



Board Office Use: Legislative File Info.	
File Number	18-2119
Introduction Date	10-10-2018
Enactment Number	18-1651
Enactment Date	10/24/18 os

## Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Marcus Battle, Chief Business Officer  
Susan Beltz, Chief Technology Officer 

**Board Meeting Date** October 10, 2018

**Subject** Approval of Licensed Product and Services Agreement between PowerSchool Group LLC Successor-in-interest to SunGard Public Sector LLC and Oakland Unified School District

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**Action Requested** Approval of Licensed Product and Services Agreement between PowerSchool Group LLC Successor-in-interest to SunGard Public Sector LLC and Oakland Unified School District for the period of 10/11/2018 through 6/30/2019 in the amount of \$21,848.00.

### Background

*A one paragraph explanation of why the consultant's services are needed.*

The Oakland Unified School District, on August 28, 2001, entered into the Application Support Provider (ASP) Addendum designating SunGard Bi Tech LLC to be the "Application Services Provider" providing software to the Oakland Unified School District remotely.

On October 26, 2016, the Oakland Unified School District entered into an Agreement with the Alameda County Office of Education for the latter to provide Escape School Business Software and System Support Services



(Legistar File ID #16-2237). This system launched on July 1, 2018 and has replaced the aforementioned SunGard system. However, the OUSD Fiscal Services team requires continued access to the SunGard system through December 31, 2018 to fully close and complete all reporting related to the 2017-18 fiscal year and complete the annual audit.

After December 31, 2018, continued access to the SunGard system is needed to support any future multi-year audits and legacy data needs.

### **Discussion**

*One paragraph summary of the scope of work.*

The current proposal addresses this need for ongoing read-only access to the SunGard system through a one-time professional services project to bring the SunGard system on premises, where it will be hosted within our OUSD data centers. This includes hardware and operating system configuration, along with database and software configuration. Once the project is completed, no ongoing licensing or hosting services costs will be incurred for the SunGard system. Ongoing professional services and support are not currently anticipated, but may be purchased separately on a paid hourly basis through PowerSchool Group LLC in the event that any emergency needs arise.

### **Recommendation**

Approval of Licensed Product and Services Agreement between PowerSchool Group LLC Successor-in-interest to SunGard Public Sector LLC and Oakland Unified School District for the period of 10/11/2018 through 6/30/2019 in the amount of \$21,848.00.

### **Fiscal Impact**

\$21,848.00 from Funding Resource  
010-0000-0-0000-7700-5846-999-9860-9994-9999-99999: General Purpose (GP), Data Processing, License Agreements, Districtwide

### **Attachments**

Licensed Product and Services Agreement

Proposal and Pricing Summary for BusinessPLUS Archive Solution





**CONTRACT JUSTIFICATION FORM**  
**This Form Shall Be Submitted to the Board Office With Every Consent Agenda Contract.**

**Legislative File ID No.** 18-2119

**Department:** Technology Services Department

**Vendor Name:** PowerSchool Group LLC Successor-in-interest to SunGard Public Sector LLC

**Contract Term:** Start Date: October 11, 2018 End Date: June 30, 2019

**Annual Cost:** \$ 21,848.00

**Approved by:** Susan Beltz

**Is Vendor a local Oakland business?** Yes \_\_\_ No X

**Why was this Vendor selected?**

Sungard provided the IFAS (BusinessPlus) system to the Oakland Unified School District since 2001. On October 26, 2016, the Oakland Unified School District entered into an Agreement with the Alameda County Office of Education for the latter to provide Escape School Business Software and System Support Services (Legistar File ID #16-2237). This system launched on July 1, 2018 and has replaced the aforementioned IFAS system. However, the OUSD Fiscal Services team requires continued access to the SunGard system through December 31, 2018 to fully close and complete all reporting related to the 2017-18 fiscal year and complete the annual audit, along with ongoing access to the SunGard system to support any future multi-year audits and legacy data needs. The current proposal addresses this need for ongoing read-only access to the SunGard system through a one-time professional services project to bring the SunGard system on premises, where it will be hosted within our OUSD data centers.

**Summarize the services this Vendor will be providing.**

PowerSchool Group LLC will provide hardware and operating system configuration, along with database and software configuration.

**Was this contract competitively bid?** Yes \_\_\_ No X

If No, answer the following:

1) How did you determine the price is competitive?

The Oakland Unified School District used the IFAS system since 2001, and has now transitioned to the Escape system on July 1, 2018. PowerSchool Group LLC is the only vendor who can provide an on-premises version of our hosted SunGard system to support ongoing needs.

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$ 90,200 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts [requires Board resolution declaring an emergency]
- Technology** contracts
  - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$ 90,200 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
  - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
  - Western States Contracting Alliance Contracts (WSCA)
  - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**



## PowerSchool Comprehensive Solution

To assist you through the implementation of BusinessPLUS, the PowerSchool **Technical Solutions Group ("TSG")** is pleased to offer a wide range of hardware and software, designed to meet the needs specific to your district. TSG is comprised System Engineers that are well versed in the latest technologies and how they interact with PowerSchool platforms. As part of the PowerSchool Comprehensive Solution, TSG provides the following key offerings:

- Hardware sized and scaled to your current and anticipated needs
- All third-party software required to support your PowerSchool platform deployment
- Enterprise-level remote services by TSG Systems Engineers

PowerSchool TSG is an authorized reseller for Dell, HP, Microsoft, VMware, and Symantec products and is authorized to resell these products to the K-12 public sector. PowerSchool TSG has special arrangements with these manufacturers, which allow PowerSchool TSG to sell these hardware and third-party software products to PowerSchool customers at reduced costs. PowerSchool TSG provides this offering to reduce hardware and third-party software costs associated with implementing PowerSchool platforms in an effort to provide our customers with a more cost-effective solution.

The PowerSchool Comprehensive Solution offering is a complete out of the box solution that contains new Dell or HPE PowerSchool BusinessPLUS Archive Server with a 3 Year hardware warranty shipped to your location already preinstalled with Microsoft Windows Server 2012 R2 Standard Edition operating system and Microsoft SQL Server 2016 Standard Edition application. In addition to this your existing PowerSchool hosted Informix data will be utilized for the migration to Microsoft SQL as part of your new self-hosted BusinessPLUS Archive server.

### Hardware and Third-Party Software

The hardware and third-party software listed below are **included with the PowerSchool Comprehensive Solution**.

BusinessPLUS Database / Application Server	Qty.	Item Price	Total Price
<b>Dell PowerEdge R640 Server - 1U RACK Chassis</b> 2.5" Chassis with up to 8 Hard Drives and 3PCIe slots <b>(Qty 2)</b> Intel® Xeon® Bronze 3106 1.7G, 8C/8T, 9.6GT/s, 11M Cache, No Turbo, No HT (85W) DDR4-2133 <b>16GB Memory</b> (2x8GB RDIMM, 2668MT/s, Dual Rank) PERC H730P RAID Controller, 2GB NV Cache, Minicard <b>(Qty 6)</b> 800GB 10K RPM SAS 12Gbps 3.5in Hot-plug Hard Drive - <b>RAID 10</b> Broadcom 5720 QP 1Gb Network Daughter Card DVD ROM, SATA, Internal iDRAC9, Express Dual, Hot-plug, Redundant Power Supply (1+1), 750W <b>(Qty 2)</b> NEMA 3-15P to C14 Wall Plug, 125 Volt, 15 AMP, 10 Feet (3m), Power Cord <b>(4 Post)</b> ReadyRails™ Sliding Rails With Cable Management Arm / Standard Bezel <b>3 Years Basic Hardware Warranty Repair: 5x10 HW-Only, 5x10 NBD Onsite</b> *Utilizes Microsoft Windows Server 2012 R2 Standard Edition Operating System. *Utilizes Microsoft SQL Server 2016 Standard Edition Application.	1		Customer Provided



Infrastructure Components	Qty.	Item Price	Total Price
Patch cable - RJ-45 (M) - RJ-45 (M) - UTP - CAT 6 - 7 ft - Blue	2		Customer Provided
Microsoft Software	Qty.	Item Price	Total Price
Microsoft Windows Server Software (Downgraded to Windows 2012 R2)			
Windows Server 2016 Standard - License - 2 cores - MOLP: Academic	8		Customer Provided
Windows Server 2016 - License - 1 CAL - MOLP: Academic	5		Customer Provided
Microsoft SQL Server Software (Downgraded to SQL 2016)			
SQL Server 2017 Standard - License - 1 server - OLP: Academic	1		Customer Provided
SQL Server 2017 Standard - License - 1 user CAL - OLP: Academic	5		Customer Provided
Third-Party Software	Qty.	Item Price	Total Price
Microfocus NetExpress - Test License Fee	1	\$3,869.00	\$3,869.00
Microfocus NetExpress - Test Annual Maintenance Fee	1	\$609.00	\$609.00
MKS SysAdmin Toolkit/Connectivity Perpetual License Fee	1	\$1,500.00	\$1,500.00
MKS SysAdmin Toolkit/Connectivity Annual Maintenance Fee	1	\$750.00	\$750.00

## Professional Services

The Professional Services listed below are **included with the PowerSchool Comprehensive Solution** and will be delivered **remotely** by a TSG Systems Engineer.

Integration Design
<ul style="list-style-type: none"> <li>Design and review of the desired deployment including infrastructure readiness, network topology, and project related deliverables and schedules</li> </ul>
Hardware Configuration
<ul style="list-style-type: none"> <li>Apply applicable BIOS and firmware updates for all hardware components</li> <li>Configure optimal server BIOS settings</li> </ul>
Microsoft Windows Server Configuration
<ul style="list-style-type: none"> <li>Install Microsoft Windows Server 2012 R2 Standard Edition as the operating system for the BusinessPLUS Server(s)</li> <li>Apply applicable Microsoft Windows Server operating system patches and updates</li> <li>Configure Microsoft Windows Server environment variables specific to BusinessPLUS / Microsoft SQL for project related server(s)</li> </ul>
Microsoft SQL Server Configuration
<ul style="list-style-type: none"> <li>Install / configure Microsoft .NET framework for project related SQL database server(s)</li> <li>Install Microsoft SQL application for project related SQL database server(s)</li> <li>Apply applicable Microsoft SQL Server updates for security and performance</li> <li>Configure applicable Microsoft SQL Server instance features</li> <li>Configure Microsoft SQL Server database authentication</li> <li>Configure optimal Microsoft SQL Server memory settings</li> <li>Configure optimal Microsoft SQL Server collation &amp; database settings</li> <li>Configure optimal Microsoft SQL Server database and log file directory settings based on disk subsystem</li> </ul>
BusinessPLUS Configuration



- Install and configure Microfocus NetExpress
- Install and configure MKS SysAdmin Toolkit
- Configure Pervasive ETL and data integration tools
- Build database schema in Microsoft SQL for Informix source data
- Migrate existing Informix source data to the new Microsoft SQL environment
- Verify table counts and image tables of migrated data compared to source data
- Apply SQL server fixes and rebuild SQL schema against all subsystems (HR, PY, etc)
- Install the current release of the BusinessPLUS application that is being utilized on the PowerSchool Hosting production environment
- Configure / update 7i Web Server application

## Customer Responsibilities

It will be the responsibility of customer's designated personnel to ensure each of the following items are understood and addressed.

Facilities
<ol style="list-style-type: none"> <li>1. Provide a technical district resource to work with the PowerSchool Systems Engineer for the duration of the consultation.</li> <li>2. All work will be performed during normal business hours unless otherwise specified. (Monday – Friday; 8:00 AM – 5:00 PM US Eastern Time) (Excludes US PowerSchool Holidays)</li> </ol>
Infrastructure Configuration
<ol style="list-style-type: none"> <li>1. Provide TSG with naming conventions, TCP/IP parameters, and user accounts passwords associated with all project related infrastructure components.</li> </ol>
BusinessPLUS
<ol style="list-style-type: none"> <li>1. The upgrade / migration of BusinessPLUS resources within this scope of this project will be performed within a five (5) business-day service window unless weekend or off-hour services have been negotiated.</li> <li>2. The services included within the scope of this offering do not include any services related to the installation / configuration of any other third-party applications that have direct access to the BusinessPLUS / SQL resources. Questions or issues concerning the configuration of other application configurations should be directed to the appropriate Technical Support department that is affiliated with the application in use.</li> <li>3. TSG is not affiliated with the BusinessPLUS Technical Support department and is unable to address any questions relating to the use or troubleshooting of functionality within the application as a result of a BusinessPLUS configuration or update performed by TSG. Customers with questions of this nature will be instructed to contact the BusinessPLUS Technical Support department.</li> </ol>
General
<ol style="list-style-type: none"> <li>1. The customer understands and agrees that all hardware and third-party software sales within this proposal are not subject to return nor will customer be entitled to any refund(s) or account credit(s) for such items.</li> </ol>

### Completion Criteria

The services within this proposal will be considered complete and delivered when the following conditions have been met:

1. All project related hardware and third-party software has been configured.
2. TSG has migrated the existing BusinessPLUS / Informix configuration to the new BusinessPLUS Archive Server.
3. TSG has applied the applicable BusinessPLUS Version Release to the customer's BusinessPLUS environment.
4. The customer is presented with the BusinessPLUS logon screen.
5. The customer has been notified that the BusinessPLUS Archive configuration has been completed.

Within five (5) business days of completion of the services within this proposal, the District Primary Contact will either accept the Deliverables or provide TSG a written list of objections, if any. If no response from the Customer is received within five (5) business days, then the Deliverables will be deemed accepted, unless the Customer requests an extension.

If the Customer experiences issues directly related to a configuration performed by TSG personnel, it will be the Customer's responsibility to contact TSG within five (5) business days. Configuration related requests received after five (5) business days of project completion may incur additional service costs.

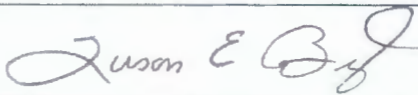


## Pricing Summary - As of August 28, 2018

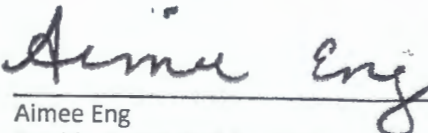
<b>Hardware / Third-Party Software Costs:</b>	<b>\$6,728.00</b>
<b>Professional Services (Remote):</b>	<b>\$11,760.00</b>
<b>Post Install Testing (Remote):</b>	<b>\$3,360.00</b>
<b>Comprehensive Infrastructure Solution Total: (USD)</b>	<b>\$21,848.00</b>

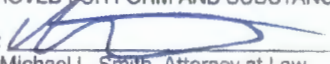
The pricing set forth above shall be valid for a period of sixty (60) days from the date of this proposal and is only applicable to those products and services described herein. If customer has not returned a signed copy of this Proposal to PowerSchool prior to the expiration of the foregoing sixty (60) day period, PowerSchool reserves the right to modify the products, services and associated pricing quoted herein, or in the alternative, cancel this Proposal in whole or in part.

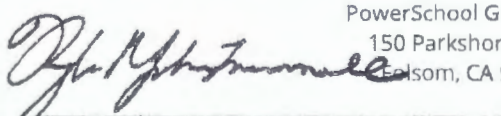
All products and services set forth in this Proposal will be provided to Client in accordance with the terms and conditions of the standard PowerSchool Licensed Product and Services Agreement.

<b>AGREED TO: Oakland Unified School District</b>			
<b>By:</b>			
	(Authorized Signature)		
<b>Name:</b>	Susan Beltz		
<b>Title:</b>	Chief Technology Officer		
<b>Date:</b>	9/28/18	<b>Phone Number:</b>	510-879-8873

To purchase this offering, please sign the last page of this proposal and submit back to the PowerSchool Group, LLC along with a purchase order via fax to (916) 288-1590. Thank you and we look forward to working with you and your staff.

  
Aimee Eng  
President, Board of Education

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVED FOR FORM AND SUBSTANCE  
By:  9/28/18  
Michael L. Smith, Attorney at Law

  
Kyla R. Johnson-Trammell  
Secretary, Board of Education :

PowerSchool Group, LLC  
150 Parkshore Drive  
Folsom, CA 95630

TIN: 47-4429364  
Fax: (916) 288-1590  
Phone: (877) 873-1550





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## LICENSED PRODUCT AND SERVICES AGREEMENT

Last updated as of June 2, 2017

1. **DEFINITIONS.** PowerSchool Group LLC, the licensor of Licensed Product pursuant to this Agreement, is referred to herein as "PowerSchool." The school, school district or other entity licensing Licensed Product is referred to herein as "Licensee." This Licensed Product and Services Agreement is referred to herein as the "Agreement." In addition, the following definitions shall apply:

1.1 **Documentation** means all written user information, whether in electronic, printed or other format, delivered or made available to Licensee by PowerSchool with respect to Licensed Product, now or in the future, including instructions, manuals, training materials, and other publications that contain, describe, explain or otherwise relate to Licensed Product.

1.2 **Embedded Applications** means software developed by third parties that may be embedded in or bundled with the software developed by PowerSchool as part of Licensed Product.

1.3 **Hosting Services** means the hosting of the Licensee's license to the Licensed Product and Third Party Software by PowerSchool or its hosting providers from a server farm that is comprised of application, data and remote access servers used to store and run the Licensed Product and Third Party Software, including associated offline components.

1.4 **Licensed Product(s)** means all software (including Embedded Applications) and subsequent versions provided under Support Services and all related Documentation licensed to Licensee pursuant to this Agreement, now or in the future; provided, however, that Licensed Product shall not include any Third Party Software.

1.5 **Licensed Sites** means Licensee's schools, administrative offices, and other locations at which Licensee conducts its school administrative functions.

1.6 **Professional Services** means data conversion, implementation, site planning, configuration, integration and deployment of the Licensed Products or Hosting Services, application development, training, project management and other consulting services.

1.7 **Support Services** is defined in section 3.1. of the Support and Services Policies attached hereto.

1.8 **Services** means Support Services, Hosting Services and Professional Services collectively.

1.9 **State Reporting Code (or SRC)** means Licensed Product that may be available to Licensee to assist Licensee in meeting specific state reporting requirements and that is designated as State Reporting Code by PowerSchool.

1.10 **Third Party Software** means any software product designated as Third Party Software by PowerSchool, and any related documentation supplied to Licensee. Any product designated as Third Party Software is licensed by an entity other than PowerSchool, under different license terms than those set forth herein. Third Party Software is different from Embedded Applications in that PowerSchool licenses the Embedded Applications to Licensee as part of Licensed Product (but in some cases, such Embedded Applications may be subject to additional license terms as identified herein). PowerSchool is not the licensor of Third Party Software.

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2.3 **Supplemental Terms and Conditions.** The product-specific terms and conditions set forth in the Supplemental Terms and Conditions attached hereto are incorporated herein by reference. These additional terms and conditions are applicable to the extent that Licensee licenses any of the specific products or modules listed therein.

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4. **SUPPORT AND OTHER SERVICES.** Any Support and/or Professional Services and/or Hosting Services ordered from PowerSchool by Licensee in connection with the license of Licensed Product shall be provided by PowerSchool pursuant to PowerSchool's terms, conditions and policies applicable at the time of order to the particular Services purchased. PowerSchool's current terms, conditions and policies for delivery of Support and Services, which are subject to change from time to time, are attached hereto as the Support and Services Policies. Licensee's license of Licensed Product does not, by itself, entitle Licensee to any support, upgrades, patches, fixes or the like for Licensed Product; Licensee must maintain a current Support subscription and pay any applicable Support fees to be eligible for Support Services. Support Services must be purchased for all licenses in Licensee's possession. Support may not be purchased or renewed for a subset of such licenses only. Support Services may not be used as a substitute for Professional Services.

5. **FEES AND TAXES.** Licensee agrees to pay PowerSchool, in accordance with PowerSchool's invoice terms, the fees charged for the Licensed Products and related Services and/or other items ordered by Licensee, together with any other charges made in accordance with this Agreement, and all applicable sales, use or other taxes or duties, however designated, except for taxes based on PowerSchool's net income. Licensee agrees to also pay for PowerSchool's reasonable travel and lodging expenses for Services performed at Licensee's premises, at actual cost. If Licensee claims tax exempt status, Licensee agrees to provide evidence of such tax exemption upon PowerSchool's request. To the extent that such tax exemption cannot be properly claimed or does not extend to certain taxes or transactions, Licensee shall be responsible for any and all taxes and assessments that arise from this Agreement and related transactions (except for taxes based upon PowerSchool's net income). Licensee shall pay a monthly charge of 1.5% (18% annually) on all amounts not paid when due, or, if a lower maximum rate is established by law, then such lower maximum rate. All pricing set forth in any PowerSchool quotation or invoice is in United States dollars unless otherwise specified.

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8. **LIMITED MEDIA WARRANTY.** PowerSchool warrants that the media on which Licensed Product is recorded shall be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of purchase. Licensee's exclusive remedy under this Section shall be replacement of the defective media.

9. **DISCLAIMER OF OTHER WARRANTIES. LICENSED PRODUCT AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND (EXCEPT AS PROVIDED IN SECTION 8), AND POWERSCHOOL AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, POTENTIAL IMPLEMENTATION DELAYS, AND NON-INFRINGEMENT. POWERSCHOOL DOES NOT WARRANT THAT THE FUNCTIONALITY CONTAINED IN THE LICENSED PRODUCT WILL MEET LICENSEE'S REQUIREMENTS, OR THAT THE OPERATION OF THE LICENSED PRODUCT OR HOSTING SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE LICENSED PRODUCT WILL BE CORRECTED. FURTHERMORE, POWERSCHOOL DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE LICENSED PRODUCT OR SERVICES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, SECURITY OR OTHERWISE. LICENSEE AGREES THAT THE USE OF LICENSED PRODUCT AND SERVICES IS AT LICENSEE'S OWN RISK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY POWERSCHOOL OR A POWERSCHOOL REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT FULLY APPLY TO LICENSEE.**

10. **STATE REPORTING CODE.** Unless PowerSchool specifically offers SRC for Licensee's state, PowerSchool makes no representation that Licensed Product includes any SRC designed to meet the reporting requirements of Licensee's state. If PowerSchool does offer SRC for Licensee's state, Licensee acknowledges that the SRC is intended as a tool to assist Licensee in complying with state regulatory requirements; however, PowerSchool does not warrant that the SRC conforms to, or that use of the SRC will ensure Licensee's compliance with, all state regulatory requirements that may apply or that the SRC will be maintained to conform to such requirements now or in the future. It is Licensee's, and not PowerSchool's, responsibility to understand and comply with all such requirements.

11. **TERMINATION**

11.1 **Termination for Breach.** PowerSchool shall have the right to suspend performance under this Agreement in the event that Licensee is in breach of any of its obligations under this Agreement. In addition, either party shall have the right to terminate this Agreement in whole or in part upon thirty (30) days written notice to the other party, in the event



the other party materially breaches this Agreement and fails to correct such breach within such thirty (30) day period; provided that PowerSchool shall have the right to terminate this Agreement immediately upon written notice in the event that Licensee breaches any of its obligations under Section 3. Licensee further acknowledges that, as breach of the provisions of Section 3 could result in irreparable injury to PowerSchool, PowerSchool shall have the right to seek equitable relief against any actual or threatened breach thereof, without proving actual damages.

**11.2 Effects of Termination.** In the event of any termination of all or any portion of this Agreement, Licensee shall not be relieved of any obligation to pay any sums of money that have accrued prior to the date of termination. In addition, the provisions of Sections 3, 5, 6, 9, 11, 12 and 13 shall survive termination of this Agreement. Immediately upon any termination of a license for any Licensed Product under this Agreement, Licensee shall, at its own expense, either return to PowerSchool or destroy all copies of such Licensed Product and associated Third Party Software in its possession or control, and shall forward written certification to PowerSchool that all such copies of such Licensed Product and Third Party Software have either been destroyed or returned to PowerSchool.

**11.3 Liquidated Damages.** In the event that Licensee enters into a multi-year contract with PowerSchool and Licensee terminates the contract or any portion thereof, Licensee agrees to pay PowerSchool the remaining sum due to PowerSchool through the stated term of the contract as liquidated damages, as actual damages being impossible to calculate. This clause shall not apply in the event Licensee terminates this Agreement as a result of PowerSchool's breach in accordance with Subsection 11.1 herein. Notwithstanding the foregoing, Licensee shall not be liable for said liquidated damages in the event that: (i) Licensee provides PowerSchool at least thirty (30) days' advance notice of termination prior to the effective date anniversary; and (ii) said termination is a result of the non-appropriation of funds for Licensee's contract. Licensee shall not utilize this clause as a right to terminate the contract for convenience. PowerSchool reserves the right to seek documentation evidencing the non-appropriation of funds.

**12. LIMITATION OF LIABILITY. POWERSCHOOL SHALL NOT BE LIABLE TO LICENSEE FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR LOST PROFITS, LOST FUNDING, LOST SAVINGS, OR LOST OR DAMAGED DATA; OR FOR CLAIMS OF A THIRD PARTY; ARISING OUT OF THIS AGREEMENT, LICENSED PRODUCT, THIRD PARTY SOFTWARE, SUPPORT, SERVICES, OR OTHER ITEMS PROVIDED, OR THE USE OR INABILITY TO USE ANY OF THE FOREGOING, EVEN IF POWERSCHOOL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE. IN ANY EVENT, IN RESPECT OF ANY CLAIM, DEMAND OR ACTION ARISING OUT OF THIS AGREEMENT, LICENSEE SHALL BE LIMITED TO RECEIVING ACTUAL AND DIRECT DAMAGES IN A MAXIMUM AGGREGATE AMOUNT EQUAL TO THE CHARGES PAID BY LICENSEE TO POWERSCHOOL HEREUNDER FOR THE APPLICABLE LICENSED PRODUCT, ITEM OR SERVICE ON WHICH THE CLAIM IS BASED IN THE PREVIOUS TWELVE (12) MONTHS. IN ADDITION, IN NO EVENT WILL THE LIABILITY OF POWERSCHOOL RELATING TO SUPPORT SERVICES OR HOSTING SERVICES EXCEED THE TOTAL AMOUNT OF MONEY PAID BY LICENSEE TO POWERSCHOOL DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD WITH RESPECT TO THE PARTICULAR SUPPORT SERVICES OR HOSTING SERVICES ON WHICH THE CLAIM IS BASED.**

### **13. GENERAL**

**13.1 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA.** The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. This Agreement shall not be subject to the Uniform Computer Information Transactions Act.

**13.2 Compliance Verification.** During the term of the Agreement and for a period of one year following its termination, PowerSchool shall have the right to verify Licensee's full compliance with the terms and requirements of the Agreement. Licensee shall (A) provide any assistance

reasonably requested by PowerSchool or its designee in conducting any such audit, including installing and operating audit software, (B) make requested personnel, records, and information available to PowerSchool or its designee, and (C) in all cases, provide such assistance, personnel, records, systems access and information in an expeditious manner to facilitate the timely completion of such compliance verification. If such verification process reveals any noncompliance, Licensee shall reimburse PowerSchool for the reasonable costs and expenses of such verification process incurred by PowerSchool (including but not limited to reasonable attorneys' fees), and Licensee shall promptly cure any such noncompliance; provided, however, that the obligations under this section do not constitute a waiver of PowerSchool's termination rights and do not affect PowerSchool's right to payment for Services and interest fees related to usage in excess of the quantities purchased.

**13.3 General Provisions.** Neither party shall be held liable to the other party for failure of performance where such failure is caused by supervening conditions beyond that party's control, including acts of God, civil disturbance, strikes or labor disputes. If any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, this Agreement shall be enforced to the maximum extent possible to effectuate the original express intent of the parties. Licensee may bring no action arising out of this Agreement, regardless of form, more than one (1) year after the cause of action has arisen. In the case of notices to PowerSchool, such notices shall be sent to: PowerSchool Group LLC, Attn General Counsel, 150 Parkshore Drive, Folsom, CA 95630. In the case of notices to Licensee, such notices shall be sent to PowerSchool's address of record for Licensee. Either party may change its notice address by notifying the other in like manner. Licensee agrees that the terms of this Agreement, including all pricing for PowerSchool's products and services, shall be kept confidential and not disclosed to any third party without the prior written consent of PowerSchool.

**13.4 Facilities.** Licensee acknowledges that certain Services are intended to be performed by PowerSchool off-site (e.g., through remote communication capabilities). If any portion of the work will be performed on Licensee's premises, Licensee agrees to provide appropriate access to utilities, work space and other on-site accommodations reasonably necessary to enable PowerSchool to perform such work.

**13.5 Confidentiality.** PowerSchool agrees to use commercially reasonable efforts to maintain the confidentiality of Licensee confidential information that is disclosed to PowerSchool in connection with the performance of services, and to use such Licensee confidential information solely for purposes of performing services hereunder. PowerSchool shall require its employees, agents and subcontractors performing work hereunder to do likewise. For purposes of this Section, "Licensee confidential information" shall mean any student or personnel data belonging to Licensee, or any other Licensee information or data labeled or identified as confidential at the time of disclosure, provided, however, that this definition and the obligations of this Section shall not extend to any information that: (a) is or becomes publicly known through no fault or negligence of PowerSchool; (b) is or becomes lawfully available from a third party without restriction; (c) is independently developed by PowerSchool; or (d) is disclosed without restriction by Licensee to any third party at any time.

**13.6 Limited License.** Licensee grants to PowerSchool a non-exclusive, royalty free license, to use equipment, software, Licensee data or other material of Licensee solely for the purpose of performing its obligations under the Agreement. However, PowerSchool may use and distribute the Licensee data for any lawful purpose outside the scope of the Agreement, provided always that such Data must be aggregated and/or de-identified.

**13.7 Export.** Without in any way limiting the restrictions on transfer set forth elsewhere in this Agreement, Licensee specifically agrees that Licensee will not, directly or indirectly, export or transfer any export-controlled commodity, technical data or software: (a) in violation of any laws, regulations, rules or other limitations imposed by any government authority; or (b) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses or other approvals.

**13.8 U.S. Government Restricted Rights.** Licensed Product is a "commercial item" as that term is defined in 48 C.F.R. §2.101,



consisting of "commercial computer software" and "commercial computer software documentation" as such terms are defined in 48 C.F.R. §12.212 and 48 C.F.R. §227.7202, as applicable, and all as amended from time to time. Consistent with 48 C.F.R. §12.212, 48 C.F.R. §227.7202 and 48 C.F.R. §52.227-19, and other relevant sections of the Code of Federal Regulations, as applicable, and all as amended from time to time, all U.S. Government end users acquire Licensed Product only with those rights set forth herein.

13.9 **Entire Agreement.** This Agreement, inclusive of the Supplemental Terms and Conditions and the Support and Services Policies incorporated herein, or any addendums, amendments, and/or exhibits mutually executed and attached hereto, constitutes the complete

and entire agreement between the parties with respect to its subject matter, and supersedes all prior discussions, understandings, arrangements, proposals and negotiations with respect to same. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any purchase order or other documentation submitted by Licensee with respect to Licensed Product or any related support or services, and PowerSchool hereby refuses any such different or additional provisions in purchase orders or other documents. By mutual agreement of the parties, this Agreement is effective upon receipt and supersedes all prior Agreements entered into by the parties, the parties' agents, and/or the parties' previous affiliates. This Agreement shall not be modified or amended without the written agreement of both parties.

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## SUPPLEMENTAL TERMS AND CONDITIONS

1. **PRICING; ENROLLMENT INCREASES.** License pricing for Licensed Product is based on student enrollment at the Licensed Sites. If an increase in student enrollment in excess of five percent (5%) occurs at the Licensed Sites, then Licensee shall pay additional license and support fees to PowerSchool in accordance with PowerSchool's invoice. Such additional fees shall be computed by multiplying the then-current per student license and support fees for Licensed Product by Licensee's additional enrollment. Licensee's subsequent Support invoices will be based on the increased enrollment as well.

### 2. TERMS RELATING TO EMBEDDED APPLICATIONS

2.1 **Oracle.** The following terms are applicable to a certain Embedded Application known as Oracle Database Enterprise Edition (the "Oracle Software"):

(a) The Oracle Software may only be used in conjunction with the Licensed Product and solely for Licensee's internal business purposes.

(b) Oracle USA, Inc. ("Oracle") shall have no liability whatsoever to Licensee for any damages, whether direct, indirect, incidental, or consequential arising from Licensee's use of Licensed Product or the Oracle Software.

(c) Licensee is prohibited from publishing the results of any benchmark tests run on the Oracle Software.

(d) Licensee shall be prohibited from timesharing, rental, facility management, or service bureau use of the Oracle Software.

(e) Licensee's records may be audited, by PowerSchool or Oracle, during normal business hours to verify compliance with the terms of this Agreement.

(f) Oracle shall be a third party beneficiary of this Agreement.

(g) Oracle shall have no performance obligation or liability to Licensee in connection with this Agreement.

(h) Should the Oracle Software contain any source code provided by Oracle, such source code shall be governed by the terms of this Agreement.

2.2 **GPL Software.** Certain Embedded Applications included with the Licensed Product may be free software licensed under the terms of the GNU General Public License (GPL). Licensee may obtain a complete machine-readable copy of the source code for such free software under the terms of the GPL, without charge except for the cost of media, shipping, and handling, upon written request to PowerSchool. The GPL software is distributed in the hope that it will be useful, but WITHOUT ANY WARRANTY, including even the implied warranties of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE. A complete copy of the GPL is included within the Licensed Product.

3. **HARDWARE.** If, in conjunction with Licensee's licensure of Licensed Product, Licensee is purchasing any hardware through PowerSchool, Licensee acknowledges that such hardware purchase is being facilitated by PowerSchool as an accommodation to Licensee only. The warranties on any hardware not manufactured by PowerSchool will be limited to those provided by the manufacturers of such hardware and/or the vendors through which such hardware is being supplied. PowerSchool will pass through any manufacturer's or other vendor's warranty to the extent permitted by the manufacturer or other vendor, as applicable. Licensee agrees to look solely to the applicable manufacturer or other vendor, and not to PowerSchool, to fulfill any such warranties and any maintenance, repair, support, or other service obligations related to such hardware. Unless otherwise specifically agreed to in writing by PowerSchool, PowerSchool does not provide support for any of the hardware or third party software being purchased by Licensee through PowerSchool. Any requests for such support should be directed to the applicable hardware or software manufacturer. Licensee further agrees that any claims related to any such hardware, whether for breach of warranty or otherwise, must be made directly against the applicable manufacturer or other vendor, and not against PowerSchool, and that PowerSchool shall have no liability whatsoever in connection with such claims.

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## SUPPORT AND SERVICES POLICIES

### I. SUPPORT SERVICES

1. **Definitions.** Capitalized terms not defined herein shall have the meanings assigned to them in the applicable Licensed Product Agreement ("Agreement") between Licensee and PowerSchool to which these Support and Services Policies ("Policies") are attached. In addition, for purposes of these Policies, the following definitions shall apply:

**Errors** shall mean a reproducible failure of Licensed Product to operate in accordance with its standard Documentation, despite the proper installation and use of Licensed Product in a proper operating environment and on hardware and system software sufficient to meet PowerSchool's then-current minimum requirements, which are subject to change as New Versions are released. User mistakes are not Errors within the meaning of these Policies. Errors may be due to problems in Licensed Product, the Documentation, or both.

**Fix** shall mean a patch, service pack or corrective update of Licensed Product that PowerSchool may prepare in its discretion on an interim basis, prior to issuance of a New Version, to correct programming Errors that prevent or obstruct normal operation of Licensed Product in accordance with the applicable then-current Documentation.

**New Products** shall mean new products, programs or modules developed by PowerSchool that provide features, functions or applications not included in the Licensed Product originally licensed by Licensee and for which additional license fees apply as determined by PowerSchool. A New Product may be usable with or in addition to the Licensed Product originally licensed by Licensee. New Products will be licensed to Licensee under the terms of PowerSchool's then-current license agreement only after payment of applicable fees.

**New Version** shall mean an updated version of Licensed Product issued by PowerSchool, which may include Fixes, together with such other modifications, updates, enhancements and improvements to Licensed Product that PowerSchool may, in its discretion, develop and deem ready for distribution and that PowerSchool standardly provides to all customers with a current support subscription to such Licensed Product.

**Support Services** shall mean those support services described in Section 3.1 below that will be provided hereunder with respect to Licensed Product during Licensee's Support Term.

**Support Term** shall mean the length of time Support Services are to be provided hereunder and for which Licensee has paid any applicable



Support Services fees, including any initial Support Term and any renewal Support Terms.

**Telephone and E-mail Support** shall mean telephone and e-mail support services, available Monday through Friday, during PowerSchool's normal business hours, exclusive of PowerSchool's holidays, regarding Licensee's use of Licensed Product and any problems that Licensee experiences in using Licensed Product.

2. **Support Term; Fees.** Support Services for Licensed Product are available at an additional cost. For Support Services purchased concurrently with Licensee's license to Licensed Product, Licensee's initial Support Term will begin upon shipment (FOB PowerSchool's place of shipment) of Licensed Product (or, in the case of Licensed Product made available for download electronically, upon PowerSchool's provision of the necessary licensing information to enable Licensee to download Licensed Product) and terminate one (1) year thereafter, unless a different Support Term is specified in PowerSchool's written acknowledgment of Licensee's order, or unless terminated earlier in accordance with the terms of these Policies or the Agreement. Either party may terminate the provision of Support Services as of the end of the then-current Support Term by providing written notice to the other party prior to the end of the then-current Support Term that such party does not wish to renew the Support Term. Licensee shall provide written notice of non-renewal at least thirty (30) days prior to the applicable Support Term. If no notice of non-renewal is given by either party, the Support Term will automatically renew for the applicable renewal term stated on PowerSchool's renewal invoice at the then current Support fees; otherwise, Licensee's Support Term will terminate at the end of Licensee's current paid-up Support Term. If Licensee's Support Term is so terminated due to non-payment, and then PowerSchool subsequently reinstates Licensee's access to support, such reinstated access shall remain subject to the terms of these Policies and payment of applicable reinstatement fees. PowerSchool reserves the right to charge reinstatement fees in the event deactivated licenses are reactivated. For the initial Support Term, Licensee shall pay the charges specified in PowerSchool's initial invoice. For renewal Support Terms, Licensee shall pay PowerSchool's then-current annual Support Services fees. PowerSchool may supply new or modified Support and Services Policies or other terms and conditions to Licensee related to the provision of Support Services in a renewal term, in which event such new or modified Support and Services Policies or other terms and conditions will govern PowerSchool's provision of Support Services in such renewal term.

3. **Support Services Scope.** PowerSchool, or an entity under contract with and authorized by PowerSchool to provide Support Services, will provide Support Services for Licensed Product during the Support Term. The scope of Support Services shall be as follows:

3.1 **Support.** Support Services shall include: (a) Telephone and E-mail Support; (b) access to an online support website, as maintained by PowerSchool for customers maintaining a current support subscription; (c) Fixes, as developed and made generally available by PowerSchool in its discretion to address Errors that Licensee is experiencing in using Licensed Product; and (d) New Versions, as developed and made generally available by PowerSchool. Support Services do not include New Products. PowerSchool determines, in its sole discretion, what constitutes a New Product (for which additional license fees apply), and what improvements and enhancements to existing Licensed Product functionality are to be included in a New Version (and are therefore provided at no charge to customers with a current support subscription).

3.2 **Custom Programs.** For any custom programs developed for Licensee by PowerSchool, Support Services are available only on a time and materials basis at PowerSchool's current rates and charges for these services; support for custom programs is not included in Support Services. In addition, to the extent that Licensed Product includes any functionality that allows Licensee to customize screens or reports, PowerSchool will support the application infrastructure utilized to create such customizations but will not be responsible for supporting any such customizations.

3.3 **Requisite Training.** In order to receive Support Services described herein, Licensee must purchase appropriate training regarding the use and operation of Licensed Product. Telephone and E-mail Support may be limited to a specified number of authorized representatives of Licensee who have been appropriately trained.

3.4 **Enhancements to SRC.** PowerSchool may provide certain enhancements to SRC to customers that are current in their payment of annual Support fees for the SRC to PowerSchool. However, PowerSchool reserves the right, in its discretion: (a) to require that additional fees be paid by customers desiring that SRC be updated in connection with new reporting requirements in their state, in the event that such state's education department or equivalent entity makes changes to the state's reporting requirements that were not anticipated at the time PowerSchool determined its applicable Support fees for the SRC in that state; or (b) not to make further changes or enhancements to SRC in a given state based on lack of market demand, the nature and scope of the changes required, or other factors.

4. **Authorized Representatives.** If Licensee has purchased Support Services for the Licensed Product from PowerSchool, then in order to receive such Support Services, Licensee shall identify to PowerSchool up to two (2) people who will contact PowerSchool with any technical and product questions ("Authorized Representatives"). If it is desired that additional Authorized Representatives be permitted to contact PowerSchool for Support, Licensee must pay additional Support fees for such additional Authorized Representatives. All such Authorized Representatives shall complete, at a minimum, PowerSchool's Initial Product Training for the Licensed Product. Licensee shall provide PowerSchool with a written list of its Authorized Representatives as part of the implementation process for the Licensed Product, and shall keep PowerSchool informed of replacements for Authorized Representatives as soon as possible after the replacements occur.

5. **Licensee's Other Responsibilities.** To receive Support Services, Licensee shall: (a) report Errors or suspected Errors for which Support Services are needed, and supply PowerSchool with sufficient information and data to reproduce the Error; (b) procure, install, operate and maintain hardware, operating systems and other software that are compatible with the most current supported version of Licensed Product; (c) establish adequate operational back-up provisions in the event of malfunctions or Errors; (d) maintain an operating environment free of any modifications or other programming that might interfere with the functioning of Licensed Product; (e) maintain hardware and system software consistent with PowerSchool's minimum requirements; and (f) timely install all Fixes and New Versions supplied by PowerSchool in the proper sequence, and have the most current version of Licensed Product installed. Licensee acknowledges that Fixes and New Versions may be made available electronically, and that, in some cases, PowerSchool may maintain e-mail distribution lists that are used to notify customers of the availability of Fixes and New Versions and to provide other information to customers that are maintaining a current support subscription. Licensee shall be responsible for including the appropriate Licensee personnel on any such e-mail distribution lists of PowerSchool so that Licensee receives such notifications and other information.

6. **Support For Prior Versions.** Licensee must timely install all Fixes and New Versions to receive Support Services. In some cases, it may not be practical for certain customers to install a New Version immediately upon release. Therefore, PowerSchool may, in its discretion, continue to provide Telephone and E-mail Support for the prior version of Licensed Product for a period of time after release of a New Version. Licensee acknowledges that Fixes and other code maintenance will not be available for prior versions of Licensed Product (including SRC) after the release of a New Version.

## II. PROFESSIONAL SERVICES

1. **Fees and Expenses.** In addition to providing Support Services during the Support Term, PowerSchool will perform such other Professional Services (training, installation, consulting, project management, etc.) as may be specified in PowerSchool's written



acknowledgment of Licensee's order, or as may be subsequently agreed upon by the parties; provided that PowerSchool may, at its option, arrange for any such services to be performed by another entity on behalf of PowerSchool. Licensee agrees to pay for such services at the rates and charges specified in PowerSchool's written acknowledgment of Licensee's order, or, for work subsequently requested, at the rates agreed upon by Licensee and PowerSchool for such subsequent work. PowerSchool reserves the right to require a purchase order or equivalent documentation from Licensee prior to performing any such Services, or to require prepayment of certain Services. Unless otherwise specified, all rates quoted are for services to be performed during PowerSchool's normal business hours; additional charges may apply for evenings, weekends or holidays. Licensee shall also pay PowerSchool for travel expenses (lodging, meals, transportation and other related expenses) incurred in the performance of services. All such additional charges will be due and payable concurrently with payment for services. PowerSchool reserves the right to impose a minimum labor charge for each on-site visit. The rates and charges specified in PowerSchool's acknowledgment of Licensee's order shall apply to those services originally ordered; however, PowerSchool reserves the right to change service rates or other terms as a condition of entering into any subsequent service engagement. In the event that Licensee pays in advance for any services, all services must be scheduled and delivered within twelve (12) months of such payment, unless otherwise agreed in writing by PowerSchool; any portion of any prepaid services amount that has not been used by Licensee toward services actually rendered within such twelve (12) month period shall be forfeited.

2. **Training.** PowerSchool reserves the right to limit the number of persons permitted to attend any training class in accordance with PowerSchool's training standards.

3. **Services Cancellation.** Licensee shall pay a cancellation charge equal to fifty percent (50%) of the services fee and any non-refundable expenses incurred by PowerSchool if Licensee cancels any scheduled professional services less than fourteen (14) days before the occurrence of any service dates that PowerSchool has scheduled at Licensee's request.

4. **Ownership Of Materials.** PowerSchool shall be the owner of all copyrights, patent rights and other intellectual property rights in any software code, documentation, reports or other deliverables (collectively, "Deliverables") created for or provided to Licensee pursuant to Professional Services. Provided that Licensee pays PowerSchool all fees and expenses associated with the development and provision of such Deliverables, Licensee shall have a paid-up, royalty-free license to use such Deliverables for Licensee's internal use only, solely for the purpose for which such Deliverables were provided. Nothing in this Agreement shall prevent PowerSchool from providing any Deliverables to PowerSchool's other customers or third parties. Notwithstanding the foregoing, PowerSchool acknowledges and agrees that any Licensee confidential information (as defined in Section 13.5 of these Policies) that is incorporated into any Deliverable remains subject to the provisions of such Section.

### III. HOSTING SERVICES

1. **Term; Fees.** Hosting Services are available at an additional cost. For Hosting Services purchased concurrently with Licensee's license to Licensed Product, Licensee's initial Hosting Term will begin upon PowerSchool's written acknowledgment of Licensee's order and terminate one (1) year thereafter, ("Hosting Term") unless a different Hosting Term is specified in PowerSchool's written acknowledgment of Licensee's order, or unless terminated earlier in accordance with the terms of these Policies or the Agreement. Either party may terminate the provision of Hosting Services with effect as of the end of the then-current Hosting Term by providing written notice to the other party prior to the end of the then-current Term that such party does not wish to renew the Hosting Term. PowerSchool will provide Licensee with at least sixty (60) days' notice if PowerSchool determines that it will no longer offer Hosting Services to Licensee (but in any event will continue providing Hosting Services for the balance of the current term

for which Licensee has prepaid for such Services). If no notice of non-renewal is given by either party, then PowerSchool will invoice Licensee for the applicable renewal fees for a subsequent Hosting Term. If Licensee's Hosting Term is so terminated due to non-payment, and then PowerSchool subsequently reinstates Licensee's access to Hosting Services, such reinstated access shall remain subject to the terms of these Policies and payment of applicable reinstatement fees. For the initial Hosting Term, Licensee shall pay the charges specified in PowerSchool's initial invoice. For renewal Terms, Licensee shall pay PowerSchool's then-current annual Hosting Services fees. PowerSchool may supply new or modified Support and Services Policies or other terms and conditions to Licensee related to the provision of Hosting Services in a renewal term, in which event such new or modified Support and Services Policies or other terms and conditions will govern PowerSchool's provision of Hosting Services in such renewal term. Should Licensee decide to terminate hosting services, Licensee will retain its license to Licensed Product, subject to the terms of this Agreement.

2. **Availability.** Licensee acknowledges and agrees that the Licensed Product may be inaccessible or inoperable from time to time due to planned maintenance or to causes that are beyond the control of PowerSchool or are not reasonably foreseeable by PowerSchool, including, but not limited to: the interruption or failure of telecommunication or digital transmission links; hostile network attacks; network congestion; or other failures (collectively "Downtime"). PowerSchool shall use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the Licensed Product caused by Downtime, whether scheduled or not.

3. **Acceptable Use Policy.** Licensee acknowledges and agrees that PowerSchool does not monitor or police the content of communications or data of Licensee or its users transmitted through the Services, and that PowerSchool shall not be responsible for the content of any such communications or transmissions. Licensee shall use the Services exclusively for authorized and legal purposes, consistent with all applicable laws and regulations and PowerSchool's policies. Licensee agrees not to post or upload any content or data which (a) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (b) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; or (c) otherwise violates any applicable law. PowerSchool may remove any violating content posted or transmitted through the Hosting Services, without notice to Licensee. PowerSchool may suspend or terminate any user's access to the Hosting Services upon notice in the event that PowerSchool reasonably determines that such user has violated the terms and conditions of this Agreement.

4. **Security.** Licensee will not: (a) breach or attempt to breach the security of the Hosting Services or any network, servers, data, computers or other hardware relating to or used in connection with the Hosting Services, or any third party that is hosting or interfacing with any part of the Hosting Services; or (b) use or distribute through the Hosting Services any software, files or other tools or devices designed to interfere with or compromise the privacy, security or use of the Hosting Services or the operations or assets of any other customer of PowerSchool or any third party. Licensee will comply with the user authentication requirements for use of the Hosting Services. Licensee is solely responsible for monitoring its authorized users' access to and use of the Hosting Services. PowerSchool has no obligation to verify the identity of any person who gains access to the Hosting Services by means of an access ID. Any failure by any authorized user to comply with the Agreement shall be deemed to be a material breach by Licensee, and PowerSchool shall not be liable for any damages incurred by Licensee or any third party resulting from such breach. Licensee must immediately take all necessary steps, including providing notice to PowerSchool, to effect the termination of an access ID for any authorized user if there is any compromise in the security of that access ID or if unauthorized use is suspected or has occurred.

5. **Data.** Licensee has sole responsibility for the legality, reliability, integrity, accuracy and quality of the data it processes through and submit to the Hosting Services.