

# AGREEMENT

**THIS AGREEMENT** is made and entered into as of this 1st day of July, 2009, by and between

**THE School Board of Brevard County, FLORIDA**  
(hereinafter referred to as “BPS”),  
a body corporate and political subdivision of the State of Florida,  
whose principal place of business is  
2700 Judge Fran Jamieson Way, Viera, FL 32949.

and

**THE SCHOOL BOARD OF SEMINOLE COUNTY, FLORIDA**  
(hereinafter referred to as “SBSC”),  
whose principal place of business is  
400 East Lake Mary Boulevard, Sanford, Florida, 32773.

**WHEREAS**, both School Boards have a common and concurrent interest in providing data and sharing statistics for the purpose of being reimbursed for Medicaid Administrative Claiming activities.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to establish and maintain a process to determine statistically valid time sample results with approved staff as a function of the Medicaid Administrative Claiming reimbursement process. Both School Boards shall be subject to the following terms:

## ARTICLE 1 - RECITALS

1.01 **Recitals.** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

## ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** The term of this Agreement shall commence on July 1, 2009 and conclude on June 30, 2010, unless terminated as provided herein.

2.02 **Responsibilities of BPS**

- 2.02.1 Provide a pool of employee names who are eligible to be sampled based upon selected job codes whose incumbents have the potential to engage in Administrative Claiming Activities. Only certain staff positions are to be included in the time study process upon mutual concurrence among all parties participating in this agreement and upon the review and approval of AHCA.
- 2.02.2 Distribute and collect random moment sample forms, as provided by SBSC during three fiscal quarters in the school year.
- 2.02.3 Code the status of each observation form to effectively and accurately record the performance of school district personnel activities as delineated in the Medicaid School District Administrative Claiming Guide.
- 2.02.4 Provide periodic training to **BPS** employees who will be responsible for coding the quarterly activities of district personnel delineated on the sample forms. Only trained district coders will be authorized to participate in the program.
- 2.02.5 Send quarterly sample forms to SBSC for activity calculations
- 2.02.6 Pay the SBSC prorated actual and reasonable costs among all districts participating based upon the number of sample forms processed during the quarter. The minimum base charge is \$9.00 per form, which will include the cost of paper, printing, postage and the hourly rate for clerical processing during the contract period. This cost will be reviewed annually by all districts participating in the sample pool.
- 2.02.7 BPS shall maintain and be able to produce requested records and materials for Agency for Health Care Administration audits.
- 2.02.8 Any recoupment of funds due to an audit exception, deferral or denial deemed appropriate by the Agency for Health Care Administration (AHCA) will be the responsibility of the BPS, even after withdrawal from the program.

2.03 **Responsibilities of SBSC**

- 2.03.1 Pursuant to this agreement, SBSC will be acting solely as a data manager and data processor for **BPS**.
- 2.03.2 Annually collect school district calendars and scheduled work hours from **BPS**.
- 2.03.3 Quarterly collect personnel rosters from **BPS** and perform data entry relative to creating a sample pool of individuals.
- 2.03.4 Quarterly generate, package and mail the prorated share of random moment sample forms to **BPS**.

2.03.5 Quarterly review all returned sample forms for completion. Ten percent of all forms will be reviewed for the purposes of quality control. In instances where there is a disagreement on the coding of a particular sample form by the district coder, AHCA will be contacted to ensure the consistency of activity selection.

2.03.6 Quarterly calculate all the data generated from scanning and return the statistics to all participating districts for individual claim generation.

#### 2.04 **Mutual Agreements**

Independent contractors: SBSC and BPS are independent contractors. Nothing contained herein shall constitute or designate either party's employees or agents as agents or employees of the other party. Each party remains solely responsible for its own cost report and claim that will be submitted to the Agency for Health Care Administration (AHCA).

2.05 **Indemnification.** Each party agrees to be fully responsible for its acts of negligence, or its agent's acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

### **ARTICLE 3 – GENERAL CONDITIONS**

3.01 **No Waiver of Sovereign Immunity.** Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Non-Discrimination.** The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, or disability.

3.04 **Termination.** This Agreement may be canceled with or without cause by “\_\_\_\_\_” during the term hereof one-quarter's prior written notice to the other parties of its desire to terminate this Agreement.

3.05 **Records.** Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

3.06 **Entire Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.07 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.08 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.09 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

3.10 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.11 **Governing Law.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the **Eighteenth** Judicial Circuit of **Brevard** County, Florida.

3.12 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.13 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from **BPS**.

3.14 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense (“Force Majeure”). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.15 **Place of Performance.** All obligations of **BPS** under the terms of this Agreement are reasonably susceptible of being performed in **Brevard** County, Florida and shall be payable and performable in **Brevard** County, Florida.

3.16 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

3.17 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

- |                 |   |
|-----------------|---|
| To BPS:         | Superintendent of Schools<br>The School Board of Brevard County, Florida<br>2700 Judge Fran Jamieson Way<br>Viera, FL 32940-6601                |
| With a Copy to: | Eva Lewis, Director, ESE Program Support<br>The School Board of Brevard County, Florida<br>2700 Judge Fran Jamieson Way<br>Viera, FL 32940-6601 |
| To SBSC         | Superintendent of Schools<br>The School Board of Seminole County, Florida<br>400 East Lake Mary Boulevard<br>Sanford, Florida 32773             |
| With a Copy to: | Britt Smith<br>The School Board of Seminole County, Florida<br>400 East Lake Mary Boulevard<br>Sanford, Florida 32773                           |

3.18 **Captions.** The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

3.20 **Excess Funds.** Any party receiving funds paid by **BPS** under this Agreement agrees to promptly notify **BPS** of any funds erroneously received from **BPS** upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to **BPS** with interest calculated from the date of the erroneous payment or overpayment is noticed to the School Board of Seminole County Public Schools subject to confirmation of the overpayment by both parties. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by **BPS**.

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on the date first above written.

**FOR BPS**

(Corporate Seal)

**THE SCHOOL BOARD OF BREVARD  
COUNTY, FLORIDA**

ATTEST:

By \_\_\_\_\_  
School Board Chair

\_\_\_\_\_  
Superintendent of Schools

Approved as to Form:

\_\_\_\_\_  
School Board Attorney

**FOR SBSC**

(Corporate Seal)

**THE SCHOOL BOARD OF SEMINOLE  
COUNTY, FLORIDA**

ATTEST:

By \_\_\_\_\_  
Diane Bauer, Chairman

\_\_\_\_\_  
Bill Vogel, Superintendent of Schools

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness