onward’s Cost Report services, Customer may only elect full Cost Report services and Customer will not have the option of selecting minimal Cost Report services for such reports. Customer must advise Onward of its intent to utilize Onward Cost Report services for pre-Agreement fiscal years, by indicating its choice on the form attached hereto as Exhibit C. The form must be executed and delivered to Onward on or before the Effective Date.
- (4) Notwithstanding any termination or expiration of this Agreement, Customer shall be obliged to pay Onward as provided in Exhibit A for Cost Reports to be submitted after the termination or expiration of this Agreement if the Cost Report relies on any claims data (i) for claims that were prepared (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. Customer may elect to opt out of full Cost Report services and select minimal Cost Report services for the post-termination and post-expiration reports if no later than sixty (60) days prior to expiration or termination this Agreement, Customer provides written notice to Onward of its election in accordance with Section VI.M below. If Customer fails to provide written notice in accordance with Section VI.M sixty (60) days prior to expiration or termination of this Agreement, Customer will by default elect full Cost Report services for post-termination or -expiration Cost Reports.

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 draft quarterly MAC report and deliver it to Customer for its review. Customer shall review the draft MAC report for accuracy and completion.
- (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 its cooperation and assistance. Customer hereby agrees to cooperate and assist Onward and to comply with all reasonable requests for information or assistance by Onward. 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: 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). Within five (5) business days of the Effective Date, Customer shall provide access to Onward to all of Customer's systems for purposes of integration with Onwards SHARS software, including but not limited to Customer's Student Information System (SIS), Individual Education Plan (IEP), and nursing and transportation systems. Within five (5) business days of the Effective Date, Customer hereby agrees to provide all data files exported from its systems in the format specified and requested by Onward. If Customer's vendors fail to provide Onward access, Customer will be responsible for securing the data in the appropriate format from the vendor and providing it to Onward.
- 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) Elections:
- a) On or before the Effective Date, Customer shall elect full Cost Report services or elect to opt out by completing and delivering the form attached hereto as Exhibit C. On or before the Effective Date, Customer will also indicate whether it wishes to use Onward’s full Cost Report services for pre-Agreement fiscal years by completing Exhibit C. If Customer fails to complete and deliver Exhibit C on or before the Effective Date, it will by default (a) elect full Cost Report services with respect any fiscal year for which any services are provided by Onward pursuant to this Agreement; and (b) elect not to utilize Onward for any Cost Reports for pre-Agreement fiscal years.
- b) Notwithstanding any termination or expiration of this Agreement, Customer shall be obliged to pay Onward as provided in Exhibit A for Cost Reports to be submitted after the termination or expiration of this Agreement if the Cost Report relies on any claims data (i) for claims that were prepared (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. Customer may elect to opt out of full Cost Report services and select minimal Cost Report services for the post-termination and post-expiration reports if no later than sixty (60) days prior to expiration or termination of this Agreement, Customer provides written notice to Onward of its election in accordance with Section VI.M below. If Customer fails to provide written notice in accordance with Section VI.M sixty (60) days prior to expiration or termination of this Agreement, Customer will by default elect full Cost Report services for post-termination or -expiration Cost Reports.
- (2) Regardless of its elections, Customer shall provide all financial reports, information, and documents requested by Onward for any Cost Report no later than 30 days prior to the due date for any report. Customer shall also timely complete any applicable

state-mandated training, e.g. RMTS and Cost Reports trainings. Customer shall provide all ratio reports for any pre-Agreement fiscal years no later than December 1. Customer will promptly notify and forward to Onward all desk review communications.

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 and who 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 to Onward 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 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 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 said annual fee for any given year in which paper logs are utilized by Customer.

(3) If Customer elects to use 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.

- (4) The 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 the documentation 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 30 days of the service.

M. Training:

- (1) Onward Training. Customer will require all providers and other employees who perform services related to Customer's SHARS or MAC programs to attend any training sessions which may be offered by Onward and will make all reasonable efforts to secure employee attendance. Customer will require any subsequently added staff member or employee to be trained by a staff member or employee who attended the Onward SHARS or MAC training session.
- (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 all training materials and training labs provided by Onward to the District Manager.

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 Education Rights and Privacy Act (FERPA) and authorize Onward's receipt and use of student data so that Onward may perform the 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 is accurate and, complete, and current. Customer acknowledges that in performing its services, 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 is 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 it is 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. Fee: Customer agrees to pay Onward in accordance with fees set forth in Exhibit A. Customer will pay all 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 apply to any claims or reports for which Onward has provided any services, or which rely on claims data processed by Onward or stored on the SHARS software provided as set forth in Exhibit A. It is acknowledged and understood that settlements/payments on which Onward is entitled to payment may be 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") constitutes 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 to a 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 requests. 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 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 and 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 limited license to Customer. Customer may use the software exclusively in connection with the provision of services by Onward pursuant to this Agreement. Customer shall not sell, copy, or redevelop the software, or any component thereof. Customer may only use the software, or any portion 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 and software 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.**

- a. 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 subject to the cap set forth below.
- b. 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 Customers' transmission of inaccurate, incomplete, or outdated data or information to onward.

- c. **ONWARD'S MAXIMUM LIABILITY.** To the extent that any claim is not barred by the limitations on liability contained herein, Customer's sole and exclusive remedy and 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, 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.
- C. **REASONABLENESS.** Customer acknowledges and agrees that in connection with Onward's provision of services to Customer, it 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 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.** Notwithstanding anything to the contrary in this Agreement, 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, or computer services; *provided* that in any such event Onward will use commercially reasonable efforts to resume performance as soon as practicable.
- B. **Cooperation.** Each Party 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 the other Party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement.
- C. **Integration Clause.** This Agreement (together with the exhibits, attachments, schedules, and instruments referenced in the Agreement) contain the entire understanding of the Parties with respect to the subject matter addressed herein. Any prior agreements, representations, promises, or negotiations regarding the subject matter of this Agreement and not expressly set forth herein are not binding on the Parties.
- 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 provision of this Agreement may be waived other than by an instrument in writing signed by the Party making the waiver. No provision of this Agreement may be amended other than by an instrument in writing signed by both Parties.
- 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.
- L. Authority. 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.C (termination); Section II.H(4) and III.H(1)(b) (notices regarding elections for post-termination and post-expiration Cost Reports; 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 address Party by both email and by mail or personal delivery to the following:

(1) Customer Galveston ISD  
Jeff Martello, Chief Financial Officer  
3904 Avenue T  
Galveston, TX 77550  
[jeffreymartello@gisd.org](mailto:jeffreymartello@gisd.org)

or

(2) Onward  
c/o Jeff Dominguez  
8104 Billy Bonney Ct.  
Austin, Texas 78749  
Email: [jeff@onwardlearning.com](mailto:jeff@onwardlearning.com)

With copy to:

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

[Signature page to follow]

AGREED:

**CUSTOMER GALVESTON ISD**

\_\_\_\_\_

By: Jeff Martello

Title: Chief Financial Officer

Date: \_\_\_\_\_

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

\_\_\_\_\_

By: Jeffrey Dominguez, Managing Member

Date: \_\_\_\_\_

## **EXHIBIT A: FEES/ PRICING**

**Interim Payments Fee:** Customer shall pay Onward an administrative fee of five percent (5%) of all SHARS gross revenue (interim) for all claims prepared or submitted (partially or otherwise) by Onward. It is acknowledged and understood that payments for claims prepared or submitted by Onward may be received by Customer after the term of this Agreement. Customer's payment obligations to Onward will apply to all revenue received by Customer after the termination or expiration of this Agreement for any claims submitted or prepared (partially or otherwise) by Onward. Customer's payment obligations survive termination or expiration of this Agreement.

### **Cost Report Fees:**

1. Other Cost Reports During Term of Agreement.
  - a. If Customer does not opt out of full Cost Report services for reports to be submitted during the term of this Agreement as set forth in Exhibit C, Customer shall pay Onward five percent (5%) of all Cost Report settlements/payments received for any fiscal year which a Cost Report covered.
  - b. If Customer opts out of full Cost Report services and elects to receive only minimal Cost Report services for reports submitted during the term of this Agreement as set forth in Exhibit C, Customer shall pay Onward one percent (1%) of all Cost Report settlements/payments received for any fiscal year which a Cost Report covered.
2. Cost Reports for Pre-Agreement Fiscal Years. For the Cost Report services for 2022, Customer shall pay Onward one percent (1%) of all Cost Report settlements/payments for the 2022 fiscal year. For any other pre-Agreement fiscal years for which any Cost Report services are provided by Onward, Customer shall pay Onward five percent (5%) of all Cost Report settlements/payments for the fiscal year which the Cost Report covered.
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 to be submitted after the termination or expiration of this Agreement if the Cost Report relies on any claims data (i) for claims that were prepared (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.
  - b. For any Cost Reports submitted after the termination or expiration of this Agreement, if Customer fails to timely opt out of full Cost Report services as provided in Sections II.H(4) and III.H(1)(b) and VI.M, Customer shall pay Onward five percent (5%) of all Cost Report settlements/payments received for any fiscal year which a Cost Report covered.
  - c. For any Cost Reports submitted after the termination or expiration of this Agreement, if Customer timely gives written notice of its election for minimal Cost Report services as provided in Sections II.H(4) and III.H(1)(b) and VI.M, Customer shall pay Onward five percent (5%) of all Cost Report settlements/payments received for any fiscal year which a Cost Report covered.
  - d. The foregoing fees shall apply regardless of whether any post-termination or expiration Cost Report services are actually provided or accepted by Customer.

It is acknowledged and understood that Cost Report settlements/payments may be received by Customer after the term of this Agreement. These payment obligations will apply to revenue received by Customer after the termination or expiration of this Agreement if (A) derived from any Cost Report for which Onward provided any services; or (B) if the Cost Report relies on any claims data (i) for claims that were processed 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. These payment obligations 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 five percent (5%) of all revenue received by Customer. These payment obligations will apply to any quarterly MAC claim for which Onward provided services pursuant to this Agreement. It is acknowledged and understood MAC revenue for MAC claims for which Onward provided services may be received by Customer after the termination or expiration of this Agreement. These payment obligations will apply to 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 \$6,000 per year for the additional expense and time incurred in processing paper logs. 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.

**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.

AGREED:

**CUSTOMER GALVESTON ISD**

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

\_\_\_\_\_  
By: Jeff Martello  
Title: Chief Financial Officer

\_\_\_\_\_  
By: Jeffrey Dominguez, Managing Member

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**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 GALVESTON ISD**

\_\_\_\_\_  
By: Jeff Martello

Title: Chief Financial Officer

Date: \_\_\_\_\_

**EXHIBIT C: COST REPORT ELECTIONS FORM**

Pursuant to Sections II.H and III.H of the Parties' Texas School Medicaid Direct Service Agreement, by checking the relevant box below, Customer hereby makes the following elections with respect to Cost Reports for fiscal years in which Onward has provided services for the entire fiscal year:

Customer hereby confirms that it will receive full Cost Report services as provided in Section II.H(1) for the fee set forth in Exhibit A

Customer hereby elects to opt out of full Cost Report services and will receive only minimal Cost Report services as provided in Section II.H(2) for the fee set forth in Exhibit A

**PRE-AGREEMENT FISCAL YEARS**

By checking this box, Customer hereby elects to receive full Cost Report services from Onward for the fiscal year prior to Customer's engagement of Onward for the fee set forth in Exhibit A.

This form be must filled out, executed, and delivered to Onward on or before the Effective Date of the Agreement. If Customer fails to complete and deliver this form on or prior to the Effective Date, Customer will by default (a) elect full Cost Report services for any fiscal year in which Onward provide services pursuant to this Agreement; and (b) elect not to receive any Cost Report services from Onward for any fiscal year which pre-dates this Agreement.<sup>1</sup>

**CUSTOMER GALVESTON ISD**

\_\_\_\_\_  
By: Jeff Martello

Title: Chief Financial Officer

Date: \_\_\_\_\_

\_\_\_\_\_  
<sup>1</sup> Elections for post-termination or post-expiration Cost Reports are not governed by this form. Customer may elect to opt out of full Cost Report services and select minimal Cost Report services for the post-termination and post-expiration reports if no later than sixty (60) days prior to expiration or termination this Agreement, Customer provides written notice to Onward of its election in accordance with Section VI.M of this Agreement. If Customer fails to provide written notice in accordance with Section VI.M sixty (60) days prior to expiration or termination of this Agreement, by default Customer will elect full Cost Report services for post-termination or -expiration Cost Reports.