

Agreement for Perris Union High School District - Red Rover

Perris Union High School District

155 E 4TH ST
PERRIS, CA 92570-2124

Sylvia Hinojosa

sylvia.hinojosa@puhsd.org

Reference: 20230222-135827127

Quote expires: March 24, 2023



Red Rover Technologies, LLC

559 W. Uwchlan Ave
Suite 200
Exton PA 19341

Prepared by: Seth Gurss

sgurss@redroverk12.com

Subscription Fees	QUANTITY		PRICE	TOTAL
Employees Requiring a Sub	900	monthly	\$1.25	\$1,125.00
Employees Not Requiring a Sub	400	monthly	\$0.62	\$248.00
Employees Extra Duty	0	monthly	\$0.62	\$0.00
YEAR ONE ONLY FEES				TOTAL
Implementation	1		\$2,000.00	\$2,000.00

Total Annual Subscription: **\$16,476.00**

Fee Terms:

Red Rover agrees to waive any usage costs for '22-'23 School Year. Implementation cost to be invoiced upon approval unless client requests delay for after fiscal year start.

Subscription year: July 1 to June 30

Invoicing details: Initial invoice will be prorated to the start of the subscription year. Renewal invoices will be based on the subscription year.

Subscription type: Annual subscription automatically renews each year, unless notice is given up to 30 days after the subscription start date. Renewal year employee counts are pulled from the Red Rover system within 120 days of the renewal subscription start date. This "renewal" does NOT lock the customer in for another year, as the agreement can still be cancelled by customer, with or without cause, and any owed monies will be returned. This subscription will not need to be re-signed by customer or company, unless requested by either party.

Price lock term: Rates are locked for the first three (3) subscription years, with a price increase applied that is not to exceed the US Bureau of Labor Statistics, All Item CPI Index, posted each March.

Signature

Before you sign this quote, an email must be sent to you to verify your identity. Find your profile below to request a verification email.

Sylvia Hinojosa
sylvia.hinojosa@puhsd.org

Verify to sign

Daniel OShaughnessey
dani@redroverk12.com

Verify to sign

(Master Agreement Terms & Conditions, Pages 2-5)

The Provider provides the Customers access to the Services, which include absence management and substitute placement service, and the Customer desires to access the Services, and Provider desires to provide Customer access to the Services, subject to the terms and conditions of this Agreement. Therefore, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

- A. **"Aggregated Statistics"** means data and information related to Customer's use of the Services that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.
- B. **"Authorized User"** means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Services has been purchased hereunder.
- C. **"Customer Data"** means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services.

- D. **“Documentation”** means Provider’s user manuals, handbooks, and guides relating to the Services provided by Provider to Customer either electronically or in hard copy form and end user documentation relating to the Services available at www.redroverk12.com.
- E. **“Fees”** mean the amount stated on Provider’s invoice to Customer for an annual subscription of the Services.
- F. **“Provider IP”** means the Services, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP includes Aggregated Statistics and any information, data, or other content derived from Provider’s monitoring of Customer’s access to or use of the Services, but does not include Customer Data.
- G. **“Services”** mean the software-as-a-service offering by Provider for the monitoring of school absences and substitute placement.

2. Access and Use.

- A. Provision of Access. Subject to and conditioned on Customer’s payment of Fees and compliance with all other terms and conditions of this Agreement, Provider hereby grants Customer a non-exclusive, non-transferable right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer’s internal use. Provider shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the Services.
- B. Documentation License. Subject to the terms and conditions contained in this Agreement, Provider hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use the Documentation during the Term solely for Customer’s internal business purposes in connection with its use of the Services.
- C. Use Restrictions. Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; or (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.
- D. Reservation of Rights. Provider reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP.
- E. Suspension. Notwithstanding anything to the contrary in this Agreement, Provider may temporarily suspend Customer’s and any Authorized User’s access to any portion or all of the Services if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Customer’s or any Authorized User’s use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Customer, or any Authorized User, is using the Provider IP for fraudulent or illegal activities; or (D) Customer fails to make a timely payment due under the Agreement. Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.
- F. Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, Provider may monitor Customer’s use of the Services and collect and compile Aggregated Statistics. As between Provider and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Provider. Customer

acknowledges that Provider may compile Aggregated Statistics based on Customer Data input into the Services. Customer agrees that Provider may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that the Provider's use of the Aggregated Statistics does not identify Customer or Customer's Confidential Information.

3. Customer Responsibilities. Customer is responsible and liable for all uses of the Services and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions.

4. Support. The access rights granted hereunder entitle Customer to remote support services. The Provider will provide onsite support or training for the fee of \$2,500 per day plus the payment of Provider's direct costs such as transportation, airfare, hotel, and meals.

5. Payment of Fees. Customer shall pay Provider the Fees within forty-five (45) days of the invoice date and any Fee invoices not paid by September 1st of the year issued are past due. Training fees and direct costs for onsite support or training will be invoiced separately to the Customer and will be due thirty (30) days from the invoice date. Customer shall reimburse Provider for all reasonable costs incurred by Provider in collecting any late payments, including attorneys' fees, court costs, and collection agency fees. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer.

6. Confidential Information. From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information that is marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire three (3) years from the date first disclosed to the receiving Party. Customer name may be used by Provider for marketing purposes unless written expressed notice is given.

7. Intellectual Property Ownership.

- A. Provider IP. Customer acknowledges that, as between Customer and Provider, Provider owns all right, title, and interest, including all intellectual property rights, in and to the Provider IP.
- B. Customer Data. Provider acknowledges that, as between Provider and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Provider a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Provider to provide the Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics.

- C. Privacy Policy & Data Security. Red Rover will abide by its policy, as set forth in Exhibit A (Data Security) Exhibit B (Privacy Policy) with respect to the security and privacy of its Customer's data within the Red Rover Product(s). You will also find Red Rover's respective policies at www.redroverk12.com/privacy-policy and www.redroverk12.com/technology-promise.
- D. Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback.

8. Limited Warranty and Warranty Disclaimer.

- A. Provider warrants that the Services will conform in all material respects to the Documentation. Provider does not make any representations or guarantees regarding uptime or availability of the Services. The remedies set forth within this Agreement are Customer's sole remedies and Provider's sole liability under the limited warranty set forth in this Section 8(a).
- B. THE PROVIDER IP IS PROVIDED "AS IS" AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

9. Indemnification.

- A. To the extent permitted by law, each Party shall indemnify, defend, and hold harmless the other Party from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party's US intellectual property rights, provided that the indemnified-Party promptly notifies indemnifying-Party in writing of the claim, cooperates with indemnifying-Party, and allows indemnifying-Party sole authority to control the defense and settlement of such claim.
- B. If such a claim is made or appears possible, indemnified-Party agrees to permit indemnifying-Party, at indemnifying-Party's sole discretion, to (i) modify or replace the Services, or component or part thereof, to make it non-infringing, or (ii) obtain the right for indemnified-Party to continue use. If indemnifying-Party determines that neither alternative is reasonably available, indemnifying-Party may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to indemnified-Party.
- C. As to the Provider, this Section 9 will not apply to the Provider to the extent that the alleged infringement arises from Customer's: (i) use of the Services in combination with data, software, hardware, equipment, or technology not provided by indemnifying-Party or authorized by Provider in writing; (ii) modifications to the Services not made by Provider; or (iii) Customer Data.
- D. Sole Remedy. THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. IN NO EVENT WILL PROVIDER'S LIABILITY UNDER THIS SECTION 9 EXCEED THE FEES DUE FROM CUSTOMER TO PROVIDER FOR THE SCHOOL CALENDAR YEAR DURING WHICH THE INDEMNIFIED CLAIM AROSE.

10. Limitations of Liability. IN NO EVENT WILL PROVIDER BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a)

CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE FEES DUE FROM CUSTOMER TO PROVIDER FOR THE SCHOOL CALENDAR YEAR DURING WHICH THE CLAIM AROSE.

11. Term and Termination

- A. Term. The initial term of this Agreement begins on Effective Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect until June 30th following the Effective Date (the "**Initial Term**"). This Agreement will automatically renew for (5) five additional successive one (1) year terms starting on July 1st of each year unless the Customer provides the Provider written notice of non-renewal prior to July 31st of that year (each a "**Renewal Term**" and together with the Initial Term, the "**Term**").
- B. Termination. In addition to any other express termination right set forth in this Agreement: (i) Provider may terminate this Agreement, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder and such failure continues after Provider's delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(c) or Section 6; or (ii) either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach.
- C. Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Provider IP. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund.
- D. Survival. This Section 11(d) and Sections 1, 5, 6, 7, 8(b), 9, 10, and 12 survive any termination or expiration of this Agreement. Further, the Provider shall store and retain the Customer Data and supply to Customer the Customer Data specific to absences for a period of up to two (2) years after the expiration or termination of the Agreement. The Provider shall make such Customer Data available upon receipt of a written request from the Customer and agreement to a reasonable hourly rate charge for the Provider to capture and provide the requested Customer Data. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

12. Miscellaneous.

- A. Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter.
- B. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.
- C. Force Majeure. In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to

the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

- D. Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- E. Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- F. Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of California. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder may be instituted in the federal courts of the United States within the State of California, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.
- G. Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Provider. Provider may assign this Agreement in its entirety, upon notice to Customer but without Customer's consent, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of Provider's business or assets. Any purported assignment or delegation in violation of this Section will be null and void. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.
- H. Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Section 2(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.
- I. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.