



AGREEMENT

THIS AGREEMENT ("Agreement") is by and between NCS Pearson, Inc., a Minnesota corporation ("Pearson") and Charter Schools USA, having offices located at 6245 N Federal Hwy, 5th Floor, Fort Lauderdale, FL 33308 ("Licensee").

WHEREAS, Licensee wishes to obtain, and Pearson wishes to provide to Licensee, certain Pearson products and related services ("Pearson Products and Services");

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. Pearson shall make available the Pearson Products and Services to Licensee in accordance with the terms and conditions set forth on Exhibit A (the "Licensed Product Agreement," including the Supplemental Terms and Conditions and the Support and Services Policies), which is attached hereto and incorporated herein by reference.
2. The specific Pearson Products and Services being ordered pursuant to this Agreement are as set forth on Exhibit B (the "Order Schedule"), which is attached hereto and incorporated herein by reference.
3. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but which all together shall be deemed to constitute one and the same instrument. Transmission and receipt of this Agreement via facsimile or other electronic means shall be treated as original signatures for all purposes hereof and shall have the same legal effect as receipt of the original executed document by mail or any other acceptable means of delivery.

IN WITNESS WHEREOF, Pearson and Licensee have caused this Agreement to be executed by their duly authorized representatives as of the date of the last signature below.

CHARTER SCHOOLS USA

NCS PEARSON, INC.

By: [Signature]
Name: Jonathan K. Hage
Title: President & CEO
Date: 01-11-2013

By:
Name:
Title:
Date:

## LICENSED PRODUCT AGREEMENT – POWERSCHOOL SOFTWARE

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

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

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

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

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

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

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

## 2. LICENSE GRANT

2.1 **Basic Terms.** Subject to the terms and conditions of this Agreement, Pearson grants to Licensee a restricted, personal, non-exclusive, non-transferable license to use Licensed Product to support its school administrative functions, only at the Licensed Sites, not to exceed the maximum student enrollment as set forth in Section 1 of the Supplemental Terms and Conditions. Such license shall be perpetual, unless it is specified in Pearson's price quotation or proposal to Licensee that Licensee's license will be limited to a specified length of time, or unless this license is terminated under the provisions of this Agreement. In no event may Licensed Product be: (a) used other than at the Licensed Sites; (b) made available via a network or otherwise to any school, school district or third party other than the Licensed Sites; or (c) used to perform service bureau functions for third parties or to process or manage data for locations other than the Licensed Sites. Licensed Product will be provided by Pearson and may be used by Licensee in executable code form only; source code to Licensed Product will not be provided. Licensed Product shall only be used as expressly authorized by this Agreement.

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

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

## 3. RESTRICTIONS ON USE OF LICENSED PRODUCT

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

3.2 **Confidentiality.** Licensee agrees to keep Licensed Product confidential and to prevent unauthorized disclosure or use of Licensed Product in Licensee's possession. Licensee shall not transfer, assign, provide or otherwise make Licensed Product available to any other party without the prior written consent of Pearson. Any attempted sublicense, assignment or transfer of any rights, duties or obligations by Licensee in violation of this Agreement shall be void. Licensee shall notify Pearson immediately in writing of any unauthorized use or distribution of Licensed Product of which Licensee becomes aware and shall take all steps necessary to ensure that such unauthorized use or distribution is terminated. For any Licensed Product for which Pearson makes

available passwords or other user identification technology to access such Licensed Product, Licensee shall advise all users of such passwords or other user identifications that such passwords or user identifications must be maintained in confidence and not transmitted or shared.

3.3 **Modifications.** Licensee shall not, and shall not allow any third party to, modify, decompile, disassemble or reverse engineer Licensed Product or attempt to create source code for Licensed Product by any means without Pearson's express written authorization.

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

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

6. **THIRD PARTY SOFTWARE LICENSE TERMS; EMBEDDED APPLICATIONS; OPEN SOURCE SOFTWARE.** Any software designated by Pearson as Third Party Software is provided to Licensee pursuant to a separate license agreement between Licensee and the third party supplier, which will be provided to Licensee by the third party supplier. All support, warranties, and services related to Third Party Software are provided by the supplier of the Third Party Software under such third party's terms and conditions, and not by Pearson, unless otherwise specifically provided under this Agreement. Only Sections 5, 6, 9 and 12 of this Agreement apply to Third Party Software and any related support and services set forth in this Agreement. In addition, Licensed Product may contain Embedded Applications. If any additional license terms are identified in the Supplemental Terms and Conditions with respect to any Embedded Applications, Licensee shall comply with such conditions with respect to such applications. Certain Embedded Applications may also be subject to "open source" licensing terms. In some cases, the open source licensing terms may conflict with portions of this Agreement, and to the extent of any such conflict, the open source licensing terms shall govern, but only as to the software components subject to those terms. Notwithstanding the foregoing, Licensee acknowledges that if any open source software component is licensed under terms that permit Licensee to modify such component, and if Licensee does so modify such component, then Pearson will not be responsible for any incompatibility with such modifications and the remainder of the Licensed Product.

7. **COMPATIBLE PLATFORMS/HARDWARE.** Licensee is responsible for obtaining and maintaining an appropriate operating environment with the necessary hardware, operating system software and other items required to use and access Licensed Product. Pearson will not be responsible for any incompatibility between Licensed Product and any versions of operating systems, hardware, browsers or other products not specifically approved by Pearson for Licensee's use with Licensed Product. Pearson will make written requirements available to Licensee at Licensee's request.

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

9. **DISCLAIMER OF OTHER WARRANTIES. LICENSED PRODUCT IS PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND (EXCEPT AS PROVIDED IN SECTION 8), AND PEARSON AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. PEARSON DOES NOT WARRANT THAT THE FUNCTIONALITY CONTAINED IN THE LICENSED PRODUCT WILL MEET LICENSEE'S REQUIREMENTS, OR THAT THE OPERATION OF THE LICENSED PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE LICENSED PRODUCT WILL BE CORRECTED. FURTHERMORE, PEARSON DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE LICENSED PRODUCT IN TERMS OF ITS CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. LICENSEE AGREES THAT THE USE OF LICENSED PRODUCT IS AT LICENSEE'S OWN RISK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PEARSON OR A PEARSON**

REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT FULLY APPLY TO LICENSEE.

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

## 11. TERMINATION

**11.1 Termination for Breach.** Pearson shall have the right to suspend performance under this Agreement in the event that Licensee is in breach of any of its obligations under this Agreement. In addition, either party shall have the right to terminate this Agreement in whole or in part upon thirty (30) days written notice to the other party, in the event the other party materially breaches this Agreement and fails to correct such breach within such thirty (30) day period, provided that Pearson shall have the right to terminate this Agreement immediately upon written notice in the event that Licensee breaches any of its obligations under Section 3. Licensee further acknowledges that, as breach of the provisions of Section 3 could result in irreparable injury to Pearson, Pearson shall have the right to seek equitable relief against any actual or threatened breach thereof, without proving actual damages.

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

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

**TOTAL AMOUNT OF MONEY PAID BY LICENSEE TO PEARSON DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD WITH RESPECT TO THE PARTICULAR SUPPORT SERVICES ON WHICH THE CLAIM IS BASED.**

## 13. GENERAL

**13.1 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF MINNESOTA.** The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**13.2 General Provisions.** Neither party shall be held liable to the other party for failure of performance where such failure is caused by supervening conditions beyond that party's control, including acts of God, civil disturbance, strikes or labor disputes. If any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, this Agreement shall be enforced to the maximum extent possible to effectuate the original express intent of the parties. Licensee may bring no action arising out of this Agreement, regardless of form, more than one (1) year after the cause of action has arisen. In the case of notices to Pearson, such notices shall be sent to: NCS Pearson, Inc., Attn: Contracts Department, 3075 West Ray Road, Chandler, AZ 85226. In the case of notices to Licensee, such notices shall be sent to Pearson's address of record for Licensee. Either party may change its notice address by notifying the other in like manner. Licensee agrees that the terms of this Agreement, including all pricing for Pearson's products and services, shall be kept confidential and not disclosed to any third party without the prior written consent of Pearson; provided, however, that Pearson's consent shall not be required if Licensee is required to disclose the provisions of this Agreement in order to comply with applicable public records laws.

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

**13.4 U.S. Government Restricted Rights.** Licensed Product is a "commercial item" as that term is defined in 48 C.F.R. §2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are defined in 48 C.F.R. §12.212 and 48 C.F.R. §227.7202, as applicable, and all as amended from time to time. Consistent with 48 C.F.R. §12.212, 48 C.F.R. §227.7202 and 48 C.F.R. §52.227-19, and other relevant sections of the Code of Federal Regulations, as applicable, and all as amended from time to time, all U.S. Government end users acquire Licensed Product only with those rights set forth herein.

**13.5 Entire Agreement.** This Agreement, inclusive of the Supplemental Terms and Conditions and the Support and Services Policies attached hereto, constitutes the complete and entire agreement between the parties with respect to its subject matter, and supersedes all prior discussions, understandings, arrangements, proposals and negotiations with respect to same. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any purchase order or other documentation submitted by Licensee with respect to Licensed Product or any related support or services, and Pearson hereby refuses any such different or additional provisions in purchase orders or other documents. This Agreement shall not be subject to the Uniform Computer Information Transactions Act. This Agreement shall not be modified or amended without the written agreement of both parties.

## SUPPLEMENTAL TERMS AND CONDITIONS – POWERSCHOOL SOFTWARE

The following additional terms and conditions are applicable to Licensee's license of Pearson's PowerSchool software and Pearson's delivery of any associated support and services. These terms apply to all versions of the PowerSchool software, including PowerSchool Pro and PowerSchool Premier, and any references to Licensed Product in these Supplemental Terms and Conditions apply to all such versions of the PowerSchool software.

**1. PRICING; ENROLLMENT INCREASES; AUDIT.** License pricing for Licensed Product is based on student enrollment at the Licensed Sites. If an increase in student enrollment in excess of five percent (5%) occurs at the Licensed Sites, then Licensee shall pay additional license fees to Pearson in accordance with Pearson's invoice. Such additional license fees shall be computed by multiplying the then-current per student license fee for Licensed Product by Licensee's additional enrollment. Licensee's subsequent support invoices will be based on the increased enrollment as well. Pearson reserves the right to audit Licensee's use of Licensed Product to determine current student enrollment for the above purposes. Such audit may be performed by remotely accessing Licensee's server to determine the student enrollment, or such other means as Pearson may determine, provided that Pearson shall perform any such audit so that it avoids unreasonable interference with Licensee's business operations. Pearson shall treat all Licensee information obtained in the course of the audit as Licensee confidential information as defined in Section 6.3 of the Support and Services Policies.

## 2. TERMS RELATING TO EMBEDDED APPLICATIONS

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

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

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

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

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

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

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

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

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

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

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

4. **HOSTING SERVICES.** If Licensee chooses to have Pearson host the Licensed Product on its behalf (which service is available only at an additional annual, renewable cost), Licensee acknowledges and agrees that the Licensed Product may be inaccessible or inoperable from time to time due to maintenance or to causes that are beyond the control of Pearson or are not reasonably foreseeable by Pearson, including, but not limited to: the interruption or failure of telecommunication or digital transmission links; hostile network attacks; network congestion; or other failures (collectively "Downtime"). Pearson shall use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the Licensed Product caused by Downtime, whether scheduled or not. Should Licensee decide to terminate hosting services, Licensee will retain its license to Licensed Product, subject to the terms of this Agreement. Pearson will provide Licensee with at least sixty (60) days notice if Pearson determines that it will no longer offer hosting services to Licensee (but in any event will continue providing hosting services for the balance of the current term for which Licensee has prepaid for such services). Notwithstanding the foregoing, Licensee acknowledges that Pearson may terminate hosting services immediately at any time if Licensee does not remain current in its payment of Pearson's applicable fees for such hosting services.

5. **HARDWARE.** If, in conjunction with Licensee's licensure of Licensed Product, Licensee is purchasing any hardware through Pearson, Licensee acknowledges that such hardware purchase is being facilitated by Pearson as an accommodation to Licensee only. The warranties on any hardware not manufactured by Pearson will be limited to those provided by the manufacturers of such hardware and/or the vendors through which such hardware is being supplied. Pearson will pass through any manufacturer's or other vendor's warranty to the extent permitted by the manufacturer or other vendor, as applicable. Licensee agrees to look

solely to the applicable manufacturer or other vendor, and not to Pearson, to fulfill any such warranties and any maintenance, repair, support, or other service obligations related to such hardware. Unless otherwise specifically agreed to in writing by Pearson, Pearson does not provide support for any of the hardware or third party software being purchased by Licensee through Pearson. Any requests for such support should be directed to the applicable hardware or software manufacturer. Licensee further agrees that any claims related to any such hardware, whether for breach of warranty or otherwise, must be made directly against the applicable manufacturer or other vendor, and not against Pearson, and that Pearson shall have no liability whatsoever in connection with such claims.

6. **LOCALLY DEPLOYED VERSIONS OF PEARSON INFORM.** The Pearson Inform software may include certain "open source" software from the Eclipse Foundation distributed under the Eclipse Public License. With respect to such open source software (the "Embedded Software"), the following terms apply:

(A) **PEARSON DISCLAIMS, ON ITS BEHALF AND ON BEHALF OF ALL CONTRIBUTORS TO THE EMBEDDED SOFTWARE, ALL WARRANTIES OR CONDITIONS, EXPRESS AND IMPLIED, INCLUDING WARRANTIES OR CONDITIONS OF TITLE AND NON-INFRINGEMENT, AND IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

(B) **NO CONTRIBUTOR TO THE EMBEDDED SOFTWARE SHALL BE LIABLE TO CUSTOMER FOR ANY DAMAGES HEREUNDER WHATSOEVER, INCLUDING DIRECT, INDIRECT, SPECIAL, INCIDENTAL AND CONSEQUENTIAL DAMAGES, SUCH AS LOST PROFITS.**

(C) Source code for the Embedded Software is available from Pearson, and may be obtained by contacting Pearson at the address for notices listed above or by contacting Pearson's telephone support center.

(D) Any provisions in this Agreement which differ from the preceding paragraphs (A), (B) or (C) are offered by Pearson alone and not by any other party.

## SUPPORT AND SERVICES POLICIES

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

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

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

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

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

1.5 **Support Services** shall mean those support services described in Section 3.1 that will be provided hereunder with respect to Licensed Product during Licensee's Support Term. Support Services may also be referred to as "Maintenance and Support" on an applicable Order Schedule.

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

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

2. **SUPPORT TERM; FEES.** Support Services for Licensed Product are available at an additional cost. For Support Services purchased concurrently with Licensee's license to Licensed Product, Licensee's initial Support Term will begin upon shipment of Licensed Product (or, in the case of Licensed Product made available for download electronically, upon Pearson's provision of the necessary licensing information to enable Licensee to download

Licensed Product) and terminate one (1) year thereafter, unless a different Support Term is specified on the applicable Order Schedule. The parties acknowledge and agree that initial Support Term for the Fifty-Four Thousand Two Hundred Nineteen (54,219) PowerSchool licenses set forth on Exhibit B to this Agreement shall commence on the effective date of this Agreement and expire on June 30, 2014, unless terminated earlier in accordance with the terms of these Policies or the Agreement. All renewal Support Terms shall be for a period of one (1) year. 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. If no notice of non-renewal is given by either party, then Pearson will invoice Licensee for the applicable renewal fees for a subsequent Support Term. If Licensee pays the applicable renewal fees, then Licensee's Support Term will renew for the applicable renewal term stated on Pearson's renewal invoice; otherwise, Licensee's Support Term will terminate at the end of Licensee's current paid-up Support Term. If Licensee's Support Term is so terminated due to non-payment, and then Pearson subsequently reinstates Licensee's access to support, such reinstated access shall remain subject to the terms of these Policies. For the initial Support Term, Licensee shall pay the charges specified in Pearson's initial invoice. For renewal Support Terms, Licensee shall pay Pearson's then-current annual Support Services fees. Pearson acknowledges that the fees for the initial Support Term for the Fifty-Four Thousand Two Hundred Nineteen (54,219) PowerSchool licenses set forth on Exhibit B hereto are included in the license fees payable by Licensee for such licenses. Pearson may supply new or modified Support and Services Policies or other terms and conditions to Licensee related to the provision of Support Services in a renewal term, in which event such new or modified Support and Services Policies or other terms and conditions will govern Pearson's provision of Support Services in such renewal term.

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

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

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

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

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

**5. SUPPORT FOR PRIOR VERSIONS.** As set forth in Section 4 of these Policies, Licensee must timely install all Fixes and New Versions to receive Support Services. In some cases, it may not be practical for certain customers to install a New Version immediately upon release. Therefore, Pearson may, in its discretion, continue to provide Telephone and E-mail Support for the prior version of Licensed Product for a period of time after release of a New Version. Licensee acknowledges that Fixes and other code maintenance will not be available for prior versions of Licensed Product (including SRC) after the release of a New Version.

## **6. PROFESSIONAL SERVICES**

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

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

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

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

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

**7. OWNERSHIP OF MATERIALS.** Pearson shall be the owner of all copyrights, patent rights and other intellectual property rights in any software code, documentation, reports or other deliverables (collectively, "Deliverables") created for or provided to Licensee pursuant to these Policies or any associated Statement of Work entered into by the parties. Provided that Licensee pays Pearson all fees and expenses associated with the development and provision of such Deliverables, Licensee shall have a paid-up, royalty-free license to use such Deliverables for Licensee's internal use only, solely for the purpose for which such Deliverables were provided. Nothing in this Agreement shall prevent Pearson from providing any Deliverables to Pearson's other customers or third parties. Notwithstanding the foregoing, Pearson acknowledges and agrees that any Licensee confidential information (as defined in Section 6.3) that is incorporated into any Deliverable remains subject to the provisions of Section 6.3.

## AGREEMENT

This Agreement is entered into by and between the school, school district or other educational institution named in the signature block below (hereinafter “Customer”) and Pearson Education, Inc. (hereinafter “Vendor”). This Agreement is effective as of the date of the last executing signature hereto.

Louisiana recently enacted new requirements that govern the collection, disclosure and use of personally identifiable information of students. The new laws include instituted new contract requirements between schools or districts and anyone granted access to such personally identifiable information. In recognition of these new requirements, and to confirm their commitment to the protection of student personally identifiable information (“Student Information”), Pearson Education, Inc. (“Vendor”) and the Customer agree that the following supplementary terms will apply to the agreements between the parties for any instructional and/or school administrative products and services with respect to which Vendor has access to or custody of Student Information (“Products and Services”).

Vendor will (a) maintain the security and confidentiality of Student Information through the use of access controls and employment of commercially reasonable security measures, and (b) allow access to Student Information only to those who are authorized to view or use this information. If Student Information is resident on Vendor’s network (or the network of a third party contractor of Vendor), such network will comply with commercially reasonable standards to maintain the integrity of Student Information and prevent unauthorized access in these systems. Vendor agrees that regular review of the methods used to protect this information and system audits are important to maintaining the security of these systems.

In order to provide access to Student Information to authorized parties, Vendor will use authentication protocols consistent with industry standards to establish the identity of the requester of the information. Vendor agrees that no individual or entity should be allowed unauthenticated access to Student Information at any time; provided, however, that Vendor is not responsible for the failure of the Customer employees, students, parents or other users to maintain the security of their log-in credentials.

Vendor shall implement appropriate measures to maintain the confidentiality and security of Student Information and protect it against any unauthorized access or disclosure while in Vendor’s custody. Vendor agrees that servers will be provisioned in such a manner that restricts access to the Customer’s Student Information to only those persons and entities authorized to have access to such Student Information and that no Student Information in Vendor’s custody at any time will be processed on or transferred to any unencrypted portable or laptop computing device or any unencrypted portable storage medium. All servers, storage, backups, and network paths utilized in the delivery of the Vendor’s Products and Services and containing Student Information shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by a Customer employee with signature authority.

Vendor agrees that any and all Student Information exchanged shall be used expressly and solely for the purposes enumerated in the original agreement (if any) between the parties at the time of licensure of the applicable Products and Services. Student Information shall not be distributed, repurposed or shared with the any non-Pre-K-12 business units of Vendor. Subject to Federal and State law, Vendor further agrees that no Student Information of any kind shall be revealed, transmitted, exchanged or otherwise passed to other vendors or interested parties, except as provided herein. Notwithstanding the foregoing, Vendor may disclose such information in the following circumstances: (a) pursuant to a subpoena or order issued by a court or governmental entity; (b) to protect user security or the security of other persons, consistent with applicable laws; (c) in connection with a sale, joint venture or other transfer of some or all of the assets of Vendor; (d) in order to enforce any terms of use, license agreement or other applicable terms and conditions governing the use of the applicable Vendor product; and (e) to third party vendors involved in the hosting, delivery, maintenance, administration, or support of the products and services supplied by Vendor, subject to the terms herein. The parties recognize that the use of de-identified data, which contains no personally identifiable information, is needed by the Vendor in order to effectively provide, evaluate, maintain and improve its Products and Services. The provisions of this document shall not be construed to restrict the Vendor from maintaining or using de-identified data (including de-identified aggregated data).

Vendor acknowledges that it has established and implemented a data breach response plan outlining Vendor's policies and procedures for addressing a potential breach. Vendor's response plan shall require prompt response for minimizing the risk of any further data loss and mitigating any negative consequences of the breach, including potential harm to affected individuals. For purposes of this Agreement, a data breach is defined as any instance in which there is an unauthorized release or access of Student Information. This definition applies regardless of whether Vendor stores and manages the data directly or through a contractor, such as a cloud service provider.

Vendor is permitted to disclose Student Information to its employees, authorized subcontractors, agents, consultants and auditors on a need to know basis only and as set forth in this Agreement, provided that all such subcontractors, agents, consultants and auditors shall be contractually required by Vendor to comply with the confidentiality obligations set forth in this Agreement. The confidentiality obligations set forth in this Agreement shall survive termination of any agreement with Vendor for so long as the information remains confidential and will inure to the benefit of the Customer.

Vendor and the Customer acknowledge that unauthorized disclosure or use of the Student Information may irreparably damage the Customer in such a way that adequate compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of the Student Information arising from Vendor's breach of its security obligations under this Agreement may give the Customer the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available

(including reasonable attorney fees). Vendor hereby waives the posting of a bond with respect to any action for injunctive relief.

The parties agree to comply with the Louisiana Database Breach Notification Law (La. R.S. 51:3071 *et seq.*) and all applicable laws to the extent that such laws require the notification of individuals in the event of unauthorized release of any of the Student Information. In the event of a breach of any of the Vendor's security obligations as set forth in this Agreement, which results in the unauthorized release of Student Information, Vendor agrees to (i) promptly notify the Customer, (ii) cooperate and assist the Customer in providing notification to all such individuals in accordance with applicable law (a "Notification Event"), and (iii) indemnify, hold harmless and defend the Customer and its employees from and against any claims, damages, or suits arising from the Notification Event.

Vendor and Customer agree, upon the reasonable request of either party, to review and discuss security and privacy procedures for the Student Information. In addition, Vendor agrees that reasonable privacy and security audits concerning the protection of the Student Information may be performed by the Customer under the direction of the School Superintendent of the Customer. The parties agree that they will each bear their own expenses associated with such audits and that they will consult and provide reasonable cooperation with each other to work out the particulars for such audits in advance. Such audits shall be conducted during normal working hours upon mutual agreement between Vendor and the Customer.

Prior to the termination of the use of a given Vendor Product or Service, if requested by the Customer, Vendor will review and consult with the Customer concerning the disposition of Student Information after termination. If the Customer desires to have continued access to certain data, Vendor will review the options available for the Customer to run reports or extract data from the applicable Vendor product or service to the extent that such capability exists within such Product or Service application; however, it is acknowledged that for some Products and Services, certain data may have no meaning except within the confines of the specific Product or Service application and/or may not be usable without access to the specific Product or Service application, and therefore the provision of such data to the Customer may be impossible or impractical. Vendor may charge the Customer at Vendor's then-current rates for any time spent assisting the Customer in extracting or exporting data if such assistance is not included in Vendor's standard charges already paid by the Customer for the applicable Product or Service. If requested by the Customer after consultation with Vendor, Vendor will delete or de-identify Student Information on its servers as soon as reasonably practicable for such Product or Service application after termination of its use by the Customer. In the absence of specific instructions from the Customer, Vendor may delete or de-identify Student Information within a given Product or Service application after termination of the Customer's use of such Product or Service in accordance with Vendor's standard business practices.

The supplementary terms set forth herein amend any prior agreement or contract relating to the Student Information and the Products and Services referenced above between the Customer and Vendor and are effective as of the date of the last executing signature hereto.

PEARSON EDUCATION, INC.

Douglas Kubach

Authorized Representative Signature

Douglas Kubach

Authorized Representative Name (Print)

President, School

Title

1/15/2015

Date

CHARTER SCHOOLS USA

Jonathan K. Hage

Authorized Representative Signature

Jonathan K. Hage

Authorized Representative Name (Print)

President & CEO

Title

01/27/2015

Date