



LICENSED PRODUCT AND SERVICES AGREEMENT

Last updated as of October 2019

1. **DEFINITIONS. PowerSchool Group LLC**, the licensor of Licensed Product pursuant to this Agreement, is referred to herein as “PowerSchool”. The university, college or government agency or other entity licensing Licensed Product is referred to herein as “Licensee.” This Licensed Product and Services Agreement is referred to herein as the Agreement.” “PowerSchool/” Licensor” and Licensee are individually referred to “Party” and collectively as “Parties” in this Agreement. In addition, the following definitions will apply:
 - 1.1 **Documentation** means all written user information, whether in electronic, printed or other format, delivered or made available to Licensee by PowerSchool with respect to Licensed Product, now or in the future, including instructions, manuals, training materials, and other publications that contain, describe, explain or otherwise relate to Licensed Product.
 - 1.2 **Embedded Applications** means software applications developed by third parties that permanently reside in or are bundled with the software developed by PowerSchool as part of Licensed Product.
 - 1.3 **Hosting Services** means the hosting of the Licensee’s license to the Licensed Product and Third Party Software by PowerSchool or its hosting providers from a server farm that is comprised of application, data and remote access servers used to store and run the Licensed Product and Third Party Software, including associated offline components.
 - 1.4 **Licensed Product(s)** means all PeopleAdmin-branded software (including Embedded Applications) and subsequent versions provided under Support Services and all related Documentation licensed to Licensee pursuant to this Agreement, now or in the future; provided, however, that Licensed Product will not include any Third Party Software.
 - 1.5 **Licensed Sites** means any location at which the Licensee’s university, college, government administrative offices, and other locations conducts its higher education administrative functions.
 - 1.6 **Professional Services** means services that include, but are not limited to, data conversion, implementation, site planning, configuration, integration and deployment of the Licensed Products or Hosting Services, application development, training, project management and other consulting services. Each Quote will include a signature block for signature of the Parties.
 - 1.7 **Quote** means a document listing the offered subscriptions for Licensed Products and pricing for Professional Services, state and end date for the offer with an offer expiration date which may be signed by both the Licensor and the Licensee.
 - 1.8 **Subscription Term** means the start and end dates for offered subscriptions to r Licensed Products, which includes any Support and Professional Services, as indicated in the signed Quote between the Parties.
 - 1.9 **Support Services** is defined in section 3.1. of the Support and Services Policies attached hereto.
 - 1.10 **Services** means Support Services, Hosting Services and Professional Services collectively.
- 1.11 **Third Party Software** means any software product designated as Third Party Software by PowerSchool, and any related documentation supplied to Licensee. Any product designated as Third Party Software is licensed by an entity other than PowerSchool, under different license terms than those set forth herein. Third Party Software is different from Embedded Applications in that PowerSchool licenses the Embedded Applications to Licensee as part of Licensed Product (but in some cases, such Embedded Applications may be subject to additional license terms as identified herein). PowerSchool is not the licensor of Third Party Software.
2. **LICENSE GRANT**
 - 2.1 **Basic Terms.** Subject to the terms and conditions of this Agreement and the Privacy Policy located at <https://www.powerschool.com/privacy/>, and in exchange for Licensee’s payment obligations, PowerSchool provides Licensee with a non-exclusive, personal, restricted, non-transferable, terminable access to the Licensed Product pursuant to this Agreement and all applicable Quotes, solely to support Licensee’s university, college or government administrative functions at Licensed Sites for a count of employees not to exceed the Licensee’s count reported to IPEDS (Integrated Postsecondary Education Data System - a system of interrelated surveys conducted annually by the National Center for Education Statistics, a part of the Institute for Education Sciences within the United States Department of Education – see <https://nces.ed.gov/ipeds/>), as set forth in Section 1 of the Supplemental Terms and Conditions. The PowerSchool’s price quotation or proposal to Licensee will indicate the specified length of time of the license. In no event may the Licensed Product be: (a) access for any other purpose than support of a Licensed Sites of the Licensee; (b) made available via a network or otherwise to any university, college, government agency or third party other than the Licensed Sites of the Licensee; or (c) accessed to perform service bureau functions for third parties or to process or manage data for locations other than the Licensed Sites of the Licensee. Licensed Product will only be accessed as expressly authorized by this Agreement. This license covers all PowerSchool Licensed Products, except PACx.
 - 2.2 **PACX License.** Where a Licensee licenses the PowerSchool PACx product, the following license will apply. Subject to the terms and conditions of this Agreement and the Privacy Policy located at <https://www.powerschool.com/privacy/>, and in exchange for Licensee’s payment obligations, PowerSchool provides Licensee with a non-exclusive, personal, restricted, non-transferable, revocable and terminable subscription license to: (a) copy and use PACx internally only within the university, college, government agency information technology system; and (b) integrate any third party approved application to connect within existing PowerSchool Licensed Products operating within the university, college, government agency information technology system to support Licensee’s university, college

or government administrative functions at Licensed Sites to support a count of employees not to exceed the Licensee's count reported to IPEDS (Integrated Postsecondary Education Data System - a system of interrelated surveys conducted annually by the National Center for Education Statistics, a part of the Institute for Education Sciences within the United States Department of Education – see <https://nces.ed.gov/ipeds/>), as set forth in Section 1 of the Supplemental Terms and Conditions. The PowerSchool's price quotation or proposal to Licensee will indicate the specified length of time of the license. In no event may PACx be: (a) accessed for any other purpose than support of a Licensed Sites of the Licensee; (b) made available via a network or otherwise to any university, college, government agency or third party other than the Licensed Sites of the Licensee; or (c) accessed to perform service bureau functions for third parties or to process or manage data for locations other than the Licensed Sites of the Licensee.

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

2.4 **Copies.** Licensee will not make copies of, otherwise reproduce, or allow any unauthorized and/or third-party access to any Licensed Product, except that: (a) Licensee may make copies of the software component of any Licensed Product, in executable code form, only for backup or archival purposes; and (b) Licensee may make unlimited printed copies for Licensee's internal use of any Documentation delivered by PowerSchool to Licensee. Licensee will retain and include all of PowerSchool's or any third parties' copyright and other proprietary rights notices on all copies of Licensed Product. Licensee will not otherwise reproduce Licensed Product.

3. PROPRIETARY RIGHTS

3.1 **Restrictions on Use of the Licensed Product and Services.** Licensee will use the Licensed Products and Services only for the internal business purposes of Licensee. Licensee will not itself, or through any affiliate, employee, consultant, contractor, agent or other third party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Licensed Products or Services; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Licensed Products or Services, in whole or in part, for competitive purposes or otherwise; (iii) write or develop any derivative works based upon the Licensed Product or Services; (iv) modify, adapt, translate or otherwise make any changes to the Licensed Products or Services or any part thereof; (v) use the Licensed Products or Services to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vi) disclose or publish, without PowerSchool prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Licensed Products or

Services; or (viii) otherwise use or copy the same except as expressly permitted herein. Licensee will not transfer, assign, provide or otherwise make Licensed Products, Services or this Agreement available to any other party without the prior written consent of PowerSchool. Any attempted sublicense, assignment or transfer of any rights, duties or obligations by Licensee in violation of this Agreement will be void. Licensee will hold PowerSchool harmless from claims for damages resulting from Licensee's misuse of the Licensed Products and Services, including PowerSchool's intellectual property.

3.2 **Intellectual Property Rights.** Licensed Product is proprietary to PowerSchool and/or third parties and is protected by copyright, trade secret, and other intellectual property rights. The placement of a copyright notice on any portion of Licensed Product does not mean that such portion has been published and will not derogate any claim of trade secret protection for the same. Title to all complete or partial copies, and all applicable rights to copyrights, patents, trademarks and trade secrets in Licensed Product, are and will remain the property of PowerSchool or their other owners, as applicable.

3.3 Confidentiality.

i **General Obligations.** The Licensor and Licensee acknowledge either may, from time to time, provide the other access to Confidential Information. For purposes of this Agreement, "Confidential Information" will mean any information marked or any information which the receiving party from the circumstances should reasonably understand to be confidential. PowerSchool Confidential Information includes, but is not limited to, the terms and conditions of this Agreement, pricing information, supplier lists, product designs and specifications, schematics and engineering drawings, and computer programs and the data and information (other than data and information of the Licensee or Customers) contained in such programs. The Licensee agrees to take commercially reasonable steps to protect PowerSchool Confidential Information, will treat all Licensed Products as trade secret, and will not copy, distribute, furnish, use or disclose the PowerSchool Confidential Information to any third party or appropriate it for the Licensee' or any third party's benefit, except as expressly authorized under this Agreement and the License Agreement or otherwise authorized by PowerSchool in writing.

ii **Licensed Product.** Licensee further agrees to keep Licensed Product confidential and to prevent unauthorized disclosure, access or use of Licensed Product in Licensee's possession. Licensee will notify PowerSchool immediately in writing of any unauthorized access, use or distribution of Licensed Product of which Licensee becomes aware and will take all steps necessary to ensure that such unauthorized access, use or distribution is terminated. For any Licensed Product for which PowerSchool makes available passwords or other user identification technology to access such Licensed Product, Licensee will advise all users of such passwords or other user identifications that such passwords or user identifications must be maintained in confidence and not transmitted or shared.

iii **Licensee's Confidential Information.** PowerSchool agrees to use commercially reasonable efforts to maintain the confidentiality of Licensee confidential information that is disclosed to PowerSchool in connection with the performance of services, and to use such Licensee confidential information solely for purposes of performing services hereunder. PowerSchool will require its

employees, agents and subcontractors performing work hereunder to do likewise. For purposes of this Section, "Licensee Confidential Information" means any student or personnel data belonging to Licensee, or any other Licensee information or data labeled or identified as confidential at the time of disclosure.

iv **Limits to Confidentiality Obligation.** None of the obligations of this Section will not apply to any information which becomes publicly known or is disclosed by either Party without restriction to a third party, or any information that is required to be disclosed by law; provided, however, that if the Licensee receives notice of a request or order to disclose any PowerSchool Confidential Information for which disclosure is asserted to be required by law, the Licensee will promptly notify PowerSchool and permit PowerSchool to take such steps as PowerSchool deems appropriate to resist the request or order. The Licensee will, if requested by PowerSchool, reasonably cooperate (at PowerSchool's expense) in resisting the request or order. The Licensee will take commercially reasonable steps by instruction or otherwise to ensure that its employees comply with the requirements of this Agreement. Notwithstanding the above, Licensee may disclose to the university, college or government agency that Licensee serves all PowerSchool Confidential Information, provided that such universities, colleges and government agencies agree to be bound by the confidentiality terms contained in this Agreement.

4. **FEES AND TAXES.** Licensee agrees to pay PowerSchool, in accordance with PowerSchool's invoice terms, the fees charged for the Licensed Products and related Services and/or other items ordered by Licensee, together with any other charges made in accordance with this Agreement, and all applicable sales, use or other taxes or duties, however designated, except for taxes based on PowerSchool's net income. License pricing for Licensed Product is based on employee count as reported in IPEDS at each Licensed Site. If an increase in employee count in excess of five percent (5%) over the initial count occurs at the Licensed Sites, then Licensee will pay additional license and support fees to PowerSchool in accordance with PowerSchool's invoice. Such additional fees will be computed by multiplying the then-current per employee license and support fees for Licensed Product by Licensee's additional employee count. Licensee's subsequent Support invoices will be based on the increased employee as well. Licensee agrees to also pay for PowerSchool's reasonable travel and lodging expenses for Services performed at Licensee's premises, at actual cost. If Licensee claims tax exempt status, Licensee agrees to provide evidence of such tax exemption upon PowerSchool's request. To the extent that such tax exemption cannot be properly claimed or does not extend to certain taxes or transactions, Licensee will be responsible for any and all taxes and assessments that arise from this Agreement and related transactions (except for taxes based upon PowerSchool's net income). Licensee will pay a monthly charge of 1.5% (18% annually) on all amounts not paid when due, or, if a lower maximum rate is established by law, then such lower maximum rate. All pricing set forth in any PowerSchool quotation or invoice is in United States dollars unless otherwise specified.

5. **THIRD PARTY SOFTWARE LICENSE TERMS; EMBEDDED APPLICATIONS; OPEN SOURCE SOFTWARE.** Any software designated by PowerSchool as Third Party Software is provided to Licensee pursuant to a separate license agreement between Licensee and the third party supplier, which will be provided to Licensee by the third

party supplier. All support, warranties, and services related to Third Party Software are provided by the supplier of the Third Party Software under such third party's terms and conditions, and not by PowerSchool, unless otherwise specifically provided under this Agreement. Only Sections 5, 6, 9 and 12 of this Agreement apply to Third Party Software and any related support and services set forth in this Agreement. In addition, Licensed Product may contain Embedded Applications. If any additional license terms are made available to the Licensee with respect to any Embedded Applications, Licensee will comply with such conditions with respect to such applications. Certain Embedded Applications may also be subject to "open source" licensing terms. In some cases, the open source licensing terms may conflict with portions of this Agreement, and to the extent of any such conflict, the open source licensing terms will govern, but only as to the software components subject to those terms. Notwithstanding the foregoing, Licensee acknowledges that if any open source software component is licensed under terms that permit Licensee to modify such component, and if Licensee does so modify such component, then PowerSchool will not be responsible for any incompatibility with such modifications and the remainder of the Licensed Product.

6. **COMPATIBLE PLATFORMS/HARDWARE.** Licensee is responsible for obtaining and maintaining an appropriate operating environment with the necessary hardware, operating system software and other items required to access Licensed Product. PowerSchool will not be responsible for any incompatibility between Licensed Product and any versions of operating systems, hardware, browsers enabling Licensee to access the Licensed Product.

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

8. **TERMINATION**

- 8.1 **Termination for Breach.** PowerSchool will have the right to suspend performance under this Agreement in the event that Licensee is in breach of any of its obligations under this Agreement. In addition, either party will have the right to terminate this Agreement in whole or in part upon thirty (30) days written notice to the other party, in the event the other party materially breaches this Agreement and fails to correct such breach within such thirty (30) day period; provided that PowerSchool will have the right to terminate this Agreement immediately upon written notice in the event that Licensee breaches any of its obligations under Section 3. Licensee further acknowledges that, as breach of the provisions of Section 3 could result in irreparable injury to PowerSchool, PowerSchool will have the right to seek equitable relief against any actual or threatened breach thereof, without proving actual damages.
- 8.2 **Effects of Termination.** In the event of any termination of all or any portion of this Agreement, Licensee will not be relieved of any obligation to pay any sums of money that have accrued prior to the date of termination. Immediately upon any termination of a license for any Licensed Product under this Agreement, Licensee will, at its own expense, either return to PowerSchool or destroy all copies of such Licensed Product and associated Third Party Software in its possession or control and will forward written certification to PowerSchool that all such copies of such Licensed Product and Third Party Software have either been destroyed or returned to PowerSchool.
- 8.3 **Liquidated Damages.** In the event Licensee enters into a multi-year contract with PowerSchool and Licensee terminates the contract or any portion thereof, Licensee agrees to pay PowerSchool the remaining sum due to PowerSchool through the stated term of the contract as liquidated damages, as actual damages being impossible to calculate. This clause will not apply in the event Licensee terminates this Agreement as a result of PowerSchool's breach in accordance with Subsection 11.1 herein. Notwithstanding the foregoing, Licensee will not be liable for said liquidated damages in the event that: (i) Licensee provides PowerSchool at least thirty (30) business days' advance notice of termination prior to the effective date anniversary; and (ii) said termination is a result of the non-appropriation of funds for Licensee's contract. Licensee will not utilize this clause as a right to terminate the contract for convenience. PowerSchool reserves the right to seek documentation evidencing the non-appropriation of funds.
9. **LIMITATION OF LIABILITY. POWERSCHOOL WILL NOT BE LIABLE TO LICENSEE FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR LOST PROFITS, LOST FUNDING, LOST SAVINGS, OR LOST OR DAMAGED DATA; OR FOR CLAIMS OF A THIRD PARTY; ARISING OUT OF THIS AGREEMENT, LICENSED PRODUCT, THIRD PARTY SOFTWARE, SUPPORT SERVICES, OR OTHER ITEMS PROVIDED, OR THE USE OR INABILITY TO USE ANY OF THE FOREGOING, EVEN IF POWERSCHOOL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE. IN ANY EVENT, IN RESPECT OF ANY CLAIM, DEMAND OR ACTION ARISING OUT OF THIS AGREEMENT, LICENSEE WILL BE LIMITED TO RECEIVING ACTUAL AND DIRECT DAMAGES IN A MAXIMUM AGGREGATE AMOUNT EQUAL TO THE CHARGES PAID BY LICENSEE TO POWERSCHOOL HEREUNDER FOR THE APPLICABLE LICENSED PRODUCT, ITEM OR SERVICE ON WHICH THE CLAIM IS BASED IN THE PREVIOUS TWELVE (12) MONTHS. IN**

ADDITION, IN NO EVENT WILL THE LIABILITY OF POWERSCHOOL RELATING TO SUPPORT SERVICES OR HOSTING SERVICES EXCEED THE TOTAL AMOUNT OF MONEY PAID BY LICENSEE TO POWERSCHOOL DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD WITH RESPECT TO THE PARTICULAR SUPPORT SERVICES OR HOSTING SERVICES ON WHICH THE CLAIM IS BASED.

10. **HOSTING SERVICES.** Hosting Services are provided as a part of the Licensee Fees.
- 10.1 **Acceptable Use Policy.** Licensee acknowledges and agrees that PowerSchool does not monitor or police the content of communications or data of Licensee or its users transmitted through the Services, and that PowerSchool will not be responsible for the content of any such communications or transmissions. Licensee will use the Services exclusively for authorized and legal purposes, consistent with all applicable laws and regulations and PowerSchool's policies. Licensee agrees not to post or upload any content or data which (a) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (b) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; or (c) otherwise violates any applicable law. PowerSchool may remove any violating content posted or transmitted through the Hosting Services, without notice to Licensee. PowerSchool may suspend or terminate any user's access to the Hosting Services upon notice in the event PowerSchool reasonably determines that such user has violated the terms and conditions of this Agreement.
- 10.2 **Security.** Licensee will not: (a) breach or attempt to breach the security of the Hosting Services or any network, servers, data, computers or other hardware relating to or used in connection with the Hosting Services, or any third party that is hosting or interfacing with any part of the Hosting Services; or (b) use or distribute through the Hosting Services any software, files or other tools or devices designed to interfere with or compromise the privacy, security or use of the Hosting Services or the operations or assets of any other customer of PowerSchool or any third party. Licensee will comply with the user authentication requirements for use of the Hosting Services. Licensee is solely responsible for monitoring its authorized users' access to and use of the Hosting Services. PowerSchool has no obligation to verify the identity of any person who gains access to the Hosting Services by means of an access ID. Any failure by any authorized user to comply with the Agreement will be deemed to be a material breach by Licensee, and PowerSchool will not be liable for any damages incurred by Licensee or any third party resulting from such breach. Licensee must immediately take all necessary steps, including providing notice to PowerSchool, to affect the termination of an access ID for any authorized user if there is any compromise in the security of that access ID or if unauthorized use is suspected or has occurred.
- 10.3 **Data.** Licensee has sole responsibility for the legality, reliability, integrity, accuracy and quality of the data it processes through and submit to the Hosting Services.
11. **PROFESSIONAL SERVICES**
- 11.1 **Fees and Expenses.** In addition to providing Support Services during the Support Term, PowerSchool will perform such other Professional Services (training, installation, consulting, project management, etc.) as may be specified in PowerSchool's written acknowledgment of Licensee's order, or as may be subsequently agreed upon by the parties; provided that PowerSchool may, at its option, arrange for any such services to be performed by another entity on behalf of PowerSchool. Licensee agrees to pay for such

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

- 11.2 **Training.** PowerSchool reserves the right to limit the number of persons permitted to attend any training class in accordance with PowerSchool's training standards.
- 11.3 **Services Cancellation.** Licensee will pay a cancellation charge equal to fifty percent (50%) of the services fee and any non-refundable expenses incurred by PowerSchool if Licensee cancels any scheduled professional services less than fourteen (14) days before the occurrence of any service dates that PowerSchool has scheduled at Licensee's request.
- 11.4 **Ownership Of Materials.** PowerSchool will be the owner of all copyrights, patent rights and other intellectual property rights in any software code, documentation, reports or other deliverables (collectively, "Deliverables") created for or provided to Licensee pursuant to Professional Services. Provided that Licensee pays PowerSchool all fees and expenses associated with the development and provision of such Deliverables, Licensee will have a paid-up, royalty-free license to use such Deliverables for Licensee's internal use only, solely for the purpose for which such Deliverables were provided. Nothing in this Agreement will prevent PowerSchool from providing any Deliverables to PowerSchool's other customers or third parties. Notwithstanding the foregoing, PowerSchool acknowledges and agrees that any Licensee confidential information (as defined in Section 13.5 of these Policies) that is incorporated into any Deliverable remains subject to the provisions of such Section.

12. GENERAL

- 12.1 **Governing Law and Venue. THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA without giving effect to principles of conflict of laws. The Parties irrevocably consent to the nonexclusive jurisdiction and venue of the state and federal courts located in the State of California.** The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

- 12.2 **Indemnity.** Subject to Section 11 (LIMITATION OF LIABILITY) PowerSchool hereby agrees to defend, indemnify, and hold harmless the Licensee from and against any and all losses, liabilities, costs, expenses and damages arising out of or relating to any claim by a third party alleging infringement of any intellectual property rights as to the Licensed Product, provided that PowerSchool will have received from Licensee (i) prompt written notice of such claim; (ii) the exclusive right to control and direct the investigation, defense and settlement of such claim; and (iii) all reasonable necessary cooperation of Licensee.

If Licensee's use of the Licensed Product is enjoined, PowerSchool may (i) substitute for the Licensed Product substantially functionally similar product and documentation; (ii) procure for Licensee the right to continue using the Licensed Product; or if (i) or (ii) are not possible after reasonable commercial efforts from PowerSchool, then PowerSchool may terminate this Agreement by refunding all fees paid to date.

The foregoing obligation of PowerSchool do not apply to the extent the claim arises from (i) modifications to the Licensed Product by anyone other than PowerSchool; (ii) combinations of the Licensed Product with products or process not provided or authorized by PowerSchool; or (iii) any unauthorized use, access or distribution of the Licensed Product.

Licensee agrees to indemnify and hold PowerSchool harmless against and from any claim, demand, expenses, or losses, including reasonable legal fees (including but not limited to attorney's fees, costs and expenses), made by any third party against PowerSchool due to or arising out of: (a) Licensee's access, use of and/or connection to the Licensed Products; (b) Licensee's sharing of any content obtained through access or use of the Licensed Products to any third party; (c) Licensee's violation of Section 3 (Proprietary Rights); (d) information Licensee sent, submitted, electronically received, accessed, printed, downloaded, or transmitted through the Licensed Products; or (e) Licensee's gross negligence or willful misconduct.

THIS SECTION SETS FORTH POWERSCHOOL'S AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.'

- 12.3 **Compliance Verification.** During the term of the Agreement and for a period of one year following its termination, PowerSchool will have the right to verify Licensee's full compliance with the terms and requirements of the Agreement. Licensee will (A) provide any assistance reasonably requested by PowerSchool or its designee in conducting any such audit, including installing and operating audit software, (B) make requested personnel, records, and information available to PowerSchool or its designee, and (C) in all cases, provide such assistance, personnel, records, systems access and information in an expeditious manner to facilitate the timely completion of such compliance verification. If such verification process reveals any noncompliance, Licensee will reimburse PowerSchool for the reasonable costs and expenses of such verification process incurred by PowerSchool (including but not limited to reasonable attorneys' fees), and Licensee will promptly cure any such noncompliance; provided, however, that the obligations under this section do not constitute a waiver of PowerSchool's termination rights and do not affect PowerSchool's right to payment for Services and interest fees related to usage in excess of the quantities purchased.
- 12.4 **General Provisions.** If any provision of this Agreement is invalid or unenforceable under any applicable statute or rule

of law, this Agreement will be enforced to the maximum extent possible to effectuate the original express intent of the parties. Licensee may bring no action arising out of this Agreement, regardless of form, more than one (1) year after the cause of action has arisen. In the case of notices to PowerSchool, such notices will be sent to: PowerSchool Group LLC, Attn General Counsel, 150 Parkshore Drive, Folsom, CA 95630. In the case of notices to Licensee, such notices will be sent to PowerSchool's address of record for Licensee. Either party may change its notice address by notifying the other in like manner. Licensee agrees that the terms of this Agreement, including all pricing for PowerSchool's products and services, will be kept confidential and not disclosed to any third party without the prior written consent of PowerSchool.

- 12.5 **Facilities.** Licensee acknowledges that certain Services are intended to be performed by PowerSchool off-site (e.g., through remote communication capabilities). If any portion of the work will be performed on Licensee's premises, Licensee agrees to provide appropriate access to utilities, workspace and other on-site accommodations reasonably necessary to enable PowerSchool to perform such work.
- 12.6 **Limited License.** Licensee grants to PowerSchool a non-exclusive, royalty free license, to use equipment, software, Licensee data or other material of Licensee solely for the purpose of performing its obligations under the Agreement. However, PowerSchool may use and distribute the Licensee data for any lawful purpose outside the scope of the Agreement, provided always that such Data must be aggregated and/or de-identified.
- 12.7 **Export.** Without in any way limiting the restrictions on transfer set forth elsewhere in this Agreement, Licensee specifically agrees that Licensee will not, directly or indirectly, export or transfer any export-controlled commodity, technical data or software: (a) in violation of any laws, regulations, rules or other limitations imposed by any government authority; or (b) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses or other approvals.
- 12.8 **U.S. Government Restricted Rights.** Licensed Product is a "commercial item" as that term is defined in 48 C.F.R. §2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are defined in 48 C.F.R. §12.212 and 48 C.F.R. §227.7202, as applicable, and all as amended from time to time. Consistent with 48 C.F.R. §12.212, 48 C.F.R. §227.7202 and 48 C.F.R. §52.227-19, and other relevant sections of the Code of Federal Regulations, as applicable, and all as amended from time to time, all U.S. Government end users acquire Licensed Product only with those rights set forth herein.
- 12.9 **Force Majeure.** Except for payment of fees, non-performance by either party will be excused to the extent that performance is rendered impossible by acts of God, civil disturbance, strikes or labor disputes, fire, flood, governmental acts or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by negligence of the non-performing party.
- 12.10 **Severability.** If any part of this agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.
- 12.11 **Survival.** The Licensor's and Licensee's obligations under sections 3.3 (CONFIDENTIALITY) 5 (FEES AND TAXES), 6 (THIRD PARTY SOFTWARE LICENSE TERMS; EMBEDDED APPLICATIONS; OPEN SOURCE SOFTWARE.), 9 (DISCLAIMER OF WARRANTIES), 10

(TERMINATION) 11(LIMITATION OF LIABILITY), and 12 (GENERAL) will survive a termination or expiration of the Agreement.

- 12.12 **Headings for Convenience Only.** The division of this Agreement into articles and sections is for convenience of reference only and will not affect the interpretation or construction of this Agreement.
- 12.13 **Entire Agreement.** This Agreement, inclusive of the Supplemental Terms and Conditions and the Support and Services Policies incorporated herein, or any addendums, amendments, and/or exhibits mutually executed and attached hereto, constitutes the complete and entire agreement between the parties with respect to its subject matter, and supersedes all prior discussions, understandings, arrangements, proposals and negotiations with respect to same. The terms and conditions of this Agreement will prevail notwithstanding any variance with the terms and conditions of any purchase order or other documentation submitted by Licensee with respect to Licensed Product or any related support or services, and PowerSchool hereby refuses any such different or additional provisions in purchase orders or other documents. By mutual agreement of the parties, this Agreement is effective upon receipt and supersedes all prior Agreements entered into by the parties, the parties' agents, and/or the parties' previous affiliates. This Agreement will not be modified or amended without the written agreement of both parties.

SUPPORT AND SERVICE POLICIES

I. SUPPORT SERVICES

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

- 1.1 **Errors** will mean a reproducible failure of Licensed Product to operate in accordance with its standard Documentation, despite the proper installation and use of Licensed Product in a proper operating environment and on hardware and system software sufficient to meet PowerSchool's then-current minimum requirements, which are subject to change as New Versions are released. User mistakes are not Errors within the meaning of these Policies. Errors may be due to problems in Licensed Product, the Documentation, or both.
- 1.2 **Fix** will mean a patch, service pack or corrective update of Licensed Product that PowerSchool may prepare in its discretion on an interim basis, prior to issuance of a New Version, to correct programming Errors that prevent or obstruct normal operation of Licensed Product in accordance with the applicable then-current Documentation.
- 1.3 **New Products** will mean products, programs or modules newly developed by PowerSchool that provide features, functions or applications not included in the Licensed Product originally licensed by Licensee and for which additional license fees apply as determined by PowerSchool. A New Product may be usable with or in addition to the Licensed Product originally licensed by Licensee. New Products will be licensed to Licensee under the terms of PowerSchool's then-current license agreement only after payment of applicable fees.
- 1.4 **New Version** will mean an updated version of Licensed Product issued by PowerSchool, which may include Fixes, together with such other modifications, updates, enhancements and improvements to Licensed Product that PowerSchool may, in its discretion, develop and deem ready

for distribution and that PowerSchool standardly provides to all customers with a current support subscription to such Licensed Product.

- 1.5 **Support Services** will mean those support services described in Section 3.1 below that will be provided hereunder with respect to Licensed Product during Licensee's Support Term.
 - 1.6 **Support Term** will mean the length of time Support Services are to be provided hereunder and for which Licensee has paid any applicable Support Services fees, including any initial Support Term and any renewal Support Terms.
 - 1.7 **Telephone and E-mail Support** will mean telephone and e-mail support services, available Monday through Friday, during PowerSchool's normal business hours, exclusive of PowerSchool's holidays, regarding Licensee's use of Licensed Product and any problems that Licensee experiences in using Licensed Product.
2. **Support Services Scope.** PowerSchool, or an entity under contract with and authorized by PowerSchool to provide Support Services, will provide Support Services for Licensed Product during the Support Term. The scope of Support Services will be as follows:
- 2.1 **Support.** Support Services will include: (a) Telephone and E-mail Support; (b) access to an online support website, as maintained by PowerSchool for customers maintaining a current support subscription; (c) Fixes, as developed and made generally available by PowerSchool in its discretion to address Errors that Licensee is experiencing in using Licensed Product; and (d) New Versions, as developed and made generally available by PowerSchool. Support Services do not include New Products. PowerSchool determines, in its sole discretion, what constitutes a New Product (for which additional license fees apply), and what improvements and enhancements to existing Licensed Product functionality are to be included in a New Version (and are therefore provided at no charge to customers with a current support subscription).
 - 2.2 **Custom Programs.** For any custom programs developed for Licensee by PowerSchool, Support Services are available only on a time and materials basis at PowerSchool's current rates and charges for these services; support for custom programs is not included in Support Services. In addition, to the extent that Licensed Product includes any functionality that allows Licensee to customize screens or reports, PowerSchool will support the application infrastructure utilized to create such customizations but will not be responsible for supporting any such customizations.
 - 2.3 **Requisite Training.** In order to receive Support Services described herein, Licensee must purchase appropriate training regarding the use and operation of Licensed Product. Telephone and E-mail Support may be limited to a specified number of authorized representatives of Licensee who have been appropriately trained.
3. **Authorized Representatives.** If Licensee has purchased Support Services for the Licensed Product from PowerSchool, then in order to receive such Support Services, Licensee will identify to PowerSchool up to two (2) people who will contact PowerSchool with any technical and product questions ("Authorized Representatives"). If it is desired that additional Authorized Representatives be permitted to contact PowerSchool for Support, Licensee must pay additional Support fees for such additional Authorized Representatives. All such Authorized Representatives will complete, at a minimum, PowerSchool's Initial Product Training for the Licensed Product. Licensee will provide PowerSchool with a written list of its Authorized Representatives as part of the implementation process for the Licensed Product and will keep PowerSchool informed of replacements for Authorized Representatives as soon as possible after the replacements occur.
4. **Licensee's Other Responsibilities.** To receive Support

Services, Licensee will: (a) report Errors or suspected Errors for which Support Services are needed, and supply PowerSchool with sufficient information and data to reproduce the Error; (b) procure, install, operate and maintain hardware, operating systems and other software that are compatible with the most current supported version of Licensed Product; (c) maintain an operating environment free of any modifications or other programming that might interfere with the functioning of Licensed Product; and (d) maintain hardware and system software consistent with PowerSchool's minimum requirements. Licensee acknowledges that Fixes and New Versions may be made available electronically, and that, in some cases, PowerSchool may maintain e-mail distribution lists that are used to notify customers of the availability of Fixes and New Versions and to provide other information to customers that are maintaining a current support subscription. Licensee will be responsible for including the appropriate Licensee personnel on any such e-mail distribution lists of PowerSchool so that Licensee receives such notifications and other information.

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