



# STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management & Budget  
525 West Allegan, Lansing MI 48933

## NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. 190000000426  
between  
THE STATE OF MICHIGAN  
and

<b>CONTRACTOR</b>	PowerSchool Group LLC
	150 Parkshore Drive
	Folsom, CA 95630
	Joshua Deegan
	248-981-8839
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	VS0033768

<b>STATE</b>	Program Manager	James Thomas	MDHHS
		517-335-3541	
	thomasj11@michigan.gov		
	Contract Administrator	Sean Regan	DTMB
517-243-8459			
regans@michigan.gov			

CONTRACT SUMMARY			
<b>DESCRIPTION: Special Education Management System</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
2/28/2019	2/28/2022	3 -1 Year Options	N/A
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			<b>\$31,889.05</b>

CONTRACT NO. 190000000426

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**FOR THE CONTRACTOR:**

PowerSchool Group LLC

**Company Name**

DocuSigned by:

*Mike Quinn*

**Authorized Agent Signature**

Mike Quinn

**Authorized Agent** (Print or Type)

2/21/2019

**Date**

**FOR THE STATE:**

*Sean Regan*

**Signature**

Sean Regan, IT Category Analyst

**Name & Title**

DTMB

**Agency**

2/21/2019

**Date**

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# STATE OF MICHIGAN

## CONTRACT TERMS

### Software as a Service (SaaS)

This Software as a Service Contract (this “**Contract**”) is agreed to between the State of Michigan (the “**State**”) and PowerSchool Group LLC (“**Contractor**”). This Contract is effective on January 30, , 2019 (“**Effective Date**”), and unless earlier terminated, will expire on January 31, 2022 (the “**Term**”).

This Contract may be renewed for up to [3] additional [1] year period(s). Renewal must be by written notice from the State and will automatically extend the Term of this Contract.

#### 1. Definitions.

“**Accept**” has the meaning set forth in **Section 4.2(b)**.

“**Acceptance**” has the meaning set forth in **Section 4.2(b)**.

“**Action**” has the meaning set forth in **Section 15.1**.

“**Actual Uptime**” means the total minutes in the Service Period that the Hosted Services are Available.

“**Allegedly Infringing Features**” has the meaning set forth in **Section 15.3(b)(ii)**.

“**Authorized Users**” means all Persons authorized by the State to access and use the Services through the State’s account under this Contract, subject to the maximum number of users specified in the applicable Statement of Work.

“**Business Day**” means a day other than a Saturday, Sunday or State Holiday.

“**Change Notice**” has the meaning set forth in **Section 2.2**.

“**Code**” has the meaning set forth in **Section 21**.

“**Confidential Information**” has the meaning set forth in **Section 12.1**.

“**Contract**” has the meaning set forth in the preamble.

“**Contract Administrator**” is the individual appointed by each party to (a) administer the terms of this Contract, and (B) approve and execute any Change Notices under this Contract. Each party’s Contract Administrator will be identified in the Statement of Work.

**“Contractor”** has the meaning set forth in the preamble.

**“Contractor Personnel”** means all employees and agents of Contractor, all Subcontractors and all employees and agents of any Subcontractor, involved in the performance of Services.

**“Contractor Security Officer”** has the meaning set forth in **Section 2.5(a)**.

**“Contractor Service Manager”** has the meaning set forth in **Section 2.5(a)**.

**“Contractor Systems”** has the meaning set forth in **Section 13.3**.

**“Documentation”** means all generally available documentation relating to the Services, including all user manuals, operating manuals and other instructions, specifications, documents and materials, in any form or media, that describe any component, feature, requirement or other aspect of the Services, including any functionality, testing, operation or use thereof.

**“DR Plan”** has the meaning set forth in **Section 14.3(a)**.

**“Effective Date”** has the meaning set forth in the preamble.

**“Fees”** has the meaning set forth in **Section 8.1**.

**“Force Majeure Event”** has the meaning set forth in **Section 19.1**.

**“Harmful Code”** means any software, hardware or other technologies, devices or means, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner, any (i) computer, software, firmware, hardware, system or network, or (ii) any application or function of any of the foregoing or the integrity, use or operation of any data Processed thereby; or (b) prevent the State or any Authorized User from accessing or using the Services or Contractor Systems as intended by this Contract, and includes any virus, bug, trojan horse, worm, backdoor or other malicious computer code and any time bomb or drop dead device.

**“HIPAA”** has the meaning set forth in **Section 9.1**.

**“Hosted Services”** has the meaning set forth in **Section 2.1(a)**.

**“Intellectual Property Rights”** means any and all rights comprising or relating to: (a) patents, patent disclosures and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith; (c) authorship rights, copyrights and copyrightable works (including computer programs) and rights in data and databases; (d) trade secrets, know-how and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable Law in any jurisdiction throughout the world.

**“Key Personnel”** means any Contractor Personnel identified as key personnel in this Contract or any Statement of Work.

**“Law”** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement or rule of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

**“Loss”** means all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers. “Losses” has a correlative meaning.

**“Person”** means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

**“Personal Health Information (PHI)”** has the meaning set forth in **Section 9.1**.

**“Personally Identifiable Information (PII)”** has the meaning set forth in **Section 9.1**.

**“Process”** means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works, (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or (c) block, erase or destroy. **“Processing”** and **“Processed”** have correlative meanings.

**“Reject”** has the meaning set forth in **Section 4.2(b)**.

**“Rejection”** has the meaning set forth in **Section 4.2(b)**.

**“Representatives”** means a party’s employees, officers, directors, consultants, legal advisors and, with respect to Contractor, Contractor’s Subcontractors.

**“RFP”** means the State’s request for proposal designed to solicit responses for Services under this Contract.

**“Scheduled Uptime”** means the total minutes in the Service Period.

**“Service Error”** means any failure of any Hosted Service to be Available or otherwise perform in accordance with this Contract and the Specifications.

**“Service Level Failure”** means a failure to perform the Support Services fully in compliance with the Support Service Level Requirements.

**“Service Software”** means any and all software applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that

Contractor provides remote access to and use of as part of the Services. For clarity, PowerSchool's term of Licensed Products means the same as "Service Software".

"**Services**" has the meaning set forth in **Section 2.1**.

"**Source Code**" means the human readable source code of the Service Software to which it relates, in the programming language in which the Service Software was written, together with all related flow charts and technical documentation, including a description of the procedure for generating object code, all of a level sufficient to enable a programmer reasonably fluent in such programming language to understand, build, operate, support, maintain and develop modifications, upgrades, updates, adaptations, enhancements, new versions and other derivative works and improvements of, and to develop computer programs compatible with, the Service Software.

"**Specifications**" means the specifications for the Services set forth in the applicable Statement of Work and, to the extent consistent with and not limiting of the foregoing, the Documentation.

"**State**" has the meaning set forth in the preamble.

"**State Data**" has the meaning set forth in **Section 9.1**.

"**State Modification**" has the meaning set forth in **Section 15.2(a)**.

"**State Project Manager**" has the meaning set forth in **Section 2.8**.

"**State Systems**" means the information technology infrastructure, including the computers, software, databases, electronic systems (including database management systems) and networks, of the State or any of its designees.

"**Statement of Work**" has the meaning set forth in **Section 2.1(a)**. The Initial Statement of Work is attached as **Schedule A**, and subsequent Statements of Work shall be sequentially identified and attached as Schedule A-1, A-2, A-3, etc.

"**Subcontractor**" means any entity that performs any Services under this Contract and otherwise has the meaning set forth in **Section 2.4(a)**.

"**Term**" has the meaning set forth in the preamble.

"**Transition Period**" has the meaning set forth in **Section 7.3**.

"**Transition Responsibilities**" has the meaning set forth in **Section 7.3**.

"**User Data**" means any and all information reflecting the access or use of the Hosted Services by or on behalf of the State or any Authorized User, including any end user profile, visit, session, impression, click-through or click-stream data and any statistical or other analysis, information or data based on or derived from any of the foregoing.

## 2. Services.

2.1 Services. Throughout the Term and at all times in connection with its actual or required performance under this Contract, Contractor will, in accordance with all terms and conditions set forth in this Contract and each applicable Statement of Work, provide to the State and its Authorized Users the following services (“**Services**”):

(a) the hosting, management and operation of the Service Software and other services for remote electronic access and use by the State and its Authorized Users (“**Hosted Services**”) as described in one or more written, sequentially numbered, statements of work referencing this Contract, including all Specifications set forth in such statements of work, which, upon their execution will be attached as **Schedule A** to this Contract and by this reference are incorporated in and made a part of this Contract (each, a “**Statement of Work**”);

(b) service maintenance and the Support Services as set forth in **Section 6** and in the applicable Statement of Work; and

(c) such other services as may be specified in the applicable Statement of Work.

### 2.2 Change Notices.

(a) Any modifications or changes to the Services under any executed Statement of Work will be effective only if and when memorialized in a mutually agreed written change notice (“**Change Notice**”) signed by both Parties, provided, however, that for any Services provided on a limited basis (for example, on a per user, server, CPU or named-user basis), the State may, at any time, increase or decrease the number of its licenses hereunder subject to a corresponding forward-going adjustment of the Fees to reflect these changes in accordance with the pricing set forth in the applicable Statement of Work.

(b) In the event the Services are customizable, a more detailed change control process may be specified in the applicable Statement of Work. In such event, the change control process set forth in such Statement of Work shall control.

2.3 Compliance With Laws. Contractor must comply with all applicable Laws as they concern this Contract, including by securing and maintaining all required and appropriate visas, work permits, business licenses and other documentation and clearances necessary for performance of the Services.

2.4 Subcontracting. Contractor will not itself, and will not permit any Person to, subcontract any Services, in whole or in part, without the State’s prior written consent, which consent may be given or withheld in the State’s sole discretion. Without limiting the foregoing:

(a) Contractor must ensure each Contractor subcontractor (including any subcontractor of a Contractor subcontractor, each, a “**Subcontractor**”) complies with all relevant terms of this Contract, including all provisions relating to State Data or other Confidential Information of the State;

(b) the State's consent to any such Subcontractor does not relieve Contractor of its representations, warranties or obligations under this Contract;

(c) Contractor will remain responsible and liable for any and all: (i) performance required hereunder, including the proper supervision, coordination and performance of the Services; and (ii) acts and omissions of each Subcontractor (including, such Subcontractor's employees and agents, who, to the extent they are involved in providing any Services, are deemed Contractor Personnel) to the same extent as if such acts or omissions were by Contractor;

(d) any noncompliance by any Subcontractor or its employees or agents with the provisions of this Contract or any Statement of Work will constitute a breach by Contractor;

(e) prior to the provision of Services by any Subcontractor, Contractor must obtain from each such proposed Subcontractor:

- (i) the identity of such Subcontractor and the location of all its data centers, if any, that will be used in Processing any State Data, which information Contractor shall promptly disclose to the State in writing; and
- (ii) a written confidentiality, restricted use, work-for-hire and intellectual property rights assignment Contract in form and substance acceptable to the State, giving the State rights at least equal to those set forth in **Section 9** (State Data), **Section 12** (Confidentiality), **Section 13** (Security) and **Section 14** (Redundancy, Data Backup and Disaster Recovery) and containing the Subcontractor's acknowledgment of, and agreement to, the provisions of **Section 2.5** (Contractor Personnel), a fully-executed copy of which agreement Contractor will promptly provide to the State upon the State's request.

2.5 Contractor Personnel. Contractor will:

(a) subject to the prior written approval of the State, appoint: (i) a Contractor employee to serve as a primary contact with respect to the Services who will have the authority to act on behalf of Contractor in matters pertaining to the receipt and processing of Support Requests and the Support Services (the "**Contractor Service Manager**"); and (ii) a Contractor employee to respond to the State's inquiries regarding the security of the Contractor Systems who has sufficient knowledge of the security of the Contractor Systems and the authority to act on behalf of Contractor in matters pertaining thereto ("**Contractor Security Officer**"); and (iii) other Key Personnel, who will be suitably skilled, experienced and qualified to perform the Services;

(b) provide names and contact information for Contractor's Key Personnel on **Schedule B** to this Contract;

(c) maintain the same Contractor Service Manager, Contractor Security Officer and other Key Personnel throughout the Term and such additional period, if any, as Contractor is required to perform the Services, except for changes in such personnel due to: (i) the State's request pursuant to **Section 2.5(d)**;

or (ii) the death, disability, resignation or termination of such personnel or other circumstances outside Contractor's reasonable control; and

(d) upon the reasonable written request of the State, promptly replace any Key Personnel of Contractor.

## 2.6 Management and Payment of Contractor Personnel.

(a) Contractor is solely responsible for the payment of Contractor Personnel, including all fees, expenses and compensation to, by or on behalf of any Contractor Personnel and, if applicable, the withholding of income taxes and payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.

(b) Contractor will ensure that no Person who has been convicted of a felony or any misdemeanor involving, in any way, theft, fraud, or bribery provides any Services or has access to any State Data, State Systems or State facilities. On a case-by-case basis, the State may request that Contractor initiate a background check on any Contractor Personnel before they may have access to State Data, State Systems or State facilities. Any request for a background check shall be initiated by the State and must be reasonably related to the type of work requested. The scope of the background check is at the discretion of the State and the results shall be used solely to determine the eligibility of Contractor Personnel to work with State Data, State Systems or in State facilities. If provided to the State, results of background checks will be promptly returned to Contractor, and will be treated as Confidential Information. All investigations will include a Michigan State Police Background check (ICHAT) and may include a National Crime Information Center (NCIC) Finger Print check. Contractor will present attestation of satisfactory completion of such tests. Contractor is responsible for all costs and expenses associated with such background checks.

2.7 Time is of the Essence. Contractor acknowledges and agrees that time is of the essence with respect to its obligations under this Contract and that prompt and timely performance of all such obligations, including all timetables and other requirements of this Contract and each Statement of Work, is strictly required.

2.8 State Project Manager. The State will appoint and, in its reasonable discretion, replace, a State employee to serve as the primary contact with respect to the Services who will have the authority to act on behalf of the State in matters pertaining to the Support Services, including the submission and processing of Support Requests (the "**State Project Manager**").

## 3. **License Grant and Restrictions.**

3.1 Contractor License Grant. Contractor hereby grants to the State, exercisable by and through its Authorized Users, a nonexclusive, royalty-free, irrevocable (except as provided herein) right and license during the Term and such additional periods, if any, as Contractor is required to perform Services under this Contract or any Statement of Work, to:

(a) access and use the Hosted Services, including in operation with other software, hardware, systems, networks and services, for the State's business purposes, including for Processing State Data;

(b) generate, print, copy, upload, download, store and otherwise Process all GUI, audio, visual, digital and other output, displays and other content as may result from any access to or use of the Services;

(c) prepare, reproduce, print, download and use a reasonable number of copies of the Specifications and Documentation for any use of the Services under this Contract; and

(d) access and use the Services for all such non-production uses and applications as may be necessary or useful for the effective use of the Hosted Services hereunder, including for purposes of analysis, development, configuration, integration, testing, training, maintenance, support and repair, which access and use will be without charge and not included for any purpose in any calculation of the State's or its Authorized Users' use of the Services, including for purposes of assessing any Fees or other consideration payable to Contractor or determining any excess use of the Hosted Services as described in **Section 3.3**.

3.2 **License Restrictions.** The State shall 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 Service Software; (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 Service Software, in whole or in part, for competitive purposes or otherwise; (iii) write or develop any derivative works based upon the Service Software; (iv) modify, adapt, translate or otherwise make any changes to the Service Software or any part thereof; (v) use the Service Software to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vi) disclose or publish, without Contractor prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Service Software, except as required by law; or (viii) otherwise use or copy the same except as expressly permitted herein. .

3.3 **Use.** The State will pay Contractor the corresponding Fees set forth in the Statement of Work for all Authorized Users access and use of the Service Software. Such Fees will be Contractor's sole and exclusive remedy for use of the Service Software, including any excess use. The State is responsible for obtaining and maintaining an appropriate operating environment with the necessary hardware, operating system software and other items required to use and access the Service Software. Contractor will not be responsible for any incompatibility between the Service Software and any versions of operating systems, hardware, browsers or other products not specifically approved by Contractor for the State's use with the Service Software. Contractor will make written requirements available to the State at the State's request.

3.4 **State License Grant.** The State hereby grants to Contractor a limited, non-exclusive, non-transferable license (i) to use the State's (or individual agency's, department's or division's) name,

trademarks, service marks or logos, solely in accordance with the State's specifications, and (ii) to display, reproduce, distribute and transmit in digital form the State's (or individual agency's, department's or division's) name, trademarks, service marks or logos in connection with promotion of the Services as communicated to Contractor by the State. Use of the State's (or individual agency's, department's or division's) name, trademarks, service marks or logos will be specified in the applicable Statement of Work.

#### **4. Service Preparation, Testing and Acceptance.**

4.1 Service Preparation. Promptly upon the parties' execution of a Statement of Work, Contractor will take all steps necessary to make the Services procured thereunder ready and available for the State's use in accordance with the Statement of Work and this Contract, including any applicable milestone date or dates set forth in such Statement of Work.

#### **5. Service Availability, Service Availability Credits, Support and Maintenance Services.**

Contractor will provide the Service Availability and Service Availability Credits as set forth in Contractor's Service Level Agreement which is attached as **Schedule F**. Contractor will provide the Support and Maintenance Services and other services as set forth in the Support Service Policies attached as **Schedule G**.

#### **6. Termination, Expiration and Transition.**

6.1 Termination for Cause. In addition to any right of termination set forth elsewhere in this Contract:

(a) Either party may terminate this Contract for cause, in whole or in part, if the breaching party: (i) endangers the value, integrity, or security of the non-breaching party's Systems, Data, or facilities or personnel; (ii) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; or (iii) breaches any of its material duties or obligations under this Contract. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

(b) The State will only pay for amounts due to Contractor for Services provided by the Contractor on or before the date of termination, subject to the non-breaching party's right to set off any amounts owed by the breaching party for the non-breaching party's reasonable costs in terminating this Contract. Contractor must promptly reimburse to the State any Fees prepaid by the State prorated to the date of such termination. Further, the breaching party must pay all reasonable costs incurred by the non-breaching party in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Services from other sources.

6.2 Termination for Non-appropriation. The State may immediately terminate this Contract in whole or in part, without penalty for appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance immediately, or (b) continue to perform in accordance with **Section 7.3**. If the State terminates this Contract for non-appropriation, the State will pay all

reasonable costs, as determined by the State, for State approved Transition Responsibilities to the extent the funds are available.

6.3 Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days; the “**Transition Period**”), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract to continue without interruption or adverse effect, and to facilitate the orderly transfer of the Services to the State or its designees. Such transition assistance may include but is not limited to: (a) continuing to perform the Services at the established Statement of Work rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Services to the State or the State’s designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all State Data; and (d) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, the “**Transition Responsibilities**”). The Term of this Contract is automatically extended through the end of the Transition Period.

6.4 Effect of Termination. Upon and after the termination or expiration of this Contract or one or more Statements of Work for any or no reason:

(a) Contractor will be obligated to perform all Transition Responsibilities specified in **Section 7.3**.

(b) All licenses granted to Contractor in State Data will immediately and automatically also terminate. Contractor must promptly return to the State all State Data not required by Contractor for its Transition Responsibilities, if any.

(c) Contractor will (i) return to the State all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the State’s Confidential Information; (ii) permanently erase the State’s Confidential Information from its computer systems; and (iii) certify in writing to the State that it has complied with the requirements of this **Section 7**, in each case to the extent such materials are not required by Contractor for Transition Responsibilities, if any.

6.5 Survival. The rights, obligations and conditions set forth in this **Section 7.5** and **Section 1** (Definitions), **Section 7.3** (Effect of Termination; Data Retention), **Section 9** (State Data), **Section 12** (Confidentiality), **Section 13** (Security), **Section 15.1** (Indemnification), **Section 16** (Limitations of Liability), **Section 17** (Representations and Warranties), **Section 18** (Insurance) and **Section 21** (Effect of Contractor Bankruptcy) and **Section 22** (General Provisions), and any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Contract, survives any such termination or expiration hereof.

## 7. Fees and Expenses.

7.1 Fees. Subject to the terms and conditions of this Contract and the applicable Statement of Work, including the provisions of this **Section 8**, the State shall pay the fees set forth in the applicable

Statement of Work, subject to such increases and adjustments as may be permitted pursuant to **Section 8.2 (“Fees During Option Years”)**.

7.2 Fees During Option Years. Contractor’s Fees are fixed during the initial period of the Term. Contractor may increase Fees for any renewal period by providing written notice to the State at least sixty (60) calendar days prior to the commencement of such renewal period. An increase of Fees for any renewal period may not exceed three percent (3%) of the Fees effective during the immediately preceding twelve (12) month period. License pricing for Service Software is based on student enrollment at licensed sites. If an increase in student enrollment in excess of five percent (5%) occurs at the licensed sites, then the State shall pay additional license and support fees to Contractor in accordance with Contractor’s invoice. Such additional fees shall be computed by multiplying the then-current per student license and support fees for the Service Software by the State’s additional enrollment. State’s subsequent Support invoices will be based on the increased enrollment as well. No increase in Fees is effective unless made in compliance with the provisions of this **Section 8.2**.

7.3 Administrative Fee and Reporting. Contractor must pay an administrative fee of 1% on all payments made to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states (including governmental subdivisions and authorized entities). Administrative fee payments must be made by check payable to the State of Michigan and mailed to:

Department of Technology, Management and Budget  
Cashiering  
P.O. Box 30681  
Lansing, MI 48909

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to DTMB-Procurement. The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each calendar quarter.

7.4 Responsibility for Costs. Contractor is responsible for all costs and expenses incurred in or incidental to the performance of Services, including all costs of any materials supplied by Contractor, all fees, fines, licenses, bonds, or taxes required of or imposed against Contractor, and all other of Contractor’s costs of doing business.

7.5 Taxes. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Contract are for the State’s exclusive use. Notwithstanding the foregoing, all Fees are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

7.6 Invoices. Contractor will invoice the State for all Fees in electronic format, via such delivery means and to such address as are specified by the State in writing from time to time. If more than one Statement of Work is in effect, Contractor shall provide separate invoices for each Statement of Work.

Each separate invoice must: (a) clearly identify the Statement of Work to which it relates, in such manner as is required by the State; (b) list each Fee item and Service Credit separately; (c) include sufficient detail for each line item to enable the State to verify the calculation thereof; (d) for Fees determined on a time and materials basis, report details of time taken to perform Services, and such other information as the State requires, on a per-individual basis; and (e) include such other information as may be required by the State as set forth in the applicable Statement of Work.

7.7 Payment Terms. Invoices are due and payable by the State, in accordance with the State's standard payment procedures as specified in 1984 Public Act no. 279, MCL 17.51, *et seq.*, within forty-five (45) calendar days after receipt, provided the State determines that the invoice was properly rendered.

7.8 State Audits of Contractor.

(a) During the Term, and for four (4) years after, Contractor must maintain complete and accurate books and records regarding its business operations relevant to the calculation of Fees and any other information relevant to Contractor's compliance with this **Section 8**. During the Term, and for four (4) years after, upon the State's request, Contractor must make such books and records and appropriate personnel, including all financial information, available during normal business hours for inspection and audit by the State or its authorized representative, provided that the State: (a) provides Contractor with at least fifteen (15) days prior notice of any audit, and (b) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor's normal business operations.

(b) The State may take copies and abstracts of materials audited upon approval by the Contractor. The State will pay the cost of such audits unless an audit reveals an overbilling or over-reporting of five percent (5%) or more, in which case Contractor shall reimburse the State for the reasonable cost of the audit. Contractor must immediately upon written notice from the State pay the State the amount of any overpayment revealed by the audit, together with any reimbursement payable pursuant to the preceding sentence.

7.9 Payment Does Not Imply Acceptance. The making of any payment or payments by the State, or the receipt thereof by Contractor, will in no way affect the responsibility of Contractor to perform the Services in accordance with this Contract, and will not imply the State's Acceptance of any Services or the waiver of any warranties or requirements of this Contract, including any right to Service Credits.

7.10 Withhold Remedy. In addition and cumulative to all other remedies in law, at equity and under this Contract, if Contractor is in material default of its performance or other obligations under this Contract or any Statement of Work and fails to cure the default within fifteen (15) days after receipt of the State's written notice of default, the State may, without waiving any other rights under this Contract, elect to withhold from the payments due to Contractor under this Contract during the period beginning with the sixteenth (16th) day after Contractor's receipt of such notice of default, and ending on the date that the default has been cured to the reasonable satisfaction of the State, an amount that, in the State's reasonable judgment, is in proportion to the magnitude of the default or the Service that Contractor is not providing. Upon Contractor's cure of the default, the State will cause the withheld payments to be paid to

Contractor, without interest. Upon a final and binding legal determination that the State has withheld any payment in bad faith, such payment shall promptly be paid to Contractor.

7.11 Availability and Support Service Level Credits. Contractor acknowledges and agrees that each of the Service Availability Credits and Service Level Credits assessed pursuant to **Schedule F**: (a) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the corresponding Service Error or Service Level Failure, which would be impossible or very difficult to accurately estimate; and (b) may, at the State's option, be credited or set off against any Fees or other charges payable to Contractor under this Contract or be payable to the State upon demand. No Service Availability Credits, Service Level Credits, or combination thereof, for any Service Period may exceed the total amount of Fees that would be payable for that Service Period if the Services were fully provided in accordance with this Contract and the Specifications.

7.12 Support Not to be Withheld or Delayed. Contractor may not withhold or delay any Hosted Services or Support Services or fail to perform any other Services or obligations hereunder by reason of: (a) the State's good faith withholding of any payment or amount in accordance with this **Section 8**; or (b) any dispute whatsoever between the parties, including any payment or other dispute arising under or concerning this Contract or any other agreement between the parties.

## **8. State Data.**

8.1 Ownership. The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) User Data; and (b) the State's data collected, used, processed, stored, or generated in connection with the Services, including but not limited to (i) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and (ii) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Services, which is defined under the Health Insurance Portability and Accountability Act ("**HIPAA**") and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This **Section 9.1** survives termination or expiration of this Contract.

8.2 Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Services. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of

anyone other than the State without the State's prior written consent. This **Section 9.2** survives termination or expiration of this Contract.

8.3 Extraction of State Data. Contractor must, within one (1) Business Days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of State Data in the available format specified by the State.

8.4 Discovery. Contractor shall immediately notify the State upon receipt of any requests which in any way might reasonably require access to State Data or the State's use of the Hosted Services. Contractor shall notify the State Project Manager by the fastest means available and also in writing. In no event shall Contractor provide such notification more than twenty-four (24) hours after Contractor receives the request. Contractor shall not respond to subpoenas, service of process, FOIA requests, and other legal requests related to the State without first notifying the State and obtaining the State's prior approval of Contractor's proposed responses. Contractor agrees to provide its completed responses to the State with adequate time for State review, revision and approval.

8.5 Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is reasonably suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than forty-eight (48) ( ) hours of becoming aware of and confirming such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) with approval and assistance from the State, notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of confirmation of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (i) provide to the State a detailed plan within ten (10) calendar days of confirmation of the occurrence describing the measures Contractor will undertake to prevent a future occurrence.

Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent by Contractor to affected individuals prior to its delivery which approval shall not be unreasonably withheld or delayed. The Contractor will have the option to review and approve any notification sent by the State to affected individuals prior to its delivery, which approval shall not be unreasonably withheld or delayed. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by both parties in writing prior to its dissemination. This section survives termination or expiration of this Contract.

8.6 HIPAA Compliance. The State and Contractor must comply with all obligations under HIPAA and its accompanying regulations, including but not limited to entering into a business associate agreement, if reasonably necessary to keep the State and Contractor in compliance with HIPAA.

8.7 ADA Compliance. If the Services are required to be compliant with the Americans with Disabilities Act or Section 508 of the Workforce Rehabilitation Act of 1973, such compliance requirements shall be specified in the Statement of Work.

## **9. PCI Compliance.**

Reserved

## **10. CEPAS Electronic Receipt Processing Standard.**

Reserved

## **11. Confidentiality.**

11.1 Meaning of Confidential Information. The term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was or is: (a) in the possession of the State and subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when

received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). Notwithstanding the above, in all cases and for all matters, State Data is deemed to be Confidential Information.

11.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to the Contractor's subcontractor is permissible where: (a) the subcontractor is a Permitted Subcontractor; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Permitted Subcontractor's responsibilities; and (c) Contractor obligates the Permitted Subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any of the Contractor's Representatives may be required to execute a separate agreement to be bound by the provisions of this **Section 12.2**.

11.3 Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract. Each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

11.4 Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, the immediate termination, without liability, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

11.5 Surrender of Confidential Information upon Termination. Upon termination or expiration of this Contract or a Statement of Work, in whole or in part, each party must, within five (5) Business Days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control. If Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and certify the same in writing within five (5) Business Days from the date of termination to the other party.

## **12. Security.**

12.1 Protection of the State's Confidential Information. Throughout the Term and at all times in connection with its actual or required performance of the Services hereunder, Contractor will:

(a) ensure that the Service Software and all State Data is securely hosted, supported, administered, and accessed in a data center that resides in the continental United States, and minimally meets Uptime Institute Tier 3 standards ([www.uptimeinstitute.com](http://www.uptimeinstitute.com));

(b) maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of the State's Confidential Information that comply with the requirements of the State's data security policies as set forth in **Schedule C** (Data Security Requirements) and, to the extent such practices and standards are consistent with and not less protective than the foregoing requirements, are at least equal to applicable best industry practices and standards;

(c) provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling or Processing of such information that ensure a level of security appropriate to the risks presented by the Processing of the State's Confidential Information and the nature of such Confidential Information, consistent with best industry practice and standards.

(d) take all reasonable measures to:

- (i) secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the Services against "hackers" and others who may seek, without authorization, to disrupt, damage, modify, access or otherwise use Contractor Systems or the information found therein;
- (ii) prevent (A) the State and its Authorized Users from having access to the data of other customers or such other customer's users of the Services; (B) the State's Confidential Information from being commingled with or contaminated by the data of other customers or their users of the Services; and (C) unauthorized access to any the State's Confidential Information;

(e) continuously monitor its systems for potential areas where security could be breached.

12.2 Unauthorized Access. Contractor may not access, and shall not permit any access to, State Systems, in whole or in part, whether through Contractor's Systems or otherwise, without the State's express prior written authorization. Such authorization may be revoked by the State in writing at any time in its sole discretion. Any access to State Systems must be solely in accordance with this Contract, and in no case exceed the scope of the State's authorization pursuant to this **Section 13.2**. All State-authorized connectivity or attempted connectivity to State Systems shall be only through the State's security gateways and firewalls and in compliance with the State's security policies set forth in **Schedule C** as the same may be supplemented or amended by the State and provided to Contractor from time to time.

12.3 Contractor Systems. Contractor will be solely responsible for the information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems) and networks used by or for Contractor to access State Systems or otherwise in

connection with the Services (“**Contractor Systems**”) and shall prevent unauthorized access to State Systems through the Contractor Systems.

12.4 Security Audits. During the Term, Contractor will:

(a) maintain complete and accurate records relating to its data protection practices and the security of any of the State’s Confidential Information, including any backup, disaster recovery or other policies, practices or procedures relating to the State’s Confidential Information and any other information relevant to its compliance with this **Section 13**;

(b) upon the State’s request, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by the State or an independent data security expert that is reasonably acceptable to Contractor, provided that the State: (i) gives Contractor at least five Business Days prior notice of any such audit; (ii) undertakes such audit no more than once per calendar year, except for good cause shown; and (iii) conducts or causes to be conducted such audit in a manner designed to minimize disruption of Contractor’s normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of this Contract. The State may, but is not obligated to, perform such security audits, which shall, at the State’s option and request, include penetration and security tests, of any and all Contractor Systems and their housing facilities and operating environments; and

(c) if Contractor engages a third party auditor to perform a Statement on Standards for Attestation Engagements No. 16 (SSAE 16) audit of Contractor’s operations, information security program or disaster recovery/business continuity plan, Contractor will provide a copy of the audit report to the State within thirty (30) days after Contractor’s receipt of such report. Any such audit reports will be recognized as Contractor’s Confidential Information.

12.5 Nonexclusive Remedy for Security Breach. Any failure of the Services to meet the requirements of this Contract with respect to the security of any State Data or other Confidential Information of the State, including any related backup, disaster recovery or other policies, practices or procedures, is a material breach of this Contract for which the State, at its option, may terminate this Contract immediately upon written notice to Contractor without any notice or cure period, and Contractor must promptly reimburse to the State any Fees prepaid by the State prorated to the date of such termination.

**13. Redundancy, Data Backup and Disaster Recovery**. Contractor must, in accordance with the provisions of this **Section 14**, maintain or cause to be maintained disaster avoidance procedures designed to safeguard State Data and the State’s other Confidential Information, Contractor’s Processing capability and the availability of the Hosted Services, in each case throughout the Term and at all times in connection with its actual or required performance of the Services hereunder. The force majeure provisions of **Section 19.1** do not limit Contractor’s obligations under this **Section 14**.

13.1 Redundant Hosting and Connectivity. Contractor will simultaneously operate a mirror system at a location in the United States that is geographically remote from the primary system on which the

Service Software and Hosted Services are hosted. Except for its location, the mirror system must: (a) be identical in all respects to the primary system; (b) have hardware and software, network connectivity, power supplies, backup generators and other similar equipment and services that operate independently of the primary system; (c) have fully current backups of all the State Data stored on the primary system; and (d) have the ability to provide the Hosted Services in accordance with this Contract and the Specifications during the performance of routine and remedial maintenance or any outage or failure of the primary system fails. Contractor will operate, monitor and maintain such mirror system so that it may be activated within five (5) hours of any failure of the Hosted Services to be Available.

13.2 Data Backup. Contractor will conduct, or cause to be conducted, daily back-ups of State Data and perform, or cause to be performed, other periodic back-ups of State Data on at least a weekly basis and store such back-ups as specified in **Schedule D**. All backed up State Data shall be located in the continental United States. On written notice from the State and, in any case, on a quarterly basis, Contractor will provide the State with a copy of the backed up State Data in such machine readable format as is specified in **Schedule D** or the State otherwise reasonably requests. Contractor will provide all quarterly back-ups at its sole cost and expense. The State will reimburse Contractor for all media costs and shipping charges reasonably incurred in fulfilling the State's additional requests for copies of backed up the State Data.

13.3 Disaster Recovery/Business Continuity. Throughout the Term and at all times in connection with its actual or required performance of the Services hereunder, Contractor will:

(a) maintain a Business Continuity and Disaster Recovery Plan for the Hosted Services (the "**DR Plan**"), and implement such DR Plan in the event of any unplanned interruption of the Hosted Services. Contractor will actively test, review and update the DR Plan on at least an annual basis using industry best practices as guidance. Contractor will provide the State with copies of all such updates to the Plan within fifteen (15) days of its adoption by Contractor. All updates to the DR Plan are subject to the requirements of this **Section 14.3**; and

(b) provide the State with copies of all reports resulting from any testing of or pursuant to the DR Plan promptly after Contractor's receipt or preparation. If Contractor fails to reinstate all material Hosted Services within the periods of time set forth in the DR Plan, the State may, in addition to any other remedies available under this Contract, in its sole discretion, immediately terminate this Contract as a non-curable default under **Section 7.1(a)**.

## **14. Indemnification.**

14.1 General Indemnification. Contractor must defend, indemnify and hold harmless the State, and the State's agencies, departments, officers, directors, employees, agents, and contractors from and against all Losses arising out of or resulting from any third party claim, suit, action or proceeding (each, an "**Action**") that does or is alleged to arise out of or result from:

(a) any negligence or more culpable act or omission (including recklessness or willful misconduct) in connection with the performance or nonperformance of any Services or other activity

actually or required to be performed by or on behalf of, Contractor (including, in the case of Contractor, any Contractor Personnel) under this Contract, provided that, to the extent that any Action or Losses described in this **Section 15.1** arises out of, results from, or alleges a claim that any of the Services does or threatens to infringe, misappropriate or otherwise violate any Intellectual Property Rights or other rights of any third party, Contractor's obligations with respect to such Action and Losses, if any, shall be subject to the terms and conditions of **Section 15.2(a)** through **Section 15.2(b)** and **Section 15.3**.

14.2 Infringement Indemnification By Contractor. Contractor must indemnify, defend and hold the State, and the State's agencies, departments, officers, directors, employees, agents, and contractors harmless from and against all Losses arising out of or resulting from any Action that does or is alleged to arise out of or result from a claim that any of the Services, or the State's or any Authorized User's use thereof, actually does or threatens to infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of a third party, provided however, that Contractor shall have no liability or obligation for any Action or Loss to the extent that such Action or Loss arises out of or results from any:

(a) alteration or modification of the Hosted Services or Service Software by or on behalf of the State or any Authorized User without Contractor's authorization (each, a "**State Modification**"), provided that no infringement, misappropriation or other violation of third party rights would have occurred without such State Modification and provided further that any alteration or modification made by or for Contractor at the State's request shall not be excluded from Contractor's indemnification obligations hereunder unless (i) such alteration or modification has been made pursuant to the State's written specifications and (ii) the Hosted Services, as altered or modified in accordance with the State's specifications, would not have violated such third party rights but for the manner in which the alteration or modification was implemented by or for Contractor; and

(b) use of the Hosted Services by the State or an Authorized User pursuant to this Contract in combination with any software or service not provided, authorized or approved by or on behalf of Contractor, if (i) no violation of third party rights would have occurred without such combination and (ii) such software or service is not commercially available and not standard in Contractor's or the State's industry and there are no Specifications, Documentation, or other materials indicating Contractor's specification, authorization or approval of the use of the Hosted Services in combination therewith.

14.3 Mitigation.

(a) If Contractor receives or otherwise learns of any threat, warning or notice alleging that all, or any component or feature, of the Services violates a third party's rights, Contractor must promptly notify the State of such fact in writing, and take all commercially reasonable actions necessary to ensure the State's continued right to access and use such Services and otherwise protect the State from any Losses in connection therewith, including investigating such allegation and obtaining a credible opinion of counsel that it is without merit.

(b) Subject to the exclusions set forth in clauses (a) and (b) of **Section 15.2**, if any of the Services or any component or feature thereof is ruled to infringe or otherwise violate the rights of any third party by any court of competent jurisdiction, or if any use of any Services or any component thereof is

threatened to be enjoined, or is likely to be enjoined or otherwise the subject of an infringement or misappropriation claim, Contractor must, at Contractor's sole cost and expense:

- (i) procure for the State the right to continue to access and use the Services to the full extent contemplated by this Contract and the Specifications; or
- (ii) modify or replace all components, features and operations of the Services that infringe or are alleged to infringe ("**Allegedly Infringing Features**") to make the Services non-infringing while providing equally or more suitable features and functionality, which modified and replacement services shall constitute Services and be subject to the terms and conditions of this Contract.

(c) If neither of the remedies set forth in **Section 15.3(b)** is reasonably available with respect to the Allegedly Infringing Features then Contractor may direct the State to cease any use of any materials that have been enjoined or finally adjudicated as infringing, provided that Contractor will:

- (i) refund to the State any prepaid Fees for Services that have not been provided; and
- (ii) in any case, at its sole cost and expense, secure the right for the State to continue using the Allegedly Infringing Features for a transition period of up to six (6) months to allow the State to replace the affected Services or Allegedly Infringing Features without disruption.

(d) The remedies set forth in this **Section 15.3** are in addition to, and not in lieu of, all other remedies that may be available to the State under this Contract or otherwise, including the State's right to be indemnified pursuant to **Section 15.1** and **Section 15.2**.

14.4 Indemnification Procedure. The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations. The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own expense, if the State deems necessary. Contractor will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. Any litigation activity on behalf of the State or any of its subdivisions, under this **Section 15**, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

#### **15. Disclaimer of Damages and Limitations of Liability.**

(a) Disclaimer of Damages. NEITHER PARTY WILL BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL,

INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES.

(b) Limitation of Liability. IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE AGGREGATE CONTRACT PRICE. As used in this clause, the term "Aggregate Contract Price" means the total price for the initial Term and all renewal terms of this Contract.

(c) Exceptions. Subsections (a) (Disclaimer of Damages) and (b) (Limitation of Liability) above, shall not apply to: (i) Contractor's obligation to indemnify under **Section 15** of this Contract; (ii) Contractor's obligations under **Section 9.5** of this Contract (Loss or Compromise of State Data); (iii) any loss or claim to the extent the loss or claim is covered by a policy of insurance maintained, or required by this Contract to be maintained, by Contractor; and (iv) damages arising from either party's recklessness, bad faith, or intentional misconduct.

(d) Nothing herein shall be construed to waive any law regarding sovereign immunity, or any other immunity, restriction, or limitation on recovery provided by law.

## **16. Contractor Representations and Warranties.**

16.1 Authority and Bid Response. Contractor represents and warrants to the State that, to the best of its knowledge:

(a) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented under this Contract under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;

(b) it has the full right, power, and authority to enter into this Contract, to grant the rights and licenses granted under this Contract, and to perform its contractual obligations;

(c) the execution of this Contract by its Representative has been duly authorized by all necessary organizational action;

(d) when executed and delivered by Contractor, this Contract will constitute the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms;

(e) the prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder to the RFP; and no attempt was

made by Contractor to induce any other Person to submit or not submit a proposal for the purpose of restricting competition;

(f) all written information furnished to the State by or for Contractor in connection with this Contract, including Contractor's bid response to the RFP, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading; and

(g) Contractor is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.

16.2 Software and Service Warranties. Contractor represents and warrants to the State that, to the best of its knowledge:

(a) Contractor has, and throughout the Term and any additional periods during which Contractor does or is required to perform the Services will have, the unconditional and irrevocable right, power and authority, including all permits and licenses required, to provide the Services and grant and perform all rights and licenses granted or required to be granted by it under this Contract;

(b) neither Contractor's grant of the rights or licenses hereunder nor its performance of any Services or other obligations under this Contract does or at any time will: (i) conflict with or violate any applicable Law, including any Law relating to data privacy, data security or personal information; (ii) require the consent, approval or authorization of any governmental or regulatory authority or other third party; or (iii) require the provision of any payment or other consideration by the State or any Authorized User to any third party, and Contractor shall promptly notify the State in writing if it becomes aware of any change in any applicable Law that would preclude Contractor's performance of its material obligations hereunder;

(c) as accessed and used by the State or any Authorized User in accordance with this Contract and the Specifications, the Hosted Services, Documentation and all other Services and materials provided by Contractor under this Contract will not infringe, misappropriate or otherwise violate any Intellectual Property Right or other right of any third party;

(d) there is no settled, pending or, to Contractor's knowledge as of the Effective Date, threatened Action, and it has not received any written, oral or other notice of any Action (including in the form of any offer to obtain a license): (i) alleging that any access to or use of the Services or Service Software does or would infringe, misappropriate or otherwise violate any Intellectual Property Right of any third party; (ii) challenging Contractor's ownership of, or right to use or license, any software or other materials used or required to be used in connection with the performance or receipt of the Services, or alleging any adverse right, title or interest with respect thereto; or (iii) that, if decided unfavorably to Contractor, would reasonably be expected to have an actual or potential adverse effect on its ability to

perform the Services or its other obligations under this Contract, and it has no knowledge after reasonable investigation of any factual, legal or other reasonable basis for any such litigation, claim or proceeding;

(e) the Service Software and Services will in all material respects conform to and perform in accordance with the Specifications and all requirements of this Contract, including the Availability and Availability Requirement provisions set forth in **Section 5**;

(f) all Specifications are, and will be continually updated and maintained so that they continue to be, current, complete and accurate and so that they do and will continue to fully describe the Hosted Services in all material respects such that at no time during the Term or any additional periods during which Contractor does or is required to perform the Services will the Hosted Services have any material undocumented feature;

(g) the Contractor Systems and Services are and will remain free of Harmful Code;

(h) Contractor will not advertise through the Hosted Services (whether with adware, banners, buttons or other forms of online advertising) or link to external web sites that are not approved in writing by the State;

(i) Contractor will perform all Services in a timely, professional and workmanlike manner with a level of care, skill, practice and judgment consistent with generally recognized industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications, and will devote adequate resources to meet Contractor's obligations (including the Availability Requirement and Support Service Level Requirements) under this Contract;

(j) During the term of this Contract, any audit rights contained in any third-party software license agreement or end user license agreement for third-party software incorporated in or otherwise used in conjunction with the Services, will apply solely to Contractor's (or its subcontractors) facilities and systems that host the Services (including any disaster recovery site), and regardless of anything to the contrary contained in any third-party software license agreement or end user license agreement, third-party software providers will have no audit rights whatsoever against State systems or networks; and

(k) Contractor acknowledges that the State cannot indemnify any third parties, including but not limited to any third-party software providers that provide software that will be incorporated in or otherwise used in conjunction with the Services, and that notwithstanding anything to the contrary contained in any third-party software license agreement or end user license agreement, the State will not indemnify any third party software provider for any reason whatsoever.

(l) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606.

16.3 DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS CONTRACT, CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED,

STATUTORY OR OTHERWISE UNDER OR IN CONNECTION WITH THIS CONTRACT OR ANY SUBJECT MATTER HEREOF.

**17. Insurance.**

17.1 Required Coverage.

(a) **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Required Limits	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit  \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit  \$2,000,000 Products/Completed Operations  <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
<b>Umbrella or Excess Liability Insurance</b>	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.
<b>Automobile Liability Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2)

	include Hired and Non-Owned Automobile coverage.
<b>Workers' Compensation Insurance</b>	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
<b>Privacy and Security Liability (Cyber Liability) Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.
<b>Crime (Fidelity) Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Employee Theft Per Loss	Contractor must have their policy: (1) cover forgery and alteration, theft of money and securities, robbery and safe burglary, computer fraud, funds transfer fraud, money order and counterfeit currency, and (2) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as Loss Payees.
<b>Professional Liability (Errors and Omissions) Insurance</b>	
<u>Minimal Limits:</u> \$3,000,000 Each Occurrence	

<p>\$3,000,000 Annual Aggregate</p> <p><u>Deductible Maximum:</u></p> <p>\$50,000 Per Loss</p>	
------------------------------------------------------------------------------------------------	--

(b) If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of Contractor to any indemnified party or other persons.

(c) If any of the required policies provide **claims-made** coverage, Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of contract work; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the contract of work; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

(d) Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

17.2 Non-waiver. This **Section 18** is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

**18. Force Majeure.**

18.1 Force Majeure Events. Subject to **Section 19.2**, neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term hereof, when and to the extent such failure or delay is caused by: acts of God, flood, fire or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Contract, national or regional emergency, or any passage of law or governmental order, rule, regulation or direction, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition (each of the foregoing, a "**Force Majeure Event**"), in each case provided that: (a) such event is outside the reasonable control of the affected party; (b) the affected party gives prompt written notice to the other party, stating the period of time the occurrence is expected to continue; (c) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

18.2 State Performance; Termination. In the event of a Force Majeure Event affecting Contractor's performance under this Contract, the State may suspend its performance hereunder until such time as Contractor resumes performance. The State may terminate this Contract by written notice to Contractor if a Force Majeure Event affecting Contractor's performance hereunder continues substantially uninterrupted for a period of five (5) Business Days or more. Unless the State terminates this Contract pursuant to the preceding sentence, any date specifically designated for Contractor's performance under this Contract will automatically be extended for a period up to the duration of the Force Majeure Event.

18.3 Exclusions; Non-suspended Obligations. Notwithstanding the foregoing or any other provisions of this Contract:

- (a) in no event will any of the following be considered a Force Majeure Event:
  - (i) shutdowns, disruptions or malfunctions of the Contractor Systems or any of Contractor's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to the Contractor Systems; or
  - (ii) the delay or failure of any Contractor Personnel to perform any obligation of Contractor hereunder unless such delay or failure to perform is itself by reason of a Force Majeure Event; and

(b) no Force Majeure Event modifies or excuses Contractor's obligations under **Section 5** (Service Availability and Service Availability Credits), **Section 6.5** (Support Service Level Credits), **Section 9** (State Data), **Section 12** (Confidentiality), **Section 13** (Security), **Section 14** (Data Backup and Disaster Recovery) or **Section 15** (Indemnification), or any Availability Requirement, Support Service Level Requirement, Service Availability Credit or Service Level Credit obligations under this Contract or an applicable Statement of Work.

## **19. Software Escrow.**

### **Reserved**

**20. Effect of Contractor Bankruptcy.** All rights and licenses granted by Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this agreement, including the Services, is and shall be deemed to be "embodiments" of "intellectual property" for purposes of and as such terms are used in and interpreted under section 365(n) of the United States Bankruptcy Code (the "**Code**") (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory Statement of Works). Without limiting the generality of the foregoing, if Contractor or its estate becomes subject to any bankruptcy or similar proceeding, subject to the State's rights of election, all rights and licenses granted to the State under this Contract will continue subject to the respective terms and conditions of this Contract, and will not be affected, even by Contractor's rejection of this Contract.

## 21. General Provisions.

21.1 Further Assurances. Each party will, upon the reasonable request of the other party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Contract.

21.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Contract is to be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party has authority to contract for or bind the other party in any manner whatsoever.

21.3 Media Releases. News releases (including promotional literature and commercial advertisements) pertaining to this Contract or project to which it relates must not be made without the prior written approval of both parties, and then only in accordance with the explicit written instructions agreed upon by both parties.

21.4 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder, other than routine communications having no legal effect, must be in writing and addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this Section):

If to Contractor:

150 Parkshore Drive

E-mail: legal@powerschool.com

Attention: Jeff Lambert

Title: Chief Legal Officer/General Counsel

If to the State:

525 W. Allegan, 1<sup>st</sup> Floor, Lansing MI 48913

E-mail: regans@michigan.gov

Attention: Sean Regan

Title: Category Analyst, IT Division

Notices sent in accordance with this **Section 22.4** will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next

business day, if sent after normal business hours of the recipient; or (d) on the fifth (5<sup>th</sup>) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

21.5 Extended Purchasing Program. This Contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at [www.michigan.gov/mideal](http://www.michigan.gov/mideal). Upon written agreement between the State and Contractor, this Contract may also be extended to: (a) State of Michigan employees, and (b) other states (including governmental subdivisions and authorized entities). If extended, Contractor must supply all Contract Activities at the established Contract prices and terms, and the State reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions. Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

21.6 Headings. The headings in this Contract are for reference only and do not affect the interpretation of this Contract.

21.7 Entire Agreement. This Contract, including all Statements of Work and other Schedules and Exhibits, constitutes the sole and entire agreement of the parties to this Contract with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms of this Contract and those of any Schedule, Exhibit or other document, the following order of precedence governs: (a) first, this Contract, excluding its Exhibits and Schedules; and (b) second, the Exhibits and Schedules to this Contract as of the Effective Date . NO TERMS ON CONTRACTORS WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE SERVICES, OR DOCUMENTATION HEREUNDER WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE AND THE AUTHORIZED USER, EVEN IF ACCESS TO OR USE OF SUCH SERVICE OR DOCUMENTATION REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

21.8 Assignment. Contractor may not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Contract, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the State's prior written consent provided, however, that this Contract may be assigned without such consent to the surviving entity resulting from sale, merger, acquisition, and/or transfer of control of all or substantially all assets related to this Contract. The State has the right to terminate this Contract in its entirety or any Services or Statements of Work hereunder, pursuant to **Section 7.2**, if Contractor delegates or otherwise transfers any of its obligations or performance hereunder, whether voluntarily, involuntarily, by operation of law or otherwise, and no such delegation or other transfer will relieve Contractor of any of such obligations or performance. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Contractor (regardless of whether Contractor is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this

Contract for which the State's prior written consent is required. Any purported assignment, delegation, or transfer in violation of this **Section 22.8** is void.

21.9 No Third-party Beneficiaries. This Contract is for the sole benefit of the parties and nothing herein, express or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Contract.

21.10 Amendment and Modification; Waiver. This Contract may only be amended, modified or supplemented by an agreement in writing signed by each party's authorized signatory. No waiver by any party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Contract, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Contract will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

21.11 Severability. If any term or provision of this Contract is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Contract or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto will negotiate in good faith to modify this Contract so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

21.12 Governing Law. This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in the Michigan Court of Claims. Complaints against the State must be initiated in Ingham County, Michigan. Contractor waives any objections, such as lack of personal jurisdiction or forum non conveniens. Contractor must appoint agents in Michigan to receive service of process

21.13 Equitable Relief. Each party to this Contract acknowledges and agrees that (a) a breach or threatened breach by such party of any of its obligations under this Contract would give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto is, in addition to any and all other rights and remedies that may be available to such party at law, at equity or otherwise in respect of such breach, entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Each party to this Contract agrees that such party will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this **Section 22.13**.

21.14 Nondiscrimination. Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

21.15 Unfair Labor Practice. Under 1980 PA 278, MCL 423.321, *et seq.*, the State must not award a contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A contractor of the State, in relation to the contract, must not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any contract if, after award of the contract, the contractor as an employer or the name of the subcontractor, manufacturer or supplier of the contractor appears in the register.

21.16 Schedules All Schedules that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

<b>Schedule A</b>	Statement of Work
<b>Schedule B</b>	Key Personnel
<b>Schedule C</b>	Data Security Requirements
<b>Schedule D</b>	Data Backup Requirements
<b>Schedule E</b>	Service Level Agreement
<b>Schedule F</b>	Support Service Policies
<b>Schedule G</b>	PowerSchool Quote

21.17 Counterparts. This Contract may be executed in counterparts, each of which will be deemed an original, but all of which together are deemed to be one and the same agreement and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Contract. A signed copy of this Contract delivered by facsimile, e-mail or other means of electronic transmission (to which a signed copy is attached) is deemed to have the same legal effect as delivery of an original signed copy of this Contract.

## **SCHEDULE A**

### **STATEMENT OF WORK**

#### **1.001 PROJECT REQUEST**

Special Education Management System:

The State must select, procure and implement a complete, end to end Special Education Management System for OJP Facilities (Bay Pines & Shawono) to fully comply with State and Federal regulations for the education of special education qualified students.

This project will include the contracting with a third party vendor to establish, implement, and operate a Software as a service (SaaS) Special Education Management system to better serve special needs students under the care of the Michigan Department of Health & Human Services (MDHHS).

#### **1.002 BACKGROUND**

The Michigan Department of Health and Human Services (MDHHS) Juvenile Justice Programs (JJP) requires a web-based data management system that simplifies the special education processes and regulations while ensuring speed, compliance, and the ability to track and document the educational steps taken with each special education student in the facilities care. The Juvenile Justice Programs were audited in October 2015; the auditors' recommendation for corrective action was to acquire a web based management system that would simplify the special education process, maintain regulations, and compliance. The use of a web-based data management system will ensure the JJP facilities Michigan Department of Education Special Education compliance while aligning with the federal regulations.

#### **1.100 SCOPE OF WORK AND DELIVERABLES**

##### **1.101 IN SCOPE**

This project has of the following scope:

Implementation and administration of a Special Education Management System to better serve special needs students under the care of the Michigan Department of Health & Human Services. The selected Contractor will facilitate meetings with State of Michigan staff to validate, verify and update the Business Requirements as documented in this RFP to best match the capabilities of the proposed solution. These meetings will also validate the hardware, software, and program procedure requirements of the system (as required of the State and the Contractor) to document the system in place and to assist in assessing future work. A summary of software required to develop, implement, maintain, and perform ongoing enhancement/development must also be confirmed to assist in assessing any future work.

As a result of these facilitated sessions the Contractor will provide the State with a document that outlines the business requirements, provides a description of the overall system, its Application Design including any anticipated Application Development and confirms the Implementation process that will be followed, including:

- Data Conversion
- Data Migration
- Configuration
- Customization
- Interfaces/Integration
- Data Security
- System Security
- Testing
- Implementation
- Pricing Structure

The Contractor will also be responsible for Training State of Michigan staff, End users (*SEMS* Service Providers, and the public). This training must have both onsite (for State of Michigan and Service Providers) and Web training components for all users (Web search training is acceptable for public). The State shall be provided with copies of all training materials, and as the materials are updated over the term of the contract new versions will be provided to the State. The State will approve all training materials.

The Contractor will be responsible for producing, updating and distributing system documentation required to access, maintain and develop on the system. Including documentation pertaining to:  
Operation Services  
Maintenance and Support  
Help Desk  
Onsite Technical Support

The Contractor will be responsible for producing documentation providing for system Knowledge Transfer and a plan for transitioning to a new service at the end of the contract period. This documentation will be provided prior to final implementation and must be updated annually.

The Contractor will also be responsible for providing services that will address the need for future business requested enhancements and/or legislative mandates.

A more detailed description of the software, services (work) and deliverables sought for this project is provided in Article 1, Section 1.104, Work and Deliverables and Schedule A, Attachment 1 – Requirements.

### **1.103 ENVIRONMENT**

The links below provide information on the State's Enterprise information technology (IT) policies, standards and procedures which includes security policy and procedures, eMichigan web development, and the State Unified Information Technology Environment (SUITE).

Contractors are advised that the State has methods, policies, standards and procedures that have been developed over the years. Contractors are expected to provide proposals that conform to State IT policies and standards. All services and products provided as a result of this RFP must comply with all applicable State IT policies and standards. Contractor is required to review all applicable links provided below and state compliance in their response.

#### **Enterprise IT Policies, Standards and Procedures:**

All software and hardware items provided by the Contractor must run on and be compatible with the MDTMB Standard Information Technology Environment. Additionally, the State must be able to maintain software and other items produced as the result of the Contract. Therefore, non-standard development tools may not be used unless approved by MDTMB. The Contractor must request, in writing, approval to use non-standard software development tools, providing justification for the requested change and all costs associated with any change. The MDTMB Project Manager must approve any tools, in writing, before use on any information technology project.

It is recognized that technology changes rapidly. The Contractor may request, in writing, a change in the standard environment, providing justification for the requested change and all costs associated with any change. The State's Project Manager must approve any changes, in writing, and MDTMB, before work may proceed based on the changed environment.

Enterprise IT Security Policy and Procedures:

<http://www.michigan.gov/documents/dmb/1210.32.pdf>

[http://www.michigan.gov/documents/dmb/1325\\_193160\\_7.pdf](http://www.michigan.gov/documents/dmb/1325_193160_7.pdf)

[http://www.michigan.gov/documents/dmb/1335\\_193161\\_7.pdf](http://www.michigan.gov/documents/dmb/1335_193161_7.pdf)  
[http://www.michigan.gov/documents/dmb/1340\\_193162\\_7.pdf](http://www.michigan.gov/documents/dmb/1340_193162_7.pdf)

**The State's security environment includes:**

- MDTMB Single Login.
- MDTMB provided SQL security database.
- Secured Socket Layers.
- SecureID (State Security Standard for external network access and high risk Web systems)

MDTMB requires that its single - login security environment be used for all new client-server software development. Where software is being converted from an existing package, or a client-server application is being purchased, the security mechanism must be approved in writing by the State's Project Manager and MDTMB Office of Enterprise Security.

Any additional Agency specific security requirements above and beyond the enterprise requirements and standard terms and conditions stated in Article 2 must be provided as part of the Agency Specific Technical Environment.

**SAML 2.0 – Technology Requirement:**

The solution must support integration with a SAML 2.0-based user authentication service, with credentials to be provided by an external identity and access management system.

**a) Look and Feel Standard**

All software items provided by the Contractor must be ADA compliant and adhere to the Look and Feel Standards [www.michigan.gov/somlookandfeelstandards\\_including\\_MiPage\\_standards](http://www.michigan.gov/somlookandfeelstandards_including_MiPage_standards).

**ADA Compliance:**

Contractor shall comply with and adhere to the Accessibility Standards of Section 508 of the Rehabilitation Act of 1973, including any more specific requirements set forth in an applicable Statement of Work. See DTMB Policy at [http://www.michigan.gov/documents/dmb/1650.00\\_209567\\_7.pdf?20151026134621](http://www.michigan.gov/documents/dmb/1650.00_209567_7.pdf?20151026134621).

**The State Unified Information Technology Environment (SUITE):**

Includes standards for project management, systems engineering, and associated forms and templates – must be followed: <http://www.michigan.gov/suite>

**b) Agency Specific Technical Environment**

See Attachment 1 of Schedule A for Agency Specific Technical Environment.

**1.104 WORK AND DELIVERABLES**

*Schedule A, Attachment 1 contains a detailed list of requirements*

**Services and Deliverables To Be Provided -**

**A. Business Requirements**

Procure and implement a complete, end to end Special Education Management System for OJP Facilities (Bay Pines & Shawono) to fully comply with State and Federal regulations for the education of special education qualified students.

**Deliverable(s)**

- A complete, end to end Special Education Management System for OJP Facilities: Bay Pines & Shawono

- Special Education Management System that is in full compliance with State and Federal regulations for the education of special education qualified students.
- A comprehensive case management in a web environment using an off the shelf product.
- A complete, end to end system that begins with the referral process, guides through the IEP Process and manages Medicaid, encounter tracking, billing and compliance.

### **Acceptance Criteria**

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 4.2 Terms and Conditions.

- Created by educators for educators, PowerSchool Special Education is an easy-to-use, configurable web-based solution that provides a comprehensive case management system that meets all Michigan Department of Education requirements.

Created as an end to end special education management system, PowerSchool Special Education is easy for users to access and manage with an intuitive graphical interface. One of the many strengths that differentiates PowerSchool from its competitors is the solution's ease of use through consistent menu systems which reduces time spent on training and administrative tasks and increases time for focusing on the classroom and student learning. Our Special Education solution tracks students from the referral process through placement, provides a comprehensive case management system with alignment to state and local goals related to the IEP.

- PowerSchool Special Education uses a variety of standard reports that will assist users in managing workflows. Our color-coded timeline reports provide real-time data for users. One-click access allows staff to stay abreast of all phases of the special education process.
- Case Management
  - a. PowerSchool's Special Education Case Management (SECM) Module helps educators easily develop and manage compliant and high-quality special education documents, such as an Individualized Education Program (IEP). Using one simple application, educators can document all special education activities, from referral to progress reporting.
  - b. PowerSchool Special Education is based on more than four decades of experience working with school districts to implement best practices in supporting special education management. With the SECM Module, educators are empowered to:
    - c. Customize virtually all elements, terminology, data fields, forms, and reports without sacrificing consistency.
    - d. Generate mandated state and federal reports.
    - e. Easily develop professional, multidimensional reports, including graphic charting, and drill-down capabilities.
    - f. Ensure confidentiality by defining access privileges at the administrative level for each person or process role.
    - g. Benefit from user alerts during the IEP development process.
    - h. Complete compliant IEPs using guided actions and business rules.
- Reports

PowerSchool has extensive experience working with Michigan school districts. PowerSchool Special Education report layouts in addition to a number of diagnostic reports to aide in the submission of error-free state reports. All reports can be easily downloaded into a variety of formats for submission to state agencies.

i. In addition to state-required reports, the following management and monitoring reports come standard with PowerSchool Special Education. These reports can be easily modified to capture additional data as desired.

- Disability by Ethnicity, Gender and/or Grade
- Drop Outs
- Students Exit from District
- Graduation
- IEP Workflow Compliance
- IEP Workflow Compliance – Annual Review
- IEP Workflow Compliance – Reevaluation
- Least Restorative Environment (LRE)
- Preschool Children in General Education Settings
- Students Exit from Special Education
- Timeframe Between Evaluation and Identification

#### Service Capture Module

j. PowerSchool Special Education's Service Capture module enables school districts to collect data related to services provided to students and utilize PowerSchool Special Education's reporting tool to export the data to bill Medicaid directly or through any third-party vendor claims processor. Our integrated business rules and guided actions promote accurate and reliable data to decrease disallowances and maximize reimbursements.

k. The Service Capture module enables educators and service providers to:

- Easily and efficiently document the services they provide to individual students or groups of students
- Cross check service records with IEPs, prescriptions, staff licensures, and certifications to promote compliance
- Document services provided
- Verify that the IEP is being implemented as planned
- Facilitate data collection for Medicaid and third-party reimbursements
- Track delivery of services to support legal challenges
- Provide progress data to improve student performance

l. While we can work with any third-party billing vendor, for those districts that may not have a preferred third-party billing vendor, or may be interested in exploring other options, PowerSchool is proud to share information regarding our long-standing relationship with CompuClaim. CompuClaim is well established across the United States currently working with over 2,800 schools in 12 states. All of CompuClaim's clients have increased their Medicaid reimbursement from 20-75% over previous service providers, many within a year of implementation.

- RTI Documents

m. With the full range of case management features supported by PowerSchool Special Education, the solution also provides an RTI module where educators are empowered to refer a student to the Response to Intervention (RTI) process, document interventions, monitor progress, and determine next steps.

n. 504 Module

o. PowerSchool's 504 Module provides educators with the ability to efficiently manage the needs of students who require certain accommodations, but may or may not be classified as special education students. The 504 Module supports all types of students needing special assistance. Our easy-to-use solution enables educators to document and track the delivery of services in all activities within a student's service plan.

p. Identify and plan for a student's special needs.

q. Document the program to accommodate issues affecting learning.

r. Alert all staff to the student's needs and accommodations.

s. Assure confidentiality by defining access privileges.

t. Monitor the benefits derived from the accommodations provided.

u. Escalate if accommodations do not meet the needs of the student.

v. With the full range of case management features supported by PowerSchool Special Education, educators are empowered to identify and plan for students needing special accommodations to help them succeed.

## **B. Hardware**

Hardware used to support the State of Michigan SEMS system must be current within 1 year and meet DTMB specifications. Server hardware and all associated costs will be incurred by the SEMS provider at no cost to the State. Proposed hardware, sizing (including lead time required for size increases) and specifications must be provided to the State prior to project commencement. Hardware refreshes, maintenance, and patches are required, and proof of refresh must be submitted to DTMB within 10 business days. See Attachment 1 of Schedule A for detailed requirements.

### **Deliverable(s)**

- Prior to the purchase of any hardware; the Contractor must provide a report detailing descriptions of the hardware and functions for review and approval by the State.
- Prior to the purchase of any hardware; the Contractor must provide a report documenting the maintenance plan, proposed patching plan and the description of the process to be utilized to

provide DTMB with confirmation that firmware and hardware patches were made for the State's review and approval.

- Prior to the purchase of any hardware; the Contractor must provide a report documenting the proposed refresh schedule for all hardware to be utilized in this program for the State's review and approval.

PowerSchool Special Education is deployed as a PowerSchool Hosting (vendor hosted) solution. With our PowerSchool Hosting solution, server hardware, server operating system licensing, networking components, security systems protection, and secured redundant infrastructure do not to be procured or managed by the State / School District. Total cost of ownership is also lowered by the following PowerSchool Hosting benefits:

- Reducing the required IT resources for server management and maintenance
- Reducing the required IT resources for application monitoring and management
- Eliminating the need to have a secure, redundant, physical space within the data center for the PowerSchool platforms infrastructure
- Reducing the risk of security vulnerabilities, malicious activities, and unauthorized intrusion attempts
- Reducing the risk of data loss and data continuity

The PowerSchool Hosting solution (vendor hosted) provides the School District with secured, cloud-based access to PowerSchool platforms and their related components. With our PowerSchool Hosting solution, all data remains the property of and is solely owned, and thereby controlled, by the School District. The State / School District grants PowerSchool non-exclusive rights to utilize infrastructure for providing, maintaining, and supporting the School District with various PowerSchool platforms.

The PowerSchool Hosting infrastructure utilizes an isolated infrastructure that includes fully redundant compute resources, multiple levels of data recovery, and perimeter edge security technologies. This not only increases performance but also increases security and allows our PowerSchool Hosting infrastructure to reach unlimited scaling capabilities.

Within in our PowerSchool Hosting environment each facility utilizes a secured PowerSchool platform configuration. Each School District's PowerSchool platform includes allocated application servers to scale district needs as well as allocated compute resources such as memory, processors, and disk space that are consistent with our current systems requirements and Quality Assurance performance testing. Data storage within our PowerSchool Hosting environments utilizes SSD-backed volumes with optimized IOPS and throughput provisioning.

The PowerSchool Hosting core network utilizes highly available and scalable network services to deliver PowerSchool platform content with low latency and high data transfer speeds. Redundant load balancing automatically scales handling capacity in response to incoming application traffic and supports SSL termination to offload TLS decryption / encryption from application instances

### **C. Software**

The State of Michigan is seeking a Software as a Service (SaaS) package from the SEMS System Provider. The proposed software specifications must be provided to the State prior to commencement of the project. The software will be installed on the SEMS Provider's hardware. The costs associated with software upgrades, maintenance, patches and enhancements are the responsibility of the SEMS System Provider. See Attachment 1 of Schedule A for detailed requirements.

Version updates are released twice a year. State model updates are released as needed. They contain changes due to State or Federal regulation changes.

PowerSchool will release updates as part of a scheduled release plan or as a resolution to critical software defects. Maintenance releases are provided as needed to address known issues and may be either provided through the installer-based system or through the auto-update feature in PowerSchool, depending on the adjustments made to the application. Notification of these updates can be made through various media, including immediate notification on the PowerSchool Support website and/or an email notification through weekly technical updates to all subscribing customers (administrators).

### **D. Application Design (Reserved)**

### **E. Application Development (Reserved)**

### **F. Implementation**

The Contractor will be responsible for all costs associated with implementation of the SEMS system. Testing, validation, and implementation will all take place according to the State's schedule and will only be considered complete once approved in writing by the State. Expenses related to approved software customization and changes will be the responsibility of the SEMS System Provider. Any necessary interface and/or integration will also be the responsibility of the SEMS System Provider.

**At this time the state has not identified any interfaces as being required. This may change and the SEMS System provider must accommodate any interface that may be required within the term of the Contract resulting from this RFP via an agreed upon Change Notice to the Contract.**

### **Deliverable(s)**

- Services to implement the application, including:
  - Documentation of issues and steps or processes required for data conversion.
  - Documentation of issues and steps or processes required for data migration (may include transition of business operations to the new application).
  - Documentation of issues and steps or processes required for software configuration.
  - Documentation of issues and steps or processes required for software customization.
  - Documentation of processes required by any necessary system interfaces or integration processes.

### **Liquidated Damages**

The parties agree that any delay or failure by Contractor to timely perform its obligations in accordance with the Implementation Plan and Milestone Dates agreed to by the parties will interfere with the proper and timely implementation of the system and to the loss and damage for the State. Further, the State will incur major costs to perform the obligations that would have otherwise been performed by Contractor. The parties understand and agree that any liquidated damages Contractor must pay to the State as a result of such nonperformance are described herein, and that these amounts are reasonable estimates of the State's damages in accordance with applicable Law.

The parties acknowledge and agree that Contractor could incur liquidated damages for more than one event if Contractor fails to timely perform its obligations by each Milestone Date.

The assessment of liquidated damages will not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract for cause under **Section 19.2**, and the State will be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Contract. However, the State will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.

Amounts due the State as liquidated damages will be equivalent to the amounts required to continue operations manually during the period of late delivery and/or extended downtime; the value of the liquidate damages will align with the cost of the downtime, starting at \$10,000.00 and not to exceed \$100,000.00 per documented occurrence. The State may bill Contractor as a separate item and Contractor will promptly make payments on such bills.

#### **G. Training**

Contractor must provide all training materials, class outlines, and delivery methods.

MDHHS reserves the right to audit and approve any training session.

The Contractor must provide MDHHS with the list of training attendees and email contact information within 14 days of session.

The SEMS System Provider will be responsible for providing all training, training materials, and maintenance of such. All training and related materials for the State will be provided at no charge whether as part of an on-site training session (locations and when), web based training or documentation, or hard copy provided as part of training or documentation of training.

Location: 2 OJP facilities (State training center in Gaylord, Michigan)

Preferred Date Range: **To be determined by Project Manager and vendor**

Materials: example documentation, example reports, interactive training session, user manuals

Number of sessions: 1 full 8 hour day, and 1 half day

Prior to implementation on-site training will be provided to the State, this shall include but not be limited to: end user, technical, and administration functions.

Further, the SEMS System Provider will be responsible for the upkeep and ongoing updates to the training materials and will make training available to Subscribers and Service Providers. See Attachment 1 of Schedule A for detailed requirements.

Upgrades and new versions to the system that affect end-user functionality include training at no additional cost (e.g. classroom or online training, training flier, release features, etc.)

Training is provided in a variety of formats for product installation, use, and administration for a variety of levels (e.g. basic, advanced, refresher, etc.)

All training manuals, training plans and other documentation become the property of the State.

#### **Deliverable(s)**

- Session documentation for instructors and students.
- End user training, session documentation, for instructors and students.

- Technical training and session documentation and materials for State individuals who will be working with the services contractor to configure the applications including establishing databases and interfaces, data conversion, customization, and upgrading the customized software.
- System administration training and session documentation and materials for State personnel who will be responsible for ongoing maintenance and administration of the system, including security
- Attendance lists with email.
- Onsite training Location: State training center in Gaylord, Michigan
- Materials: example documentation, example reports, interactive training session, user manuals
- Number of sessions: 1 full 8 hour day, and 1 half day
- Administrator training session in Lansing, Michigan – 1 full day

The State will have 30 business days to review and approve these deliverables. Acceptance will be in writing. Additional time may be required with the agreement of the vendor.

PowerSchool’s **Train the Trainer approach** is designed to enable appropriate staff to quickly and easily learn the functionality of PowerSchool Special Education. It is employed in every possible instance to foster your team’s ownership of the learning, to encourage the team’s self-sufficiency and to deliver “best business value” and minimize costs.

Post Implementation Staffing	
Training	Responsibilities
System Administration	<ul style="list-style-type: none"> <li>• Participate in the PowerSchool installation &amp; training</li> <li>• Set up users</li> <li>• Troubleshoot issues with system</li> <li>• Customize web pages</li> <li>• Coordinate &amp; implement data standards</li> <li>• Monitor school connectivity</li> </ul>
Network Administration	<ul style="list-style-type: none"> <li>• Ensure that the network is configured and running efficiently with the TCP/IP protocol</li> <li>• Track down network congestion/slowdown due to poor bandwidth</li> <li>• Overall Administration of Windows 2000 Active Directory (AD) infrastructure (for future AD integration)</li> <li>• Manage and maintain server hardware and operating systems that PowerSchool resides on</li> </ul>
Data Back-ups	<ul style="list-style-type: none"> <li>• Ensure that all backups are scheduled to run</li> <li>• Ensure that backups successfully run</li> <li>• Testing that the backup is reliable (disaster recovery scenarios)</li> </ul>
Software Administration	<ul style="list-style-type: none"> <li>• Participate in the PowerSchool installation &amp; training</li> <li>• Complete upgrades to the database server and client machines as required</li> </ul>
Database Administration	<ul style="list-style-type: none"> <li>• Participate in the PowerSchool installation &amp; training</li> <li>• Set up backup/recovery strategy and procedures</li> <li>• Periodically maintain &amp; tune the database</li> <li>• Add indexes to enhance report performance (optional)</li> </ul>

	<ul style="list-style-type: none"> <li>• Set up users (depending on who will be responsible for defining security requirements for the schools) and security access level</li> </ul>
Report Generation	<ul style="list-style-type: none"> <li>• Develop custom reports for district and schools</li> <li>• Create indexes to improve report performance (optional)</li> <li>• Posting and managing of report content to ensure they are current</li> <li>• Manage security to the reports</li> </ul>
Customization	<ul style="list-style-type: none"> <li>• Create custom PowerSchool pages</li> <li>• Maintaining custom pages to ensure data integrity and accuracy</li> <li>• Develop &amp; test export routines for data transfer to other systems (optional)</li> </ul>
Help Desk Support	<ul style="list-style-type: none"> <li>• Support the schools and end-users in MI DHHS by diagnosing problems</li> <li>• Provide users with fast, efficient, and informative solutions</li> <li>• Read and maintain knowledge of current versions and updates of PowerSchool to provide technically accurate solutions to their end-users</li> <li>• Attend training sessions as necessary to remain abreast of new functionality</li> </ul>

**H. Documentation**

Contractor will be responsible for providing copies of all system documentation materials both on-line and in hard copy.

All technical and user manuals will also be the responsibility of the SEMS System Provider.

They will provide the State with software current process flow documents and update them as necessary and relevant.

The SEMS System Provider will also be responsible for maintaining transition documentation on a monthly basis and submitting that to the State for storage.

See Schedule A, Attachment 1 for detailed requirements.

The State will have 30 business days to review and approve these deliverables. Acceptance will be in writing. Additional time may be required with the agreement of the vendor.

**PowerSchool user documentation is available for download via the PowerSource website.**

Materials include workbooks, reference guides, quick reference cards, training agendas, user guides, and more. PowerSchool documentation is delivered electronically in PDF format, which makes it easy to search and convenient to print. Included with each major release are the Release Notes, User Guide, Installation Guide, and a System Administration Guide. We also include documentation for specific topics covering Alternative Education Programs, Schools Interoperability Framework, and State reporting.

The documentation uses screen shots from the PowerSchool application to provide informative descriptions of all the screen elements. This includes buttons, fields, check boxes, menu selections, and input fields. Step-by-step instructions will guide School users through the various tasks associated with installing, configuring, running, and maintaining PowerSchool.

Each manual is targeted to a specific task. Installation and System Configuration guides are written for the system administrator who installs and maintains PowerSchool. PowerSchool user guides are written for those who will use PowerSchool on a daily basis, such as administrative professionals, teachers, and parents.

Contextual in-system help is also available and easily accessible for every page and task, keeping instructions and guides always available and up-to-date. PowerSchool online help is updated as PowerSchool is updated.

## **I. Operation Services**

Contractor is responsible for all Hosting and costs related to the SEMS. Servers and services shall be at the sole expense of the vendor and shall be managed and maintained by the vendor or their authorized agent. Servers and services for the State shall be dedicated to the State only and shall not be jointly used for any other State, entity, or business. Disaster recovery plans and testing shall be documented, exercised, maintained and available for State review with 10 business days of a written request. Hosting and system security processes, policies, and procedures shall be created, maintained, documented, and updated and available for State review with 10 business days of a written request. See Attachment 1 of Schedule A for detailed requirements.

### **Deliverable(s)**

The Contractor must provide a detailed description of how they will address these operational services within the context of their service offering.

- Hosting and facility specifics.
- Systems management
- Disaster recovery
- Security administration services
  - Including but not limited to yearly auditing requirements as set forth by the State:
    - SAEC 16 - SOC2 Type 2
    - Security and Risk Assessment
- Storage services
- Access control, policies and procedures.
- Record storage policies and procedures.
- Portable media policies and procedures.
- Management with hardware at the Contractor's site
- Owned by the Contractor and dedicated to the State

### **Acceptance Criteria**

High-level acceptance criteria for Document Deliverables and Software Deliverables are listed in Section 4.2 Terms and Conditions.

## **J. Maintenance and Support**

PowerSchool is responsible for maintenance and support of all hardware and software related to this project. Hardware and software shall be maintained and upgraded according to manufacturer specifications and timelines. Proof of maintenance and refresh activities shall be provided to the State within 7 business days of a written request. A mutually agreed upon maintenance window shall be established and utilized for all maintenance items and all maintenance items must be approved in writing by the State. No work to the hardware and software is to take place outside scheduled maintenance window unless. The State must be made aware of break-fix or restore to service activities immediately and will require a root-cause analysis to be completed and submitted to the state within 7 business days. The vendor shall provide support services to MDHHS at no cost which shall include both user and technical support. All maintenance and support activities must be completed by qualified, factory trained technicians. See Schedule C for detailed requirements.

### **Deliverable(s)**

- Support
  - Help Desk
  - Technical

Technical support for PowerSchool **includes email, chat, and phone** support as well as electronic manuals, an online knowledge base, tech notes, and access to **PowerSource**—a self-service portal for submission and tracking of product related issues.

### Software Maintenance

PowerSchool's goal is to provide new features and functionality through four major quarterly releases a year. PowerSchool will release updates as part of a scheduled release plan or as a resolution to critical software defects. Maintenance releases are provided as needed to address known issues and may be either provided through the installer-based system or through the auto-update feature in PowerSchool, depending on the adjustments made to the application. Notification of these updates can be made through various media, including immediate notification on the PowerSchool Support website and/or an email notification through weekly technical updates to all subscribing customers (administrators).

### Support Services—Phone, Chat, and Email Support

Our Customer Service Center's (CSC) is comprised of over 130 experienced and competent customer support staff, who will answer the Division's questions efficiently and thoroughly. In 2015, our call center serviced over 133,000 customer inquiries.

Along with strong and current knowledge of technology, we require excellent customer service skills of our CSC staff. Our CSC staff approach each caller as an individual with specific needs and concerns and address each call thoughtfully and efficiently.

### PHONE

PowerSchool technical support personnel are available via phone weekdays from **Monday – Friday, 6 AM – Midnight EST and Saturday 11 AM – 8 PM EST, excluding company holidays**. Users can choose their language preference and then be connected to a bilingual triage agent for resolution.

### ONLINE SUPPORT

PowerSchool's technical support team is just a phone call away, but we also offer chat, email, and online support through PowerSource—our technical support website.

**Live Chat Support** is available Monday – Friday, 5 AM – 6 PM MST, excluding company holidays. Email support is available at any time.

**PowerSource** is PowerSchool's community-focused website for support, services, downloads, training, and more.

### TECHNICAL SUPPORT

Technical assistance is available through PowerSource, our customer support portal and knowledge base, and customers are able to view their support case status updates via the My Cases page on

PowerSource. Through this self-service site, customers have the option to use the online web-form to submit a web-based case that will get routed to Support.

**Monitor Tickets.** Track the progress of support cases in real time. Customers are able to view existing cases with Support on their PowerSource page.

**Account Management.** Control access for all staff.

Unlike traditional websites that only allow you to receive information, PowerSource allows MOE and division users to participate in and contribute to the worldwide PowerSchool community. The following are some features of PowerSource that will benefit the Ministry and division staff:

**An Expansive Knowledgebase.** Quickly search more than 29,000 articles and documents.

**Forums.** Connect and collaborate with more than 329,800 members in more than 17,300 discussion threads.

**Professional Development.** Find immersive and comprehensive web-based distance learning courses.

**Mastery in Minutes.** Access a growing list of more than 150 interactive and entertaining tutorials.

**Labs.** Play with future technology from PowerSchool today.

**PowerSource Exchange.** An area for sharing reports, transcripts, custom pages, and more with other PowerSchool users at no cost.

## **K. Knowledge Transfer/Transition**

The SEMS Provider is responsible for providing Knowledge Transfer/Transition services to State staff as well as a new incoming vendor should this contract be expired or be terminated. Transition services will last 180 days. Transition documentation is the responsibility of the SEMS Provider to create and maintain throughout the life of the contract. Transition documentation will be provided electronically to the State on a monthly basis.

### **Train the Trainer Methodology**

Using PowerSchool's best business practices, our structured implementation plan methodology is designed to implement our integrated solutions effectively in districts like the Michigan Department of Health and Human Services project. PowerSchool Professional Services creates customized plans that identify needs and establish the appropriate training, implementation, support requirements, and timelines. PowerSchool will work with MI DHHS to select appropriate staff to establish an effective training and learning environment.

### **PowerSchool's Roles**

Our comprehensive plan organizes product and project teams to meet various key requirements which include dedicated on- and off-site resources, subject matter expertise, demonstrated technical capability, direct relevant experience and local knowledge, and

assistance with the management of cultural changes related to the rollout of a new system or process.

### **MI DHHS's Roles**

To further support the ongoing transfer of knowledge it is imperative that the MI DHHS provide appropriately skilled and available resources to work in a collaborative nature with the PowerSchool team. By committing these resources throughout the duration of the project and assigning them to continue working with the system after implementation is complete, the MI DHHS project will result in optimal knowledge transfer and assist in developing self-sufficiency - key elements in a successful project.

## **II. Requirements**

### **A. Technical/General System Requirements**

See Schedule A, Attachment 1 for Technical/General System Requirement

#### **1.200 ROLES AND RESPONSIBILITIES**

##### **1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES**

#### **A. Contractor Staff**

The Contractor will provide resumes in the attached Personnel Resume templates Schedule A, Attachment 1, for staff, including subcontractors, who will be assigned to the Contract, indicating the duties/responsibilities and qualifications of such personnel, and stating the amount of time each will be assigned to the project. The competence of the personnel the Contractor proposes for this project will be measured by the candidate's education and experience with reference to experience on similar projects as described in this Statement of Work. The Contractor will commit that staff identified in its proposal will perform the assigned work.

Contractor must provide a list of all subcontractors, including firm name, address, contact person, and a complete description of the work to be contracted. Include descriptive information concerning subcontractor's organization and abilities.

The Contractor will identify a Single Point of Contact (SPOC). The duties of the SPOC shall include, but not be limited to:

- supporting the management of the Contract,
- facilitating dispute resolution, and
- advising the State of performance under the terms and conditions of the Contract.

The State reserves the right to require a change in the current SPOC if the assigned SPOC is not, in the opinion of the State, adequately serving the needs of the State.

The contractor must submit a letter of commitment for Key Personnel, signed by the identified resource, stating their commitment to work for the contractor/subcontractor on this project contingent on award of the bid. If the identified personnel are currently assigned to a State project the contractor must provide a letter signed by the State Project Manager releasing the individual from the project upon execution of the contract.

The Contractor will provide, and update when changed, an organizational chart indicating lines of authority for personnel involved in performance of this Contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of

management and indicate who within the firm will have prime responsibility and final authority for the work.

All Key Personnel may be subject to the State's interview and approval process. Any key staff substitution must have the prior approval of the State. The State has identified the following as key personnel for this project:

- *Project Manager*
- *Trainer*
- *Security Architect*

**The Contractor will provide a (*project manager/technical lead*)** to interact with the designated personnel from the State to insure a smooth transition to the new system. The project manager/technical lead will coordinate all of the activities of the Contractor personnel assigned to the project and create all reports required by State. The Contractor's project manager/technical lead responsibilities include, at a minimum:

- Manage all defined Contractor responsibilities in this Scope of Services.
- Manage Contractor's subcontractors, if any
- Develop the project plan and schedule, and update as needed
- Serve as the point person for all project issues
- Coordinate and oversee the day-to-day project activities of the project team
- Assess and report project feedback and status
- Escalate project issues, project risks, and other concerns
- Review all project deliverables and provide feedback
- Proactively propose/suggest options and alternatives for consideration
- Utilize change control procedures
- Prepare project documents and materials
- Manage and report on the project's budget

The Contractor will provide sufficient qualified staffing to satisfy the deliverables of this Statement of Work.

## **B. On Site Work Requirements**

### **1. Location of Work**

- Onsite training Location: State training center in Gaylord, Michigan
- Preferred Date Range: August 21, 2018 through August 25, 2018.
- Materials: example documentation, example reports, interactive training session, user manuals
- Number of sessions: 1 full 8 hour day, and 1 half day
- Administrator training session in Lansing, Michigan – 1 full day

The work is to be performed, completed, and managed at the following locations:

At the contractor's place of business

### **2. Hours of Operation:**

- Normal State working hours are 8:00 a.m. to 5:00 p.m. EST, Monday through Friday, with work performed as necessary after those hours to meet project deadlines. No overtime will be authorized or paid.
- The State is not obligated to provide State management of assigned work outside of normal State working hours. The State reserves the right to modify the work hours in the best interest of the project.
- Contractor shall observe the same standard holidays as State employees. The State does not compensate for holiday pay.

**3. Travel:**

- a. No travel or expenses will be reimbursed. This includes travel costs related to training provided to the State by Contractor.
- b. Travel time will not be reimbursed.

**4. Additional Security and Background Check Requirements:**

Contractor must present certifications evidencing satisfactory Michigan State Police Background checks ICHAT and drug tests for all staff identified for assignment to this project.

In addition, proposed Contractor personnel will be required to complete and submit an RI-8 Fingerprint Card for the National Crime Information Center (NCIC) Finger Prints, if required by project.

Contractor will pay for all costs associated with ensuring their staff meets all requirements.

**1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES**

Agency should specify State personnel dedicated to project, and identify their associated roles and responsibilities.

The State will provide the following resources for the Contractor's use on this project: The State project team will consist of Executive Subject Matter Experts (SME's), project support, and a MDTMB and Agency project manager:

**Executive Subject Matter Experts**

The Executive Subject Matter Experts representing the business units involved will provide the vision for the business design and how the application shall provide for that vision. They shall be available on an as needed basis. The Executive SME's will be empowered to:

- Resolve project issues in a timely manner
- Review project plan, status, and issues
- Resolve deviations from project plan
- Provide acceptance sign-off
- Utilize change control procedures
- Ensure timely availability of State resources
- Make key implementation decisions, as identified by the Contractor's project manager, within 48-hours of their expected decision date.

<b>Name</b>	<b>Agency/Division</b>
James Thomas	School Principal
Simon Baldwin	MDTMB
Rick Manning	MDTMB
James Avery	MDHHS
Katherine Adams	MDHHS
Beth Cooley	MDHHS
Jerome Moses	MDHHS
Marcia Esper	MDHHS
Amy Bearden	MDTMB

**c) State Project Manager- (MDTMB and Agency)**

MDTMB will provide a Project Manager who will be responsible for the State's infrastructure and coordinate with the Contractor in determining the system configuration.

The State's Project Manager will provide the following services:

- Provide State facilities, as needed
- Coordinate the State resources necessary for the project
- Facilitate coordination between various external contractors
- Facilitate communication between different State departments/divisions
- Provide acceptance and sign-off of deliverable/milestone
- Review and sign-off of timesheets and invoices
- Resolve project issues
- Escalate outstanding/high priority issues
- Utilize change control procedures
- Conduct regular and ongoing review of the project to confirm that it meets original objectives and requirements
- Document and archive all important project decisions
- Arrange, schedule and facilitate State staff attendance at all project meetings.

Name	Agency/Division	Title
Katherine Adams	MDHHS	Project Manager

MDTMB shall provide a Contract Administrator whose duties shall include, but not be limited to, supporting the management of the Contract.

Name	Agency/Division	Title
Simon Baldwin	MDTMB	Contract Administrator

### 1.300 PROJECT PLAN

#### 1.301 PROJECT PLAN MANAGEMENT

##### **Preliminary Project Plan**

Contractor will provide a Preliminary Project Plan with the proposal for evaluation purposes, including necessary time frames and deliverables for the various stages of the project and the responsibilities and obligations of both the Contractor and the State.

1. In particular, the Preliminary Project Plan will include a MS Project plan or equivalent (check the SUITE/PMM standard):
  - a. A description of the deliverables to be provided under this contract.
  - b. Requirements confirmation
  - c. Target dates and critical paths for the deliverables.
  - d. Identification of roles and responsibilities, including the organization responsible. Contractor is to provide a roles and responsibility matrix.
  - e. The labor, hardware, materials and supplies required to be provided by the State in meeting the target dates established in the Preliminary Project Plan.
  - f. Internal milestones
  - g. Task durations
  
2. The Preliminary Project Plan shall include the following deliverable/milestones for which acceptance shall be made.
  - a. Payment to the Contractor will be made upon the completion and acceptance of the deliverable or milestone, not to exceed contractual costs of the phase. A milestone is defined as complete when all of the deliverables within the milestone have been completed.
  - b. Failure to provide deliverable/milestone by the identified date may be subject to liquidated damages.

### **Orientation Meeting**

Upon 10 calendar days from execution of the Contract, the Contractor will be required to attend an orientation meeting to discuss the content and procedures of the Contract. The meeting will be held in Lansing, Michigan, at a date and time mutually acceptable to the State and the Contractor. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

### **Performance Review Meetings**

The State will require the Contractor to attend monthly meetings, at a minimum, to review the Contractor's performance under the Contract. The meetings will be held in Lansing, Michigan, or by teleconference, as mutually agreed by the State and the Contractor. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

### **Project Control**

1. The Contractor will carry out this project under the direction and control of MDTMB, and the Michigan Department of State.
2. Within 30 working days of the execution of the Contract, the Contractor will submit to the State project manager(s) for final approval of the project plan. This project plan must be in agreement with Article 1, Section 1.104 Work and Deliverables, and must include the following:
  - *The Contractor's project organizational structure.*
  - *The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.*
  - *The project work breakdown structure (WBS) showing sub-projects, activities and tasks, and resources required and allocated to each.*
  - *The time-phased plan in the form of a graphic display, showing each event, task, and decision point in the WBS.*
3. The Contractor will manage the project in accordance with the State Unified Information Technology Environment (SUITE) methodology, which includes standards for project management, systems engineering, and associated forms and templates which is available at <http://www.michigan.gov/suite>
  - a. Contractor will use an automated tool for planning, monitoring, and tracking the Contract's progress and the level of effort of any Contractor personnel spent performing Services under the Contract. The tool shall have the capability to produce:
    - Staffing tables with names of personnel assigned to Contract tasks.
    - Project plans showing tasks, subtasks, deliverables, and the resources required and allocated to each (including detailed plans for all Services to be performed within the next 30 calendar days, updated semi-monthly).
    - Updates must include actual time spent on each task and a revised estimate to complete.
    - Graphs showing critical events, dependencies and decision points during the course of the Contract.
  - b. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State standards.

### **1.302 REPORTS**

Reporting formats must be submitted to the State's Project Manager for approval within 10 business days after the execution of the contract resulting from this RFP. Once both parties have agreed to the format of the report, it shall become the standard to follow for the duration of the contract.

- *Weekly Project status reports consisting of:*
  - *Updated project plan*
  - *Summary of activity during the report period*

- *Accomplishments during the report period*
- *Deliverable status*
- *Schedule status*
- *Action Item status*
- *Issues*
- *Change Control*
- *Repair status*
- *Maintenance Activity*

## **1.400 PROJECT MANAGEMENT**

### **1.401 ISSUE MANAGEMENT**

An issue is an identified event that if not addressed may affect schedule, scope, quality, or budget.

The Contractor shall maintain an issue log for issues relating to the provision of services under this Contract. The issue management log must be communicated to the State's Project Manager on an agreed upon schedule, with email notifications and updates. The issue log must be updated and must contain the following minimum elements:

- Description of issue
- Issue identification date
- Responsibility for resolving issue.
- Priority for issue resolution (to be mutually agreed upon by the State and the Contractor)
- Resources assigned responsibility for resolution
- Resolution date
- Resolution description

Issues shall be escalated for resolution from level 1 through level 3, as defined below:

- Level 1 – Business leads
- Level 2 – Project Managers
- Level 3 – Executive Subject Matter Experts (SME's)

The PowerSchool Project Manager is the first line of issue resolution with any project. When an issue arises between MI DHHS and PowerSchool Group LLC, and resolution is required, project team members will first strive to solve it internally through the following steps:

**Level 1:** If the project team cannot resolve the issue within two working days, MI DHHS and PowerSchool project managers will meet to resolve it.

**Level 2:** If the issue is not resolved within three working days after escalation to Level 1, MI DHHS executive sponsor will meet with the PowerSchool project executive.

**Level 3:** If the issue remains unresolved after Level 2 intervention, resolution will be addressed in accordance with our Project Change Control Procedure or termination of this contract under the Terms of the Contract. All attempts to reach agreement through arbitration may affect the project timeline.

Our Service Line Directors are always available for conference if our project team is unable to resolve an issue through the above-mentioned steps. And if necessary, we will arrange for a conference with the appropriate Service Line Director and MI DHHS to discuss the issue and the options for resolution.

During any conflict resolution, PowerSchool Group agrees to provide services relating to items not in dispute, to the extent practicable pending resolution of the conflict. MI DHHS agrees to pay invoices per the contract.

#### **1.402 RISK MANAGEMENT**

A risk is an unknown circumstance or event that, if it occurs, may have a positive or negative impact on the project.

The Contractor is responsible for establishing a risk management plan and process, including the identification and recording of risk items, prioritization of risks, definition of mitigation strategies, monitoring of risk items, and periodic risk assessment reviews with the State.

A risk management plan format shall be submitted to the State for approval within twenty (20) business days after the effective date of the contract resulting from the upcoming RFP. The risk management plan will be developed during the initial planning phase of the project, and be in accordance with the State's PMM methodology. Once both parties have agreed to the format of the plan, it shall become the standard to follow for the duration of the contract. The plan must be updated bi-weekly, or as agreed upon.

The Contractor shall provide the tool to track risks. The Contractor will work with the State and allow input into the prioritization of risks.

The Contractor is responsible for identification of risks for each phase of the project. Mitigating and/or eliminating assigned risks will be the responsibility of the Contractor. The State will assume the same responsibility for risks assigned to them.

As part of the project management plan, PowerSchool conducts a risk analysis that provides the basis of a risk management plan. The analysis involves the following criteria:

- Identifying risks to the program.

- Examining causes of the identified risks.

- Determining probability of the identified risk occurring.

- Assessing impact (high, medium, or low) on the program should the risk occur.

Based on this analysis, we capture and document risks in the risk management plan, which includes the following information:

- Risk and its corresponding cause

- Probability of occurrence and its corresponding impact ranking

- Mitigation strategies to prevent the risk from occurring

- Contingency strategies should the risk occur

- Strategies for monitoring and managing risks

The risk plan management plan is accepted and put into action, with the PowerSchool project manager taking ownership for update and monitoring.

## Quality Management

The PowerSchool approach to Quality Management closely follows the Agile PM Methodology. Daily customer interaction and collaboration, early and frequent provisioning of project's deliverables, deliverables' demonstration and customer validation are some of the practices that PowerSchool uses to manage deliverables and to output quality. Collaboration controlled by structured input, continues through all phases of the PowerSchool project, from analysis of need and planning, designing, testing, deployment and adoption. At the completion of a project phase, the project team will evaluate the entire process to identify areas of improvements, and to plan for the next phase. Adaptability, continued improvement, early detection, and customer collaboration are key factors for process improvement, and quality management.

### 1.403 CHANGE MANAGEMENT

Change management is defined as the process to communicate, assess, monitor, and control all changes to system resources and processes. The State also employs change management in its administration of the Contract.

If a proposed contract change is approved by the Agency, the Contract Administrator will submit a request for change to the Department of Technology, Management and Budget, Procurement Buyer, who will make recommendations to the Director of DTMB-Procurement regarding ultimate approval/disapproval of change request. If the DTMB Procurement Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the DTMB-Procurement Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Contractors who provide products or services prior to the issuance of a Contract Change Notice by the DTMB-Procurement, risk non-payment for the out-of-scope/pricing products and/or services.**

The Contractor must employ change management procedures to handle such things as "out-of-scope" requests or changing business needs of the State while the migration is underway.

The Contractor will employ the change control methodologies to justify changes in the processing environment, and to ensure those changes will not adversely affect performance or availability.

PowerSchool adheres to the following Project Change Control procedure if a change to an existing scope of work is required:

**Reviewing Change.** The requesting party reviews the proposed change and determines whether to submit the request to the other party.

**Beginning the Investigation.** Both project managers review the proposed change and recommend it for further investigation or reject it. PowerSchool will specify any charges for such investigation. A PCR is signed by authorized representatives from both parties to authorize investigation of the recommended changes. PowerSchool will invoice MI DHHS for any such charges. The investigation determines the effect that the implementation of the PCR will have on price, schedule, and other terms and conditions of the contract.

**Authorizing Change.** A written Change Authorization and/or PCR must be signed by authorized representatives from both MI DHHS and PowerSchool to authorize implementation of the investigated changes. Until a change is agreed in writing, both parties will continue to act in accordance with the latest agreed version of the scope of work.

### 1.500 ACCEPTANCE

PowerSchool Group will work directly with MI DHHS to ensure the product is implemented and/or customized to fit District's needs with products and services. PowerSchool Group is willing to negotiate and develop milestone-based statements of work ("SOWs") for the implementation period upon contract award, and as such, MI DHHS's acceptance of the products and/or services will be through mutually agreed upon targets in the SOWs, instead of acceptance testing.

### 1.501 CRITERIA

The acceptance criteria for this contract is outlined in Section 4.2 of the SaaS Contract terms.

### 1.502 FINAL ACCEPTANCE

- System performance must be free from system errors or failures that preclude the completion of transactions.
- Vendor must comply with SAEC16 SOC 2 Type 2 requirements within 90 business days of system go live.
  - Any remediation must be complete within 120 business days of system go live.
- The system must be free of any critical defects prior to implementation.
  - Open defects must be accepted by the State or remediated prior to implementation.
- At the request of the State the Contractor must submit the application to a Usability Study and/or a 90 business pilot to prove the system and review system effectiveness.

### 1.600 COMPENSATION AND PAYMENT

#### Method of Payment

Payments to the Contractor will be made upon the completion and acceptance of specified milestones. Payment milestones are defined in Schedule C, Cost Tables. Failure to provide deliverable/milestone by the identified date and/or failure to abide by system availability requirements may be subject to liquidated damages in the form of service credits as identified in SaaS Terms and Conditions.

The preliminary Project Management Plan shall include the following deliverable/milestones for which payment shall be made. Payment to the Contractor will be made upon the completion and acceptance of the deliverable or milestone, not to exceed contractual costs of the phase. A milestone is defined as complete when all of the deliverables within the milestone have been completed.

The following table outlines the payment milestones for this project. After each milestone is completed, the contractor may invoice the SOM for the indicated amount of the total amount of one-time costs. Ongoing costs such as licensing and hosting are not covered in this table.

Payment Milestone	Amount to Be Invoiced
Successful UAT	100% of License Cost
Training and Documentation	100% of Project Cost
Final Acceptance Total One-Time Project Costs	100%

Contractor may bill for recurring annual costs (i.e., Maintenance and Support, ongoing licensing costs) after final acceptance and annually thereafter, pro-rating the costs as needed to fit within the contract years.

**Travel**

The State will not pay for any travel expenses, including hotel, mileage, meals, parking, etc. Travel time will not be reimbursed.

**Statements of Work and Issuance of Purchase Orders**

Unless otherwise agreed by the parties, each Statement of Work will include:

- 1. Background
- 2. Project Objective
- 3. Scope of Work
- 4. Deliverables
- 5. Acceptance Criteria
- 6. Project Control and Reports
- 7. Specific Department Standards
- 8. Payment Schedule
- 9. Travel and Expenses
- 10. Project Contacts
- 11. Agency Responsibilities and Assumptions
- 12. Location of Where the Work is to be performed
- 13. Expected Contractor Work Hours and Conditions

The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract. Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.

**Invoicing**

Contractor will submit properly itemized invoices to

DTMB – Financial Services

Accounts Payable

P.O. Box 30026

Lansing, MI 48909

or

[DTMB-Accounts-Payable@michigan.gov](mailto:DTMB-Accounts-Payable@michigan.gov)

. Invoices must provide and itemize, as applicable:

Contract number;

Purchase Order number

Contractor name, address, phone number, and Federal Tax Identification Number;

Description of any commodities/hardware, including quantity ordered;

Date(s) of delivery and/or date(s) of installation and set up;

Price for each item, or Contractor's list price for each item and applicable discounts;

Maintenance charges;

Net invoice price for each item;

Shipping costs;

Other applicable charges;

Total invoice price; and

Payment terms, including any available prompt payment discount.

The State may pay maintenance and support charges on a monthly basis, in arrears. Payment of maintenance service/support of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day.

Incorrect or incomplete invoices will be returned to Contractor for correction and reissue.

Please note that this is intended to be a zero dollar contract to the State of Michigan, no invoices for goods or services are expected as part of the scope of the original Contract.

**1.602 HOLDBACK (RESERVED)**

**SCHEDULE B  
KEY PERSONNEL**

**[TO BE COMPLETED AT KICK-OFF]**

## **SCHEDULE C**

### **DATA SECURITY REQUIREMENTS**

- A.** The Contractor must deploy commercially reasonable, up-to-date security processes and resources in an effort to prevent unauthorized access to the State of Michigan's IT equipment to support confidentiality, availability, and integrity of not only the physical equipment, but also the data and transmission of data between those systems. The Contractor will accomplish this through infrastructure protection services. The Contractor will develop an infrastructure protection services plan and include it in the material that is verified by the annual Michigan Cyber Security (MCS) security review and annual third-party review as defined in Attachment 2 - Section 11.0 - Paragraph G.
- B.** Infrastructure protection services must include the physical and logical security components for the facilities and networks in Contractor sites and non-Contractor managed sites which the Contractor owns, operates or sub-contracts. Physical access control requirements will be applicable to CPUs, channel attached devices, and physical system and master consoles (such as interactive devices providing a command interface to the operating system without having identification and authentication of the operator), portable media storage, and print output.
- C.** The Contractor will ensure that all sensitive data is encrypted at rest and in transit.
- D.** The Contractor will ensure that the provided network meets all State telecom interface standards as referenced in Section 1.103 This will be verified by the Michigan Network and Telecommunications Services group signoff of the Network Interface Connection Form.
- E.** Contractor must ensure that:
  - 1. The network is protected by server and desktop anti-virus enterprise software. Anti-virus software must be updated with the latest virus definitions as they are released by the software publisher.
  - 2. Any Contractor workstations not used on the State network will be scanned by the Contractor.
  - 3. Any Contractor workstations used on the State network will be scanned by the State and approved prior to being attached to the network for the first time.
  - 4. The network is protected from hacking by firewalls and intruder detection software, and manual monitoring of incoming traffic as requested.
- F.** The Contractor must ensure documentation, electronic files, and data are developed, used, and maintained in a secure manner, protecting the confidentiality of all materials, records, and files.
- G.** The Contractor must obtain and provide a third-party certification annually regarding the level of security practiced by the Contractor and based on the COBIT framework which may include the following:
  - 1. Information Security Risk Assessment
  - 2. Digital Signatures
  - 3. Intrusion Detection
    - i. Viruses and other Malicious Logic
    - ii. Control Risk Self-assessment
    - iii. Firewalls
    - iv. Irregularities and Illegal Acts
    - v. Security Assessment (penetration testing, data encryption effectiveness, vulnerability analysis, and effectiveness of controls) Annual third-party certification will be done prior to go-live events and annually in August thereafter.

- H. If Contractor's solution results in the outsourcing of the State of Michigan (SOM) system under this contract to an external hosting entity; and that hosting include the systems and database repositories containing the State's Sensitive Data, then the following clause, which requires the performance of an annual SOC 2 Type II report, applies. If an RFP is a multi-phase project, the scope of each SOC 2 Type II report should cover those SOM systems that have been modernized, migrated, and/or ported to the external hosting entity prior to the beginning of each SOC 2 audit engagement.

This clause applies to the Contractor and Subcontractors who host the implemented SOM system for the State. The Contractor and/or Subcontractors who provide services that handle\*(see definition below) Sensitive Data for the SOM system must also comply with this clause, assuming the Contractor and/or Subcontractor receives copies of any data for use in providing services, including any system and/or user acceptance testing of the new system and any provided data that contains Sensitive Data.

The Contractor shall have an annual audit performed by an independent audit firm of the Contractor and/or Subcontractors' handling Sensitive Data and/or the Agency's critical functions, which is identified as SOM and shall address all areas resulting to information technology security and operational processes. These services provided by the Contractor and/or Subcontractors that shall be covered by the audit will collectively be referred to as the "Information Functions and/or Processes." Such audits shall be performed in accordance with audit guidance: Reporting on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2) as published by the American Institute of Certified Public Accounts (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly recognized professional organization, as agreed to by the State, to assess security of outsourced client functions or data (collectively, the "Guidance") as follows:

The type of audit to be performed in accordance with the Guidance is a SOC 2 Type II Audit (referred to as the "SOC 2 report"). The initial SOC 2 report audit shall be scheduled and completed within a timeframe to be specified by the State and submitted to the Contract Manager. All subsequent SOC 2 audits that are arranged after this initial audit shall be performed on an annual basis and shall be submitted to the Contract Manager by September 1 for the preceding calendar year.

The SOC 2 report shall report on the description of the Contractor and/or Subcontractors' system and controls and the suitability of the design and operating effectiveness of controls over the Information Functions and/or Processes relevant to the following trust principles: Security, Availability, and Confidentiality as defined in the aforementioned Guidance. The SOC 2 report should also report on the suitability of the design and operating effectiveness of controls of the Information Functions and/or Processes to meet the requirements of the Contract, specifically the security requirements identified in the security requirements and those in the technical requirements.

The audit scope of each year's SOC 2 report may need to be adjusted (including the inclusion or omission of the relevant trust services principles of Security, Availability, Confidentiality, Processing Integrity, and Privacy) to accommodate any changes to the Contractor's and/or Subcontractors' environment since the last SOC 2 report. Such changes may include but are not limited to the addition of Information Functions and/or Processes through change orders or Work

Orders under the Contract; or, due to changes in information technology or operational infrastructure implemented by the Contractor and/or Subcontractors. The Contractor and/or Subcontractors shall ensure that the audit scope of the year's SOC 2 report engagement shall accommodate these changes including the SOC 2 report all appropriate controls related to the current environment supporting the Information Functions and/or Processes, including those controls required by the Contract.

The scope of the SOC 2 report shall include work performed by any Subcontractors that provide essential support to the Contractor and/or essential support to the Information Functions and/or Processes provided to the State under the contract. The contractor shall ensure the audit includes all of these Subcontractor(s) in the performance of the SOC 2 report.

All SOC 2 reports, including those of the Contract and/or Subcontractor, shall be performed at no additional expense to the State.

The Contractor and/or Subcontractors' shall promptly provide a complete copy of the final SOC 2 report to the Contract Manager upon completion of each annual SOC 2 report engagement.

The Contractor shall provide to the Contract Manager, within 30 calendar days of the issuance of each annual final SOC 2 report, a documented corrective action plan which addresses each audit finding or exception contained in the SOC 2 report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor and/or Subcontractors along with the date(s) when each remedial action is to be implemented.

If the Contractor and/or Subcontractors currently have annual information security assessment performed that includes the operations, systems, and repositories of the products/services being provided to the State under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the State will determine in consultation with appropriate State government technology and audit authorities whether the Contractor and/or Subcontractors' current information security assessments are acceptable in lieu of the SOC 2 report.

If the Contractor and/or Subcontractors fail during the Contract term to obtain an annual SOC 2 report by the date specified, the State shall have the right to retain the independent audit firm to perform an audit engagement of a SOC 2 report of the Information Functions and/or Processes being provided by the Contractor and/or Subcontractors. The Contractor and/or Subcontractors agree to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and will provide the support and cooperation to the independent audit firm that is required to perform the SOC 2 report. The State will invoice the Contractor for the expense of the SOC 2 report(s), or deduct the cost from future payments to the Contractor.

\*Handle: (as it relates to data) collect, store, transmit, have access to data

\*\*References to the security requirements and technical requirements by section number to be included

- I. The Contractor must perform system security subsystems administration and execution as defined in the infrastructure protection services plan, which will be verified by the annual MCS security review and annual third-party review.
- J. User-IDs for the State employees and resources will be managed by the State Security administrator. System IDs and Contractor resource IDs will be managed by the Contractor.

- K.** The Contractor must establish and maintain compliance with the following Federal and State security policies as identified in Section 1.103 Environment.
- L.** All proposed hosting solutions must be compliant with the Federal Information Security Management Act (FISMA) and with security policies of the State regardless of the extent to which sensitive, personal, or other covered data may or may not be captured, stored, or used in the proposed solution. For the environment where the State's solution will be hosted, FISMA/FedRAMP Compliance must be verified annually by one of the two following options:
1. Obtaining validation of FISMA Compliance from a Federally Accredited 3rd Party Assessment Organization that is approved by the State and providing the State a copy of the full Certification & Accreditation (C&A) preparation package, or
  2. Obtaining a FEDRAMP provisional ATO.
  3. The Contractor must provide encryption at the disk and database levels for all production and non-production environments including databases, backup disks, tapes and any media where the State's data or files are stored and/or accessed.
  4. The State must:
    - i. Develop, maintain and update the State IT Security Policies, including applicable State information risk policies, standards and procedures (DTMB/IT)
    - ii. Support intrusion detection and prevention and vulnerability scanning pursuant to State IT Security Policies (DTMB/IT)
    - iii. Provide a State Single Point of Contact with responsibility for account security audits (MDOS)
    - iv. Provide the State security audit findings material for the Services based upon the security policies, standards and practices in effect as of the Effective Date and any subsequent updates (MDOS)
    - v. Assist the Contractor in performing a baseline inventory of access IDs for the systems for which the Contractor has security responsibility (MDOS)
    - vi. Authorize User IDs and passwords for the State personnel for the Systems software, software tools and network infrastructure systems and devices under Contractor management. (MDOS)
    - vii. Approve non-expiring passwords and policy exception requests, as appropriate. (MDOS)
- M.** The Contractor must confirm that their proposal includes that the following ongoing security assessment testing / audits will be included in the Contractor's proposed services:
1. Information Security Risk Assessment (Based on Nation Institute of Standards and Technology (NIST) and COBIT)
  2. Digital Signatures
  3. Intrusion Detection
  4. Viruses and other Malicious Logic
  5. Control Risk Self-assessment
  6. Firewalls
  7. Irregularities and Illegal Acts
  8. Security Assessment (penetration testing, data encryption effectiveness, vulnerability analysis and effectiveness of controls)
- N.** The Contractor must receive express written approval from the State before deployment of any updates, patches, fixes, etc. (a Software Update). The Contractor must provide the code and documentation for the Software Update to the State with a reasonable amount of time for review and test. The Contractor must notify the State in writing of all Software Updates and provide a

description of the issues that the Software Update is intended to address prior to deployment.

A Critical Security Vulnerability is any opening, susceptibility, or weakness that impairs or has the potential to decrease system availability, data security, data integrity, or permits an unauthorized person access to the system or data or similar exploitation of the system or data. The Contractor must provide a Software Update for all Critical Security Vulnerabilities within 30 days of when the Contractor became aware or should have become aware of the Critical Security Vulnerability, whether the Critical Security Vulnerability is in the Contractor's system or in a third-party software or hardware component.

The Contractor must implement the Software Update as soon as possible after the written approval of the State in the case of a Critical Security Vulnerability. Other than for a Critical Security Vulnerability, the Contractor and the State will jointly assess the risk of the vulnerability and the intrusiveness of any Software Update relative to the benefit the Software Update is intended to provide, to determine when the Software Update should be implemented. Other than for a Critical Security Vulnerability, the State prefers all Software Updates to be implemented during a normal maintenance window or during periods of low customer usage.

**O. Regarding Data Privacy and Information Security:**

1. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described herein, Contractor shall be responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and, (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case shall the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and shall at all times comply with all applicable State IT policies and standards in effect upon the effective date of this Agreement. In the event of changes in the applicable State IT policies and standards giving rise to an increase in Contractor costs, such increase shall be addressed through the Contract Change Management Procedures.
2. Audit by Contractor. No less than annually, Contractor shall conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the State.
3. Right of Audit by the State. The State's audit rights specified in this Subsection (c) are limited in frequency to once yearly except where a follow-up audit is necessary concerning a deficiency revealed through a previous yearly audit. Without limiting any other audit rights of the State, the State shall have the right to review Contractor's data privacy and information security program prior to the commencement of Services and during the term of this Agreement. During the providing of the Services, on an ongoing

basis and without notice, the State, at its own expense, shall be entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within forty-five (45 days) of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.

4. Audit Findings. Contractor shall implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.
  5. The State's Right to Terminate for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Agreement or a Statement of Work without limitation and without liability if the State reasonably determines that Contractor fails or has failed to meet its obligations under this Section.
- P.** The State and Contractor must comply with all obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, including but not limited to entering into a business associate agreement, if reasonably necessary to keep the State and Contractor in compliance with HIPAA.
- Q.** The State and Contractor must document the system's compliance with the National Institute of Standards and Technology 800-53 based on the classification of system data.
- R.** The State and Contractor must document the system's compliance with the Control Objectives for Information and Related Technology (COBIT) as required by DTMB Policies and Procedures.
- S.** The Contractor must inform the State Program Manager in the fastest manner possible of any actual or possible data breaches. The Contractor must also provide this information in writing. The Contractor must provide this information within 24 hours of learning of an actual or possible data breach.

## SCHEDULE D

### DATA BACK-UP REQUIREMENTS

**PowerSchool Special Education is deployed as a PowerSchool Hosting (vendor hosted) solution.** With our PowerSchool Hosting solution, server hardware, server operating system licensing, networking components, security systems protection, and secured redundant infrastructure do not to be procured or managed by the State / School District.

#### **PowerSchool Hosting Data Center**

Our PowerSchool Hosting solution provider's data center facilities are housed in state of the art facilities that are in alignment with security best practices and a variety of IT security standards as well as incorporating multiple redundancy levels to maintain high-availability infrastructure services.

Power protection incorporates fully redundant systems utilizing different grids from independent utility providers to provide 24x7x365 maintainable electrical power. Isolated-parallel (IP) UPS topology provide backup power in the event of an electrical failure for critical and essential loads in the facility. Diesel-powered generators provide backup power for the entire facility.

Temperature and humidity controls comply with ASHRAE standards and are conditioned to maintain atmospheric conditions at optimal levels. Systems are in place to provide 24x7x365 monitoring and control temperature and humidity at appropriate levels.

Fire detection and suppression equipment utilizes smoke detection sensors throughout the data center environment as well as a combination of wet-pipe, double-interlocked pre-action, and gaseous sprinkler systems.

Internet connectivity is provided through multiple redundant Tier-1 Service Providers.

#### **PowerSchool Hosting Security**

PowerSchool supports the most critical processes of managing student, class, and school data, and we are committed to the highest standards of protection for student data and Personally Identifiable Information (PII). PowerSchool independently verifies the security management system to the internationally recognized standard for security management systems, and holds **ISO 27001:2013 certification**.

Our data center facilities provider complies with a variety of IT security standards including HIPAA, FERPA, SOC 1/SSAE 16/ISAE 3402 (formerly SAS 70), SOC 2, SOC 3, PCI DSS Level 1 and many others. They provide multiple challenge points and employ an extensive series of security protocols throughout all data center areas to ensure your data is 100% secure.

Data centers are housed in nondescript facilities. Physical access is strictly controlled both at the perimeter and at building ingress points by professional security staff utilizing video surveillance, intrusion detection systems, and other electronic means. Authorized staff must pass two-factor authentication a minimum of two times to access data center floors. All visitors and contractors are required to present identification and are signed in and continually escorted by authorized staff.

All PowerSchool critical and sensitive information resides within the platform database(s) and all systems incorporate industry-standard AES-256 data at rest encryption. Data storage within our PowerSchool Hosting environments utilizes SSD-backed volumes that include data at rest and data in transit encryption. All web-based access to PowerSchool platforms are secured via Certificate Authority (CA) issued TLS v1.2 certificates that utilizes a 2048-bit RSA key with SHA-256 signatures.

Internal and external network segments are separated by extensive security groups with multiple levels of intrusion detection system (IDS) technologies in place to monitor network and system activities for malicious activities, unauthorized intrusion attempts, and policy violations. Enterprise systems at the perimeter edge network are utilized to protect, prevent, and mitigate against several types of Denial of Service (DoS) attacks, IP Spoofing, Port Scanning, and other malicious activities. Network Access Control Lists (ACLs) restricts direct access to the PowerSchool Hosting infrastructure through only dedicated TCP/IP addresses for PowerSchool Hosting technical staff.

### **PowerSchool Hosting Data Recovery**

With our PowerSchool Hosting Solution, Data Recovery and Disaster Recovery plans exist and take into consideration the impact on critical systems. Our data center facilities provider provides PowerSchool Hosting with the flexibility to store PowerSchool data within multiple Availability Zones. Availability Zones are designed as an independent failure zones and are physically separated within a typical metropolitan region.

PowerSchool platform servers are configured with multiple data backup and data recovery options. All database servers utilize online log files that allow for point-in-time recovery (PITR) options of database transactions. PowerSchool platforms incorporate multiple backup levels including the use of daily full database backups with 1-month retention policies, monthly full database backups with 2-year retention policies, and annual (July 1) full database backups with 7-year retention policies.

All platform backup files are stored with data at rest encryption on volumes that are replicated across Availability Zones for redundancy of recovery options. Additionally, PowerSchool platform servers can be restored in multiple Availability Zones for Disaster Recovery.

### **PowerSchool Hosting Systems**

Within in our PowerSchool Hosting environment each School District utilizes a secured PowerSchool platform configuration. Each School District's PowerSchool platform includes allocated application servers to scale district needs as well as allocated compute resources such as memory, processors, and disk space that are consistent with our current systems requirements and Quality Assurance performance testing. Data storage within our PowerSchool Hosting environments utilizes SSD-backed volumes with optimized IOPS and throughput provisioning.

The PowerSchool Hosting core network utilizes highly available and scalable network services to deliver PowerSchool platform content with low latency and high data transfer speeds. Redundant load balancing automatically scales handling capacity in response to incoming application traffic and supports SSL termination to offload TLS decryption / encryption from application instances.

### **PowerSchool Hosting Systems Administration**

As part of the PowerSchool Hosting solution, a dedicated team familiar with PowerSchool platforms and specific infrastructure needs provides systems administration, maintenance, and monitoring of your hosted PowerSchool platforms.

PowerSchool Hosting utilizes a wide variety of automated monitoring systems to provide a high level of service performance and availability. Infrastructure and PowerSchool platforms application performance are closely monitored 24x7x365 by PowerSchool Hosting technical staff. Enterprise-grade solutions are extensively instrumented to monitor key operational metrics and early warning thresholds. These capabilities allow our PowerSchool Hosting solution to sustain 99.9% availability of your PowerSchool hosted platforms.

Our PowerSchool Hosting solution also includes services by our PowerSchool Hosting technical staff to ensure your hosted PowerSchool platforms have the current database updates, platform product updates, and security updates applied

## SCHEDULE E

### SERVICE LEVEL AGREEMENT

This Service Level Agreement (“SLA”) sets forth the framework for PowerSchool Group, LLC (“PowerSchool”) provision of Application Support for the operation of the Service Software and describes the responsibilities of the parties with respect to the provision and receipt of such said services. Throughout this document Michigan Department of Education will be referred to as “Customer” or the “Customer” and PowerSchool Group LLC shall be referred to as “PowerSchool” or “Service Provider.”

This document is organized into the following 2 sections:

- **Section 1 – Application Support**
- **Section 2 – PowerSchool Hosting Service Description**
- **Section 3 – PowerSchool Hosting Service Level Commitment**

The Service Level Agreement is valid when the Customer has a valid subscription for products covered by the Service Level Agreement. PowerSchool reserves the right to change, amend, or revise the Service Level Agreement at any time. Changes or revisions to the Service Level Agreement will be posted to PowerSchool’s Support Portal.

#### Definitions

The following definitions shall apply to this SLA. All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement:

Term	Definition
"Users"	Any person with a valid user ID and online access to the SERVICE SOFTWARE system via the web interface.
"Support Service"	Customer’s request of obtaining service from PowerSchool to rectify a product issue, apply a product patch, recover data, assist with general functionality of the PowerSchool SERVICE SOFTWARE product.
"Service Level"	Performance metric(s) set forth in this SLA that PowerSchool agrees to meet in the delivery of the Support Services.
"Normal Business Hours"	Hours between 7:00 AM and 6:00 PM, Monday through Friday, Customer local time zone.
"Support Portal"	PowerSchool's community-focused customer support portal for all PowerSchool products.
"Technical Contact"	Customer’s support and management staff, who shall be authorized to contact PowerSchool for the purpose of obtaining Support Services.
"Downtime"	The period of time during which the PowerSchool SERVICE SOFTWARE is unavailable to Users.
"Scheduled Downtime"	Time planned and agreed upon in advance for reasons including scheduled maintenance, system updates and patches, and system upgrades with notification
"Incident"	Any single event, or any set of events, that results in Downtime.

<b>"Disaster"</b>	An unplanned event that causes a complete loss of access to and use of the PowerSchool SERVICE SOFTWARE for a period greater than 24 hours as declared by PowerSchool.
<b>"Maintenance Window"</b>	Designated period of time during which activity is at its lowest to cause minimal disruption to Customers where the system can be taken offline for maintenance and updates.
<b>"Outage"</b>	An impact of PowerSchool SERVICE SOFTWARE availability to a specific sub-set of Customers' Users, but does not cause an impact to all the Customers' Users, and is not considered a Disaster.
<b>"Case"</b>	Referred to as a Support Service ticket number that references the Customer, Customer Contact, and nature of the Support Service request.
<b>"Response"</b>	Confirmation to the Customer that the Support Service request was received and registered by PowerSchool.
<b>"Response Time"</b>	Time it takes for PowerSchool to confirm that the Support Service request / reported Incident has been acknowledged by PowerSchool.
<b>"Workaround"</b>	Change in the followed procedures or data to avoid error without substantially impairing use of the product.
<b>"Infrastructure Systems"</b>	Underlying systems hardware, network, and storage components

**1. Application Support**

Application Support addresses technical support for the PowerSchool SERVICE SOFTWARE application as a product. This includes functionality within the PowerSchool SERVICE SOFTWARE application itself, outside of the underlying Infrastructure components which are covered separately under PowerSchool Hosting (Service Software hosted by PowerSchool).

**1.1 Support Structure**

PowerSchool Application Support employs a tiered structure. Each level is defined as follows and includes support for English, Spanish, and French languages.

<b>Support Tier</b>	<b>Description</b>
<b>Tier 0 Technical Support</b>	Consists of the PowerSchool SERVICE SOFTWARE Administrators at each of the school districts / school boards. These Administrators have access to the Support Portal knowledgebase. 80 to 90% of all potential issues may be resolved with the documentation contained on the Support Portal.
<b>Tier 1 Application Support</b>	Performs the initial investigation on all inbound technical support requests. The Service Provider fully trains the Tier 1 team to diagnose and resolve most issues; however, they will escalate to a Tier 2 Senior Support Specialist if they are unable to provide a resolution. 70 to 80% of submitted cases are typically resolved within Tier 1.

<b>Tier 2 Senior Application Support</b>	Subject matter experts and focus their attention on a specific area of the application, allowing each specialist to obtain a deeper level of knowledge within his/her area of expertise. In the event the Tier 2 Senior Support Specialist is unable to resolve the issue; the issue may be escalated to PowerSchool Product Development organization, depending on the product line and type of issue identified. 10 to 20% of all submitted cases are typically resolved in Tier 2.
<b>Product Development</b>	Resolves the remainder of all issues. These issues typically are resolved by a PowerSchool SERVICE SOFTWARE product release; however, some issues may be resolved with a fix from development directly to the Customer.

### 1.2 Requesting Support Services

Within the Customer’s Maintenance & Service Agreement, the Customer is asked to identify authorized Technical Contact(s) who will contact Application Support when needed. PowerSchool provides an extensive knowledgebase for Technical Contacts to access Tier 0 support (self-service support) for themselves and their district/school via the Support Portal.

Support Service requests and incident reporting must be submitted through one of methods listed below.

- Submit a Case through the Support Portal (<https://support.powerschool.com> or current URL provided by PowerSchool)
- Submit a Case through email ([specialeducationsupport@powerschool.com](mailto:specialeducationsupport@powerschool.com))
- Open a Case through telephone (866-434-6276 / 916-288-1881)

### 1.3 Application Support Business Hours

Application Support for PowerSchool includes email and phone support as well as electronic manuals, an online knowledge base, tech notes, and access to Support Portal.

Support Type	Availability
PowerSchool Application Support (Registration)	Monday – Friday; 4:00 AM – 5:00 PM PST *Excludes PowerSchool Holidays
Email Support	24x7x365
Support Portal Support	24x7x365

### 1.4 Response Time

Response times will vary based on call load and time of the school year. The Service Provider’s targeted response times during Support Business Hours are listed below, however initial phone response times average two minutes or less during off-peak season, and less than 10 minutes during the peak-season. Customers preferring to interact via email will typically receive a response within four business hours during non-peak season and within 12 business hours during the peak back-to-school season.

Support Type	Response Time
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Telephone Support	Less than 10 minutes
Email Support	Less than 1 business day
Support Portal Submitted Case	Less than 1 business day

### 1.5 Issue Priority Definitions

Priority	Description
<b>Priority 0 (Urgent)</b>	<ul style="list-style-type: none"> <li>• Production system outage, data security/backups or submissions deadlines that can no longer be accessed, performed or met.</li> <li>• Missions critical impact which requires actively working with the Customer to resolve the issue or to restore production, including considering a release to resolve.</li> <li>• No workaround is available.</li> </ul>
<b>Priority 1 (Critical, must have)</b>	<ul style="list-style-type: none"> <li>• Critical "must have" functionality, with no known workaround or solution available.</li> <li>• Significant impact causing functional limitations and requires imminent but not immediate release.</li> </ul>
<b>Priority 2 (Must have, not critical)</b>	<ul style="list-style-type: none"> <li>• "Must have" functionality which may have known workaround or solution available.</li> <li>• Moderate to high impact, but not required for the upcoming release</li> </ul>
<b>Priority 3 (Nice to have)</b>	<ul style="list-style-type: none"> <li>• Cosmetic or "nice to have" functionality or product enhancements.</li> <li>• Minimal to no impact. System is operational</li> </ul>

### 1.6 Response Targets

Service Provider will make commercially reasonable efforts to ensure that submitted cases are assigned the proper level of priority. "Response Time" is the time it takes before a support agent makes initial contact with the individual who submitted the case. With the exception of Priority 0 cases logged by the Customer, response times are calculated within Standard Support Hours. Response time is not a resolution goal and should not be interpreted as a guarantee of service. Service Provider will use commercially reasonable efforts to adhere to the time frames listed below. Service Provider does not provide resolution targets and Response Time should not be interpreted as a commitment regarding resolution timeframes.

Severity	Targeted Response Time
Priority 0 (Urgent)	1 hour
Priority 1 (Critical, must have)	4 hours
Priority 2 (Must have, not critical)	8 hours
Priority 3 (Nice to have)	2 business days

### 1.7 Exclusions

Service Provider will make every effort to solve critical and high severity errors reported by the Customer within a reasonable time frame and to the satisfaction of the Customer. Application Support

within the Scope of PowerSchool SERVICE SOFTWARE support does not address the following areas:

- Customer computer hardware and networking issues
- Any systems, programs or interfaces not developed and supplied by PowerSchool
- For fee offerings from PowerSchool Professional Services such as project management, training, workshops
- Migration of data from a non-PowerSchool supported SERVICE SOFTWARE into PowerSchool SERVICE SOFTWARE. New Customers may need to contact their Implementation project manager.
- Work done by the PowerSchool Services department; the Customer will need to contact PowerSchool Services organization for help on such items.
- Undocumented DAT codes, for the latest version of PowerSchool SERVICE SOFTWARE.
- ODBC complex queries or connections not covered in the Support Portal documentation.
- Beta releases. Those issues must be sent through the Beta participant process communicated when Customer was invited to that program.
- Advanced Learning Summit documentation, custom field Sales/Trainer solutions or other PowerSchool University provided solutions that are not part of the Support Portal knowledgebase documentation.
- Building of reports via APEX or Enterprise Reporting.
- No code level support for API / APEX API WebDevs / SSO (SAML).
- SQL statements not provided by the PowerSchool Product Development organization.

## **2. PowerSchool Hosting Service Description**

This supplement describes the structure and practices for the PowerSchool Hosting Service offering from PowerSchool at the time of the signing of the agreement. PowerSchool reserves the right to make modifications to the descriptions in this supplement to address subsequent changes in the underlying practices and tools used to deliver the hosting service.

### **2.1 Data Centers**

All PowerSchool Hosted applications reside in secure facilities committed to meeting or exceeding Uptime Institute Tier III standards ([www.uptimeinstitute.com](http://www.uptimeinstitute.com)). The data centers reside at PowerSchool site(s) or reputable third-party hosting providers that meet or exceed the same standards.

To support resiliency the following infrastructure is present in all PowerSchool Data Centers:

- Redundant Tier-1 Internet Service Providers
- Redundant power grids from independent utility providers
- Generator failover (Diesel/Natural Gas) to supply backup power
- Systems configured with fault tolerant/redundant components
- Redundant switching and network infrastructure
- Temperature and humidity monitoring and conditioning systems
- Fire detection/suppression systems

## 2.2 System Monitoring

Automated monitoring and alerting systems are in place for all PowerSchool Hosting Data Centers. The monitoring systems provide alerts for all system conditions that require attention and provide early warning alerts for infrastructure items approaching capacity. The alerting systems are directly tied to PowerSchool ticketing systems to notify administrative staff when action is required. In addition to monitoring and reporting on infrastructure and capacity, alerting systems also monitor and report on key components of hosted applications.

## 2.3 Data Ownership and Access

In all cases, the Customer retains ownership rights to the data stored in application databases that are hosted by PowerSchool. The PowerSchool Hosting offering is designed to ensure that Customers have appropriate access to add, change, delete, and extract data maintained on hosted systems.

All capabilities to modify and extract data that are present in the application interface are also available in a PowerSchool hosted solution. The tools available vary depending on the application, and may include the following:

- The ability to read data through reports built into the application or through reporting tools accompanying the application.
- The ability to extract data to text files and excel spreadsheets.
- The ability to upload data from text files and excel spreadsheets.
- The ability to read or update data through API interfaces.
- The ability to access SFTP site to import or export files
- The ability to share data between applications through defined interfaces.

The above may not be present in all applications. Please check available documentation to understand the use and availability of tools. The options available in the application interfaces are the preferred method for data modification and extraction. These tools also enforce data integrity for updates by applying appropriate business rules before posting modified data. It is PowerSchool's goal to continue to enhance these capabilities to provide coverage for identified use cases.

Should gaps be identified in the capabilities present in the applications, PowerSchool may offer read-only ODBC access to a Customer database over a PowerSchool provided client based VPN. This option may not be available for all applications. Where ODBC access is available, a stateful (always on) VPN tunnel to access the data may also be an option for an additional fee. Please check with your sales representative for information and pricing on these options. PowerSchool limits all direct access to the database to read only access. In no case, will direct write access to a database outside of the application interface be supported.

## 2.4 Direct System Access

PowerSchool is committed to the integrity, security, and availability of all hosted systems employed to deliver application access. As such, PowerSchool does not provide direct console access to any hosted systems using tools for remote access such as RDP for the purpose of review, or making changes to the systems.

Should there be a need to apply Customer produced changes to systems that cannot be accomplished through the application interface, the Customer can open a ticket with Application Support to request assistance applying the change. All Customer generated changes must be approved by Application Support prior to being applied to hosted systems.

## 2.5 Physical Access Restrictions

Physical access to all PowerSchool Hosting data centers is strictly controlled and limited to specific employees of PowerSchool and its subcontractors having job responsibilities that require access.

Typical data center security measures include, key card access to building ingress points and the data center rooms; professional security staff; and video monitoring.

## 2.6 Logical Access Restrictions

Logical access to hosted systems is strictly controlled. Each user with a demonstrated need to access the environment is provided a unique User ID and password. All activities performed by PowerSchool employees and contractors is monitored and can be traced to an individual user. Logical Access to environments is actively protected by managed firewalls, intrusion detection systems, port filtering, and user access lists. All end user access to applications is encrypted from the browser to the data center environments with at least TLS v1.1 certificates using 2048-bit RSA key with SHA-256 signatures.

## 2.7 Backup and Recovery

PowerSchool Hosting service includes backups of all system and application environments. Database backups are structured to allow full recovery of the application environment and data in the event of a disaster. In addition, database backups allow for point in time recovery in the production hosted environments for all Customer applications. For all production applications, full database backups are performed daily.

Backups are retained for all production databases to match the following table:

Backup Type	Occurrence	Retention Period
Full Backup	Daily	90 Days
Full Backup	Weekly	6 Months
Full Backup	Monthly	1 Year

Customer data restore requests are submitted through the Application Support team as a standard support ticket. The Application Support team works directly with the PowerSchool Hosting team to ensure timely processing of all restore requests.

## 2.8 Disaster Recovery

Disaster Recovery and Data Continuity plans exist for all PowerSchool Hosting Data Centers. The Disaster Recovery and Data Continuity plans are reviewed and updated on a quarterly basis. Additional updates are made between quarterly reviews to adjust plans as infrastructure changes require plan updates.

The Continuity plans support a Recovery Time Objective (RTO) of 48 hours. The 48 hour RTO means that within 48 hours of a declared disaster by PowerSchool, the systems impacted are expected to be back online for Customer access. The plans also support a Recovery Point Objective (RPO) of 24 hours. The 24 hour RPO means that data is expected to be restored to a point not more than 24 hours prior to the start time of the declared disaster event.

## 2.9 Hosting DevOps Staff Activities

PowerSchool Hosting maintains a team of technical personnel with decades of technical experience to support the hosting infrastructure environments 24x7x365. The PowerSchool Hosting technical staff are continuously trained on existing and emerging technologies with a focus on maintaining a high level of security for all deployed systems.

PowerSchool Hosting technical staff are responsible for the following:

- Management of compute resources including memory, processor, and disk space to ensure the resources are consistent with application requirements and Quality Assurance performance testing.

- Support of Infrastructure Systems including hardware replacement.
- Installing and monitoring of protection against malware, virus, and other malicious agents.
- Maintenance of Operating System configurations.
- Installation of Security and Operating System updates.
- Installation of application updates and upgrades.
- Provisioning and deployment of Certificate Authority TLS certificates for secure application access.
- Performance of backup and recovery for Operation Systems, Application code, and Application databases.
- Support and assistance with problem identification, escalation, and resolution activities pertaining to the hosting infrastructure.

#### 2.10 Update Management Process

Update Management includes managing the changes implemented to hosted systems for both Operating System and Application changes. PowerSchool Hosting technical staff are responsible for implementing all changes into the hosted environments. Automation tools are developed and used by the team to ensure seamless error free deployments to the environments. In addition to installing all changes, the PowerSchool Hosting technical staff ensure that all updates to hosting systems are appropriately documented, and tracked.

#### 2.11 System Maintenance Process

PowerSchool expects to provide notice of at least five days for planned updates to system infrastructure. For emergency updates, PowerSchool will provide as much notice as possible and will work with the impacted Customers on scheduling changes to the degree possible. Planned updates will be accompanied by information on the content of the update, the planned date of activation, and the anticipated duration for the change to be completed. All regular maintenance will occur outside of normal business hours. Every attempt will be made to ensure that emergency updates are also performed outside of normal business hours.

#### 2.12 Exclusions

The following items that may impact performance and access to the hosted application environments are not supported by PowerSchool Hosting and are not covered by hosting agreements:

- Network / Internet connectivity issues outside of the PowerSchool Hosting data center environment, including issues in the Customer local network environment.
- End user activity that adversely impacts application data. PowerSchool Hosting will only perform full database restore operations when requested to assist with data issues by Application Support.
- The performance impact of Customer third party application access to hosted application data.
- General Application Support. (Provided through Application Support)
- Support for application changes completed by the PowerSchool Customization department. (Provided through the Customizations Department)

### 3. Hosting Service Level Commitment

PowerSchool recognizes and appreciates the investment the Customer is making in this agreement. To ensure Customer satisfaction with the hosting services provided, PowerSchool agrees to the following commitment regarding application responsiveness and availability.

### 3.1 Application Responsiveness

PowerSchool will make commercially reasonable efforts to ensure that hosted applications provide adequate responsiveness at all times. PowerSchool expects the application to perform as well or better than typical performance achieved in a Customer self-hosted environment.

These performance expectations include ensuring that adequate compute, memory, network infrastructure, and internet bandwidth are in place and that resources are monitored for all hosted environments.

The ability for PowerSchool to impact performance is limited to the systems and infrastructure directly under the control of PowerSchool.

### 3.2 Application Responsiveness Measurement

PowerSchool maintains internal monitoring of system resources to measure performance of the individual resources. In addition, PowerSchool maintains external monitors to measure application access responsiveness via the internet. All monitors are configured to generate alerts to hosting staff should they hit thresholds outside of expected levels. Resource monitors are built to trigger alerts proactively on performance to address issues before they significantly impact end users.

### 3.3 Customer Reported Responsiveness Issues

With the monitoring described in the prior section, PowerSchool expects application performance will remain at acceptable levels. However, should a Customer experience performance that is not acceptable, the Customer is expected to open an Application Support ticket for investigation.

Any Customer performance ticket that is determined to be the result of an issue in the hosting controlled infrastructure will be entitled to a case entry with details on the issue, resolution performed, and steps taken to prevent the issue from reoccurring.

For performance tickets that do not lead to identification of a hosting controlled infrastructure issue, Application Support staff will work with the Customer and experts at PowerSchool to assist the Customer with identification of the external source of the performance issue.

### 3.4 Availability Targets

PowerSchool will make commercially reasonable efforts to ensure that hosted applications are available for Customer access at a level of 99.9% during normal business hours.

The availability target excludes any downtime for maintenance where Customer has been notified of the planned maintenance at least 5 business days in advance.

Downtime tracking will be within normal business hours. Time will not accrue for downtime outside of normal business hours.

### 3.5 Availability Measurement

All measurements concerning this commitment including downtime event start and resolution time will be maintained and reported by the hosting team. The availability measurement will be calculated for each calendar month.

Total downtime minutes will be the sum of the minutes for each downtime event during normal business hours, exclusive of planned maintenance, within a single calendar month.

Total service minutes will be calculated as 11 hours per day, for each non-holiday week day within a month (normal business hours).

Availability percentage will be calculated as  $(\text{Total Service Minutes} - \text{Downtime Minutes}) / \text{Total Service Minutes per month}$

Customer Technical Contacts will have access to outage information through the Support Portal.

### 3.6 Failure to Achieve Availability Commitment Level

Individual availability issues may not impact all Customers. The Customer is responsible for notifying PowerSchool in writing should they believe the commitment level has not been achieved for the prior month. Customer notice must be received within two (2) weeks of month end. Should the Customer notify PowerSchool of failure to meet the targets levels in a given month, PowerSchool will implement the following remediation.

### 3.7 Remediation for Failure to Achieve Availability Commitment Level

Following the receipt of appropriate notice described in section 3.3 of this document, PowerSchool will assign a senior level representative to work with the Customer within the following parameters.

The representative will review each instance of unavailability identified and produce an outage report for delivery to the Customer. The outage report will contain, at a minimum, the following sections; description of the outage; application(s) impacted, start time of incident; end time of incident, and the resolution description.

The initial report will be delivered to the Customer within 2 weeks of receiving notification of failure to meet the commitment. The report will remain open until root cause and outage avoidance descriptions are added to the report. PowerSchool staff will review the status of the report at least weekly with the Customer until the report is closed.

## 4.1 Remedies for Service Availability Failures.

(a) If the actual Availability of the Hosted Services is less than the Availability Requirement for any Service Period, such failure will constitute a Service Error for which Contractor will issue to the State the following credits on the Fees payable for Hosted Services provided during the Service Period (“**Service Availability Credits**”):

<b>Availability</b>	<b>Credit of Fees</b>
≥99.95%	None
<99.95% but ≥99.0%	15%
<99.0% but ≥95.0%	35%
<95.0%	100%

(b) Any Service Availability Credits due under this **Section 5.5** will be applied in accordance with **Section 8.11**.

(c) If the actual Availability of the Hosted Services is less than the Availability Requirement in any two (2) of four (4) consecutive Service Periods, then, in addition to all other remedies available to the State, the State may terminate this Contract and/or the applicable Statement of Work on written notice to Contractor with no liability, obligation or penalty to the State by reason of such termination.

4.2 Corrective Action Plan. If two or more Critical Service Errors occur in any thirty (30) day period during (a) the Term or (b) any additional periods during which Contractor does or is required to perform any Hosted Services, Contractor will promptly investigate the root causes of these

Service Errors and provide to the State within five (5) Business Days of its receipt of notice of the second such Support Request an analysis of such root causes and a proposed written corrective action plan for the State's review, comment and approval, which, subject to and upon the State's written approval, shall be a part of, and by this reference is incorporated in, this Contract as the parties' corrective action plan (the "**Corrective Action Plan**"). The Corrective Action Plan must include, at a minimum: (a) Contractor's commitment to the State to devote the appropriate time, skilled personnel, systems support and equipment and other resources necessary to Resolve and prevent any further occurrences of the Service Errors giving rise to such Support Requests; (b) a strategy for developing any programming, software updates, fixes, patches, etc. necessary to remedy, and prevent any further occurrences of, such Service Errors; and (c) time frames for implementing the Corrective Action Plan. There will be no additional charge for Contractor's preparation or implementation of the Corrective Action Plan in the time frames and manner set forth therein.

## Schedule F

### SUPPORT AND SERVICES POLICIES

#### I. SUPPORT SERVICES

1. **Definitions.** For purposes of these Policies, the following definitions shall apply:

**Errors** shall mean a reproducible failure of Hosted Services to operate in accordance with its standard Documentation, despite the proper installation and use of Hosted Services in a proper operating environment and on hardware and system software sufficient to meet Contractor'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 Hosted Services, the Documentation, or both.

**Fix** shall mean a patch, service pack or corrective update of Hosted Services that Contractor 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 Hosted Services in accordance with the applicable then-current Documentation.

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

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

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

**Support Term** shall mean the length of time Support Services are to be provided hereunder and for which The State has paid any applicable Support Services fees, including any initial Support Term and any renewal Support Terms.

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

2. **Support Term; Fees.** Support Services for Hosted Services are available at an additional cost. For Support Services purchased concurrently with The State's license to Hosted Services, The State's initial Support Term will begin upon shipment (FOB Contractor's place of shipment) of Hosted Services (or, in the case of Hosted Services made available for download electronically, upon Contractor's provision of the necessary licensing information to enable The State to download Hosted Services) and terminate one (1) year thereafter, unless a different Support Term is specified in Contractor's written acknowledgment of The State's order, or unless terminated earlier in accordance with the terms of these Policies or the Agreement. Either party may terminate the provision of Support Services as of the end of the then-current Support Term by providing written notice to the other party prior to the end of the then-current Support Term that such party does not wish to renew the Support Term. The State shall provide written notice of non-renewal at least thirty (30) days prior to the applicable Support Term. If no notice of

non-renewal is given by either party, the Support Term will automatically renew for the applicable renewal term stated on Contractor's renewal invoice at the then current Support fees; otherwise, The State's Support Term will terminate at the end of The State's current paid-up Support Term. If the State's Support Term is so terminated due to non-payment, and then Contractor subsequently reinstates The State's access to support, such reinstated access shall remain subject to the terms of these Policies and payment of applicable reinstatement fees. Contractor reserves the right to charge reinstatement fees in the event deactivated licenses are reactivated. For the initial Support Term, The State shall pay the charges specified in Contractor's initial invoice. For renewal Support Terms, The State shall pay Contractor's then-current annual Support Services fees. Contractor may supply new or modified Support and Services Policies or other terms and conditions to The State related to the provision of Support Services in a renewal term, in which event such new or modified Support and Services Policies or other terms and conditions will govern Contractor's provision of Support Services in such renewal term.

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

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

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

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

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

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

keep Contractor informed of replacements for Authorized Representatives as soon as possible after the replacements occur.

5. **The State's Other Responsibilities.** To receive Support Services, The State shall: (a) report Errors or suspected Errors for which Support Services are needed, and supply Contractor 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 Hosted Services; (c) establish adequate operational back-up provisions in the event of malfunctions or Errors; (d) maintain an operating environment free of any modifications or other programming that might interfere with the functioning of Hosted Services; (e) maintain hardware and system software consistent with Contractor's minimum requirements; and (f) timely install all Fixes and New Versions supplied by Contractor in the proper sequence, and have the most current version of Hosted Services installed. The State acknowledges that Fixes and New Versions may be made available electronically, and that, in some cases, Contractor 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. The State shall be responsible for including the appropriate The State personnel on any such e-mail distribution lists of Contractor so that The State receives such notifications and other information.

6. **Support For Prior Versions.** The State 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, Contractor may, in its discretion, continue to provide Telephone and E-mail Support for the prior version of Hosted Services for a period of time after release of a New Version. The State acknowledges that Fixes and other code maintenance will not be available for prior versions of Hosted Services (including SRC) after the release of a New Version.

## II. **PROFESSIONAL SERVICES**

1. **Fees and Expenses.** In addition to providing Support Services during the Support Term, Contractor will perform such other Professional Services (training, installation, consulting, project management, etc.) as may be specified in Contractor's written acknowledgment of The State's order, or as may be subsequently agreed upon by the parties; provided that Contractor may, at its option, arrange for any such services to be performed by another entity on behalf of Contractor. The State agrees to pay for such services at the rates and charges specified in Contractor's written acknowledgment of The State's order, or, for work subsequently requested, at the rates agreed upon by The State and Contractor for such subsequent work. Contractor reserves the right to require a purchase order or equivalent documentation from The State 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 Contractor's normal business hours; additional charges may apply for evenings, weekends or holidays. Contractor reserves the right to impose a minimum labor charge for each on-site visit. The rates and charges specified in Contractor's acknowledgment of The State's order shall apply to those services originally ordered; however, Contractor reserves the right to change service rates or other terms as a condition of entering into any subsequent service engagement. In the event that The State 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 Contractor; any portion of any prepaid services amount that has not been used by The State toward services actually rendered within such twelve (12) month period shall be forfeited.

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

3. **Ownership Of Materials.** Contractor shall be the owner of all copyrights, patent rights and other intellectual property rights in any software code, documentation, reports or other deliverables (collectively, "Deliverables") created for or provided to The State pursuant to Professional Services. Provided that The State pays Contractor all fees and expenses associated with the development and provision of such

Deliverables, The State shall have a paid-up, royalty-free license to use such Deliverables for The State's internal use only, solely for the purpose for which such Deliverables were provided. Nothing in this Agreement shall prevent Contractor from providing any Deliverables to Contractor's other customers or third parties. Notwithstanding the foregoing, Contractor acknowledges and agrees that any State confidential information (as defined in Section 13.5 of these Policies) that is incorporated into any Deliverable remains subject to the provisions of such Section.

### III. **HOSTING SERVICES**

1. **Acceptable Use Policy.** The State acknowledges and agrees that Contractor does not monitor or police the content of communications or data of The State or its users transmitted through the Services, and that Contractor shall not be responsible for the content of any such communications or transmissions. The State shall use the Services exclusively for authorized and legal purposes, consistent with all applicable laws and regulations and Contractor's policies. The State 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. Contractor may remove any violating content posted or transmitted through the Hosting Services, without notice to The State. Contractor may suspend or terminate any user's access to the Hosting Services upon notice in the event that Contractor reasonably determines that such user has violated the terms and conditions of this Agreement.
2. **Security.** The State 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 Contractor or any third party. The State will comply with the user authentication requirements for use of the Hosting Services. The State is solely responsible for monitoring its authorized users' access to and use of the Hosting Services. Contractor has no obligation to verify the identity of any person who gains access to the Hosting Services by means of an access ID. Any failure by any authorized user to comply with the Agreement shall be deemed to be a material breach by The State, and Contractor shall not be liable for any damages incurred by The State or any third party resulting from such breach. The State must promptly take all necessary steps, including providing notice to Contractor, 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.
3. **Data.** The State has sole responsibility for the legality, reliability, integrity, accuracy and quality of the data it processes through and submit to the Hosting Services

## SCHEDULE G - POWERSCHOOL QUOTE



PowerSchool Group LLC  
 150 Parkshore Dr, Folsom, CA 95630  
 Quote #: Q-183110-1

Quote Expiration Date: 4/30/2019

Prepared By: Josh Deegan

Customer Contact: Rick Manning

Customer Name: Michigan State Department of Education

Title:

Enrollment: 150

Address: 608 W Allegan Hannah Bldg 2nd Fl

# of Schools: 2.00

City: Lansing

Contract Term: 36 Months

State/Province: Michigan

Start Date: 2/28/2019

Zip Code: 48933

End Date: 2/27/2022

Phone #: (734) 461-6790

Product Description	Quantity	Unit	Unit Price	Extended Price
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<b>License and Subscription Fees</b>				
PowerSchool Special Programs SPED	150.00	Students	USD 10.00	USD 1,500.00
PowerSchool Special Programs Service Capture	150.00	Students	USD 10.00	USD 1,500.00
PowerSchool Special Programs 504	150.00	Students	USD 10.00	USD 1,500.00
License and Subscription Totals:				<b>USD 4,500.00</b>

<b>Professional Services and Setup Fees</b>				
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PowerSchool Special Programs Implementation	1.00	Each	USD 5,830.00	USD 5,830.00
PowerSchool Special Programs Service Capture Implementation	1.00	Each	USD 2,500.00	USD 2,500.00
PowerSchool Special Programs 504 Implementation	1.00	Each	USD 1,500.00	USD 1,500.00
PowerSchool Special Programs Keys to Ownership	20.00	Hour	USD 187.50	USD 3,750.00
Professional Services and Setup Fee Totals:				<b>USD 13,580.00</b>

<b>Training Services</b>				
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PowerSchool Special Programs Training Onsite	2.00	Each	USD 2,200.00	USD 4,400.00
Training Services Total:				<b>USD 4,400.00</b>

<b>Quote Total</b>	
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<b>Year One Total</b>	<b>USD 22,480.00</b>
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<b>Annual Ongoing Fees</b>				
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PowerSchool Special Programs SPED	150.00	Students	USD 10.00	USD 1,500.00
PowerSchool Special Programs Service Capture	150.00	Students	USD 10.00	USD 1,500.00

PowerSchool Special Programs 504	150.00	Students	USD 10.00	USD 1,500.00
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Annual Ongoing Fees Total: **USD 4,500.00**

**Fees for subsequent years within the term bound by the Start Date and End Date detailed on this quote will be equal to the 'Annual Ongoing Fees' amount uplifted by 3.0% in each following year.**

On-Going PowerSchool Subscription/Maintenance & Support Fees are invoiced at then current rates & enrollment per terms of the Licensed Product and Services Agreement, which may be subject to an annual increase after the first year for non-multi-year contracts and/or enrollment increases.

Any applicable state sales tax has not been added to this quote. Subscription Start and expiration Dates shall be as set forth above, which may be delayed based upon the date that PowerSchool receives your purchase order.

In the event that this quote includes promotional pricing, such promotional pricing may not be valid for the entire period stated on this quote.

All invoices shall be paid within thirty (30) days of the date of invoice.

**All purchase orders must contain the exact quote number stated within. Customer agrees that purchase orders are for administrative purposes only and shall not impact the terms or conditions reflected in this quote and the applicable PowerSchool Licensed Product and Services Agreement.**

This quote is subject to and incorporates the terms and conditions of the Software as a Service (SaaS) contract between PowerSchool and the State of Michigan Enterprise Procurement, Department of Technology effective January 30, 2019.