

SOFTWARE LICENSE AND SERVICES AGREEMENT

THIS SOFTWARE LICENSE AND SERVICES AGREEMENT (the "Agreement") dated [month]_____[day], 20___, and will be effective on the day of execution ("**Effective Date**"), and is between School District No 1, in the City and County of Denver, a body corporate, with its principal place of business at 900 Grant Street, Denver, Colorado 80203 ("School District"), and [**Vendor Name**], a [**State Type of Entity and State of Formation**], with its principal place of business at [**Vendor Address**] ("Vendor"). The terms of this Agreement shall apply to all products and services provided by Vendor under this Agreement.

1. **DEFINITIONS** The following terms are defined to avoid any ambiguity, clarify meanings and to give designations for terms that will be used frequently throughout the agreement. Alternatively, definitions may be supplied at the first occurrence of the term in the agreement.

(a) **Acceptance** of the software will be final ninety days (90) days after the mutual execution of a written agreement by the Vendor and DPS that the software and all modules of the software have been installed, operate and satisfactorily tested in accordance the standards set forth in the formal testing protocols summarized in paragraph 3 of this Agreement, Vendor's documentation, approved scope of work document(s), including without limitation, delivery schedules, the written operating manual, representations, warranties, marketing literature ("Documentation"), response to Request for Proposal and any other communications; provided, however, acceptance shall be subject to School District's right to revoke the Vendor's product due to latent defects and unknown, changed conditions adversely affecting the School District.

(b) **Testing.** Formal testing of the software or each module obtained from Vendor will begin upon written notification by an authorized representative of the Vendor that the installation of the software or each module and all expressly agreed to modifications, if any, are complete on the designated hardware as agreed to by the parties. Upon receipt of the Vendor's written notification, the School District will have (xx) days to test the specified software or each module. If the School District reasonably determines the software or module does not meet the specifications in accordance the Vendor's Documentation, the School District's authorized representative will notify the Vendor's authorized representative in writing that the software or module is defective, at which time the testing of the software or module will cease. Vendor will have (xx) days to repair, correct or replace the defective software or module. After repairing the defective software or module rejected by the School District, the Vendor will notify the School District to resume testing. Should the School District fail to notify Vendor of any apparent and obvious defect or deficiency in the software or module, the parties agree it will be presumed to

have passed the required protocols for testing the software or module(s). Software Acceptance is satisfaction of all criteria as specified in the Documentation and both parties have executed the written acceptance agreement.

- (c) **Affiliate(s)**: of the School District are without limitation, any DPS school, program, agent, contractor, assign, student, and employee sanctioned and associated with the School District. References to School District shall include School District and its relevant Affiliates; and of the Vendor are any business entity more than 50% owned by Vendor, any business entity which owns more than 50% of the Vendor, or any business entity that is more than 50% owned by a business entity that owns more than 50% of the Vendor.
- (d) **Authorized User** means: (a) School District and its Affiliates; (b) employees, consultants, customers and authorized agents of Affiliates; (c) third party consultants and other independent contractors performing services for School District or Affiliates.
- (e) **School District Information** means all notes, data, materials, sketches, drawings, memoranda, disks, documentation and records research and development, inventions, processes, techniques, methodologies, designs, marketing and technical information, finances, properties, methods of operation, computer programs, and documentation (including training materials), and other such information, confidential or not, whether, written, oral, or without regard to the medium or format of communication and includes any copyrights, trade secrets and patents belonging exclusively or not to the School District (collectively, "Information"), as well as any data entered, provided, collected and is made available from a third party by publication or through software licensed, owned or purchased by the School District ("Materials"). The School District is solely responsible for the School District Information and Materials. All right, title and interest in and to the School District Information and Materials, including all intellectual property rights therein, shall at all times remain the property of the School District.
- (f) **Days** mean calendar days unless specifically noted otherwise.
- (g) **Defect** means a reproducible defect in the software or module that fails to operate in accordance with the Documentation provided by Vendor.
- (h) **Documentation** is, collectively, the functional, operational and performance capabilities related to the software or module, without regard to the media of use and storage and includes all subsequent enhancements, improvements, fixes and releases of any kind connected to the software and modules purchased and owned by the School District.

- (i) **Enhancements** means any and all updates, releases, subsequent versions, error corrections, enhancement and bug fixes to the software released from time to time by Vendor and are generally provided to other customers free of charge or as part of a maintenance and support agreement. Enhancements shall be given to the School District, at no cost, on an as-available basis and may include bug fixes and updates to the software to keep current with changes in services or in operating systems used by the School district and generally made available by Vendor.
- (j) **Hardware** means the equipment necessary to make the Vendor's solution operable.
- (k) **Maintenance and Support Services** means the services set forth in the attached **Exhibit A**.
- (l) **Purchase Order(s)** means a document conveyed to the Vendor by the School District to buy products and related services.
- (m) **Ordered Program(s)** means the object code or source code of the software as specified in a Purchase Order and Vendor Documentation and delivered by Vendor to the School District.
- (n) **Products** means the object code version of any identified proprietary software, module, products and any associated documentation and updates to software and programs whether incorporated as embedded software or bundled component and adds primary and significant functionality to the software developed by Vendor.
- (o) **Program(s)** means (i) the Ordered Programs, and (ii) Updates.
- (p) **Program License(s)** shall mean the license granted to School District for an Authorized User to use a Program.
- (q) **Services** means all services provided by Vendor under this Agreement, including, but not limited to, installation, testing, maintenance and support Services.
- (r) **Vendor Materials** means any materials provided by Vendor in the course of performing services other than Maintenance and Support Services.
- (s) **Training Materials** shall mean any training materials provided in connection with any training courses provided by School District and delivered by Vendor as set forth in this Agreement.
- (t) **Update(s)** shall mean (a) subsequent releases of the Programs that (i) add new features, functionality, and improved performance, (ii) operate on new or other databases, operating systems, or client or server platforms, or (iii) add new foreign language capabilities; (b) bug or error fixes, patches, workarounds, and maintenance releases; (c) new point releases, including those denoted by a change to the right of the first decimal point (e.g., v3.0 to 3.1), and (d) new major version releases, regardless of the version name or number, but including those denoted

by (i) a change to the left of the first decimal point (e.g., v5.0 to 6.0) and (ii) the addition of a date designation or a change in an existing date designation (e.g., v1999 to 2009).

2. **PROGRAM LICENSE.** Subject to the terms and conditions of this Agreement, Vendor grants to the School District and its Authorized Users a nonexclusive, fully paid, perpetual, unlimited user license:
 - (a) **To use** (i) the Program and the Documentation and any Technical Training, and Vendor Materials to (ii) install, operate , integrate, and implement the Programs or allow third parties (e.g., system integrators) to do the same for the School District in accordance with the terms of this Agreement; and
 - (b) **To copy** (i) the Programs as reasonably necessary to support users; and (ii) to make additional copies of the Programs, Documentation and Technical Training and Vendor Materials solely required for archival, emergency back-up, testing, or disaster recovery purposes in accordance with the terms of this Agreement.
3. **RESTRICTIONS.** The rights granted in Section 2 is subject to the following restrictions:
 - (a) the School District may not reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code of the Programs if not provided to School District by Vendor; provided that, if required under applicable law or as necessary to operate the Programs, upon School District's request, Vendor shall provide information necessary for School District to achieve interoperability between the Programs and other software; and
 - (b) With regard to copies of the Programs, Documentation and any Technical Training, and Vendor Materials, School District shall ensure that each copy contains all titles, trademarks, and copyright and restricted rights notices as in the original, and all such copies shall be subject to the terms and conditions of this Agreement.
4. **RETENTION OF RIGHTS.** Vendor reserves all rights not expressly granted to School District in this Agreement.
5. **ASSIGNMENT.** Neither this Agreement nor any rights granted hereunder may be sold, leased, assigned, or otherwise transferred, in whole or in part, by either party, and any such attempted assignment shall be void and of no effect without the advance written consent of the other party, such consent not to be unreasonably withheld or delayed; provided, however, that such consent shall not be required if either party assigns this Agreement to an Affiliate or in connection with a merger, acquisition, or sale of all or substantially all of its assets, unless the Affiliate or surviving entity is a direct competitor of the other party. However, the School District reserves the right to terminate this Agreement with a respective successor or assign if in the School District's reasonable commercial discretion, continuing this

Agreement with that successor or assign would be contrary to the best interests of the School District. School District may (i) transfer any Program License to any other Affiliate in accordance with this Agreement without requirement of any relocation, transfer or assignment fee or consent by Vendor; and (ii) transfer any Programs to any other School District computer without any requirement of any relocation, transfer or assignment fee or consent by or notice to Vendor. In addition, School District may transfer all of its rights and obligations hereunder to an independent Affiliate in connection with the sale of such Affiliate provided that the Programs continue to be used only for such Affiliate's internal business operations.

6. **AUDIT.** Vendor reserves the right to audit School District's use of the Programs via an agreed to independent third party no more than once annually at Vendor's expense. Vendor shall provide all necessary cooperation to assist School District in collecting information regarding School District's use of the Programs, which cooperation shall include but not be limited to the furnishing of a sufficient number of .exe file to allow the automated tracking of the Programs and the provision of copies of all Purchase Orders received by Vendor under this Agreement. Vendor shall schedule any audit at least sixty (60) days in advance at a mutually convenient time. Any such audit shall be conducted during regular business hours at School District's facilities and shall not unreasonably interfere with School District's business activities.
7. **EVALUATION OF THE PROGRAMS.** During the term of this Agreement, School District may acquire software programs on a temporary basis for purposes of evaluation for an agreed upon period of time at no cost to School District. School District may separately acquire Maintenance and Support Services from Vendor upon mutually agreeable terms and conditions. School District agrees to return or destroy all copies of the software programs subject to the evaluation at the completion of the evaluation period unless School District chooses to order the software program(s) under the appropriate Purchase Order.
8. **SOURCE CODE ESCROW.** At the Vendor's cost, the School District shall become a beneficiary to the escrow agreement between Vendor and its escrow agent by executing a copy of the same, which is attached hereto as **Exhibit B**, and incorporated by reference into this Agreement.
9. **SERVICES**
 - (a) **Maintenance and Support Services for Programs.** School District may purchase Maintenance and Support Services for the period specified for each Program in accordance with **Exhibit A** under this Agreement. Upon payment of the required fees or in accordance with this Agreement, Vendor shall provide School District all Maintenance and Support Services specified in **Exhibit A**.

(b) **Other Services.** Vendor will provide all other Services in accordance with a mutually agreed upon statement of work ("Statement of Work.") Each Statement of Work shall be in a form substantially similar to **Exhibit G**. The Services contemplated in Section 9, do not involve the creation of new software or other intellectual property, if School District desires to engage Vendor for those services, the parties agree to enter into a separate agreement for the provision of new Program(s), software or other intellectual property.

10. **SCHOOL DISTRICT FACILITY ACCESS.** In the event Vendor requires access to a School District facility, Vendor shall be escorted by an authorized School District employee or other authorized person. Vendor shall not be allowed unescorted access to a School District facility, or access to the School District network, unless Vendor complies with School District's additional requirements for such access, which requirements will be provided upon request.

11. **TERM AND TERMINATION.**

(a) **Term.** Each Program License granted under this Agreement shall commence on the execution date of the Agreement by the School District and Vendor authorized representatives and will remain in effect perpetually unless such Program License is terminated as provided in this Section.

(b) **Termination by School District for Convenience.** School District may terminate any Program License at any time upon written notice to Vendor.

(c) **Termination by the Parties for Material Breach.** Either party may terminate this Agreement upon written notice if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days following receipt of written notice specifying the breach in detail. Termination of this Agreement shall not result in the termination of: (i) any fully paid Program Licenses, which School District shall have a continued right to use; and (ii) Maintenance and Support Services related to such Program Licenses, unless School District is in material breach of, or has failed to pay for, such Maintenance and Support Services. Notwithstanding the foregoing, Vendor may terminate a fully paid Program License and any related Maintenance and Support Services in the event that School District materially breaches any provision of Sections 2, 3,5,6,7 and 11.

(d) **Waiver.** Vendor expressly waives any right or remedy to disable, de-install, or repossess a Program without due process of law. In the event of termination of Maintenance and Support Services, School District shall be liable only for payment for Maintenance and Support Services

satisfactorily performed in accordance with this Agreement through the termination date and shall receive a pro-rata refund of any unused prepaid fees.

- (e) **Effect of Termination.** Termination of this Agreement or any Program License shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve School District of its obligation to pay all undisputed fees that have accrued up to the date of termination or are otherwise owed by School District under any Purchase Order.
- (f) **Handling of Programs and Confidential Information Upon Termination.** If a Program License granted under this Agreement terminates, School District shall (i) cease using the applicable Programs, Documentation, and related Confidential Information of Vendor, and (ii) upon request certify to Vendor within thirty (30) days after termination that School District has destroyed, or has returned to Vendor, the relevant Programs, Documentation, related Confidential Information of Vendor, and all copies thereof. Upon termination of this Agreement, each party shall certify to the other party within thirty (30) days of termination that it has destroyed or returned to the other party all Confidential Information of the other party, and all copies thereof, whether or not modified or merged into other materials (excluding those Program Licenses which survive termination of the Agreement) together with accompanying materials. Provided that (i) School District has used commercially reasonable efforts to destroy or return the materials as required in this Section and (ii) School District has no intent to retain such materials, if School District discovers inadvertently retained materials it shall not be considered in breach of this Section provided that School District destroys or returns such materials immediately after discovering them.

12. VENDOR WARRANTIES

- (a) **Operation.** Vendor warrants for one (1) year from the Acceptance date by the School District the Programs described with this Agreement will perform in accordance with supplied Vendor's Documentation, Materials, marketing literature, response to school District's Request for Proposal and any other communications referenced in this Agreement.
- (b) **Functionality.** Vendor warrants one (1) year from the Acceptance date that the Programs will meet the requirements of the School District, including modifications contracted under the terms of this Agreement. These warranties shall be maintained for one year after Acceptance. In order to maintain the warranty, the School District must notify Vendor immediately in writing of any

problems or potential problems and make available to Vendor all material necessary to substantiate any such problem.

- (c) **Media.** Vendor warrants for one (1) year from the Acceptance date that the tapes, diskettes or other media upon which Vendor delivers Programs to School District will be free of defects in materials and workmanship under normal use.
- (d) **Services.** Vendor warrants that for one (1) year from the Acceptance date the performance of any services by Vendor pursuant to this Agreement, including Maintenance and Support Services, that such services shall be performed in a manner consistent with the highest applicable generally accepted industry standards, in a professional and workmanlike manner, and in accordance with this Agreement.
- (e) **Anti-Virus and Disabling Code.** Vendor warrants that the Programs as delivered by Vendor do not contain any virus or computer software code, routines or devices (other than as set forth in the Documentation) designed to disable, damage, impair, erase, deactivate, or electronically repossess the Programs or other software or data.
- (f) **Interoperability.** Vendor warrants it has completed a hardware analysis and determined that the hardware used by the School District will satisfy the current and projected requirements of the School District and is compatible with the Program modules licensed under this agreement. The Vendor has made a good faith effort in evaluating the transaction volumes, equipment requirements, and software constraints in determining the capacity of the proposed equipment. In the event that the Program does not interface with hardware as prescribed and required by the School District in the Request for Proposal the Vendor will take appropriate action and, at no cost to the School District, upgrade the Programs to satisfactorily resolve the interoperability problem in accordance with Subsection 13(h).
- (g) **Vendor Ownership.** Vendor warrants to the School District that it owns or has the required license to all right, title and interest in the Programs as that term is defined in and the Licensed Software as a whole and its components thereof do not and shall not infringe on any trademark, patent or copyright of any third party ("Third Party Software") and the Third Party Software will function as it should with the Programs, provided the School District does not copy, disassemble, reverse engineer, or misuse any Third Party Software as specified in the Third Party's Warranty. Vendor shall provide to the School District a copy of any license agreements, if any, with third parties for Third Party Software and such license agreements shall be incorporated into this Agreement, and attached as a new Exhibit. In addition, to the extent it is feasible, Vendor will provide the School

District with any Third Party Software warranty given to Vendor in connection with the use and operation of its Programs and a written copy of the same Third Party Software warranty shall be provided to the School District and incorporated into this Agreement.

13. **REMEDIES.** In the event of a breach of any warranties set forth in this Agreement, in addition to the remedies available to School District, at law or equity, Vendor shall be liable as follows:

- (a) **Loss of Third Party Rights.** In the event the Vendor's right to use the Third Party Software is terminated, upon notice to the School District, Vendor may substitute other software (third party or otherwise) for the terminated Third Party Software, provided the new Program's level of functionality and interoperability are commercially equivalent to the original Third Party Software. In the event the Vendor is unable to provide a commercially equivalent level of functionality and interoperability, then, upon the School District's request, Vendor will refund a pro-rata portion of the costs associated with the lost functionality that is a result of the loss of use or termination of the Third Party Software. Vendor shall secure from the applicable third party software manufacturers, and assign and pass through to the School District, at no additional cost, the license or permission required for the School District to operate its Programs.
- (b) **Intellectual Property Infringement.** If a third party makes a claim against School District that the Programs infringe any patent, copyright, or trademark or misappropriate any trade secret or other intellectual property right ("IP Claim"), Vendor will indemnify the School District against the IP Claim and pay all costs, damages and expenses (including reasonable legal fees) finally awarded against School District by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Vendor arising out of such IP Claim, provided that: (i) School District promptly notifies Vendor in writing after the School District's receipt of notification of a potential claim; (ii) Vendor assumes sole control of the defense of such claim and all related settlement negotiations; and (iii) School District provides Vendor, at Vendor's request and expense, with the assistance, information and authority necessary to perform Vendor's obligations under this Section.
- (c) **Replacement or Modification.** If a court of competent jurisdiction enters a valid order enjoining School District from using the Programs, the Vendor, at its own expense, shall (i) provide replacement or modified Programs that have the same or better functionality as the infringing Programs or (ii) obtain a license for School District to continue to use the Programs.
- (d) **Operation.** To correct or provide a workaround for Program errors that cause a breach of the warranties as set forth in Section 12, or if Vendor is unable to make the Program operate as warranted within a reasonable time considering the severity of the error and its impact on the

School District, however, in no event more than thirty (30) days unless the School District otherwise agrees to extended beyond thirty days, the School District shall be entitled to return the Program to Vendor and recover the fees paid for the Program and any related service fees.

- (e) **Media.** Vendor will replace the defective media.
- (f) **Services.** The Vendor, at its sole cost and expense, will re-perform the services in conformity with the warranty. If defects in the Services cannot be corrected by re-performance, School District may (i) require Vendor to take necessary action to ensure that Vendor's future performance conforms to the requirements of the warranty and (ii) reduce the fee payable under this Agreement applicable to the non-conforming Services to reflect the reduced value of the Services performed, and the reduced value will be reasonably determined by School District; or (iii) should the Vendor fail to promptly re-perform the services, the School District may perform the Services or obtain a third party to perform the Services and charge to Vendor any cost incurred by the School District that is attributable to the Vendor's non-performance of the non-conforming services.
- (g) **Anti-Virus and Disabling Code.** The Vendor will immediately replace all copies of the affected Programs in the possession of School District with copies that do not contain such virus or disabling code and assist the School District, at no additional charge, with the restoration of any lost Information and correct any other damage suffered to School District's system caused by the virus or disabling code.
- (h) **Interoperability.** In the event Vendor and the School District's other selected Program providers cannot reach a resolution in a reasonable amount of time, the School District shall determine which party must immediately solve the interoperability problem. Thereafter, upon the School District's reasonable request, Vendor, at its expense, shall participate in and offer any reasonable assistance requested by the School District with respect to the interoperability problem proposed or selected by the School District. Such assistance may occur at Vendor's or the School District's site, or in field, at the School District's reasonable discretion. Vendor agrees to abide by the School District's decision for resolution to the interoperability problem.

14. **GENERAL INDEMNITY.** The Vendor agrees to indemnify the School District from and against any claim, cause of action, judgment, loss, demand, suit, or legal proceeding brought against the School District or its employees, representatives, or agents, which arises directly or indirectly from any act or omission of the Vendor, including but not limited to any misconduct or neglect by the Vendor or its employees,

subcontractors or agents. Furthermore, to the maximum extent permitted by law, the Vendor will defend the District from any claim and will indemnify the District against any liability for any imposed on the District; and the Vendor will reimburse the District for any award, judgment or fine against the District based on the position the Vendor and/or any of its employees, subcontractors or agents, who provides any services to the District related to this Agreement was ever the District's employee, and all attorneys' fees and costs the District reasonably incurs defending itself against any such liability.

15. **LIMITATION OF LIABILITY.** EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATION, WARRANTIES OR A BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS EXPRESSLY MADE UNDER THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS, WARRANTIES OR A BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS, THE AGGREGATE AND CUMULATIVE LIABILITY OF EITHER PARTY FOR DIRECT AND PROVEN DAMAGES HEREUNDER SHALL IN NO EVENT EXCEED THREE TIMES THE AMOUNT OF FEES PAID OR PAYABLE BY SCHOOL DISTRICT UNDER THIS AGREEMENT.

16. **PAYMENT PROVISIONS.** All fees hereunder shall be payable within forty five (45) days of School District's receipt of Vendor's undisputed invoice or unless otherwise set forth on the Purchase Order or as specified in other documents that parties agree supersedes this Section. The Vendor will invoice School District for Programs and services after the School District's Acceptance or as set forth in the Purchase Order, Statement of Work, or other writing agreed to by the parties.

17. **TAXES.** The School District certifies that it is not liable for the payment of any taxes, whether local, state or federal sales, use, withholding, excise, personal property, value-added or similar taxes, assessments or duties or any related late charges or penalties of any nature, except for any additional amounts that the School District may be required to pay by applicable local, state or federal laws, hereafter enacted or amended. The fees specified in this Agreement do not include taxes or duties; if Vendor is required to pay sales, use, property, value-added, withholding or other taxes based on the Program Licenses granted or Services provided in this Agreement (excluding taxes based upon Vendor's income or payroll) or on School District's use of Programs or Services, then the Vendor shall promptly pay when due, all taxes, bills, debts and obligations it incurs providing Programs and Services under this Agreement and shall not allow any tax lien, money judgment or liability to be filed against the School District under this Agreement.

18. GENERAL TERMS

- (a) **Nondisclosure.** School District and Vendor agree to incorporate the terms of any Non-Disclosure Agreement executed by the parties on **[Insert Date]**, and agree that any Programs, Services performed and Documentation exchanged under this Agreement will be subject to the Non-Disclosure Agreement. Notwithstanding anything to the contrary contained elsewhere herein or in the Non-Disclosure Agreement, the Parties acknowledge and agree that the obligations set forth in the Non-Disclosure Agreement, as applied to this Agreement, shall be coterminous with the term of this Agreement.
- (b) **Governing Law.** This Agreement and all matters arising out of or relating to this Agreement shall be governed by the laws of the State of Colorado, excluding its conflict of law provisions.
- (c) **Notices.** All notices required to be sent hereunder shall be in writing and shall be deemed to have been given upon (i) the date sent by confirmed facsimile, (ii) on the date it was delivered by courier, or (iii) if by certified mail return receipt requested, on the date received, to the addresses set forth above and to the attention of the signatories of this Agreement or to such other address or individual as the parties may specify from time to time by written notice to the other party. Notices to School District shall be sent to:
- ATTN: Purchasing Department
Denver Public Schools
900 Grant Street
Denver, Colorado 80203
In case of dispute, include a copy to: DPS General Counsel
- (d) **Injunctive Relief.** Each party acknowledges and agrees that in the event of a material breach of this Agreement the non-breaching party shall be entitled to seek immediate injunctive relief, in addition to whatever remedies it might have either at law or in equity pursuant to this Agreement.
- (e) **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.
- (f) **Waiver.** The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. No action, regardless of form, arising out of this Agreement may be brought by either party more than three years after the cause of action has accrued.
- (g) **Force Majeure.** Each party will be excused from performance for any period during which, and to the extent that, it or its subcontractor(s) is prevented from performing any obligation or service, in

whole or in part, as a result of acts of God, riots, acts of war, epidemics, communication line failures, and power failures.

- (h) **Successors and Assigns:** All provisions of the Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the respective successors and permitted assigns of Vendor and School District.
- (i) **Delivery.** All materials provided by Vendor hereunder shall be delivered to School District on a F.O.B. destination basis to the School District's designated facility.
- (j) **Privacy.** The Vendor is familiar with and agrees to be responsible for its compliance with the Children's Online Privacy Protection Act of 1998 and the Federal Trade Commission's implementing regulations at 16 CFR Part 312 ("COPPA"), the Family Educational Rights and Privacy Act and the U.S. Department of Education's implementing regulations at 34CFR Part 99 ("FERPA"), Colorado Open Records Act" 24-72-201. et seq. ("CORA") and all other applicable laws, rules or regulations, as amended (collectively, the "Confidentiality Laws"), concerning the collection, use and disclosure of "Personnel files," which means and includes home addresses, telephone numbers, financial information, and other information maintained because of the employer-employee relationship, and other documents specifically exempt from disclosure under this part 2 or any other provision of law. Personnel files does not include applications of past or current employees, employment agreements, any amount paid or benefit provided incident to termination of employment, performance ratings, final sabbatical reports required under section 23-5-123, C.R.S., or any compensation, including expense allowances and benefits, paid to employees by the state, its agencies, institutions, or political subdivisions and "directory information," "education records," and "personally identifiable information," of School District's "students" and "parents," as those quoted terms are used in this Agreement and defined in FERPA, and all information concerning School District's, students' names, performance information, test results, test results analyses and all other student or school identifying information and personal data and all rights thereto (collectively, School District's "Information"). In the event of a conflict between this Agreement and the Confidentiality Laws, the Confidentiality Laws shall control the Children's Online Privacy Protection Act of 1998 ("COPPA"), the Federal Educational Rights & Privacy Act of 1974 ("FERPA") and other applicable laws, regulations and statutes and (v) the use and integrity over the dissemination of all the School District Data.

- (k) **Availability of Funds and Annual Appropriations.** The School District's obligation for payment of any amount herein shall extend only to annual appropriations by its Board of Education as provided in the School District Budget Law of 1964, C.R.S. § 22-44 Part 1 and C.R.S. § 22-32-127, as now or hereafter amended. In the event funds are not so appropriated, the School District shall have no obligation to make such payment.
- (l) **Governmental Immunity.** No term or condition of this Agreement shall be construed or interpreted as a waiver by the School District of any provision of the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., C.R.S., as now or hereafter amended. Vendor understands and agrees that liability for claims for injuries to persons or property arising out of the negligence of DPS, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of §§ 24-10-101, et seq., C.R.S., as now or hereafter amended. Any provision of this Agreement, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the School District in accordance with such governmental immunity.
- (m) **Personnel.** Prior to Vendor making any changes to their appointed onsite project manager (other than due to resignation, termination for cause, or some other cause beyond a party's reasonable control), Vendor shall provide a ten-day written, notice to the School District requesting approval to reassign or change its project manager, which consent shall not be unreasonably withheld by School District. All Vendor personnel shall follow the applicable policies while in School District facilities and buildings or on property, and Vendor's employees, licensors, agents or subcontractors having student contact shall undergo a background check in accordance with **Exhibit H** ("VENDOR\CONTRACTOR BACKGROUND CERTIFICATION").
- (n) **Insurance.** Vendor shall, at its expense, procure and maintain during the term of the performance of the Services hereunder, the following insurance: (i) Worker's compensation as required by applicable worker's compensation laws; (ii) Employer's liability insurance with a limit of not less than \$100,000 for each accident and \$100,000 per employee for bodily injury by disease, with an aggregate limit of \$500,000 per disease; (iii) Commercial general liability insurance that covers all of the operations of Vendor. Coverage shall include automobile liability (owned, hired and non-owned) operations, property damage, and personal injury with a single limit of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate; and (iv) Additional excess liability insurance of not less than \$2,000,000 general/aggregate; and (v) School District and any other parties reasonably requested by School District shall be listed as

- additional Insured under the commercial general liability policy, and Vendor shall cause its insurance carrier to waive all rights of subrogation against School District on Vendor's workers' compensation policy listed above and (vi) the Vendor shall require all authorized subcontractors to carry insurance coverage similar to that described above and (vii) the Vendor shall provide certificates evidencing such insurance prior to the initiation of Services and such certificates shall require a thirty (30) day advance written notice of cancellation to the School District.
- (o) **Public Relations.** This Agreement shall not be construed as granting to Vendor any right to use any of School District or its Affiliates' trademarks, service marks or trade names or, otherwise refer to School District in any marketing, promotional or advertising materials or activities. Without limiting the generality of the forgoing, Vendor shall not disclose (i) the terms and conditions of this Agreement or any Statement of Work, or (ii) the existence of the project or any contractual relationship between School District and Vendor, or (iii) issue any publication or press release relating directly or indirectly to (i) or (ii) above; without School District's prior written consent.
- (p) **Relationship between the Parties.** The Vendor is an independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties.
- (q) **Entire Agreement.** This Agreement, together with the attached exhibits, which are incorporated by reference, constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement and such exhibits. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party. No other act, document, usage or custom shall be deemed to amend or modify this Agreement.
- (r) **Conflict of Terms.** In the event of a conflict between the terms of this Agreement and any attachments or other documents incorporated herein, the conflict shall be resolved in the following order of precedence: (i) the terms of this Agreement; (ii) the terms of any attached Exhibits; and (iii) the terms of any Purchase Orders or Statements of Work; (iv) the Vendor's response and (v) the RFP.
- (s) **Survival.** The obligations of the parties under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive termination, cancellation, or expiration of this Agreement. Any rights or remedies by either Vendor or School District respecting payment of money by the other party shall survive the

termination of this Agreement. Any provisions that are expressly stated to survive the expiration or termination of this Agreement shall be enforced accordingly.

(t) **Counterparts and Exchanges by Fax.** This Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by fax shall be sufficient to bind the parties to the terms and conditions of this Agreement.

EXECUTED BY: SCHOOL DISTRICT

Signature: _____

Name: _____

Title: _____

Date: _____

EXECUTED BY VENDOR

Signature: _____

Name: _____

Title: _____

Date: _____

Exhibit A**MAINTENANCE AND SUPPORT SERVICES AGREEMENT**

1. **Scope of Services.** Vendor shall provide the following Maintenance and Support Services to School District for the Licensed Software. If specifically provided in an applicable Statement of Work, these Services shall also be provided for developed software:
 - (a) **Enhancements and New Features.** Under Vendor's Maintenance and Support Services Agreement, Vendor will provide to School District: (a) all Enhancements, including but not limited to Enhancements necessary to operate the Software on the current versions of the recommended equipment manufacturer(s)' operating system Software and all Enhancements necessary to maintain compatibility with all embedded third party software. Vendor shall provide such Enhancements to School District upon their general release and when the first twenty percent (20%) of Vendor's customers receive such Enhancements; provided, however, that School District shall have the right to remain on any integer release of the Software for the longer of: (i) three (3) years; or (ii) the release date for the second succeeding major Software release following the then-current Software release. Upon completion of installation of any Enhancements, Vendor shall warrant the operation and functionality of the Software, including Enhancements, in accordance with the terms set forth in Article 6, Warranties and Remedies, and provide all Service and Maintenance and Support Services for such Enhancements as set forth in the Agreement.
 - (b) **Mandatory Modifications.** Mandatory modifications to the Products shall be provided by Vendor, at no additional cost to School District (beyond any Maintenance and Support Services fees), whenever such modifications are recommended, mandated or required to meet modifications are mandated or required to meet all federal and state governmental and quasi-governmental regulatory requirements, statutes, ordinances, edicts, rules, guidelines or standards related to School District's use of Vendor Products including, without limitation, all standards or guidelines established by committees, agencies or other standard-setting organizations implementing regulatory requirements, policies or operating standards adopted by the education industry and any other such modifications or changes that may be required to meet the then-current industry-accepted specifications or standards for third party Software with which the Software interfaces and all federal, state and regulatory requirements that relate to School District's use of the Software (collectively, "Mandatory Modifications"). On or before the date on which School District is required

to comply with such Mandatory Modifications, Vendor shall provide to School District all such Mandatory Modifications. Following installation of such Mandatory Modifications Vendor shall provide all Maintenance and Support Services for such Mandatory Modifications under the Agreement.

- (c) **Obligation to Generally Improve the Software.** Vendor agrees that it will generally enhance and improve the Software for as long as School District elects to receive and pays for Maintenance and Support Services for such Software, however this obligation does not apply to Vendor's obsolete revisions.
- (d) **Third party software Maintenance and Support.** Vendor shall serve as liaison for Maintenance and Support purposes between the School District and the applicable vendor(s) for any third party software provided as part of this Agreement.
- (e) **Internet Support.** Vendor shall provide internet support to School District twenty-four (24) hours per day, seven (7) days per week.
- (f) **Software Information Network.** The School District shall have on-line access to Vendor's Product information network for on-line Product information and questions. Vendor shall provide to School District a telephone number for purposes of accessing Vendor's Product information network. The School District shall not be charged an access fee to such network, but School District shall be responsible for any connect-time charges to the public telecommunications carrier.
- (g) **Documentation.** Vendor shall provide any and all updated Documentation for any Product provided to School District in accordance with the Agreement as such Documentation is generally released, or more frequently if significant errors and/or discrepancies are discovered in such Documentation.
- (h) **Telephone Hotline.** Vendor shall continuously (twenty-four (24) hours per day, seven (7) days per week) provide a telephone number for School District personnel to call for all purposes regarding Maintenance and Support Services for the Products.
- (i) **Equipment-Related Maintenance and Support.** Vendor will serve as liaison between the School District and the applicable Hardware manufacturer(s) for any Hardware -related support requested by School District.
- (j) **Maintenance and Support Tracking System.** Vendor shall maintain a current record of School District's Maintenance and Support Services history for all Products.

2. SERVICE ESCALATION PROCEDURES.

- (a) **Defect Severity Levels.** Defects (classified as Catastrophic, Critical, Major, or Minor defects) for all Products are defined in this Section. The classification and reclassification of the defect level shall

be at the sole discretion of School District; provided, however, that such classifications and reclassifications shall be in accordance with the definitions set forth in this Section. In the event a defect is reclassified to a higher severity level by School District, the Service Restoration time period shall begin at the time the defect is reclassified.

- (b) **Catastrophic Defects** means conditions under which the Software is inoperative and School District's inability to use the Software creates an emergency situation with respect to School District's business operations. This condition generally is characterized by a loss of service affecting all or most of the District users due to Product failure and requires immediate restoration or correction.
- (c) **Critical Defects** means conditions under which the Software is partially inoperative, still usable by School District, but creates a critical situation with respect to School District's business operations. The inoperative portion of the Software severely restricts School District's operations.
- (d) **Major Defects** means conditions under which the Software is usable by the School District, with limited functions, but creates a manageable situation with respect to the School District's business operations. The condition is not critical to overall the School District operations and does not severely restrict such operations.
- (e) **Minor Defects** means conditions under which the Software is usable and the condition does not adversely affect School District's operations. These problems are those resulting in a minor failure that is cosmetic or de minimis in nature.

3. **INITIAL RESPONSE; SERVICE RESTORATION; DEFECT RESOLUTION.** With respect to the terms utilized in the table below, the following definitions shall apply:

- (a) **Defect Resolution** is the time elapsed from the School District's report of a defect to the time Vendor provides a final correction or modification of the Software that corrects the root cause of the defect.
- (b) **Initial Response** means the time it takes from the School District's initial report to the vendor of the defect until the School District speaks with the appropriate Vendor subject matter expert as set forth in the escalation table under Section 1. The measurement of Initial Response time does not apply when the School District call is related to a previously reported defect.
- (c) **Service Restoration** means the time it takes Vendor to apply a functional resolution to the reported defect, meaning Vendor provides the School District with a temporary fix or workaround that solves a reported defect and that can be used by the School District with minimal inconvenience and minimal impact on the School District's business operations.

(d) Vendor shall exercise its best, continuous and uninterrupted efforts, twenty-four (24) hours a day, seven (7) days a week, to achieve Service Restoration for any Catastrophic Defects and Critical Defects as soon as possible after reported by the School District with a quarterly mean time to restore of one (1) hour. Without limiting the generality of the foregoing, the parties agree that the time frames for Initial Response, Service Restoration and Defect Resolution set forth in the following table represent the outside time limit for Initial Response, Service Restoration and Defect Resolution and that the School District expects Vendor to achieve time frames that are better than the time frames set forth below.

Severity Level	Initial Response	Service Restoration	Defect Resolution
Catastrophic Defect1	Immediate	1 hour	10 days
Critical Defect1	Immediate	2 hours	15 days
Major Defect	30 minutes	24 hours	45 days
Minor Defect	1 hour	N/A	45 days

(e) With respect to all Catastrophic and Critical Defects, Vendor shall provide hourly status updates to the School District until Service Restoration has been achieved.

4. **Escalation of Unresolved Defects Within Vendor.** For all defects reported by the School District, the School District shall have the right to require Vendor to escalate the School District's defect to the next appropriate tier in the applicable Vendor support organization. Such escalation is not intended to and shall not diminish Vendor's obligations to restore and resolve defects within the applicable time frames. In addition, Vendor shall observe the following management notification procedures with respect to all unrestored Catastrophic Defects and Critical Defects:
 5. **Service Interruption.** Upon the School District's report to Vendor of the existence of a Catastrophic Defect, Vendor shall notify __ [TBD] __ and any additional Vendor personnel as needed by Product. If Service Restoration with respect to a Catastrophic Defect has not been achieved within thirty (30) minutes after the defect is reported by the School District to __ [TBD] __, as applicable, Vendor shall notify the appropriate Vendor supervisory management of the unrestored condition. If Service Restoration has not been achieved within one (1) hour after the defect is reported, the next higher level of Vendor supervisory management shall be notified of the unresolved condition.
 6. **Extended Service Interruption.** Upon the occurrence of an Catastrophic Defect that: (i) affects multiple customers and Service Restoration has not been achieved within thirty (30) minutes following the School District's report to Vendor of such Catastrophic Defect; or (ii) includes media involvement (an "**Extended Service Interruption**" or "**ESI**"), then in addition to the Vendor personnel identified in subsection (a) above, Vendor shall notify __ [TBD] __, as applicable. Such notification shall be made by

means of Vendor's call center via telephone, facsimile or e-mail commencing within sixty (60) minutes following the School District's report to Vendor of the Catastrophic Defect and concluding within thirty (30) minutes thereafter.

- 7. **Critical Defects.** If Service Restoration with respect to a Critical Defect has not been achieved within one (1) hour after the defect is reported by the School District to __ [TBD] __, as applicable, Vendor shall notify the appropriate Vendor supervisory management of the unrestored condition.
- 8. **Vendor Escalation Contact Information.** Technical and management escalation contact information for the persons set forth in this Section are as follows:

Level	Name	Position	Phone #	Pager	Email

- 9. **Measurement of Response, Restoration and Resolution of Defects.** On a quarterly basis, Vendor shall provide to the School District a report that summarizes the percentage of defects responded to, restored and resolved within the time frames specified in this Section.
- 10. **Reviews.** As part of its ongoing Maintenance and Support Services, Vendor shall provide the following:
 - (a) **Operational Reviews And Service Reports** within mutually agreed to time frames (but no less than quarterly), which reports shall include, without limitation: (i) a detailed summary and status of all defects reported by the School District; (ii) the number of remote accesses by Vendor into the School District's systems; (iii) the number of Maintenance and Support Services-related on-site visits; and (iv) Software Enhancements sent and applied to Products; and (v) Software release schedules and
 - (b) **Evaluation Software.** Access to any performance evaluation or troubleshooting Software, tools or utilities that are generally available to Vendor's customers to aid the School District in monitoring Product usage and projecting resource needs.
 - (c) **Availability Service Level.** The Products shall achieve an availability service level ("Availability Service Level") of 99.99% within the School District's network. The unavailability time is calculated as the total minutes of Product unavailability experienced by the School District during a calendar month during the Peak Hours defined as 7:00 a.m. to 9:00 p.m. Local Time of School District. The maximum unavailability time may vary depending on the total number of days in the month. Example: in a 30-day month, the unavailability maximum would be 4 minutes. If Vendor exceeds the maximum unavailability time of 4 minutes over the calendar month, then Vendor would be liable to pay the School District a Service Credit as set forth herein for the unavailability time exceeding 4 minutes.

(d) **Fault Frequency Rates.** The fault frequency rate ("Fault Frequency Rate") for a single Product within the School District's network shall not exceed 1% per year. The fault frequency rate is calculated as the percentage of Product failure against the overall average number of Products in service in the School District's environment per calendar year. If Vendor exceeds the maximum fault frequency rate for a Product of over 1% during a rolling 12 month period, then Vendor would be liable to pay the School District a Service Credits as set forth herein for the unavailability time exceeding 1%.

(e) **Failure to Meet Service Restoration Response Times.** Service Credits for Vendor's failure to meet the Service Restoration response times for Catastrophic and Critical Defects set forth herein shall be as follows:

Service Restoration Time Period	Service Credits
2-4 Hours	The Service Credit shall be equal to the basis of the rate charged. The Service Credit received will be the prorated amount of (1) time and materials (2) fixed fee or (3) hourly or any rate combination of the same, for the period service was unavailable. If the School District determines that this method is an unreasonable as a Service Credit, Vendor agrees to refund the direct and actual cost incurred or service lost by the School Direct.
5-8 Hours	
9- 12 hours	
13-16 hours	
17-20 hours	
21-24 hours	
Each additional 24 hour period or part thereof	

(f) **Failure to Meet Availability Service Levels.** Service Credits for Vendor's failure to meet the Availability Service Levels for each Product shall be as follows:

Duration of Service Unavailability per Month	Service Credits
5 -8 Minutes	The Service Credit shall be equal to the basis of the rate charged. The Service Credit received will be the prorated amount of (1) time and materials (2) fixed fee or (3) hourly or any rate combination of the same, for the period service was unavailable. If the School District determines that this method is an unreasonable as a Service Credit, Vendor agrees to refund the direct and actual cost incurred or service lost by the School Direct.
9-12 Minutes	
13 -16 Minutes	
17 -20 Minutes	
21 -24 Minutes	
Each additional 24 minute period or part thereof	

(g) **Failure to Meet Fault Frequency Rates.** Service Credits for Vendor's failure to meet the Fault Frequency Rates for each Product shall be as follows:

Percentage of Fault Frequency Rate	Service Credits
2-3 %	The Service Credit shall be equal to the basis of the rate charged. The Service Credit received will be the prorated amount of (1) time and materials (2) fixed fee or (3) hourly or any rate combination of the same, for the period service was unavailable. If the School District determines that this method is an unreasonable as a Service Credit, Vendor agrees to refund the direct and actual cost incurred or service lost by the School Direct.
4-5 %	
6- 7%	
8-9%	
9-10%	
Each additional 1%	

11. Special Remedies for Enhancements. The following additional remedies shall apply respecting Enhancements acquired under this Agreement or otherwise provided to the School District by Vendor:

- (a) Field Defects.** All Enhancements provided by Vendor under this Agreement shall be tested by Vendor prior to delivery to the School District. Vendor shall provide a written list of known problems associated with the Enhancement upon delivery of the Enhancement to the School District. In the event that the School District uncovers an unreported Catastrophic, Critical, or Major Defect during field testing of any Enhancement within any rolling 12-month period, the School District shall be entitled to the remedies specified in subsection (c) herein.
- (b) Product Scaling.** Prior to the beginning of each calendar quarter during the Term of this Agreement, the School District agrees to provide Vendor with a rolling 9 month forecast of its projected increase in capacity for the Products deployed by the School District in the School District's network. Vendor agrees that prior to the next succeeding quarter following each such the School District forecast, Vendor will validate that the Products will perform in accordance with Vendor's published specifications based upon the forecasted increase in capacity or provide the School District with information respecting any problems discovered by Vendor and a plan to address those problems within a reasonable time period. In the event that the School District uncovers an unreported Catastrophic, Critical, or Major Defect during production use of the Products under the forecasted capacity within any rolling 12-month period, the School District shall be entitled to the remedies specified in subsection (c) herein.
- (c) Remedies.** Upon the occurrence of an event described in subsections (a) or (b) above, the School District shall be entitled to the following remedies: (i) a credit equal to fifteen percent (15%) of the annual amount paid to Vendor for Maintenance and Support Services related to all Products for the applicable period in which the event occurred; and (ii) a credit equal to ten percent (10%) of all Product purchases for Procurement Documents submitted by the School District for Products within the following 12 month period. The School District may apply the credits as an immediate reduction against the amount due under all applicable invoices.
- (d) Lab Assistance.** In the event that the School District is unable to reproduce a Defect in its production environment or validate an error in its lab environment, Vendor agrees that upon the School District's request Vendor shall provide the School District such additional personnel and lab resources, either in the School District's location or Vendor's location, as necessary, to identify the Defect and validate a resolution. Vendor shall allow the School District personnel reasonable access to Vendor's lab and personnel if the additional testing is to take place at Vendor's location.

Information Requests. In the event Vendor requests any Licensed Software dumps, tapes, logs or any other documentation from the School District to resolve a reported problem, such documentation shall be forwarded through electronic means (email or ftp) or by overnight courier at Vendor's expense if electronic means are not available.

Replacements when Service Restoration involves the exchange of hardware or parts, the replaced item become School District property and the replaced part becomes the Vendor's.

Vendor will inform you in advance whenever additional charges apply.

Service Credit will be billed as the School District specifies, which may be in advance, periodically, during the performance of the work, or after the work is completed.

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EXHIBIT B
SOURCE CODE ESCROW AGREEMENT

THIS SOURCE CODE ESCROW AGREEMENT (“Escrow Agreement”) is between School District having a place of business at [address] and its Affiliates (“School District”), and Vendor, a corporation having a place of business at _____ (“Vendor”), and escrow agent’s name having a place of business at [address] (“Escrow Agent”).

RECITALS

WHEREAS, Concurrent with the execution of this Escrow Agreement Software, Licensee and Vendor are entering into the Software License and Services Agreement (the “Agreement”) pursuant to which Vendor has licensed to School District the right to use the Vendor Products (as defined in the Agreement) and related Documentation.

WHEREAS, the License Agreement requires Vendor and School District to enter into an escrow agreement which provides for Vendor's deposit of the Licensed Software's source code of the Vendor Products and related materials (the “Escrow Materials”) with an escrow agent reasonably satisfactory to School District and Vendor. The License Agreement provides that, under circumstances to be specified in this Escrow Agreement, School District may obtain the escrowed Escrow Materials from the Escrow Agent solely for the purpose of maintaining and supporting the Vendor Products.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is acknowledged and in consideration of the promises, mutual covenants and conditions contained in this Agreement, the parties agree as follows:

AGREEMENT

1. Definition of Escrow Materials.

- A. The Escrow Materials to be stored by the Escrow Agent consist of one copy of all existing annotated Licensed Software Agreement's source code listings, flow charts, decision tables, schematics, drawings, specifications, documentation, design details, and other related documents which pertain to the Vendor Products and all technology necessary to understand the design, structure, and implementation of the Vendor Products and to maintain, support and build the Licensed Software's of the Vendor Products (including, but not limited to, any tools which are not commercially available) such that a third party programmer reasonably skilled in

the language used in such materials could maintain and support the Vendor Products without further assistance or references to other materials. The Escrow Materials shall also include any E Licensed Software's extensions and any maintenance releases to School District pursuant to the Agreement described in Exhibit _____ ("Vendor Support Obligations").

2. Deposit. Within thirty (30) days of School District's Acceptance of the Vendor Products in accordance with the Agreement specifications ("Delivery and Acceptance Testing"), Vendor shall deliver to the Escrow Agent a sealed package certified by an authorized officer of Vendor to contain a complete set of the Escrow Materials as defined in Paragraph 1 ("Definition of Escrow Materials") for such accepted Vendor Products (a "Deposit"). In addition to the above, within thirty (30) days of any maintenance releases to School District pursuant to Agreement's Vendor support obligations, Vendor shall deliver the Licensed Software's source code to such maintenance releases for the Vendor Products (a "Maintenance Deposit") to the Escrow Agent.
3. Receipt by Escrow Agent. Vendor shall furnish to the Escrow Agent a packing list in triplicate describing each Deposit made under this Agreement. The Escrow Agent shall issue a receipt for all Escrow Materials received and forward copies of such receipts and packing lists to both School District and Vendor.
4. Storage of Materials; Inspection. The Escrow Agent shall establish under its control a receptacle for the purpose of storing the Escrow Materials in safekeeping in an appropriate physical facility and shall allow the inspection of the Escrow Materials by School District to confirm that the deposit is complete and will compile into the same version of the Object Code of the Vendor Products accepted by School District pursuant to Section [designation of section] ("Delivery and Acceptance Testing") of the License Agreement Any such inspection shall be in the presence of an authorized representative of Escrow Agent. School District shall provide Vendor with ten (10) days notice of any requested inspection and Vendor shall have the right to attend such inspection, at its option. Access to the Escrow Materials shall be permitted to authorized representatives of Escrow Agent to the extent necessary for Escrow Agent to perform its obligations pursuant to this Escrow Agreement.
5. Records. Escrow Agent agrees to keep complete written records of the activities undertaken, and materials prepared and delivered to Escrow Agent, pursuant to this Escrow Agreement. Vendor or School District shall be entitled at reasonable times, during normal business hours, and upon reasonable

notice to Escrow Agent, during the term of this Escrow Agreement to inspect the records of Escrow Agent with respect to the Escrow Materials.

6. Term. This Escrow Agreement shall be perpetual and shall not terminate upon termination of the License Agreement.
7. Default by Vendor. The following events shall constitute events of default by Vendor which give School District the right to receive for its own and sole use only, a single copy of the Escrow Materials from the Escrow Agent pursuant to Paragraph 8 (“Delivery of Escrow Materials to School District”):
 - (a) Vendor breaches its warranty in Section 6 Warranties and Remedies (“Performance”) of the License Agreement or fails to meet its maintenance or support commitments as set forth in Exhibit [designation of Exhibit A] (“Vendor Maintenance and Support Services”) to the License Agreement for a period of fifteen (15) days, or Vendor notifies School District at any time subsequent to [date] of its election to discontinue such support;
 - (b) Vendor becomes insolvent, or files or has filed against it any proceeding in bankruptcy or for reorganization under any federal bankruptcy law or similar state law, or has any receiver appointed for all or a substantial part of Vendor's assets or business, or makes any assignment for the benefit of its creditors, or enters into any other proceeding for debt relief;
 - (c) Vendor ceases to do business or institutes any proceedings for the liquidation or winding up of its business or for the termination of its corporate charter;
 - (d) Vendor or Vendor's business is acquired by a competitor of School District.
8. Delivery of Escrow Materials to School District. Escrow Agent agrees, and is specifically authorized, to provide the Escrow Materials to School District immediately upon written notice by School District (a “Default Notice”) that one or more of the default events defined in Paragraph 7 (“Default by Vendor”) has occurred.
9. Bankruptcy. Vendor and School District acknowledge that this Escrow Agreement is an “agreement supplementary to” the License Agreement as provided in Section 365(n) of Title 11, United States Code (the “Bankruptcy Code”). Vendor acknowledges that if Vendor, as a debtor in possession or a trustee in bankruptcy in a case under the Bankruptcy Code, rejects the License Agreement or this Escrow Agreement, School District may elect to retain its rights under the License Agreement and this Escrow

Agreement as provided in Section 365(n) of the Bankruptcy Code. Upon written request of School District to Vendor or the Bankruptcy Trustee, Vendor or such Bankruptcy Trustee shall not interfere with the rights of School District as provided in the License Agreement and this Escrow Agreement, including the right to obtain the Escrow Materials.

10. License Grant for Use of Escrow Materials; Confidentiality; Liability for Disclosure. In the event that School District obtains the Escrow Materials pursuant to the terms of this Agreement, School District agrees that it will disclose the Escrow Materials only to employees and consultants of School District who have a need-to-know and need access to the Escrow Materials to perform their duties. School District may make a reasonable number of machine-readable copies of the Escrow Materials solely for backup and archival purposes. School District agrees to reproduce and include all copyright, trade secret, and all other proprietary notices appearing in or on the Escrow Materials on any copy made by School District. Each source program provided to School District under this Agreement shall be confidential and subject to trade secret protection, and School District and its authorized employees and consultants acknowledge and agree that the Escrow Materials are valuable property of Vendor and will be guarded against unauthorized use or disclosure with the same care that School District uses to protect its own valuable, confidential information, but in no event less than reasonable care. The above provision is in lieu of the provisions of Section 9.1 or 5.5 [of the Agreement.
11. Delivery Site. Delivery of the Escrow Materials to School District, or return of the Escrow Materials to Vendor, shall be at the offices of the Escrow Agent at [address], unless special delivery instructions concerning delivery elsewhere are furnished to the Escrow Agent by the party authorized under this Agreement to receive the Escrow Materials.
12. Obligations of Escrow Agent. The Escrow Agent shall be responsible only for the acceptance, storage, and delivery of the Escrow Materials in accordance with the terms of this Escrow Agreement and for the exercise of due diligence in accordance with the high level of care accorded fiduciary obligations; shall have no obligation or responsibility to verify or determine that the Escrow Materials deposited with Escrow Agent by Vendor do, in fact, consist of those items which Vendor is obligated to deliver under this Escrow Agreement; shall bear no responsibility whatsoever to determine the existence, relevance, completeness, currency, or accuracy of the Escrow Materials; and shall be entitled to act in good faith reliance upon any written instruction, instrument, or signature believed in good faith to be genuine and

to assume in good faith that any person purporting to give any writing, notice, advice, or written instruction in connection with, or relating to, this Escrow Agreement has been duly authorized to do so. In the event that Escrow Agent is, for any reason, uncertain of its obligation to deliver the Escrow Materials to School District pursuant to Paragraph 8 (“Delivery of Escrow Materials to School District”), it shall deliver such materials and it shall initiate arbitration pursuant to Paragraph 13 (“Arbitration”) IS to resolve such uncertainty. In the event the arbitrator determines that the Escrow Materials should not have been delivered to School District, School District shall return the original Escrow Materials to the Escrow Agent and certify in writing that it has destroyed any copies of such Escrow Materials. Except as expressly provided in this Escrow Agreement, Escrow Agent agrees that it will not divulge or disclose or otherwise make available to third parties whatsoever, or make any use whatsoever, of the Escrow Materials or any information deposited with it by Vendor in connection with this Escrow Agreement, without the express prior written consent of Vendor.

13. Arbitration. Subsequent to the Escrow Agent's delivery of the Escrow Materials to School District pursuant to Paragraph 8 (“Delivery of Escrow Materials to School District”) if any dispute arises concerning the delivery of the Escrow Materials to School District by Escrow Agent, such dispute shall be settled by nonbinding arbitration before a single arbitrator selected in accordance with the rules of the American Arbitration Association, to take place in City and County of Denver, State of Colorado within thirty (30) days following School District's delivery of a Default Notice to Escrow Agent pursuant to Paragraph 8 (“Delivery of Escrow Materials to School District”), in accordance with the then-prevailing rules of the American Arbitration Association. No discovery will be permitted. The arbitrator shall be instructed to render his or her award within fifteen (15) days after the end of the hearing, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.
14. Indemnity. Vendor agrees to indemnify Escrow Agent from and against any and all claims, actions, and suits, whether groundless or otherwise, and from and against any and all liabilities, losses, damages, costs, charges, penalties, counsel fees, and any other expense of any other nature, including, without limitation, settlement costs incurred by Escrow Agent on account of any good faith act or omission of Escrow Agent, in respect of, or with regard to, this Escrow Agreement except as to the obligations of Escrow Agent specified in Paragraphs 4 (“Storage of Materials; Inspection”) and 12 (“Obligations of Escrow Agent”)

15. Compensation. The Escrow Agent shall be compensated for Escrow Agent's ordinary services as escrow holder. In the event Escrow Agent is required to perform any additional or extraordinary services as a result of being escrow holder, including intervention in any litigation or proceeding, Escrow Agent shall receive, upon prior written approval of the parties responsible for payment of Escrow Agent's expenses, reasonable compensation for such services and be reimbursed for such costs incurred, including reasonable attorney's fees. All costs and expenses for establishing and maintaining the escrow, including but not limited to Escrow Agent's compensation and expenses, shall be borne by School District.
16. Discharge of Escrow Agent. Escrow Agent may resign and be discharged from its duties or obligations under this Agreement by giving notice in writing of such resignation to Vendor and School District specifying a date when such resignation shall take effect, which date shall be at least sixty (60) days after the date of receipt of such notice. Prior to the effective date of such resignation, with the prior written consent of School District, which shall not be unreasonably withheld, Vendor shall arrange for the services of a new escrow agent, and Vendor and School District agree to execute and deliver another escrow agreement with such new escrow agent having substantially the same terms as this Escrow Agreement. Upon Vendor notifying Escrow Agent of the name and address of the new escrow agent, Escrow Agent agrees to forward the Escrow Materials to such new escrow agent provided that Escrow Agent has received payment for its fees and costs pursuant to Paragraph 15 ("Compensation").
17. Modification. These escrow instructions are irrevocable except as they may be revoked or modified by written consent of School District, Vendor, and the Escrow Agent, jointly.
18. Governing Law. This Escrow Agreement shall be construed and interpreted in accordance with the laws of Colorado excluding the application of principles of conflict of laws.
19. Notice. All notices required by this Escrow Agreement shall be sufficiently given:
- (a) upon delivery, if given in person with a signed receipt;
 - (b) if given by fax, upon acknowledgment of receipt of electronic transmission; or
 - (c) If given by registered or certified mail (air mail if international), postage prepaid, return receipt requested, five days after deposit in the mail in accordance with the provisions of this Agreement. All such notices shall be addressed as follows:

- | | |
|---|---|
| <p>i. School District:
 Name of representative:
 Title:
 Address:</p> | <p>iii. Licensor:
 Name of representative:
 Title:
 Address:</p> |
| <p>ii. Vendor:
 Name of representative:
 Title:
 Address:</p> | <p>iv. Escrow Agent:
 Name of representative:
 Title:
 Address:</p> |

Or to such other person or address as the parties may from time to time designate in a writing delivered pursuant to this Paragraph 19 (“Notice”).

20. Severability. In the event that any provision of this Escrow Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court or arbitration decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.
21. Waiver. The failure of any party to require performance by another party of any provision of this Agreement shall not affect the full right to require such performance at any time afterwards, nor shall the waiver by any party of a breach of any provision of this Agreement by any other party be taken or held to be a waiver of the provision itself.
22. Counterparts. This Escrow Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
23. Survival. The following provisions shall survive any termination of this Agreement or partial termination of this Agreement with respect to a portion of the Escrow Materials delivered pursuant to Paragraph 8 (“Delivery of Escrow Materials to School District”), Paragraphs 10 (“License Grant for Use of Escrow Materials; Confidentiality; Liability for Disclosure”), 13 (“Arbitration”), 14 (“Indemnity”), 18 (“Governing Law”), 19 (“Notice”), 20 (“Severability”), 21 (“Waiver”), 22 (“Counterparts”) and 24 (“Entire Agreement”).
24. Entire Agreement. This Escrow Agreement, together with any schedule, and the Agreement, constitute the entire agreement between the parties with respect to the subject matter of this Agreement. This

Escrow Agreement supersedes oral, written, or other communications concerning the subject matter of this Escrow Agreement, and shall not be altered, amended, or modified except in a writing signed by the duly authorized officers of each party.

IN WITNESS OF THE ABOVE, the parties have caused this Escrow Agreement to be executed as of the date and year below written.

EXECUTED BY: SCHOOL DISTRICT

Signature: _____ Date: _____

EXECUTED BY VENDOR

Signature: _____ Date: _____

EXECUTED BY ESCROW AGENT

Signature: _____ Date: _____

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EXHIBIT C
KNOWLEDGE TRANSFER

1. Vendor shall facilitate transfer of knowledge, whichever manner of media it consists of, including written or electronic information, documentation, executables, tools and other materials regarding or relating to the following (“Knowledge Transfer”):
 - (a) All available file and data definitions and relationships, regression test cases, data models, published APIs, screen displays and report layouts, reference manuals, user and operating guides and manuals, functional specifications, relating to the Products and custom programming, in both paper and electronic form;
 - (b) All available utilities, diagnostic programs and related documentation utilized by Vendor in the support and maintenance of the Products;
 - (c) All security requirements, methodologies and tools to prevent or detect unauthorized access to the Products;
 - (d) All installation and maintenance of security tools;
 - (e) Definition and documentation of Product performance metrics and alarms;
 - (f) Product management and troubleshooting, including how to install and utilize management and remote troubleshooting tools, alarms, operational measurements;
 - (g) Maximizing the use of the Products to perform key operational functions including, without limitation, data backups, program downloads and security checks and how to automate such functions to minimize manual intervention (including protocols/published APIs to interface with such functions as provisioning, configuration management, billing record generation, accounting, record generation) and custom APIs;
 - (h) All available Documentation of published APIs;
 - (i) The implementation of: (i) the Products; and (ii) Enhancements; and (iii) all interfaces between and among the Products and Enhancements;
 - (j) Generally available Enhancements to the Products;
 - (k) How user set parameters (and combinations of parameters) impact performance and operations of (i) traffic management, (ii) workload balancing, (iii) capacity planning, and (iv) overall system performance analysis mechanisms supplied in the system;
2. Any and all updated, changed or revised policies, practices, procedures, processes and/or techniques with respect to the knowledge transferred to the School District hereunder.

3. Install Documentation for Products, including preparations, install process steps, error situations and resolution, validation of correct installation. Process for backing out installed Products and reversion to previous version, including preparation steps, execution and troubleshooting, validation of integrity of re-installed product/environment;
4. Failover documentation, including (a) conditions that trigger failover; (b) data/integrity considerations and remedial actions to detect and correct them; (c) methods to induce failover scenarios; and (d) failure modes document; and Documentation of supporting data introduction to operate the system, including functions of provisioning, configuration management, control, billing and accounting interfaces, operational measurements, alarms, metrics, or other operational processes.

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5.

EXHIBIT D
VENDOR EXTRANET SITE REQUIREMENTS

1. The School District strongly encourages all strategic Vendor partners to create a customer specific web-site for use by all internal School District users. The site will give users access to important Vendor information. The site should be simple to navigate and have a professional look and feel; it should also contain the following features:
2. User Log-In And Profile
3. The site should contain a user log-in. This log-in should be tied to a scalable user profile that can be updated by both Vendor and the user.
4. Product Catalog
5. The site should contain a section for a product catalog that is broken into reasonable categories. It should be scalable to specific users allowing them to see all products or a portion of them. The products should contain active information regarding availability, prices, lead-times and specifications.
6. Pricing
7. The site should contain a section for special pricing, volume discounts or rebates information. Net product prices should be displayed on the product catalog.
8. Configuration & kit building
9. The site should contain a configuration tool if products require user configuration. Users should also be allowed to build kits or bill of material) and save them to the product catalog if necessary.

10. Request for information. The site should contain a quick form section that allows users to forward requests for additional information about new or existing products and services that are not published on the site.
11. Product availability. The site should contain a section that tells the user when a specific product will be available for them to purchase and in what quantities. This information should reflect service level agreements if they already exist.
12. Ordering. The site should allow users to buy products on a “shopping cart” basis. If needed the user should be able to settle the purchase with a purchasing card.
13. Order Status Tracking. The site must allow users to track an order from placement to delivery. This should link to any freight forwarders and allow tracking to final acceptance at delivery destination. Tracking should also link through to invoice information and status as well.
14. Product warranties & returns. The site should contain a section explaining the warranty agreement and return procedure in detail.
15. SLA. The site should contain a section explaining all of the service level agreements in detail. It should include the escalation process if the agreements are not met.
16. Support. The site should contain a quick form that allows users to request both technical and commercial support.
17. Support Status Tracking. The site must allow users to track status on an open support ticket.
18. Account Management Structure. The site should contain a section explaining the entire account management structure. This hierarchy should include individual position, duties, physical location, e-mail and phone numbers.

EXHIBIT E

Statement of Work Format

1. Introduction and Scope of Project
2. Project Plan
3. Milestone Event Dates
4. Dates for Completion of Deliverables
5. Payment Terms
6. Time and Materials (Choose as applicable)
7. Fee Cap Amount
8. Hourly Rates
9. Materials Estimate
10. Fee Estimate and Expense Estimate for Project (not to be exceeded without further authorization from School District School District)
11. Fixed Fee (Choose as applicable)
12. Firm Fixed Price (inclusive of all labor, materials and expenses)
13. Fixed Fee Amount with Reimbursables (specify if expenses or other costs not included)
14. If Expenses Not Included, Expense Estimate for Project
15. Milestone payments
16. Office Space, Equipment & Supplies (To Be Provided by School District School District)
17. Designated Project Managers
18. Assigned Personnel
19. Progress Reports
 - Content of Reports
 - Frequency of Reports
20. School District Responsibilities (if any)

21. Assumptions

22. Acceptance Testing/Test Plan

23. Acceptance Criteria

24. Billing Schedule

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Exhibit F

VENDOR/CONTRACTOR BACKGROUND CERTIFICATION

1. Vendor hereby certifies that with respect to any employee, agent, representative or subcontractor ("Vendor-Employee") requiring unescorted access to a School District facility or access to the School District network, Vendor shall have conducted a background investigation that meets the specified requirements. Vendor must conduct a background investigation for each Vendor-Employee requiring unescorted access to a School District facility or access to the School District network sufficient to demonstrate compliance with the following requirements, as applicable:
 - A. Social Security Verification (SSN Validation tells whether the applicant is using a valid social security number.)
 - B. Must reveal employment history for Vendor-Employee over the last seven years or back to age 18
 - C. Name and Address Trace - The addresses from a trace report are used as a way of determining what additional state or county criminal history searches should be researched. Information can be acquired through credit bureaus, phone records, historical credit records and property records.
 - D. Comprehensive Criminal History Check Based on Last Seven Years of Residency
2. Check must include federal, state, and local records.
3. A seven-year criminal history search of current and previous addresses of residence, work locations and/or places of education. Criminal history information is linked to a person's name and therefore, it is also important to search criminal history for any other name(s) the applicant may have used in the past seven years.
4. If Vendor-Employee has a felony conviction or voluntary plea to a felony the Vendor-Employee does not meet the background check requirements and will be denied unescorted entry to any School District facility and/or the School District network
 - A. Work Status
5. Vendor-Employee must be lawfully authorized to work within the United States
 - A. Military Verification - Status of Discharge
6. If Vendor-Employee has a dishonorable discharge or equivalent to a felony conviction the Vendor-Employee does not meet the background check requirements and will be denied unescorted entry to any School District facility and/or the School District network
 - A. Sex Offender Registry Check

7. This must provide information regarding felony and misdemeanour convictions of any sexual assault, aggravated sexual assault, aggravated criminal sexual contact, and/or kidnapping under Megan's Law.
8. In addition, Vendor-Employee must possess the education and/or applicable professional license and related professional certificates commensurate with the position. Upon request, Vendor shall demonstrate compliance with this requirement as applicable to the nature of the services to be offered by Vendor-Employee. Under special circumstances, School District may also request Vendor's certification that Vendor-Employee has undergone a chemical/drug screening, with negative results, prior to granting unescorted access authorization.
9. In the event that Vendor-Employee does not meet the requirements of the background investigation, but Vendor has a reasonable belief that extenuating circumstances exist which require or demonstrate that Vendor-Employee should be granted Unescorted Access Authorization, Vendor shall obtain a written release executed by Vendor-Employee and deliver a copy of the same to School District prior to discussing such circumstances with the designated School District Divisional Director. School District shall, in its sole discretion, determine whether the circumstances justify an exception to the requirements allowing Vendor-Employee unescorted access authorization.
10. Upon request, Vendor shall provide School District with adequate proof of its compliance with the above standards. Notwithstanding anything in the Agreement to the contrary, Vendor shall indemnify School District for any Claims arising in connection with this Certification and any act or omission hereunder.

IN WITNESS WHEREOF, Vendor has executed this Certification by its proper officer or other authorized representative.

Executed by: School District

Executed by Vendor

Signature: _____

Signature: _____

Date: _____

Date: _____

Safety & Security

Signature _____

Date: _____

Exhibit G

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (the "Agreement") is entered into this ____ day of ____ (the "Effective Date"), by and between ("School District"), and _____ ("Vendor"), a with its principal place of business at, _____ to assure the protection and preservation of certain confidential and/or proprietary information to be disclosed or made available by either party to the other in connection with certain negotiations or discussions regarding a certain transaction between the parties (the "Transaction").

NOW THEREFORE, in reliance upon and in consideration of the following undertakings, the parties hereby agree as follows:

1. **Confidential Information.** "Confidential Information" means any and all information of a party and/or its affiliates which is of a confidential, proprietary or trade secret nature which is or has been, whether before or after the Effective Date, made available, furnished or otherwise disclosed by the one party (hereinafter referred to as the "Disclosing Party") to the other party (hereinafter referred to as the "Receiving Party"). Specifically, and without limitation, Confidential Information includes: (i) all written or tangible information which is marked as "Confidential", "Proprietary", "Trade Secret" or in some other manner to indicate its confidential, proprietary or trade secret nature; (ii) information that is disclosed orally and either is identified contemporaneously with disclosure as "Confidential", "Proprietary" or "Trade Secret" or is disclosed in a manner that it may reasonably be inferred to be "Confidential", "Proprietary" or "Trade Secret"; and (iii) any and all information relating to current, future, or proposed business services or products, technical data or know-how, research, developments, inventions, creations, works of authorship, processes, methods, techniques, designs, specifications, systems architecture, source code, trade secrets, intellectual property, distribution, engineering, marketing plans, marketing strategies, product plans, products strategies, services plans, services strategies, business plans, business strategies, business documents, financial information, financial statements, ownership structure, shareholder and/or ownership information, merchandising information, sales information, pricing information, price lists, customers, customer information, customer lists, contracts, employees

and employment practices. Notwithstanding the foregoing, the Confidential Information of the Disclosing Party excludes information that: (i) is at the time of disclosure, or thereafter, publicly known or in the public domain without violation of this Agreement by the Receiving Party; (ii) prior to the time of disclosure by the Disclosing Party, is within the legitimate possession of the Receiving Party, as evidenced by competent written proof; (iii) the Receiving Party can demonstrate resulted from its own research and development, independent of, and without use of or reference to, information disclosed by the Disclosing Party; or (iv) the Receiving Party receives from third parties, provided such information was not obtained by such third parties from the Disclosing Party on a confidential basis.

2. **The Receiving Party's Obligations.** The Receiving Party agrees that it will, with respect to the Confidential Information of the Disclosing Party: (i) treat such Confidential Information as strictly confidential; (ii) use such Confidential Information only for the purpose of evaluating the Transaction or performing the prospective business arrangements between the parties contemplated by the Transaction; (iii) protect such Confidential Information, whether in storage or in use, with the same degree of care as the Receiving Party uses to protect its own confidential information against unauthorized disclosure, publication or dissemination, but in no case with less than reasonable care; and (iv) not, without the written consent of the Disclosing Party, disclose, disseminate or otherwise furnish such Confidential Information to any third party, except to such employees, counsel, advisors, representatives and agents of Receiving Party who have a reasonable need to know such Confidential Information for the purpose of evaluating the Transaction or performing the prospective business arrangements between the parties contemplated by the Transaction and who have been informed of the confidential nature of such Confidential Information; provided, however, that any such counsel, advisors, representatives or agents must have agreed in writing to assume the confidentiality obligations described in this Section 2 with respect to such Confidential Information. Notwithstanding the foregoing, this Agreement will not prohibit the disclosure of the Disclosing Party's Confidential Information by the Receiving Party to the extent that the Receiving Party is obligated to disclose such Confidential Information by applicable law or regulation or under an order of a court of competent jurisdiction or a valid governmental subpoena; provided that the Receiving Party, to the extent that it may legally do so, promptly notifies the Disclosing Party of such obligation and uses commercially reasonable efforts to afford the Disclosing Party a reasonable opportunity to interpose an objection to such disclosure, take action to assure confidential handling of the

Confidential Information being disclosed, or take such other action as it deems appropriate to protect such Confidential Information. In the event of any unauthorized disclosure of, loss of, or inability to account for, any Confidential Information of the Disclosing Party, the Receiving Party shall notify the Disclosing Party promptly upon becoming aware thereof, take such actions as may be necessary or reasonably requested by the Disclosing Party to minimize the violation and mitigate any damages resulting therefrom.

3. **Rights in and Ownership of Confidential Information.** The Receiving Party acknowledges and agrees that, as between the parties, the Confidential Information of the Disclosing Party is, and shall remain, the sole property of the Disclosing Party, that the Confidential Information of the Disclosing Party contains, embodies and is based on patented or patentable inventions, trade secrets, copyrights and other intellectual property rights (collectively, "Intellectual Property Rights") owned or controlled by the Disclosing Party, and that the Disclosing Party shall continue to be the sole owner of, and retain all right, title and interest in and to, the Confidential Information of the Disclosing Party (including, without limitation, all Intellectual Property Rights contained in, embodied by or underlying the Confidential Information of the Disclosing Party). The parties acknowledge and agree that neither this Agreement, nor the Receiving Party's access to the Confidential Information of the Disclosing Party, will be construed as a grant, conveyance or transfer by the Disclosing Party to the Receiving Party of any right, title or interest whatsoever, by license, sale or otherwise, in or to any of the Confidential Information of the Disclosing Party.

4. **Term and Termination.**

(a) The term of this Agreement shall commence on the Effective Date and shall expire three (3) years after the Effective Date, but either party may terminate this Agreement at any time for convenience upon at least thirty (30) days advance written notice to the other party. Notwithstanding any such expiration or termination, with respect to any particular item of Confidential Information the obligations of confidentiality set forth herein will remain in full force and effect for a period of five (5) years from the date of each disclosure of such Confidential Information hereunder by the Disclosing Party, except that with respect to any particular item of Confidential Information that constitutes a trade secret, the obligations of confidentiality set forth herein will remain in full force and effect for so long as such Confidential Information retains its trade secret status.

- (b) At any time upon the Disclosing Party's written request, and, in any event, upon the expiration or termination of this Agreement for any reason, the Receiving Party will promptly return to the Disclosing Party all Confidential Information of the Disclosing Party in the Receiving Party's possession, custody or control in whatever form held (including without limitation all documents or media containing any of the foregoing and all copies, extracts or embodiments thereof), unless the Receiving Party provides assurances reasonably satisfactory to the Disclosing Party that such Confidential Information, in whatever form held, has been destroyed. The Disclosing Party has the right to supervise such return or destruction of such Confidential Information.
5. **No Promise to Enter Transaction.** Neither this Agreement, nor the furnishing of Confidential Information under this Agreement, nor the ongoing discussions and correspondence by the parties concerning the Transaction or any other matter, shall constitute or imply any promise, intention or commitment by either party to enter into any other present or future transaction with the other party or any third party or, except as expressly set forth herein, to refrain from entering into an agreement or negotiation with any other party or to refrain from engaging in any business activity whatsoever. If, in the future, the parties elect to enter into binding commitments relating to the Transaction or any other transaction, such commitments will be explicitly stated in a separate written agreement executed by both parties.
6. **No Warranties.** Nothing herein will be construed as a warranty of accuracy, worth, fitness, completeness, title, non-infringement or any other warranty (express or implied) regarding Confidential Information furnished by either party to the other pursuant to this Agreement.
7. **Governing Law and Dispute Resolution.** This Agreement is made subject to and shall be governed by and construed under the laws of the State of Colorado, without regard to conflicts of laws principles. Any legal action or proceeding relating to this Agreement shall be instituted in a state or federal court in City and County of Denver, Colorado, except that injunctive or other equitable relief may be sought from any U.S. court of competent jurisdiction. The Receiving Party acknowledges that the extent of damages to the Disclosing Party in the event of the breach of any provision of this Agreement by the Receiving Party would be difficult or impossible to ascertain, and that there will be available no adequate remedy at law in the event of any such breach. The Receiving Party therefore agrees that in the event it breaches any provision of this Agreement, the Disclosing Party will be entitled to seek injunctive or other equitable relief, in addition to any other relief or remedies to which it may be entitled at law or

in equity. If any arbitration or litigation is commenced between or among parties to this Agreement or their personal representatives concerning any provisions of this Agreement, or the rights and duties of any person in relation thereto, the court or arbitrator, as the case may be, may award to the party or parties prevailing in such arbitration or litigation, in addition to such other relief as may be granted, a reasonable sum for their attorneys' fees.

8. **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party and any attempt to do so will be void; provided, however, that each party shall have the right to assign or transfer this Agreement without the permission of the other party to an entity that acquires all or substantially all of the assets of the assigning party or to any successor in a merger, consolidation or acquisition of the assigning party. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
9. **General.** No failure or delay by a party in exercising any right under this Agreement will operate as a waiver of such right or any other right under this Agreement. In the event any provision of this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, the remaining provisions of this Agreement will remain in full force and effect to the maximum extent possible. This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof. All prior or contemporaneous agreements or understandings between the parties relating to the subject matter hereof, whether oral or written, are superseded by and merged into this Agreement. No amendment or modification of this Agreement will be valid or binding on the parties unless the same is in writing and executed on behalf of each party by its duly authorized representative. This Agreement may be signed in two or more counterparts, including facsimile counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement as of the date first written above.

School District

Signature: _____ Date: _____

Vendor

Signature: _____ Date: _____