

Master Software and Services Contract

**School Board of Orange County
and
[SIS Vendor]**

Month XX, 2013

SAMPLE - FOR REVIEW AND DISCUSSION ONLY

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Master Software and Services Contract

This Master Software and Services Contract is entered into, on Month xx, 2013, by and between the School Board of Orange County, governing body of the school district of Orange County, FL ("the District"), and _____ ("[Student Information System Vendor or SIS Vendor]"), a [name of state] corporation having its principal place of business at Address line 1, Address line 2, City, State ZIP ("SIS Vendor"), with reference to the following facts:

- A. The District is responsible for provision of all public educational services required to be provided by state and local law to children through 12th grade and certain adult education services for students in the County of Orange, certain other incorporated municipalities within the County of Orange, and certain unincorporated areas of the County of Orange. It is governed by and acts by and through the authority of an elected Board of Education.
- B. [SIS Vendor] is engaged generally in the business of supplying technology and technology-related services to _____. Among other things, [SIS Vendor] is engaged in the business of developing, licensing, installing and maintaining, computer software and or hardware for use in the management and operation of schools and educational service programs, with particular but not exclusive emphasis on Pre-K-12 education.
- C. Florida and federal law requires the District to maintain systems and procedures for collection, storage, retrieval, and processing of a wide variety of information relating to its students and programs.
- D. [SIS Vendor] has heretofore acquired all rights to its SIS software products and has continued the development of the same, which programs provide for all or the majority of the District's requirements for its Student Information System ("SIS"). In addition, [SIS Vendor] has the technical and personnel capacity to develop, test, integrate, and deploy additional features to complete all of the District's requirements for SIS and systems described in Appendix C of the RFP, and to convert and maintain its programs, as enhanced in adding District functionality and installing an acceptable system to the District.
- E. The District has heretofore promulgated a Request for Proposal to which several vendors responded including [SIS Vendor], for the provision of software and services required to implement a SIS. After a selection process and subsequent School Board approval at the Month xx, 2013 regular meeting, the District determined to conduct negotiations with [SIS Vendor] with respect to the terms and conditions under which [SIS Vendor] would provide the products and services listed in the [SIS Vendor] proposal. The parties have now reached an agreement and understanding as to the specific products and services to be provided by [SIS Vendor] to the District and the terms and conditions on which such products and services will be provided.

NOW, THEREFORE, in consideration of the mutual promises of the parties and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Definitions

- 1.1 **“Acceptance Test”** shall mean the conduct of the series of tests and protocols specified in the Project Documents for a particular Deliverable, the successful completion of which signify the successful delivery of such Deliverable. In the case of a documentary Deliverable, the Acceptance Test for such Deliverable shall mean the review by the District of such documentary Deliverable and certification that such Deliverable complies in all material respects with the requirements for such documentary Deliverable.
- 1.2 **“Additional School”** shall mean any separately functioning school unit (whether an additional physical plant or a separately identified school unit operating within the same physical plant as another school unit) founded or created within the District after the date of execution of this Contract.
- 1.3 **“Contract”** shall mean the text of this memorandum, together with all Exhibits and Schedules hereto and any amendments made in accordance with the terms hereof.
- 1.4 **“[SIS Vendor] Supported Software”** shall mean the [SIS Vendor] SIS Software as the same is commercially available as of the Commencement Date and owned or licensed by [SIS Vendor], which computer programs will be licensed to the District as part of the SIS, as such programs shall be upgraded and enhanced by [SIS Vendor] from time to time hereafter.
- 1.5 **“Board of Education”** shall mean the Board of Education of the District, as the same is constituted from time to time.
- 1.6 **“Business Day”** shall mean a day in which general business operations of the District are conducted, whether or not schools are open, but shall not include any day in which the general business offices of the District are closed. All other references to “days” refer to calendar days.
- 1.7 **“Change Order”** shall mean a modification or clarification of the Project Documents that is duly adopted by the Parties in accordance with the Scope Management Process as set forth in Appendix F.
- 1.8 **“Change Request”** shall mean a request by a Party for a Change Order made in accordance with the Scope Management Process as set forth in Appendix F.
- 1.9 **“Confidential Information”** shall mean and include (1) student records and reports that are confidential and exempt from disclosure under Florida Statutes or Board Policy (2) District employee personnel files that are confidential and exempt from disclosure under FL Statutes, and (3) any other information, record, or document that is confidential or subject to privacy protection as otherwise provided by law, including but not limited to District’s and SIS Vendor’s Proprietary Information.
- 1.10 **“Commencement Date”** shall mean contract signing date.

- 1.11 **“Critical Deliverable”** shall mean a Deliverable, the acceptance of which is necessary for the release of any significant component of Software into Production, as more specifically identified in the Project Documents.
- 1.12 **“Defect”** shall mean a characteristic or condition of the Licensed Software or any customizations which results in the failure of such software to operate in accordance with the Specifications and/or which results in the input, storage, computation, transfer or display of erroneous information. Defects shall be characterized by their severity as set forth in the Software Maintenance Services Agreement.
- 1.13 **“Deliverable”** shall mean any unit of work required to be delivered by [SIS Vendor] to the District as a Deliverable in the Statement of Work.
- 1.14 **“Deliverable Date”** shall be the deadline date for the delivery or completion of a Deliverable under this Contract.
- 1.15 **“Delivery”** of a Deliverable shall be deemed to have taken place (or the Deliverable shall have been deemed “Delivered”) as follows:
- A. In the case of items to be delivered in tangible form, upon the transfer of possession of the item to the control of the respective District personnel designated to receive such possession at the designated time and place, or if no place is designated at such person’s office.
 - B. In the case of items to be delivered by electronic transmission, upon the successful completion of such transmission to the designated District computer and District verification of the accuracy of such transmission and working properly as required under this Contract upon completion of an acceptance test.
 - C. In the case of items for which payment is conditioned upon the completion of an acceptance test, upon the certification by the designated agent or employee of the District that such acceptance test has been completed to the reasonable satisfaction of such agent.
 - D. In all other cases, upon the completion of the Services encompassed by such Deliverable in all material respects as set forth in the applicable schedule to this Contract.
- 1.16 **“Dispute Statement”** shall mean a statement submitted by a Party under Section 9.2 below.
- 1.17 **“District”** shall mean the School Board of Orange County, each and every subdivision or unit thereof constituted now and in the future including schools and or territories within Orange County, FL and charter schools in Orange County, and each and every entity in the future to the responsibility of the School Board of Orange County to provide educational services to students at any level of education.
- 1.18 **“Documentation”** shall mean all operator guides, operating procedures (including any special yearend procedures), user manuals, training aids, installation guides, functional

and detailed specifications and other technical documents with respect to a System Deliverable or any portion or component thereof.

- 1.19 **“End User”** shall mean any Person who supplies, analyzes, and/or retrieves student, school, or related data by directly or indirectly invoking a computer program.
- 1.20 **“Enhanced Software”** shall mean those any and all future Releases of SIS Software that will be developed by [SIS Vendor] under this Contract, but which will be made available by [SIS Vendor] to other Persons in the future. Specifically, Enhanced Software shall include any Release of SIS first made available to any customer or licensee of [SIS Vendor] from and after Month xx, 2013.
- 1.21 **“Force Majeure Event”** shall mean fire, flood, earthquake, elements of nature or acts of God; acts of war, terrorism, riots, civil disorders, rebellions or revolutions; strikes, lockouts, or labor difficulties, equipment failures, computer viruses, malicious acts of third parties, interruption of telecommunications service; or any other similar cause beyond the reasonable control of the respective Party, that could not have been prevented by reasonable precautions of the kind ordinarily taken by well-managed firms engaged in software development and maintenance (such as, by way of illustration and not limitation, regular software backups and regular use of commercial anti-virus software, but not including duplicate or parallel computer systems or on or off-site backup or disaster recovery equipment).
- 1.22 **“Dispute Resolution Process”** shall mean the procedures for identifying and resolving issues related to the determination or interpretation of Project Documents, as set forth in Section 9 of this Contract.
- 1.23 **“Licensed Software”** shall mean any and all computer software required for the operation of the SIS, including without limitation software owned or licensed by [SIS Vendor] or Third Party Software, but excepting Third Party Software specifically identified in the Statement of Work as being the responsibility of the District.
- 1.24 **“License Fees”** shall mean any fees paid or to be paid by the District to [SIS Vendor] in respect of the right to copy, install, distribute use, or make derivative works from Licensed Software under this Contract.
- 1.25 **“Maintenance Materials”** shall mean the Object Code, Source Code and Documentation for error corrections, minor enhancements, updates, and Releases of the Licensed Software supplied or to be supplied by [SIS Vendor] pursuant to its responsibilities under the warranty or maintenance service provisions of this Contract.
- 1.26 **“Software Maintenance Services Agreement”** shall mean the description of maintenance services as set forth in Appendix D.
- 1.27 **“OCPS Features”** shall mean those certain computer programs and program functions developed for delivery to and installation and use by the District.
- 1.28 **“OCPS Resource Plan”** shall mean the schedule of personnel and other resources that the District has committed to provide in support of its obligations during the Project.

- 1.29 **“OCPS Supplied Software”** shall mean and include any computer programs specified in the Statement of Work to be supplied by the District, either for use during development or during production.
- 1.30 **“Object Code”** shall mean the form of a computer program that may be loaded for execution without intervening process other than the use of a program loader, linkage editor, or similar computer program.
- 1.31 **“Party”** shall mean the District and/or SIS Vendor, as the context requires.
- 1.32 **“Person”** shall mean any natural person or entity recognized by law.
- 1.33 **“Platform Software”** shall mean any computer program required for the operation, installation, debugging, or maintenance of another program, including without limitation, operating systems, database management systems, compilers, interpreters, runtime or execution environments, development environments and the like.
- 1.34 **“Pricing Schedule”** shall mean the schedule of prices and payments as set forth in Appendix C.
- 1.35 **“Production”** shall mean the use of the SIS in the ordinary course of the operations of the District.
- 1.36 **“Product Plan”** shall mean the complete set of requirements and specifications for the SIS as finalized in accordance with this Contract.
- 1.37 **“Project”** shall mean and include all work to be performed under the terms of this Contract, including without limitation all Services and all intangible and tangible Deliverables.
- 1.38 **“Project Documents”** shall mean the Statement of Work, the Pricing Schedule, the Specifications, together with any supporting charts, schedules, or documents specified in those documents or any Change Order approved by the parties.
- 1.39 **“Project Manager”** shall mean the individual designated by the respective Party pursuant to Section 9.1.
- 1.40 **“Proposal”** shall mean SIS Vendor’s response to the RFP, together with all written clarifications exchanged by the Parties on or before the date hereof, including all text, graphics, summaries, and documents referred to in such Proposal.
- 1.41 **“Proprietary Information”** shall mean all information relating to finances as provided in FL Statute 119.071(c) and data, programs, or support information which is a trade secret as defined in FL Statute 812.081, as provided in Section 119.071(f), FL Statutes. Proprietary Information shall not include information which the (provider) of the information can demonstrate:
- A. Is public knowledge or which becomes public knowledge through no breach of this Contract; or
 - B. Is required to be disclosed to the public by reason of a statute or by any public or regulatory authority.

Proprietary Information may be conveyed by written, graphic, electronic, oral, or physical financial condition, models, source code, object code, drawings, formulas, processes, ideas, inventions as provided above.

All Proprietary Information shall be marked as proprietary with an appropriate legend, marking, stamp, or other obvious written identification by the disclosing party prior to disclosure. In the event either Party discloses its Proprietary Information to the other Party other than in the manner provided for above, the disclosing party shall promptly inform the receiving party that such information is deemed proprietary by reference to Florida or Federal statute, and shall provide the receiving party with a brief written description of such information within thirty (30) days of becoming aware of such disclosure, identifying therein the manner, place, and date of such disclosure and the names of the receiving party's representative to whom such disclosure was made. Notwithstanding the foregoing, all information, the privacy, or disclosure of which is protected by applicable law or regulation shall be treated as proprietary information of the person holding the interests so protected, whether or not such information is marked or otherwise identified as confidential or proprietary.

- 1.42 **“Release”** when referring to computer software, shall mean a modification or addition to existing computer software that requires substantial reconfiguration and/or re-installation of computer software in Production. Releases shall include any and all new releases of existing software products and/or replacement products made available by [SIS Vendor] that provide substantially all of the operational functions of the Licensed Software with paid Maintenance Agreement.
- 1.43 **“Resource”** shall mean the time or effort of a Party or its employees or contractors or a quantity of components, supplies, software, software rights, or material to be supplied by or on behalf of a Party under this Contract.
- 1.44 **“RFP”** shall mean the Request for Proposal promulgated by the District in June ____, 2013 to which [SIS Vendor] responded.
- 1.45 **“SIS”** shall mean the “Student Information System”, the requirements for which are set forth in the RFP, Statement of Work, and Specifications.
- 1.46 **“SIS Software”** shall mean the suite of software (or individual components thereof) offered by [SIS Vendor], among other things, for student and school information management, whether offered under the current trademark or another mark.
- 1.47 **“Scope Management Process”** shall mean the provisions relating to processes for the modification or amendment of the Statement of Work and/or the pricing relating thereto, as the same are set forth in Appendix F attached hereto.
- 1.48 **“Services”** shall mean, collectively, as set forth in Appendix E including, but not limited to, accurate and complete data conversion from the existing system, report development, and generation of forms and invoices.
- 1.49 **“Source Code”** shall mean a human-readable form of computer programming code that can be modified, compiled, and executed, and all related Source Code Documentation.
- 1.50 **“Specifications”** shall mean the detailed set of specifications for the SIS as set in the specifications document as set forth in the RFP # 1306XXX Student Information System.
- 1.51 **“Statement of Work”** shall mean the statement of work as set forth in Appendix E., as the same shall be modified or amended in accordance with the terms of this Contract and/or the Scope Management Process.
- 1.52 **“Test Environment”** shall mean a configuration of hardware and Platform Software owned by the District and provided on District premises for the purpose of configuring and testing Deliverables and managing release for use in Production.
- 1.53 **“Third Party Software”** shall mean any computer program supplied by a Person other than [SIS Vendor], which is required for the operation of the SIS, including without limitation, any Platform Software and any applications software that will be dependent on the [SIS Vendor] Supported Software, the Enhanced Software, or the OCPS Features for its operation.

- 1.54 **“Work Order”** shall mean a request for small or routine services issued by the District pursuant to procedures set forth for Work Orders in the Scope Management Process.

2. **Products and Services to be provided by [SIS Vendor]**

- 2.1 **General Scope.** [SIS Vendor] shall provide to the District, on the terms and conditions set forth in this Contract, all products and services required for the development, installation, and maintenance of the SIS as defined in the RFP # 1306XXX Student Information System, other than the provision of hardware and Third Party Software expressly excluded under the terms of this Contract and the responsibilities expressly reserved to the District as set forth in the Statement of Work. Without limiting the generality of the foregoing, [SIS Vendor] shall provide all those Services and Deliverables as are set forth in the Statement of Work.
- 2.2 **Option to Add Schools and Students.** The Contract calls for the number of schools and students defined in OCPS as of July 30, 2013. During the term of this Contract, the District may construct, expand, or take responsibility for Additional Schools and Students and [SIS Vendor] will provide the appropriate services at no additional cost. The District may elect separately for each Additional School to receive Training Services for such Additional Schools. The District’s election to receive Services for additional schools shall not be treated as a Change Request (or Change Order or Work Order) and not subject to the Scope Management Process.
- 2.3 **Order of Precedence.** Any actual or asserted ambiguity in this Contract shall be resolved by reference first to the OCPS SIS RFP # 1306XXX, second, [SIS Vendor]’s Proposal Response to RFP # 1306XXX. If there are any inconsistencies between the Contract and the above reference documents, the Contract should control.
- 2.4 **Software Maintenance Services.** During the term of this Contract, [SIS Vendor] shall provide all services required by the District to maintain and upgrade the SIS Software as set forth in the [SIS Vendor] Software Maintenance Agreement. The Maintenance Services Fee may be increased by [SIS Vendor] to [SIS Vendor]’s prevailing level for similar maintenance services to similar customers, but in no event increased each year by more than 3.0% over the annual Maintenance Services Fee in effect for the preceding one year period of maintenance services. Nothing herein shall be deemed to obligate the District to purchase maintenance services beyond the term of this Contract.
- 2.5 **Adoption of Updates, etc.** In creating and delivering the Maintenance Materials, [SIS Vendor] shall use its best efforts to avoid the need of the District to upgrade any Platform Software.
- 2.6 **Delivery of Source Code and Documentation.** In connection with the delivery of each component of Licensed Software for which [SIS Vendor] has granted or is obligated to grant rights to the District with respect to Source Code, [SIS Vendor] shall at the same time deliver Source Code in standard machine-readable formats sufficient to generate the Object Code of the Licensed Software or component thereof being delivered, together

with all Documentation of such Source Code. Source code will be distributed at no cost via downloading from the secure [SIS Vendor] website. For all other forms of distribution, there will be a fee charge to the District.

- 2.7 **Electronic Delivery.** All Deliverables of Licensed Software and Documentation required or permitted under the terms of this Contract shall be delivered from a point of transmission outside of facilities owned or operated by the District by electronic transmission via common telecommunications carrier or the public Internet to and for storage within computing hardware and electronic storage devices owned or under the control of the District. No tangible media Object Code, Source Code, or Documentation shall be delivered to the possession and/or ownership of the District.
- 2.8 **Standard of Care.** [SIS Vendor] shall perform all Services in accordance with best practices in the development and maintenance of computer software.
- 2.9 **Acceptance of Deliverables; No Waiver.** Delivery of a Deliverable shall not be deemed complete unless and until the Deliverable shall have successfully completed the Acceptance Tests specified for such Deliverable. In the event that a Deliverable shall not satisfy the requirements of the applicable Acceptance Test, [SIS Vendor] shall promptly correct and/or revise the Deliverable such that the Deliverable shall satisfy the requirements of the specified Acceptance Test and shall continue to correct and/or revise the Deliverable until such time as the Acceptance Test for such Deliverable shall have been completed successfully. No failure to object or inaction on the part of the District shall be deemed an acceptance of any Deliverable under this Contract, nor to delay or waive the due date for any Critical Deliverable, except that the District's use of the Deliverable in Production shall be deemed its acceptance. In the event the District fails to meet its obligations for timely review of Deliverables, [SIS Vendor] may notify the District in writing and, if ten business days pass without District acceptance or rejection, [SIS Vendor] may elect to invoke the Senior Executive Resolution. Upon the invocation by [SIS Vendor] of the Senior Executive Resolution, the due date for any subsequent Deliverable that is dependent on the Deliverable for which District review is not yet complete shall be extended by the amount of time by which such delay by the District reasonably delays [SIS Vendor]'s ability to deliver such subsequent Deliverable. In the event that [SIS Vendor] cannot reasonably reallocate personnel on a temporary basis who are idled by such a delay by the District, [SIS Vendor] shall be entitled to reimbursement for its reasonable costs of such personnel during the period they are idle.
- 2.10 **Third Party Software Procurement.** The District may elect to purchase licenses to one or more items of Third Party Software products itemized in the Pricing Schedule, by issuing a purchase order for the same to [SIS Vendor]. [SIS Vendor] shall thereafter arrange for the delivery of the same to the District, by electronic means to the maximum extent made possible by the licensor of such Third Party Software. In such event, the District shall pay the price for such items in accordance with the price, formula or method set forth in the Pricing Schedule. Provided that license rights for such Third Party Software shall run directly to the District from its respective licensor, the District's rights with respect to such Third Party Software shall be solely those rights (including rights to install, use and make

derivative works) conveyed under the respective licensor's license agreements. In the event that [SIS Vendor] acts as a sub-licensor to the District of such Third Party Software, [SIS Vendor] shall assign to the District or otherwise assure to the District that the District has all rights to such software as it would have under the licensor's prevailing direct end user license agreements. [SIS Vendor] shall be responsible for providing the District with customary maintenance and update services for such licensed software.

- 2.11 No Obligation of the District.** Nothing herein, however, shall require the District to purchase any Third Party Software other than Licensed Software from [SIS Vendor] and the District shall be free in its sole discretion to select any vendor it so chooses for such purchases.
- 2.12 Documentation Standards.** In connection with the delivery to the District of each installment, component or version of the Licensed Software or Maintenance Materials, [SIS Vendor] shall provide all Documentation reasonably required for the configuration, installation, testing, maintenance, and operation of such installment, component, or version, as required by the Statement of Work. Technical Documentation shall be in most cases in the form of electronic tutorials and written in a manner sufficient to enable a software engineer or programmer ordinarily skilled in the art and in the use of the Platform Software to maintain such software with commercially reasonable effort, to make reasonable modifications and enhancements for maintenance of existing functionality, and to aid in isolating and correcting design or functional errors in the Licensed Software. Documentation of user instructions shall be in accordance with best industry practices for similar software. Acceptance testing shall include review of associated Documentation for compliance with these standards.

3. Intellectual Property Rights and Confidential Information

- 3.1 Object Code License.** [SIS Vendor] grants to the District a perpetual, non-exclusive, non-transferable, non-refundable royalty-free right and license to install and use the Object Code of all Licensed Software on any, some or all computing devices used by or for the benefit of the District in connection with the operation of the District, effective on delivery of each component or installment thereof, subject only to payment therefore as provided in this Contract and the Pricing Schedule. The right granted by this paragraph shall extend to the right of contractors to the District, other government agencies, students, parents, health care providers, private day care providers, and other End Users who have a reasonable need to avail themselves of the services provided by the SIS for the sole purpose of conducting District business, to use the Licensed Software by remote or local access, and to install and use any applets or plug-ins that are part of the Licensed Software and are provided for the purpose of using or facilitating the use of the Licensed Software or any portion thereof on a remote basis. The District shall not sublicense any rights granted to the District under this Contract.
- 3.2 Source Code License.** Effective upon each delivery to the District of Licensed Software to the District pursuant to this Contract and subject to payment in full by the District of the

License Fees set forth in the Pricing Schedule, [SIS Vendor] grants to the District a perpetual, non-exclusive, non-transferable, non-refundable royalty-free right and license to copy, make derivative works, install and use such Licensed Software in Source Code form for the purpose of creating, modifying, testing, configuring, operating and maintaining the Licensed Software in Object Code form as permitted by Section 3.1 above. furthermore independent contractors are bound by obligations of confidentiality at least as strict as the obligations of confidentiality of the District to [SIS Vendor] with respect to the particular materials being delivered or proposed to be delivered to such contractor and that no such independent contractor shall receive any rights to use such Licensed Software except for the sole benefit of the District.

- 3.3 Documentation License.** Upon delivery to the District of Documentation other than documentation of Third Party Software, [SIS Vendor] grants to the District a non-exclusive, perpetual, royalty-free right and license to copy, make derivative works, distribute and display such Documentation to authorized users of the SIS. In the case of Documentation containing Proprietary Information of [SIS Vendor], the distribution of copies of such Documentation shall be limited to Persons with a reasonable need to know such Proprietary Information in connection with their activities for the District who are bound by obligations of confidentiality at least as strict as the obligations of confidentiality of the District to [SIS Vendor] with respect to the particular materials being delivered or proposed to be delivered.
- 3.4 Software Acquired from Third Parties.** [SIS Vendor] does not hold any third party source code.
- 3.5 Protection of Proprietary Information.** The District agrees that it will not disclose [SIS Vendor]'s Proprietary Information to any Person, except to (a) the District's employees with a need to know who are bound by agreements or employment policies restricting the right of such employees to use or disclose such Proprietary Information for any purpose other than the Project, and (b) authorized contractors, in accordance with Section 3.2 of this Contract. The District agrees to preserve the confidentiality of [SIS Vendor]'s Proprietary Information with the same level of care it uses with respect to its own Confidential Information, but in no event less than a reasonable level of care. The foregoing obligation does not apply to Proprietary Information which is (a) already known to the District at the time of its receipt from [SIS Vendor], (b) is disclosed to the District by a third party who had the right to make such disclosure without any confidentiality restrictions, (c) is, or through no fault of the District, has become generally available to the public, or (d) is independently developed by the District without access to, or use of, [SIS Vendor]'s Proprietary Information. Notwithstanding the foregoing, the District may disclose Proprietary Information of [SIS Vendor] to the extent that such disclosure is (i) necessary for the District to enforce its rights under this Contract, or (ii) required by law or by the order of a court or similar judicial or administrative body. In the event the District receives a third party subpoena, notice to produce or other judicial or administrative request for disclosure, the District shall notify [SIS Vendor] as soon as is reasonably practicable after the receipt of such request in order to permit [SIS Vendor] to

take such action as [SIS Vendor] sees fit to obtain protective orders or other relief from the compulsion of process against the District to compel such disclosure.

- 3.6 Protection of Confidential Information.** [SIS Vendor] agrees that it will not disclose the District's Confidential Information to any Person, except to [SIS Vendor]'s employees with a need to know who are bound by agreements or employment policies restricting the right of such employees to use or disclose such Confidential Information for any purpose other than the Project. [SIS Vendor] agrees to preserve the confidentiality of the District's Confidential Information with the same level of care it uses with respect to its own Proprietary Information, but in no event less than a reasonable level of care. [SIS Vendor] shall implement operating practices and procedures that will (i) maintain the confidentiality and assure the physical security of all student records accessed and used in the course of providing professional services under this Contract; (ii) prohibit the release or disclosure of such records to anyone except authorized -District personnel, (iii) prevent any unauthorized access to such records, and (iv) preclude the unauthorized use, release, or disclosure of the information contained in such records. The foregoing obligation does not apply to Confidential Information which is required by law or by the order of a court or similar judicial or administrative body to be disclosed. In the event [SIS Vendor] receives a third party subpoena, notice to produce or other judicial or administrative request for disclosure, [SIS Vendor] shall notify the District as soon as is reasonably practicable after the receipt of such request in order to permit the District to take such action as the District sees fit to obtain protective orders or other relief from the compulsion of process against [SIS Vendor] to compel such disclosure. The parties acknowledge that they are subject to the provisions of Chapter 119, FL Statutes relating to the release of public records. District shall notify [SIS Vendor] as soon as is reasonably practicable after the receipt of a public records request that may include [SIS Vendor]'s Proprietary Information in order to permit [SIS Vendor] to take such actions permitted under the law to protect its Proprietary Information.
- 3.7 Rights in Data.** The District is and will remain the owner of all data provided to [SIS Vendor] by the District pursuant to this Contract. [SIS Vendor] will not use such data for any purpose other than providing Services and support to the District and its End Users under this Contract, nor will any part of such data be sold, assigned, leased or otherwise disclosed to third parties (other than authorized subcontractors for purposes of performance of the Services) or commercially exploited by or on behalf of [SIS Vendor]. [SIS Vendor] will not possess or assert any lien or other right against such data. The District agrees not to provide or otherwise make the Licensed Software available in any form to any person, except in strict conformity with the licenses expressly granted under this Contract.
- 3.8 [SIS Vendor] Intellectual Property; Residual Rights.** Except as otherwise provided in this Contract, [SIS Vendor] retains all right, title, and interest in and to any inventions (patentable or otherwise), discoveries, improvements or copyrightable works, and Licensed Software (whether the [SIS Vendor] Supported Software, Enhanced Software or OCPS Features) that [SIS Vendor] creates or licenses to the District in connection with its performance of Services hereunder (collectively "[SIS Vendor] Intellectual Property"). The

District shall execute such truthful acknowledgments, affidavits or other documentation reasonably required by [SIS Vendor], during and for a reasonable period after the Term, to assist in proving [SIS Vendor] creation and/or ownership of [SIS Vendor] Intellectual Property. Subject to any restrictions expressed elsewhere in this Contract, each Party and its respective subcontractors shall have the right to re-use any of their know-how, ideas, concepts, methods, processes, expressions, skill, experience or similar information, however characterized, whether in tangible or intangible form, and whether used by them during the Project or not, at any time and without limitation, provided that such use shall not infringe the patents, copyrights, or trade secrets of the other Party. Each Party further retains ownership of any and all of its respective intellectual property rights that existed prior to the effective date of this Contract including, without limitation, all methods, concepts, designs, reports, programs, and templates, and any Third Party Software. Nothing in this Contract will prevent [SIS Vendor] or its authorized subcontractors from marketing, developing, using, and performing services similar to or competitive with the Services and products furnished under this Contract or will prevent the District from engaging other contractors to provide services of any sort to the District (provided that the intellectual property rights of [SIS Vendor] are not thereby infringed).

4. Warranties

- 4.1 **[SIS Vendor] Warranties.** [SIS Vendor] represents, warrants, and covenants to District as follows:
- 4.1.1 **General Warranties.** [SIS Vendor] hereby warrants that all items supplied to the District, including all hardware, software, and/or any Deliverable, meet the standards of merchantability and is fit for the particular purpose for which it was supplied.
- 4.1.2 **Software Limitations.** At the time of installation, no software comprising a Deliverable or licensed hereunder shall contain any virus, "Trojan horse," timer, clock, counter, or other limiting design, instruction, or routine that would erase data or programming or cause the software or any hardware or computer system to become inoperable or otherwise incapable of being used in the full manner for which it was designed and created (a "Software Limitation"). [SIS Vendor] shall not include any such Software Limitation in any Maintenance Materials provided to the District. [SIS Vendor] also shall use all reasonable practices and security procedures necessary to avoid insertion of Software Limitations prior to installation of any Deliverable. Any Deliverable shall operate compatibly with major commercially available virus protection programs that District may use. Further, no Software Limitation shall be triggered by: (i) any Deliverable being used or copied a certain number of times, or after the lapse of a certain period of time; (ii) any Deliverable being installed on or moved to a central processing unit or system that has a serial number, model number, or other identification different from the central processing unit or system on which such Deliverable or licensed software originally was installed; or (iii) the occurrence or lapse of any similar triggering factor or event.

- 4.1.3 Accuracy of Documentation.** All Documentation shall be complete and describe the applicable Deliverable and components thereof accurately so as to enable a staff consisting of a reasonable number of information systems professionals with ordinary skills and experience to utilize the Deliverable for the purposes for which it is being acquired by or intended for use by District. All Source Code Documentation shall describe the Source Code and all components thereof accurately so as to enable computer programmers of ordinary skill and experience who are knowledgeable of the subject matter to utilize the source code to understand, support, modify, and otherwise use the software to which it relates.
- 4.1.4 Non-infringement.** No Deliverable shall violate or infringe upon the rights of any third party, including, without limitation, any patent rights, copyright rights, trademark rights, trade secret rights, or other proprietary rights of any kind. Lawful use by the District of the SIS Software in accordance with the Specifications does not require the District to secure rights to use Platform Software or other Third Party Software (whether acquired through [SIS Vendor] or through or from others) except for those specific items identified in the Statement of Work in the quantities and/or for the categories of users set forth in the Statement of Work.
- 4.1.5 Authority.** [SIS Vendor] has full power and authority to enter into this Contract and to perform hereunder and there under, and such entry and performance do not and shall make diligent effort including investigation and review to ensure any rights of any third party are not violated.
- 4.1.6 No Claims.** There is no action, suit, proceeding, or material claim or investigation pending or threatened against SIS Vendor in any court, or by or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, or before any arbitrator of any kind, that, if adversely determined, might adversely affect any Deliverable or restrict [SIS Vendor]'s ability to complete the transactions contemplated by this Contract, or restrict District's right to use any Deliverable. [SIS Vendor] knows of no basis for any such action, suit, claim, investigation, or proceeding.
- 4.1.7 Third Party Warranties.** [SIS Vendor] has the right to assign and transfer to District all of [SIS Vendor]'s rights under any and all warranties received from the supplier (other than [SIS Vendor]) of any component of any Deliverable, and has the right to assign or transfer to District such supplier's warranties.
- 4.1.8 Title.** [SIS Vendor] has full title and right to license and deliver to District, all Deliverables, including without limitation software owned by [SIS Vendor] and Third Party Software (other than OCPS Supplied Software).
- 4.1.9 Disclaimer.** The foregoing warranties, together with any other warranties set forth in this Contract, are in lieu of all other warranties, express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose.
- 4.2 Assignment of Warranties.** If under this Contract, [SIS Vendor] procures goods or services for the District; [SIS Vendor] shall assign or otherwise transfer to District, or

afford the District the benefits of, any manufacturer, licensor, or other provider's warranty for such goods and/or services.

5. Obligations of the District

- 5.1 **Development Facilities.** During the term of this Contract, the District shall provide [SIS Vendor]'s personnel with limited office space and certain other facilities as specifically described in the Statement of Work, subject to compliance by [SIS Vendor], its employees and permitted subcontractors with all applicable rules of occupancy of such facilities imposed by the lessor to the District of such facilities and all applicable rules, policies and procedures of the District as applied to District employees and other contractors using such facilities. In no event may such facilities be used for any purpose other than performing Services pursuant to this Contract. Except as expressly provided in the Statement of Work and/or the Pricing Schedule, [SIS Vendor] shall be solely responsible for all other costs associated with its personnel, contractors, software development, computing equipment and other facilities as a specified in the response to the RFP.
- 5.2 **Staffing.** The District shall provide those certain personnel identified in the OCPS Resource Plan to perform the functions therein stated, subject to reasonable coordination with their respective work schedules and responsibilities.
- 5.3 **Testing Platforms.** The SIS Vendor shall be responsible for supplying and operating at its expense, the Test Environment, including all hardware and Platform Software (other than software to be supplied by [SIS Vendor]) required for the conduct of preliminary and final acceptance testing as described in the Statement of Work.
- 5.4 **SIS Operation.** The District shall be responsible for the operation of the SIS in Production, including without limitation, the following:
- A. Installing the Licensed Software and Platform Software in the computing and telecommunications environment required for Production (with the assistance of [SIS Vendor] during the initial release to Production, as well as any update or Upgrade involving a material change in hardware Platform Software that is required to be installed by the District under this Contract).
 - B. Implementing proper procedures to assure security and accuracy of input and output, and restart and recovery in the event of a malfunction.
 - C. Establishing proper backup procedures.
 - D. Using reasonable efforts in the event of system malfunction to establish temporary operating procedures or work-arounds.
- 5.5 **Installation of Releases.** The District shall determine in its sole discretion whether and when to install updates or Releases of the Licensed Software provided such action or inaction will have no impact on the Project schedule. [SIS Vendor] shall not be responsible for activities required for the actual installation of such updates or Releases unless so provided in the Statement of Work. The District shall be responsible for installing any Release from [SIS Vendor] that is reasonably required because of the

withdrawal of support by a third party for any Platform Software, state requirements or when such update or Release is required to support [SIS Vendor]'s commitment to the Project schedule.

- 5.6 **Proprietary Notices.** District agrees that any copies of the Licensed Software and Documentation that it makes pursuant to this Contract shall bear all copyright, trademark, and other proprietary notices included therein by [SIS Vendor] or the respective Third Party licensor. District may add its own copyright or other proprietary notice to any copy of the Licensed Software or Documentation that contains modifications made by District in accordance with the terms of this Contract.
- 5.7 **Indemnity.** Except to the extent that [SIS Vendor] has an obligation to indemnify the District under this Contract, and subject to the monetary limitation set forth in Section 768.28, FL Statutes, the District hereby indemnifies and shall hold harmless [SIS Vendor], its Board of Directors, officers, employees and agents from and against any claim(s), action(s), costs, fees, expenses, losses and liabilities based on or arising out of any act or omission of the District, its School Board employees or agents or those for whom the District is, at law, responsible. The foregoing indemnity and hold harmless is conditioned on such loss being proximately caused in whole or in part by the negligent or willful act or omission of the District, its employees, or contractors, and conditioned further that nothing herein shall be deemed to require the District to indemnify [SIS Vendor], its Board of Directors, officers, employees, or agents for or against its own negligent or willful acts or omissions.
- 5.8 **Exception for Third Party Software.** Notwithstanding any other provision of this Contract to the contrary (including without limitation paragraph 5.7 above), neither the District nor any of its Board members, officers, employees, attorneys and representatives shall be liable to [SIS Vendor] in any fashion or to any extent for any claim brought against [SIS Vendor] by or in the name of any licensor or supplier of Platform Software, based on the District's failure to purchase or maintain licenses to such Platform Software unless a) [SIS Vendor] has identified clearly and unambiguously in the Statement of Work the requirement for such licenses and the specific basis of computation of any fees or other charges due such licensor or supplier, such that the amount of such charges is fully known as of the date of execution hereof.

6. Other Obligations of [SIS Vendor]; Insurance, Indemnities

- 6.1 **Compliance with Laws and Regulations.** At all times during the term of this Contract, [SIS Vendor] shall comply with all applicable federal, state, and local laws and regulations. To the extent applicable, [SIS Vendor] shall ensure that, as of the date of final acceptance of any Deliverable, such Deliverable likewise complies with all federal, state and local laws and regulations. [SIS Vendor] shall provide District with assistance in complying with all applicable federal, state, and local laws and regulations. [SIS Vendor] shall be responsible for assuring that the Licensed Software complies with all applicable provisions of federal, state and local laws and regulations respecting the privacy and

protection of student, parent, and patient information and that all of its employees and contractors comply individually with all such laws and regulations.

- 6.2 Staffing and Management.** During the term of this Contract, [SIS Vendor] shall not reassign or modify the operational authority of the management personnel listed in the Scope Management Process without the consent of the District, except (a) upon request by the District, (b) as the result of the termination by [SIS Vendor] of the employment of the affected person, or (c) upon reasonable request initiated by such affected person. [SIS Vendor] shall furthermore refrain from reassigning or reallocating work on the Project if a reasonably foreseeable consequence of such reassignment or reallocation would be to require the repetition of work or delay in the completion of the delivery of any Deliverable. Notwithstanding the foregoing, upon request by the District for a change in such management personnel, [SIS Vendor] shall use commercially reasonable efforts to remove and replace such individual [SIS Vendor] personnel assigned to the Project in a timely fashion.
- 6.3 Use of Contractors.** Prior to subcontracting any portion of the Services, [SIS Vendor] shall notify the District of the proposed subcontract and proposed subcontractor, including without limitation any legal entity and/or any individual not in the exclusive employ of [SIS Vendor] who would be involved in any manner in the Services, other than activities relating the development of the SIS Software product. The notice should provide background information with respect to the proposed subcontractor that is appropriate to the nature and scope of the subcontractor's activities. In the event the District objects to such subcontractor, [SIS Vendor] shall not use such subcontractor in connection with such work. No subcontractors have yet been approved by the District as of the execution of this Contract. No subcontracting or other arrangement shall release [SIS Vendor] from its responsibility for its obligations under this Contract. No subcontractor may be engaged unless such subcontractor and each of its employees providing services on the relevant engagement certifies in writing such qualifications as are required by the District for contractors generally, and agrees in writing to guard the confidentiality of Proprietary Information of the District to the same standard of care as binds [SIS Vendor] under this Contract and agrees in writing, prior to commencing work, that all work is a "work for hire" under the Copyright Laws of the United States and that in the event that such work is not eligible for treatment as such a work for hire, such subcontractor presently, prospectively and irrevocably assigns any copyrights in such work to [SIS Vendor]. Use of such contractors shall also be conditioned on contractors' compliance with any insurance requirements otherwise applicable to [SIS Vendor], except that the applicable limit shall be \$2,000,000, combined limit. The District may require delivery of reasonable evidence of compliance as a condition of consent.
- 6.4 Financial Reporting; Audit and Inspection of Records.** [SIS Vendor] shall, on an annual basis, provide District with compiled financial information if District requests them in writing. [SIS Vendor] agrees that until the expiration of three years after completion of all work under this Contract, RFP and other related documents, the District and any of its duly authorized representatives shall have access to and the right to examine any and all directly pertinent books, documents, papers, and records of the [SIS Vendor] involving

transactions related to this Contract. [SIS Vendor] agrees that payments made under this Contract shall be subject to reduction for amounts charged that are found on the basis of audit examination not to constitute allowable fees or costs. All required records shall be maintained until an audit is completed and all questions arising from such audit are resolved, or until three years after completion of all work under this Contract, RFP and other related documents.

- 6.5 **Indemnity.** [SIS Vendor] shall indemnify and hold harmless District, all members of the Board of Education, and their employees, agents, and attorneys from and against any losses suffered by District as a result of [SIS Vendor]'s breach of its warranties set forth in this Contract, or arising out of or in connection with [SIS Vendor]'s provision of the Services, the Deliverables, or any component or part thereof, or [SIS Vendor]'s failure to provide the same. Provided, however, the foregoing indemnity and hold harmless is conditioned on such loss(es) being proximately caused in whole or in part by the negligent or willful act or omission of [SIS Vendor], its employees, subcontractors, or anyone employed directly by [SIS Vendor]. [SIS Vendor] also shall defend, indemnify, and hold harmless District, all members of the Board of Education, employees, agents, and attorneys from and against any claim, demand, challenge, suit, loss, cost, damage, or liability based on any assertion that any Deliverable or any component or part thereof infringes, misappropriates, or violates any patent right, copyright right, trade secret, or other proprietary right of any third party. District shall notify [SIS Vendor] in writing of the initial claim or action brought against it. The selection of counsel, the conduct of the defense of any lawsuit, and any settlement shall be within [SIS Vendor]'s control; provided that District shall have the right but not the obligation to participate in the defense of any such infringement claim using counsel of its choice, at District's expense. No settlement shall be made without notice to the District.
- 6.6 **Use Disruption.** If a third-party intellectual property claim causes the use of any Deliverable, any Documentation, or any component or part thereof to be seriously endangered or disrupted, [SIS Vendor] shall, at the option of District, (i) replace the same without additional charge, buy compatible, functionally equivalent and non-infringing product(s); (ii) modify such Deliverable, Documentation, or component or part, to avoid the claim or infringement and retain all functionality; (iii) obtain license(s) for District to continue use of such Deliverable, Documentation, or component or part, and pay any additional fee required for such licenses. Nothing in this section shall relieve [SIS Vendor] from any obligation to deliver all material functions of the SIS as required by the Project Documents.
- 6.7 **General Insurance Requirements.** [SIS Vendor] shall secure and maintain, as a minimum, insurance as set forth below with insurance companies reasonably acceptable to the District to protect [SIS Vendor] from claims which may arise from operations under the Contract, whether such operations be by [SIS Vendor] or anyone employed by [SIS Vendor]. [SIS Vendor] further shall furnish upon request of the, certificates of such insurance, signed by an authorized representative of the insurance carrier, which shall include a minimum thirty-one (31) day cancellation clause and shall include the District as an additional insured. Failure to maintain the insurance and furnish the required

certificates may be considered a breach of the contract by [SIS Vendor] and the District may exercise any, some, or all of its rights on breach by [SIS Vendor].

- A. Workers' Compensation Insurance in accordance with provisions of the FL Labor Code, adequate to protect [SIS Vendor] from claims under Workers' Compensation Acts which may arise from operations under the Contract, whether such operations be by the contractor or anyone directly employed by them. [SIS Vendor], in submitting this proposal hereby certifies, pursuant to the FL Labor Code, Chapter 440, Florida Statutes, that it is aware of the provisions of Section 440.10 of the FL Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and it will comply with such provisions before commencing the performance of the work of this Contract.
- B. Comprehensive Bodily Injury and Property Damage Liability Insurance for Combined Single Limit Bodily Injury and/or Property Damage Liability of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate. The policy so secured and maintained shall include coverage for Contractual Liability, Products Liability or Completed Operations, and Owned, Hired, and Non-owned Automobiles Insurance; and shall be endorsed to name the School Board of Orange County and Board of Education of the County of Orange as additional insured's and to provide specifically that any insurance carried by the District which may be applicable to any claim or loss shall be deemed excess and the contractor's insurance primary despite any conflicting provisions in the contractor's policy to the contrary.

- 6.8 **Damage to Property.** [SIS Vendor] shall be responsible and liable for all damage to the property of the District which is caused by [SIS Vendor] sub-contractors, or their respective employees, during the term of this Contract and shall, at its own expense, repair, and/or replace all damaged property to its original condition.
- 6.9 **Errors and Omissions.** [SIS Vendor] shall maintain the following insurance coverage, at its sole expense, sufficient to cover any claims, damages, liabilities, costs and expenses (including counsel fees) arising out of or in connection with [SIS Vendor]'s fulfillment of any of its obligations under this Contract or either party's use of any Deliverable or any component or part thereof: (i) comprehensive general liability coverage; (ii) errors and omissions insurance which covers professional errors and omissions of [SIS Vendor] and all professionals who are employees of [SIS Vendor] and are engaged to furnish professional services in connection with the services hereunder. Coverage under each policy will be a minimum of One Million Dollars (\$1,000,000) for each instance and four Million Dollars (\$4,000,000) in the aggregate. Each policy shall be issued by a reputable insurance company qualified to do business in Orange County, FL. Upon District's request, [SIS Vendor] shall ensure that the general liability policy shall name District, any agency or instrumentality for which the District provides or manages educational services, the members of the Board of Education, and its officers, employees, agents and attorneys, as additional insured's. [SIS Vendor] shall provide District with evidence of compliance with [SIS Vendor]'s obligations under this Section. In the case of failure to furnish such evidence or upon cancellation of any required insurance, District may

declare a breach of this Contract or may withhold all future payments until [SIS Vendor] complies with this requirement or may purchase such coverage and offset the cost against any amounts otherwise due to [SIS Vendor]. [SIS Vendor] shall provide thirty (30) days prior written notice to District of any impending cancellation or termination of such insurance.

- 6.10 Performance Bond.** In the event of a significant problem in system performance prior to final acceptance that affects the day-to-day system operational effectiveness or delivery of function to the agreed upon schedule, District will document the issue to [SIS Vendor]. [SIS Vendor] will have 30 days to deliver a fix. If the fix is unacceptable, District will have the right to demand some financial contingency. This could take the form of an escrow amount or a performance bond. If a performance bond is requested, the amount will be based on the cumulative payment percentages at the current acceptance date as shown on the payment schedule. [SIS Vendor] will pay for this performance bond.
- 6.11 Contractors' Code of Conduct.** Throughout the term of this Contract, [SIS Vendor] shall comply with and shall cause all of its subcontractors to comply with the District's Contractors and Professional code of Ethics for the OCPS. See <http://www.Orange.k12.fl.us/xxxx>

7. Financial Matters

- 7.1 **Fixed Fee Contract.** [SIS Vendor] will provide all Services, as defined in the RFP. All travel and related expenses are included in the fixed fee portion of the contract as defined in Appendix B, Cost Forms of the OCPS RFP # 1306XXX.
- 7.2 **Payment on Deliverables.** For all software and Documentation deliverables, OCPS shall pay to [SIS Vendor] the fees and costs set forth beside the respective Deliverables on the Pricing Schedule.
- 7.3 **Conditions to Payment.** Payment to [SIS Vendor] of the amounts due on account of each software Deliverable and Documentation Deliverable or group thereof under this Contract shall be conditioned strictly upon satisfaction of the conditions for such payment set forth in the Pricing Schedule and specifically upon the successful and timely completion of the Acceptance Tests specified for the particular Deliverable.
- 7.4 **Maintenance Services.** After _____ of the expiration of the Warranty period, Maintenance will start. The District shall pay to [SIS Vendor] the annual maintenance fee set forth in the Pricing Schedule. This fee shall cover all Maintenance Services, updates and Releases to the Licensed Software during the period to which such annual maintenance fee shall apply. These are for all purchase products and/or modules, Enhancements and Releases.
- 7.5 **Time and Manner of Payment.** The District shall pay each amount set forth in the Pricing Schedule on or before forty-five (45) days after its receipt of an invoice for the amount, which invoice shall have been rendered no earlier than the successful completion of the acceptance tests or criteria set forth as a condition of such payment. Except in the case of suspension of payments for failure to Deliver Critical Deliverables as provided in this Contract, in the event the District disputes any amount due under an invoice, it shall nonetheless pay the amount with which it has not dispute and shall use the dispute resolution procedures provided by this Contract to resolve any such dispute.
- 7.6 **Work Orders.** In the event that an authorized representative of the District shall issue a Work Order for Services, Third Party Software and/or equipment under this Contract, the District shall pay to [SIS Vendor] an amount determined by the hourly rates under the Pricing Schedule, not to exceed the maximum cumulative amount for Work Orders under this Contract, as set forth in the Scope Management Process and the Pricing Schedule. Amounts due under this paragraph shall be paid within forty five (45) days after receipt by the District of [SIS Vendor]'s statement for the respective Services, itemizing the time and materials expended on the particular Work Order for the month preceding and cumulatively for that Work Order and the aggregate of Work Orders to date.
- 7.7 **Form of Invoicing.** Invoices shall itemize services, dates, and deliverables consistent with the terms of this Contract. Additional documentation shall be furnished by [SIS Vendor] to the District's Accounts Payable Section upon request. Invoices shall be mailed to:

School Board of Orange County
Information, Communication, Technology Services
445 West Amelia Street
Orlando, FL, FL 32801
ATTN: To Be Determined

- 7.8 **Change Orders.** When quoting a price for a Change Order under this Contract, [SIS Vendor] shall determine the fee by the process and formula set forth in the Scope Management Process and Pricing Schedule.
- 7.9 **Reduction of Scope.** The District may determine to eliminate certain of the Services or Deliverables from the scope of the Project. In such event, the parties shall negotiate in good faith as to an equitable reduction in the applicable prices set forth in the Pricing Schedule.
- 7.10 **Most Favorable Customer.** [SIS Vendor] agrees to treat District as its most favored customer. [SIS Vendor] represents that all of the fees and prices, warranties, benefits, and other terms being provided to District under this Contract are equivalent to or better than the fees and prices, warranties, benefits, and other terms being offered by [SIS Vendor] to any other customer for similar services under similar circumstances of similar size in student Full Time Equivalency.
- 7.11 **Suspension of Payments.** In the event that any Critical Deliverable shall not be delivered or accepted on or before the applicable dates specified for such Critical Deliverable, all payment for Deliverables to be delivered subsequent to such delayed deliverable shall be suspended until the acceptance of all Critical Deliverables which have not been timely delivered or accepted. In no event shall the suspension of a payment under this paragraph relieve [SIS Vendor] from any other date for delivery or acceptance.
- 7.12 **Taxes.** [SIS Vendor] acknowledges that the District is exempt from sales and use taxes imposed under FL law in accordance with Section 212.08(6), FL Statutes. Except as expressly provided in the Statement of Work, all software Deliverables are presumed to be deliverable solely by electronic transmission and not on tangible media.
- 7.13 **Allowance for Suspension or Delay Caused by District.** In the event that the District shall suspend the Project, delay any Deliverable Date, fail to provide resources on a timely basis in accordance with the OCPS Resource Plan, or fail to respond to a request for review and approval, the following provisions shall apply:
- A. The due date for any Deliverable set forth in the Statement of Work that is dependent on such performance by the District shall be deemed adjusted equitably to allow for the effect of such suspension or delay on [SIS Vendor]'s ability to supply or perform such Deliverable, taking into account a reasonable adjustment in assignment by [SIS Vendor] of its resources to provide Deliverables under this Contract; and,
 - B. [SIS Vendor] shall be entitled to reimbursement for any such costs that cannot reasonably be mitigated by temporary reassignments of personnel or other resources, including without limitation the hourly charges for any [SIS Vendor] personnel

necessarily idled by such delays but whose capacity is required to be maintained for timely future performance by [SIS Vendor], priced as set forth in the Pricing Schedule.

8. Formalities; Term and Termination

- 8.1 Approval by the District.** This Contract shall be effective upon its signature by the Chairman of the Board of Education in accordance with applicable law and District policies and procedures, with a budget encumbrance intended to fund performance through June 30, 2014("Initial Allocation"). Each fiscal year of the District thereafter, it is expected that the Board of Education will consider for allocation the amount set forth in the Pricing Schedule for the respective year of the term of this Contract ("Fiscal Allocation"). Nothing herein, however, shall be construed so as to require the District to allocate any sums on this Contract beyond the Initial Allocation.
- 8.2 Initial Term.** The term of this Contract shall commence on the date of its approval by the Parties and shall continue thereafter for a period of Sixty (60) months, unless sooner terminated in accordance with this Contract. Notwithstanding the foregoing, the terms and conditions applicable to maintenance services shall continue thereafter until the expiration of the year on account of which maintenance services shall have been paid.
- 8.3 Termination for Funding Restriction.** If, in connection with the determination of the budget for the District for each successive year of the term of this Contract, the Board of Education determines to allocate a smaller amount to the Project than the Fiscal Allocation for the year in question, the parties shall negotiate in good faith for a reasonable time, not to exceed sixty (60) days as to the reduction in Scope of Services reasonably required to accommodate the reduction in such allocation. If the District makes a determination that the reduction in scope to which [SIS Vendor] has agreed is too large to be practicable, the District may either: (a) terminate this Contract in full without further charge beyond amounts incurred in accordance with this Contract or encumbered by District, (b) suspend the Contract until such time that the Board of Education does encumber sufficient funds to continue, or (c) provided that the budget allocation by the Board of Education is sufficient, may terminate all remaining Services other than maintenance services related to software for which the District has already paid or incurred the obligation to pay the license fee. Such notice shall be given promptly following the expiration of the 60 day negotiation period specified in this Section. In no event shall the District be liable for any amounts beyond the Initial Allocation, unless the same shall have been duly appropriated by action of the Board of Education. All source code and documentation will be returned promptly to [SIS Vendor].
- 8.4 Termination for Convenience.** The District may terminate this Contract at any time without cause upon a minimum 90 days' notice to [SIS Vendor], in which case the following provisions shall apply:
- A. The notice may be effective as of a date certain or may apply only after the delivery of certain enumerated Deliverables.
 - B. The District shall pay to [SIS Vendor] upon receipt of an invoice from [SIS Vendor] otherwise complying with this Contract, for any Services in respect of a Deliverable

- not yet Delivered which have actually been performed by [SIS Vendor], pro-rated on a percentage completion basis based on [SIS Vendor]'s reconciliation of labor actually expended compared to labor originally estimated by [SIS Vendor] in constructing its bid.
- C. The District shall pay to [SIS Vendor] upon receipt of an invoice from [SIS Vendor] otherwise complying with this Contract, upon Delivery of any Deliverable specified to be delivered under the notice.
 - D. No other payments shall be due to [SIS Vendor].
 - E. Source Code and all Documentation must be returned within 30 days if the termination occurs prior to Month dd, 20XX. If it is returned, [SIS Vendor] will return a prorated amount based on the payment percentages.
- 8.5 **Failure to Progress.** The Statement of Work provides certain Deliverable Dates for the delivery of certain Critical Deliverables identified therein. If Delivery of any Critical Deliverable shall not have been completed by the Deliverable Date for such Critical Deliverable, and such delay is not materially caused by any fault of District or a third party over which [SIS Vendor] does not have the right to control, the District shall give [SIS Vendor] notice providing a period of not less than thirty (30) days to complete Delivery of such Critical Deliverable. In the event that [SIS Vendor] shall fail to complete Delivery of the Critical Deliverable identified in such notice within the stated cure period, the District may, in its sole discretion, thereafter either (a) extend the time for cure, or (b) declare an immediate termination of this Contract (or Services related to such Critical Deliverable) for Failure to Progress without further payment obligation on the part of the District with respect to the portion so terminated (other than charges already due and owing). In the event of a termination for Failure to Progress in accordance with this section, the District shall have no further liability to [SIS Vendor] with respect to any payments not yet due and owing that are related to the portion so terminated.
- 8.6 **Termination for Breach.** In the event that [SIS Vendor] a) commits a material breach of this Contract, that, if capable of being cured within thirty (30) days, is not cured within thirty (30) days after notice of breach from the District to [SIS Vendor]; b) commits a material breach of this Contract which is not capable of being cured within thirty (30) days and fails to (A)a) proceed promptly and diligently to correct the breach, and (B)b) cure the breach to the District's reasonable satisfaction within ninety (90) days after receiving notice; or c) commits a material breach of this Contract which, by its nature, cannot be cured, then the District may (without limitation on other remedies that may be available to it under this Contract, at law or in equity), by giving written notice to [SIS Vendor], terminate this Contract, in whole or as to selected Deliverables or Services, as of a date specified in the notice of termination.
- 8.7 **Material Breach.** For the purposes of the foregoing provision "material breach" shall mean the failure of [SIS Vendor] to perform any material obligation, including without limitation, the following:
- A. Failure to Deliver a Critical Deliverable within the notice period specified for a notice of Failure to Progress.

- B. Chronic failures to deliver Deliverables on a timely basis, without such failures being materially caused by fault of the District, a third party over which [SIS Vendor] does not have the legal right to control, or an event of Force Majeure.
 - C. Breach of any warranty given pursuant to 4.1, which breach materially affects the ability of the District to deploy and/or use the SIS.
 - D. Breach any terms and conditions required under this Contract.
- 8.8 **Termination for Nonpayment.** If the District fails to pay [SIS Vendor] when due any charges under the Contract within ninety (90) days after presentation of an invoice and fails to make such payment within thirty (30) days of notice from [SIS Vendor] of the failure to make such payment, then [SIS Vendor] may terminate this Contract without further notice, provided, however, that such termination shall not relieve the District of its payment obligations to [SIS Vendor] for services rendered and reimbursable expenses incurred through the effective date of the termination. Source Code and Documentation must be returned in 30 days.
- 8.9 **Termination for Bankruptcy.** This Contract may be terminated by either party, without notice, in the event that either Party shall have ceased business, become the subject of an order for relief or insolvent under applicable bankruptcy laws or made an assignment for the benefit of creditors. (Source Code and Documentation will be transferred to the District for complete ownership)
- 8.10 **Payment on Termination.** In the event that the District terminates this Contract or any portion thereof prior to its expiration on any basis other than for [SIS Vendor]'s material breach or Failure to Progress, the District shall pay [SIS Vendor] for all Deliverables Delivered prior to the effective date of termination and for partially completed Deliverables on a percentage completion basis. In the case of a termination for Failure to Progress, the District shall continue to be liable for Services not terminated, but shall not be liable for any amounts related to partial completion of Deliverables associated with the Critical Deliverable in question. In the case of a termination for material breach by [SIS Vendor], the District shall not be liable for any payments on account of Deliverables not delivered as of the effective date of such termination. In no event shall the District be liable for any future payments, lost profits, costs, or expenses of [SIS Vendor], incurred with respect to Services not actually performed.
- 8.11 **Transition on Termination.** In the event of a termination of this Contract, except as otherwise provided, the District shall nonetheless continue to have all rights to use and maintain for its own benefit any and all Deliverables already in Production or completed and delivered as if no termination had taken place, subject to payment for such Deliverables. The right to use the SIS Software nonetheless shall be subject to full payment of license fees as set forth in the Pricing Schedule. In the case of termination by the District for breach by [SIS Vendor] or for Failure to Progress, [SIS Vendor] shall provide those certain transition services identified in the Statement of Work, subject to payment at the hourly rate set forth in the Pricing Schedule, and shall promptly assign to the District all of [SIS Vendor]'s rights to use Platform Software, which rights were acquired by [SIS Vendor] primarily for the ability to provide the Services to the District under this

Contract, upon payment by the District of any amounts set forth in the Pricing Schedule on account of such Platform Software. In the event of a termination for material breach or for Failure to Progress, the District may thereafter engage such contractor or contractors as it determines in its sole discretion to provide any of the Services not yet provided by [SIS Vendor] to the District or any other services the District determines in its sole discretion to be necessary or convenient to the development, maintenance and operation of the SIS, subject to compliance with provisions of this Contract relating to the use of contractors to service the Licensed Software.

- 8.12 Force Majeure.** Neither party shall be liable for any delay or failure to perform, to the extent caused by a Force Majeure Event. Upon occurrence of a Force Majeure Event, the non-performing Party shall be excused from any further performance or observance of the affected obligation(s) for as long as, and to the extent that the Force Majeure Event continues and the non-performing Party (i) continues to perform to the extent practicable; (ii) takes commercially reasonable measures to mitigate the effects of the Force Majeure Event; and (iii) uses commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party whose performance is affected by a Force Majeure Event will immediately notify the other Party by telephone (to be confirmed in writing within two (2) business days of the inception of such delay) and describe in reasonable detail the circumstances causing such delay.

9. Dispute Resolution and Remedies

- 9.1 Project Managers.** All disputes, claims or controversies arising out of or relating to the validity, interpretation, performance, termination, breach, threatened breach of this Contract, or any Failure to Progress (“Dispute(s)”) shall initially be referred by the Party raising the Dispute to the Project Managers designated by the Parties. If the Project Managers are unable through good faith discussions to resolve the Dispute within ten (10) Business Days after receiving written notice of the Dispute, the Dispute shall be submitted to the Senior Executives.
- 9.2 Senior Executives Resolution.** If the Project Managers are unable to resolve the Dispute within 10 Business Days after submission by either or both Project Managers, the Dispute shall be referred to the Senior Executives. Each Project Manager will, within ten (10) business days after referral, provide to both of the Senior Executives a Dispute Statement describing in detail the substance of the Dispute and the Parties’ respective positions, and supported by such documentation as may be appropriate to acquaint the Senior Executives with the issues. The Dispute Statements will not limit either Party’s right to identify additional relevant issues at any time, or waive, prejudice or limit either Party’s rights or remedies with respect to any issues. Dispute Statements will be provided without prejudice to the providing Party for settlement purposes, and shall not be admitted in evidence or otherwise used or referred to in litigation. For the purpose of this provision, the Senior Executives shall be the Executive Sponsor for the District and the President for [SIS Vendor]. Either party may re-designate its Senior Executive from time to time during the term of this Contract by thirty (30) days’ notice to the other party, provided that once a dispute resolution procedure shall be commenced under this section,

neither party may re-designate its Senior Executive without the consent of the other party as long as such Senior Executive remains in the employ of the respective party.

- 9.3 **Mediation.** Within ten (10) business days after delivery of the Dispute Statements, the Senior Executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one party to the other will be honored. If the Senior Executives are unable to resolve the Dispute within twenty (20) business days of receipt of the Dispute Statements, the parties may pursue all claims based upon such Dispute as otherwise provided by law.
- 9.4 **Continued Access.** The parties agree as follows with respect to any dispute or disagreement concerning the Licensed Software or component thereof or any of the transactions arising out of or contemplated by this Contract: during such dispute or disagreement under this Contract or any proceeding to resolve such dispute, pending final resolution of such dispute or disagreement, [SIS Vendor] shall not interfere with the access or use by the District of the Licensed Software. In addition, the Parties expressly agree that if any dispute or disagreement arises with respect to the performance of any of either Party's obligations which would otherwise delay the schedule for either Party's performance of any of its subsequent obligations, to the extent technically and operationally feasible, each Party shall proceed to the performance of such subsequent obligations according to the existing schedule as if such dispute or disagreement were non-existent, but shall be entitled to reimbursement or relief for delay as set forth in this Contract.
- 9.5 **Applicable Law.** This Contract shall be construed in accordance with and governed by the substantive law of the State of Florida and Orange County, Florida.
- 9.6 **Jurisdiction.** The parties consent to the exclusive personal jurisdiction of the Court of the County of Orange or the United States District Court for the Middle District of FL for the purpose of any and all judicial proceedings authorized under the terms of this Contract.
- 9.7 **No Consequential Damages.** Neither party shall be liable for any indirect, exemplary, special, or consequential damages arising out of this Contract, except as set forth in.
- 9.8 **Limitation on Liability.** The liability of the District to [SIS Vendor] from all causes, except for the District's gross negligence or willful misconduct relating to its obligations under this Contract or the intentional unauthorized use or disclosure of confidential information, and subject to the provisions of Section 768.28, Florida Statutes, shall not exceed the amount of the Fiscal allocation for the fiscal year than in process, less any amount that have theretofore been paid to [SIS Vendor] out of such Fiscal Allocation. The liability of [SIS Vendor] to the District from all causes shall not exceed the previous 365 days of payments. [SIS Vendor] shall have no liability for any claim of copyright or patent infringement based upon the use of other than a current unaltered Release of the alleged infringing item or items if such infringement would have been avoided by the use of the current unaltered release of such item or items, or upon combination of the item with programs or data not supplied or specified by [SIS Vendor] if such infringement would

have been avoided by the use or combination of the unaltered item with any other programs or data in order to perform the specified functions.

- 9.9 **Waiver of Trial by Jury.** The Parties waive their right to trial by jury of any matter arising out of or relating to this Contract.

10. Miscellaneous Provisions

- 10.1 **Publicity.** Neither party shall make, issue or distribute a public statement announcing the existence of this Contract or the Services except with the consent of the other party, which consent shall not be unreasonably withheld or delayed. Upon the execution of this Contract, the parties shall confer and agree as to the information to be disclosed in press releases announcing the Contract. Notwithstanding the foregoing, the Parties shall be entitled to discuss the Project publicly at any time after its submission for approval by the Board of Education in connection with obtaining such approval, any hearings thereon, or any requests by members of the public or media and [SIS Vendor] shall be entitled to discuss the Project with potential customers and to disclose its existence in customer proposals. Either party shall be entitled to make such reasonable disclosures as are required by law, including without limitation any disclosures required for compliance with the Securities Laws of the United States or any state, of any licensing entity, and the like.
- 10.2 **Solicitation of Employees.** During the term of this Contract and for a period of one (1) year thereafter, neither Party shall solicit any employee of the other to work for such Party, provided that nothing herein shall preclude a Party from hiring an employee of the other Party who has responded to general advertising or general employment programs solicitation of such Party.
- 10.3 **Entire Contract.** This Contract, including its Exhibits and Schedules and the documents incorporated by reference herein, constitutes the sole and entire understanding and agreement of the parties with respect to its subject matter, and supersedes and replaces all prior agreements, representations and understanding of the parties.
- 10.4 **Amendment.** This Contract may not be amended or modified, except by a Contract signed by duly authorized officers of the respective parties and, in the event applicable law requires the action of the Board of Education to amend the subject provisions hereof, the due approval of such amendment by the Board of Education.
- 10.5 **Severability.** In the event that any portion of this Contract shall be deemed unenforceable by any dispute resolution tribunal, the remainder of the Contract shall remain in full force and effect.
- 10.6 **Assignment.** This Contract may not be assigned by [SIS Vendor] without the written consent of the District, except in connection with the sale of substantially all of the assets of the operating unit of [SIS Vendor] responsible for the SIS Software and may not be

assigned by the District without the consent of [SIS Vendor]. An assignment of rights to receive monies due and becoming due given as security for payment of a [SIS Vendor] institutional debt shall be permissible upon thirty (30) days prior notice to the District and written consent of such assignment by the District. Any assignment in contravention of this provision shall be void and no assignment shall relieve the assignor of any obligations under this Contract. This Contract shall be binding upon the Parties hereto their respective successors and assigns.

10.7 Headings and Captions. The captions and headings used in this document are for convenience of reading only and are not to be used in the interpretation or construction of this Contract.

10.8 Reasonable Behavior. The parties shall deal with one another in good faith. Whenever this Contract requires or contemplates any action, decision, consent or approval, the parties shall act reasonably and in good faith and (unless the parties have expressly agreed in writing to some other discretionary standard) and may not unreasonably withhold or delay any such action, decision, consent or approval.

10.9 No Third Party Beneficiaries. Nothing herein contained is intended to constitute any person a third party beneficiary under this agreement, nor to create any obligation on the part of either party to any person who is not a party to this Contract.

10.10 No Partnership or Agency. Nothing in this Contract shall be deemed to constitute either party the agent, joint venture, or partner of the other for any purpose and neither party shall be authorized to bind the other legally in any form.

10.11 Survival. Articles 3, 4, 6, 8, 9 and 10 and Sections 2.4, 5.6, 5.7, 6.5, 7.4, 8.10 and 8.11 of this Contract shall survive the expiration or termination of this Contract.

10.12 Notices. Any notices required or permitted under the terms of this Contract shall be in writing and shall be effective upon receipt, or five (5) days after mailing, postage prepaid, certified, and returns receipt requested, addressed to the parties as follows:

TO THE DISTRICT:

To Be Determined
Title
School Board of Orange County
445 W. Amelia Street
Orlando, FL 32801 - 1129

TO [SIS Vendor], LLC:

Name
Chief Executive Officer

[SIS Vendor]
Address line 1
City, State ZIP

With a copy to:

With a copy to:

Attorney, Esq.
General Counsel
[SIS Vendor]

Either party may from time to time substitute a new address or addresses for notices by delivery to the other party of a notice complying with this paragraph. This notice procedure relates to provisions of this memorandum and is not intended to override or replace provisions of the Statement of Work or Scope Process related to operational communications during the term of this Contract.

10.13 Non-Waiver of Timely Performance. Each party hereto may specifically waive any item(s) of performance under this Contract by the other party, provided that no such waiver shall be binding or effective unless approved in writing and no such waiver shall constitute a continuing waiver of similar or other items of performance. A waiving party, at any time, and upon notice given in writing to the party whose performance has been waived, may direct future compliance with the waived term or terms.

10.14 Counterparts. This Contract may be executed in duplicates and counterparts, each of which shall be effective as an original for all purposes.

10.15 Related Projects. [SIS Vendor] and the District may agree to put an additional line item into the contract. Notwithstanding any other provisions of this Contract, OCPS agrees that if [SIS Vendor] is acting as a pass through on this line item, [SIS Vendor] shall not be liable for any damages that OCPS may incur relating to the services to be provided by a contracted Project Manager. The funding will be part of the total contract and paid by OCPS.

IN WITNESS WHEREOF, the parties have executed this Contract, effective as of the date first above written.

SIS Vendor:

[SIS Vendor]
Address line 1
Address line 2
City, State ZIP

THE DISTRICT:

School Board of Orange County
445 West Amelia Street
Orlando, Florida 32801

By _____
Name
Chief Executive Officer

By _____
Name
Chairman, Board of Education

Appendices:

- A. [SIS Vendor] Master License Agreement
- B. Product Order Form (to be supplied by [SIS Vendor])
- C. Pricing/Payment Schedule
- D. Software Maintenance Services Agreement
- E. Statement of Work
- F. Scope Management Process
- G. OCPS RFP # 1306XXX Student Information System
- H. [SIS Vendor] RFP # 1306XXX Proposal Response

**Appendix A:
[SIS Vendor] Master License Agreement
for the
Student Information System
for the
School Board of Orange County**

Month XX, 2013

DRAFT WILL BE PROVIDED AT A LATER TIME.

**Appendix B:
Product Order Form
For the
Student Information System
For the
School Board of Orange County**

Month XX, 2013

DRAFT - FOR REVIEW AND DISCUSSION ONLY

**Appendix B:
Product Order Form**

(To be supplied by [SIS Vendor])

**Appendix C:
Pricing/Payment Schedule
For the
Student Information System
For the
School Board of Orange County**

Month XX, 2013

DRAFT - FOR REVIEW AND DISCUSSION ONLY

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**Appendix C:
Pricing/Payment Schedule**

This is the Pricing Schedule referred to in Paragraph 1.34 of the Software Services and License Agreement between The School Board of Orange County (“ the District”) and [SIS Vendor] Corp. (“ [SIS Vendor]”) dated as of Month _ 2013 (“the Contract”). Its purpose is to set forth the agreement and understanding of the Parties with respect to all determinations of the amounts to be paid by the District to [SIS Vendor] for Services and Deliverables under the Agreement. All terms herein shall have the meanings set forth in the Agreement.

1. [SIS Vendor] Deliverables

1.1 License Fee

The price to the District of the licensing for use of SIS software shall be XXX Thousand Dollars (\$XXX,000).

1.2 Payment Schedule

Payments on account of the Licensed Fees shall be due and payable as follows, upon presentation to the District of invoices complying with the terms and conditions of the Agreement. OCPS will pay {SIS Vendor} a pro-rated amount of the License Fee based upon the successful installation and operation of the SIS and signed acceptance of the building principal or work location supervisor. Such pro-rated amount will be based upon the percentage of students each building represents in OCPS. A schedule of school buildings with anticipated go-live days is contained below

Description of Milestone	Acceptance Test	Amount Due
30 days after Commencement Date	School Building 1 Year 1 License Payment	\$ XX,XXX.00
	School Building 2 Year 1 License Payment	\$ XX,XXX.00
30 days after Commencement Date	School Building 3 Year 1 License Payment	\$ XX,XXX.00
	School Building 224 Year 1 License Payment	\$ XX,XXX.00
30 days after Commencement Date	Year 1 Maintenance	\$ XX,XXX.00
30 days after Commencement Date		
45 days after Commencement Date		
Due August Year after Completion of All Schools	Year 2 License Payment	\$XXX,XXX.00
GRAND TOTAL:		\$XXX,XXX.00

2. Fixed Price Deliverable

2.1 Student Information System Installation Services

The following table set forth the amounts payable for each Deliverable associated with the Student Information System Installation Services. The following table will contain a list of Milestones and Deliverables mutually agreed to by OCPS and the [SIS Vendor].

Description of Milestone	Acceptance Test	Amount Due
Onsite Implementation Project Manager	Approval by District	
Completion Pilot Schools	Completion of Deployment of Pilot Schools	\$xx,xxx.00
Completion of High and Middle Schools	Completion of Deployment of High and Middle Schools	\$xx,xxx.00
Completion of Elementary Schools	Completion of Deployment of Elementary Schools	\$xx,xxx.00
GRAND TOTAL:		\$xxx,x00.00

2. Fixed Price Deliverable (Continued)

Description of Milestone	Acceptance Test	Amount Due
SIS Implementation Services	Approval by District	
SIS Installation and Implementation	Completion and Acceptance Sign-off of SIS Installation and Implementation	\$xx,000.00
DBMS Installation	Completion and Acceptance Sign-off DBMS Installation	\$xx,000.00
Student Information Data Conversion and Import	Completion and Acceptance Sign-off Student Information Conversion and Import	\$xx,000.00
H/R System Staff Data Conversion and Import	Completion and Acceptance Sign-off H/R System Staff Data Conversion and Import	\$xx,000.00
GRAND TOTAL:		\$xxx,000.00

Description of Milestone	Acceptance Test	Amount Due
Student Information System Data Interfaces	Approval by District	
Transportation System Data Interface	Completion and Acceptance Sign-off of Transportation System Data Interface	\$xx,000.00
Food Service System Data Interface	Completion and Acceptance Sign-off of Food Services System Data Interface	\$xx,000.00
Library System Data Interface	Completion and Acceptance Sign-off of Library System Data Interface	\$xx,000.00
ESE Data Interface	Completion and Acceptance Sign-off of ESE Data Interface	\$xx,000.00
Enterprise Data Warehouse Data Interface	Completion and Acceptance Sign-off of Data Interface	\$xx,000.00
GRAND TOTAL:		\$xx,000.00

Description of Milestone	Acceptance Test	Amount Due
Student Information System Training	Approval by District	
SIS Train-the-Trainer	Completion and Acceptance Sign-off of SIS	\$xx,x00.00

Train-the-Trainer

GRAND TOTAL:

\$xx,x00.00

3. Maintenance Service Charges

3.1 Maintenance Charges during Term

The fee for all Licensed Software Maintenance Services as described in the Maintenance Services Schedule to the Agreement shall be \$xx,000 ninety (90) days after commencement and \$xx,xx0 per year payable on the first of each July each of the four years commencing Month, dd, 2013.

3.2 Post Term Maintenance Charges

In the event that the District elects to purchase annual Maintenance Services for periods after verify, the following prices shall apply:

Provided that the District shall have continuously acquired Maintenance Services for prior years, for each of the ten years commencing Month, dd, 20xx, the annual fee for all Maintenance Services shall not be increased each year by more than 3.0% over the annual Maintenance Services Fee charge to the District for the immediately preceding year of Maintenance Services, but in no event more than the rate charged to other licensees of Licensed Software receiving comparable maintenance services.

4. Option Work Orders

4.1 Work Orders

Work orders shall be priced according to the price schedule agreed upon by the Parties in Exhibit xx Work Order Statement of Work, and in the Form of Work Order Exhibit xx. Work Orders will be placed on a “not to exceed” basis.

4.2 Option to Authorize End-User Training Services

[SIS Vendor] will conduct SIS End-User Training on-site for a number of End-user training classes agreed upon, in writing, by the Parties, but not to exceed xxxx dollars (\$xx,xxx). SIS End-User Training will proceed on the basis of District-issued Work Orders per Exhibit xx SOW and Exhibit xx Form of Work Order.

4.3 Services

The End-User Training will follow Section x.xx, Training Approach, as outlined in [SIS Vendor]’s RFP proposal. SIS training materials will be tailored to OCPS terminology and implementation guidelines.

Not to Exceed Price Deliverable:

Description of Milestone	Acceptance Test	Not to Exceed
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			Amount Due
End-User Training Classes	Completion and Acceptance Sign-off of Training by District	of	\$xx,xxx.00

4.4 Option to Authorize SIS Custom Report Development

[SIS Vendor] will develop District defined custom reports as required by the District to satisfy its District, Federal and/or State reporting requirements. Custom report development will proceed on the basis of a District-issued Work Order.

Description of Milestone	Acceptance Test	Not to Exceed Amount Due
Custom SIS Report Development	Approval by District Determined	Amount to be determined

**Appendix D:
Software Maintenance Services Agreement
For the
Student Information System
For the
School Board of Orange County**

Month XX, 2013

DRAFT - FOR REVIEW AND DISCUSSION ONLY

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Appendix D: Software Maintenance Services Agreement

The following Master Terms and Conditions contained in this Agreement (“T&C’s” or “Agreement”) supplement and govern each Product Order Form (“Product Order Form”) or Master License Agreement entered into at any time between [SIS Vendor], LLC (“[SIS Vendor]”) and School Board of Orange County identified below (“OCPS”). [SIS Vendor] and OCPS are individually referred to herein as a “Party” or collectively as the “Parties.”

1. Introduction

1.1 Scope

During the term that Maintenance Services are to be provided to the District by [SIS Vendor] under the Agreement, [SIS Vendor] shall correct all Defects in all [SIS Vendor] developed Software, shall assist in the isolation and identification of Defects in Third Party Software for support by the vendor of such software utilized by Maintained Software, and shall provide those other items of support services as are specifically described in this Schedule.

1.2 Warranty Support

This Schedule also describes [SIS Vendor]’s responsibilities with respect to warranty claims made within the warranty period applicable to the respective elements of Licensed Software. The warranty period is defined as XX days starting on the date of execution of the contract with OCPS. Then the maintenance support starts after this warranty period; XXX days of execution of the contract.

1.3 Definitions

Unless the context otherwise requires, the following definitions shall apply and are in addition to the definitions contained in other parts of this Agreement and in each Product Order Form or Master License Agreement:

- 1.3.1 **“Master License Agreement”** shall mean the master software license agreement for products owned by [SIS Vendor], whether such original agreement was between [SIS Vendor], LLC or a third party.
- 1.3.2 **“Product Order Form”** shall mean the product order form for products owned by [SIS Vendor], LLC pursuant to a Master License Agreement.
- 1.3.3 **“Agreement”** shall mean these T&C’s and each Product Order Form, Software Maintenance Agreement or Master License Agreement referring to these T&C’s and entered into by the Parties.
- 1.3.4 **“Effective Date”** shall mean the date software Support begins pursuant to the Schedule.

- 1.3.5 “[SIS Vendor] Supported Products” or “Products” shall mean the products specified by [SIS Vendor] in a Product Order Form, Master License Agreement or Schedule for as long as those products are eligible for Support by [SIS Vendor].
- 1.3.6 “Intellectual Property Rights” shall mean all copyrights, patent rights, confidentiality rights, trade secret rights and trademark rights.
- 1.3.7 “Major Release” shall mean the version of a [SIS Vendor] Supported Product denominated by the number before the decimal point in the release designation (e.g., 4.0 and 5.0 are each different Major Releases).
- 1.3.8 “Operating System” shall mean the third party foundation software required to communicate with OCPS’s computer hardware as identified in the Schedule.
- 1.3.9 “Schedule” shall mean the Product Order Form, Master License Agreement or forms initially attached hereto, and/or subsequently added by consent of the Parties, which identify the elements of the System to be provided, the Support to be performed by [SIS Vendor] or a third party under this Agreement, and the fees to be paid by OCPS for such Support.
- 1.3.10 “Software” shall mean the [SIS Vendor] Supported Products or Products (including modifications and enhancements [and source and object code if OCPS’s Product Order Form calls for an in-house standalone installation of the Software]) that comprise the proprietary application software and its accompanying documentation as identified in the Schedule.
- 1.3.11 “Subscription Services” shall mean each of the types of services identified in a Product Order Form and rendered by [SIS Vendor] during the subscription period identified in that Product Order Form. (Support is not a Subscription Service.)
- 1.3.12 “System” shall mean the Software, Operating System, and Third Party Software.
- 1.3.13 “Third Party” shall mean the applicable third party owner of Products that are delivered to OCPS under the Agreement or separate agreement with the third party owner.
- 1.3.14 “Third Party Software” shall mean proprietary software owned and supplied by third parties or to be supplied by [SIS Vendor] as identified in the Schedule.
- 1.3.15 “Business Time” shall mean time accounted for based only on Normal Hours of Operation. One Business Time day shall be accounted for in one-half day increments. That is, a Business Day includes the entire day if the call is placed prior to Noon on that day, but one-half day if the call is placed after Noon on that day.
- 1.3.16 “Clock Time” shall mean actual elapsed time without regard to Normal Hours of Operation.
- 1.3.17 “Fault” shall mean an incident or series of related incidents in which the SIS shall fail to perform in accordance with its specifications as the result of a Defect in the Maintained Software.
- 1.3.18 “Maintained Software” shall mean all computer software for which [SIS Vendor] is the primary licensor or source, including without limitation, the [SIS Vendor] SIS

Software and OCPS Features, as well as any Third Party Software that is provided by Vendor as part of the SIS package.

- 1.3.19 "**Normal Hours of Operation**" shall mean [SIS Vendor]'s normal hours of operation, which are 8 a.m. to 5 p.m. Eastern Standard Time, Monday through Friday excluding holidays.
- 1.3.20 "**Service Level Commitment**" shall mean for each type of Fault, the maximum response time, level of effort, or other metric to which [SIS Vendor] has committed under this Schedule.
- 1.3.21 "**Update**" shall mean a modification to the Licensed Software reflecting corrections or minor revisions not sufficient to constitute a Release.

2. Maintenance Support Term

This Agreement shall commence on the Effective Date and shall continue for an initial term of one year. At the expiration of said term this Agreement will continue from year to year by OCPS's payment of the applicable annual maintenance charge pursuant to the renewal provisions of Section 5 herein. This Agreement may be cancelled by written notice being given by either Party to the other with no less than thirty (30) days notice prior to the expiration of a particular one-year term, or by the non-payment of annual maintenance fees pursuant to Section 5 herein. There shall be no pro-ration of fees for cancellation by OCPS prior to the expiration of any particular one-year term.

3. Support by [SIS Vendor]

During the term of this Agreement, [SIS Vendor] will provide OCPS the following support ("Support"):

- A. Repair, replace, or provide OCPS with a program correction for the [SIS Vendor]-Supported Products.
- B. Make [SIS Vendor]'s standard telephone Support available to persons authorized by OCPS, including general technical information and assistance with problem determination, isolation, verification and resolution during the hours of 8 a.m. to 5 p.m. EST (excluding weekends and [SIS Vendor] designated holidays).
- C. Provide OCPS updates, and enhancements of the [SIS Vendor] Supported Products when generally made available by [SIS Vendor] for installation and use by OCPS. (1) [SIS Vendor] will provide Support for the immediate prior Major Release for a period of at least 12 months after general availability of the then current Major Release. (2) [SIS Vendor] will alert OCPS at least 12 months before the scheduled termination of Support for any Major Release. [SIS Vendor] may immediately terminate Support for all [SIS Vendor] Supported Products if OCPS does not renew Support for the [SIS Vendor] Supported Products designated on a Product Order Form, Master License Agreement, or Schedule. [SIS Vendor] will have no obligation to provide Support for any OCPS modifications to the Software unless such OCPS modifications to the Software have been incorporated by [SIS Vendor] into the [SIS Vendor] Supported Products and have been made available to other [SIS Vendor] customers.

- D. [SIS Vendor] shall exercise reasonable skill and care in the provision and performance of Support.
- E. To the extent, it is included in the Product Order Form, Master License Agreement, or Schedule [SIS Vendor] will provide Support for the Third Party Software. OCPS shall, however, be responsible for ensuring that key personnel and new staff additions are properly trained on the use and general maintenance of the Third Party Software.

4. Maintenance Services

4.1 Catalog of Services

When referred to in this section, the following service descriptions will apply:

4.1.1 Error Corrections

When [SIS Vendor] is obligated to provide error corrections and/or bug fixes for a component, it will provide to the District within the applicable Service Level Commitments, a revised software module or patch correcting the Defects to which the corrections apply. Patches should be used only when installing a revised module is impracticable. Revised Documentation shall be delivered to.

4.1.2 Updates

[SIS Vendor] will provide to the District such revisions of the Licensed Software as have been generally made available to licensees of the respective programs to which such Updates apply.

4.1.3 Releases

[SIS Vendor] will provide to the District all new releases of the product in question, including without limitation, those incorporating substantial new functionality on the same schedule as delivered to its other customers.

4.1.4 Level One Support

Level One Support is defined as direct support to end users to assist with installation and operation questions after Licensed Product acceptance. This support includes basic user training issues, software navigation and processing, hardware configuration and set-up and network configuration and set-up. Issues that cannot be resolved at Level One are escalated to Level Two Support after ??? days.

4.1.5 Level Two Support

Level Two Support is defined as the triage process of determining the nature of problems that is (network, hardware, software, processes) that cannot be resolved at Level One. Issues related to failure of the respective item of Licensed Software to function in a manner consistent with Documentation or as defined in the accepted requirements in the RFP, will be escalated to Level Three. Issues that cannot be resolved at Level Two are escalated to Level Three Support after ??? days.

4.1.6 Level Three Support

Level 3 Support shall consist of analyzing Faults reported by providers of Level 2 Support, constructing and testing error corrections or bug fixes, and distributing the same, with complying Documentation to the District within the service level commitment period applicable with the Priority Level of the reported Fault. Issues that cannot be resolved at Level Three are escalated to ??? after ??? days.

4.1.7 Priority Levels

Faults shall be characterized and prioritized in accordance with the following Priority Levels:

- A. "Priority 1" Fault shall mean any failure of Licensed Software that precludes all work at the total system level from being done on a computer system or that materially impairs a major function of the software. Nonexclusive examples include system crashes, database-wide information corruption, inability to produce time sensitive required items (such as report cards or transcripts), and incorrect writing of critical fields.
- B. "Priority 2" Fault shall mean any condition that materially impairs one or more functions that the Licensed Software is specified to perform, but that does not involve a Priority 1 condition. Nonexclusive examples include database information corruption for a small group of students, a single school, or incorrect writing of non-critical fields. Priority 2 conditions are less severe than Priority 1 conditions.
- C. "Priority 3" Fault is a condition that does not materially interfere with any function or business process of the District. Priority 3 conditions include cosmetic or formatting defects in screen displays or reports that do not affect the accuracy of data entry or review, awkwardness of operation, or other end user annoyances.

4.2 Source Code

At the time [SIS Vendor] supplies any error correction, update or upgrade, it shall provide to the District, in machine readable format as well as Source Code, all Source Code for the Maintenance Materials being distributed, together with all Documentation required for the District to compile, edit, configure, install and run such error correction, update or upgrade. Source code is available from an FTP secure [SIS Vendor] site at no cost. Should the district want the source code in any other form, there will be a time and materials fee.

4.3 Software Maintenance Services

For as long as the District purchases Maintenance Services from [SIS Vendor], [SIS Vendor] shall provide the following Maintenance Services to the District with respect to the Licensed Software:

4.3.1 Level Three Support

[SIS Vendor] shall provide Level Three Support for all reported Defects in accordance with the Service Levels attributable to the Priority of the reported Fault.

4.3.2 Error Corrections

[SIS Vendor] shall make available to the District all error corrections and bug fixes developed by [SIS Vendor] or its subcontractors or licensors, whether reported by the District or discovered by [SIS Vendor] by other means.

4.3.3 Releases

[SIS Vendor] shall make available all Updates and Releases to the Licensed Software.

4.4 Delivery of Software Revisions

All error corrections, Updates and Releases shall be delivered or made available by electronic transmission in the same manner as provided for the delivery of software and Documentation under the Statement of Work.

4.5 Documentation

In connection with each Delivery of Licensed Software, including without limitation each Delivery of an Update or Release, [SIS Vendor] shall deliver to the District full maintenance documentation in accordance with best practices in the industry including without limitation, instruction and training manuals for Level One and Level Two Support, including by way of example, operating instructions, installation instructions, troubleshooting guides, and scripted responses at least 15 days prior to public availability of the Update or Release.

4.6 Error Logging

During the term hereof, [SIS Vendor] shall maintain a computerized trouble reporting and service tracking system that is available to OCPS authorized personnel via the [SIS Vendor] customer portion of the web.

4.7 Emergency Service Weekend and Evenings

Emergency Service is defined as a problem which needs immediate resolution and cannot wait for the next business day. The emergency telephone number will be supplied by [SIS Vendor]. Any calls will be billed 2 times the hourly rates described in the RFP with a 3 hour minimum. [SIS Vendor] holiday service will not be available. Weekend support is only available on a scheduled basis 12-hour minimum notification.

5. Responsibilities of the District

5.1 Telephone Service

The District will adopt reasonable procedures such that only designated personnel, properly trained in operation and usage of the Licensed Products, will utilize telephone

support and that sufficient and suitable computer time and personnel are made available to implement the corrections suggested by [SIS Vendor]. District agrees to designate a reasonable number of staff members representing the end-users that are authorized to directly contact the [SIS Vendor] hotline.

5.2 Online Support Service

The District will allow the use of online diagnostics on Licensed Products if requested by [SIS Vendor] during problem diagnosis. District will provide a secure electronic connection access to the affected computer servers for [SIS Vendor]'s use.

5.3 Additional District Responsibilities

[SIS Vendor] Support and the Product Warranty require that:

- A. OCPS shall ensure its hardware is kept in good working order in accordance with the manufacturer's recommendations and requirements.
- B. OCPS shall identify and provide "key" individual contacts who have been approved by [SIS Vendor] to serve as OCPS's first line of support on routine System issues for OCPS's authorized users and to serve as a liaison between OCPS and [SIS Vendor] on the issues which need to be communicated to [SIS Vendor].
- C. OCPS shall provide [SIS Vendor] access to OCPS's System via a mutually agreed upon method. Such access shall allow [SIS Vendor] to conduct an audit of the Software as required by [SIS Vendor], from time to time, and to support, monitor, and test OCPS's Student Information System software.
- D. OCPS shall take all reasonable steps to ensure that no virus is loaded on the System. Virus diagnosis and removal services are not covered by Support and are billable at [SIS Vendor]'s then prevailing rates.
- E. If the installation of a new release of Software also requires a new release of the Operating System or Third Party Software, OCPS shall also install such new release(s) at the same time that it installs any such new release of the Software, so that the newly supported [SIS Vendor] release will be functional.
- F. OCPS shall be responsible, to the extent OCPS deems necessary, for the following, unless otherwise set forth in the Schedule: adherence to specified electrical requirements; running all cable and phone connections for the System; all data conversion, media, and other charges related to the transfer of OCPS's data; all networking design and administration charges relating to the set-up and Support of OCPS's network.
- G. OCPS shall use the Software and Third Party Software only in accordance with the terms and conditions set forth in this Agreement. Third Party Software and [SIS Vendor] Software may only be used on hardware owned or leased by OCPS and utilized by its employees.
- H. OCPS shall provide [SIS Vendor] reasonably available information and technical assistance to do what????.

- I. OCPS's installation of all or any part of the Software shall be in accordance with all accompanying documentation provided by the Vendor.
- J. If [SIS Vendor] reasonably determines that an OCPS reported problem is either (1) not caused by or associated with the [SIS Vendor] Supported Products or (2) due to OCPS's modification beyond the scope of modifications allowed of the Products or noncompliance with all of the accompanying documentation, and [SIS Vendor] is reasonably able to correct the problem at OCPS's request, then OCPS will reimburse [SIS Vendor] for that requested correction at [SIS Vendor]'s hourly rates described in the RFP([SIS Vendor] will notify OCPS before incurring those expenses).
- K. OCPS acknowledges and agrees that the System is a confidential and proprietary trade secret of [SIS Vendor]. OCPS, including OCPS's agents and employees, shall keep [SIS Vendor]'s Intellectual Property Rights in the Software and all related "Confidential Information" in strictest confidence. "Confidential Information" shall mean object code, source code and benchmark tests for the Products, pricing, non-standard [SIS Vendor] contract terms, OCPS data and all other information reasonably believed to be confidential with respect to programs developed by [SIS Vendor] for OCPS hereunder, and all copies thereof are proprietary to [SIS Vendor] or the respective third party and title thereto remains with [SIS Vendor] or such third party. All applicable Intellectual Property Rights in the Software, Third Party Software, Operating System or any programs developed at OCPS's request are and shall remain with [SIS Vendor] or the respective third party. No party, other than OCPS and [SIS Vendor]-approved third-party vendors (provided such OCPS has permitted access to the Software's source code), shall be permitted to maintain, modify, reverse engineer, assemble or decompile, in whole or in part, the Software, without the express written consent of [SIS Vendor]. OCPS shall not sell, license, transfer, publish, disclose, display or otherwise make available the Software, Third Party Software or Operating System or copies thereof to others. OCPS agrees to secure and protect the Intellectual Property Rights with respect to the Software, Third Party Software and Operating System and copies thereof in a manner consistent with the maintenance of [SIS Vendor]'s and/or the third party's rights therein and to take appropriate action by instruction or agreement with its employees or consultants who are permitted access to the Software, Third Party Software or Operating System to satisfy its obligations hereunder. Violation of any provision of this paragraph shall entitle [SIS Vendor] to all legal remedies, including, without limitation, rights to terminate this Agreement and the Software, Third Party Software and Operating System licenses granted to OCPS pursuant to the Master License Agreement.

6. Maintenance Fees, Renewal and Reinstatement

There is no maintenance fee for the [SIS Vendor] Supported Products during the Initial Support Period as defined in the Master License Agreement. Support after the Initial Support Period will be provided pursuant to this Agreement [SIS Vendor] will invoice OCPS approximately 90 days before the end of the then current Support Period.

7. **Excusable Delays**

If [SIS Vendor] shall be delayed or prevented from performing this Agreement due to any cause beyond its reasonable control, such delay shall be excused during the continuance of and to the extent of such cause and the period for performance shall be extended to such extent as may be necessary to enable [SIS Vendor] to perform after the cause of the delay has been removed.

8. **Severability**

If any provision, or portion thereof, of this Agreement is invalid under any applicable statute or rule of law, it is to that extent deemed omitted.

9. **Binding Upon**

This Agreement shall be binding upon and inure to the benefit of only the Parties hereto, and their respective successors and permitted assigns.

10. **Waiver**

The waiver or failure of either party to exercise any right provided for in this Agreement shall not be deemed a waiver of any further right hereunder.

11. **General**

Both Parties agree that, except as may be required by applicable law or regulation, they shall not use in advertising, publicity, or otherwise, any information concerning this Agreement or disclose the terms and conditions of this Agreement without the prior written consent of the other party.

12. **Jurisdiction**

Any proceeding arising out of or relating to this Agreement may be brought in the courts of the State of FL, Orange County, or, if it has or can acquire jurisdiction, in the United States District Court for the Middle District of FL, and each of the Parties irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the proceeding shall be heard and determined only in any such court and agrees not to bring any proceeding arising out of or relating to this Agreement in any other court. The Parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement between the Parties irrevocably to waive any objections to venue or to convenience of forum. Process in any proceeding referred to in the first sentence of this section may be served on any Party anywhere in the world. The Parties waive their right to trial by jury of any matter arising out of or relating to this Agreement.

13. Specific Services

13.1 Telephone Assistance

Telephone assistance during Normal Hours of Operation will be provided. [SIS Vendor] will provide phone/cell phone numbers or equivalent methods for immediate reporting of Priority 1 or Priority 2 Faults outside Normal Hours of Operation. This assistance includes the following activities:

- A. Advice on work-arounds for verified Defects until the Defect is addressed.
- B. Information on verified Defects previously identified by the District and reported to [SIS Vendor] and work-arounds to these.
- C. Advice on completion, and authorization for submission, of the [SIS Vendor] form to report identified Defects in Licensed Product to [SIS Vendor].

13.2 Reported Defects

When the District's Support personnel report a Priority One or Priority Two Fault to [SIS Vendor], [SIS Vendor] will provide the following responses:

- A. Assign dedicated personnel to the resolution of the Fault.
- B. Provide an alternative procedure for restoring the operation of the impaired functions until such time as the Defect can be remedied.
- C. Perform root cause analysis to identify the Defect.
- D. Provide a temporary patch or other software correction to remedy the Defect until the correction may be included in an Update.
- E. Escalate the issue as stated in section Maintenance Services - Level 1 and Level 2 sections.

13.3 Documentation Corrections

[SIS Vendor] will correct Defects in Documentation for Licensed Software as outlined in the Service Level Commitment/Agreement. Documentation shall also identify all Defects known to [SIS Vendor], together with procedures developed by [SIS Vendor] to minimize or correct the effects of such Defects.

13.4 Priority 1 Responses

In the case of a Priority 1 Fault reported by the District, [SIS Vendor] shall respond within two (2) hour from the time the Fault was reported. and [SIS Vendor] will provide a correction, or work around, within four (4) hours, provided that the District provides counterpart personnel to provide Consultation and Assistance to [SIS Vendor] during [SIS Vendor] efforts to resolve the problem. All times in this Section shall be Clock Time. If a Priority 1 condition cannot be corrected or workaround provided, within six (6) hours, the following escalation policy will be put into effect:

- A. Persons involved after six (6) hours: The [SIS Vendor]’s Service Representative shall notify [SIS Vendor]’s Director of Professional Services and other members of [SIS Vendor]’s on-call team and they shall commence work to resolve the problem.
- B. Persons involved after twelve (12) hours:[SIS Vendor]’s Regional Sales Director and Senior Director of IT will become involved and shall identify and deploy the resources necessary to correct the problem.
- C. Persons involved after sixteen (16) hours: [SIS Vendor]’s Senior Vice President of Operations or Chief Executive Officer shall become involved.

13.5 Priority 2 Responses

For Priority 2 conditions, [SIS Vendor] shall respond within four (4) hours from the time the SR or other person receives the call. Whenever possible, Priority 2 conditions will be addressed by providing a patch or suggested work-around to accommodate District's needs within eight (8) hours, with a correction or work-around within forty-eight (48) hours. If a patch or work-around cannot be provided within eight (8) hours, the problem may be escalated to a Priority 1 condition and treated as set forth above.

13.6 Priority 3 Responses

For Priority 3 Faults, OCPS shall receive a response within forty-eight (48) hours from the time the SR or other person receives the call. [SIS Vendor] shall use reasonable efforts to correct Priority 3 conditions within in the next scheduled release of the software. There is no escalation policy for a Priority 3 condition.

13.7 Service Level Commitments

[SIS Vendor] shall comply with its responsibilities for Telephone Assistance, Priority 1 Responses, and Priority 2 Responses as follows:

Service	Metric	Criterion
Priority 1 Response	Time to resolve Fault (correction or work-around)	Less than 24 hours Clock Time
Priority 2 Response	Time to Resolve Fault (correction or work-around)	Less than 48 hours Clock Time

[SIS Vendor]

OCPS

(Authorized Signature)

(OCPS Name)

(Authorized Signature)

(Authorized Signature)

Name
(Printed Name)

(Printed Name)

Chief Executive Officer
(Title)

(Title)

(Date)

(Date)

Address line 1
(Street Address Line #1)

(OCPS Street Address Line #1)

Address line 2
(Street Address Line #2)

(OCPS Street Address Line #2)

City, State ZIP
(City, State, Postal Code)

(OCPS City, State, Postal Code)

**Appendix E:
Statement of Work
for the
Configuration, Installation and Deployment
of the
Student Information System
for the
School Board of Orange County**

Month xx, 2013

DRAFT - FOR REVIEW AND DISCUSSION ONLY

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Appendix E:

Statement of Work for the Configuration, Installation, and Deployment

THIS STATEMENT OF WORK describes the work and Deliverables to be provided by [SIS Vendor], Inc. (“[SIS Vendor]”) to the School Board of Orange County (“OCPS”) under that certain Master Software and Services Contract between the Parties dated Month xx, 2013 (“Contract”). The capitalized terms used in this Statement of Work shall have the meanings set forth in the Contract.

A. Project Overview and Introduction

1. Introduction

1.1 Scope

OCPS has selected [SIS Vendor]’s software to be implemented as the basis for its Student Information System (SIS) package. OCPS has engaged [SIS Vendor] as the prime vendor to implement the software. The SIS Project will implement the [SIS Vendor]’s software package in a cooperative effort between OCPS and [SIS Vendor] and will be carried out in five (5) major Phases, as follows:

- Project Initiation
- Project Planning (including Fit/Gap Analysis)
- Project Managing
- Readiness and Deployment for OCPS schools
- Project Closeout

[SIS Vendor] shall build and expand upon the functionality that is already incorporated in the existing [SIS Vendor]’s SIS Software application as needed to meet the Specifications for the new OCPS Student Information System as defined in the RFP # 1306XXX Student Information System.

OCPS and [SIS Vendor] will approach this project as a cooperative implementation, rather than custom development effort, in order to minimize the software change and development efforts required for the project. In this regard, both parties agree that the primary design objective for this project is to use the functionality that already exists in the [SIS Vendor]’s SIS application rather than to substantially modify this functionality. In turn, the existing application will be expanded to include the additional functionality specified in the RFP and addressed in the [SIS Vendor] proposal for this project. Nonetheless, [SIS Vendor] is solely responsible for the design and implementation of OCPS SIS in a manner such that OCPS SIS functions in accordance with the Specifications and requirements in all material respects. This understanding serves as the basis for the work plan and budget that has been proposed and accepted for this project.

[SIS Vendor] shall provide all Services and Deliverables required under this Statement of Work with respect to the installation, customization, configuration, conversion of data,

testing, training and maintenance of OCPS SIS, as defined in the RFP except for those responsibilities allocated to OCPS under this Statement of Work, all for the fixed price set forth in the Contract and the Pricing Schedule (to be finalized during Contract Negotiations.).

1.2 OCPS SIS Objectives

The OCPS SIS Project has been initiated by OCPS and with [SIS Vendor] as its Contractor for the Project, will develop and implement a comprehensive, “state of the art,” student information system. The parties acknowledge that the key objectives for the OCPS SIS are as follows:

- Must meet all required items within the RFP – as defined by the use of the word “must”.
- Must meet all of the requirements on the Mandatory tab of the SIS Functional Requirements of the RFP.
- Provide for compliance with the requirements set for the FL Department of Education (FLDOE) for reporting of student data that is administered by the FL Department of Education according to the Service Level Agreement defined for State Reporting in the RFP. The FLDOE requirements are defined on the web site <http://www.fl DOE.org/eias/dataweb/default.asp>.
- Meet the requirements of the RFP as responded to as affirmative by [SIS Vendor].
- Provide the framework to address additional requirements beyond the scope of this contract through an effective scope management process.

These goals provide a starting point for defining the objectives set for this Project. It is understood that additional objectives may be identified during the initial phase of the project as OCPS and [SIS Vendor] work together to refine the vision for an integrated student information system.

1.3 Definitions

The following additional definitions shall apply throughout this Statement of Work:

- “Baseline [SIS Vendor]’s SIS Software” – the then current release of the [SIS Vendor]’s SIS Software at the time of Project Initiation, based on the regular [SIS Vendor] product development schedule.
- “Consultation and Assistance” – advice, clarifications, and examples provided by one party to another to help the responsible party complete its assigned activities, tasks, and deliverables.
- “FTP Site” – the site maintained by [SIS Vendor] from which OCPS may download software and Documentation deliverables to machines under the control of OCPS.
- “Health Check” – a process for evaluating and assessing the status of a project that includes project planning, monitoring and control, communication, customer issues, and people management as defined by measuring the Key Performance Indicators of the Project.

- “Integration Testing” – the testing of the relationships of the individual OCPS SIS modules, components, services, or deliverables to one another, including the relationships of the OCPS SIS to the OCPS technology infrastructure.
- “Project Work Plan” – a schedule of the individual tasks to be performed by the respective Parties during the Project, including fixed and dependent times, personnel and resources required from the respective Parties.
- “System of Record” – a system which is the authoritative source for reporting of OCPS’s official information regarding student records for all facilities/schools.
- “System Testing” shall mean the testing of multiple components.
- “Technical Platform” – the combination of hardware and Platform Software within the OCPS architected framework, reasonably required for the proper operation of the OCPS SIS.
- “Test Environment” – the configuration of hardware and software as set forth in Section 5.1 and operated by OCPS for the purpose of conducting Integration and Acceptance Testing of software deliverables and protocols under this Statement of Work.
- “Unit Testing” – the testing of an individual OCPS SIS module, component, service, or deliverable.

1.4 [SIS Vendor] Responsibilities

[SIS Vendor] shall provide the following Services:

- Building, revising as necessary, and maintaining a single, comprehensive Project Work Plan in collaboration with the OCPS SIS Project Management Office (PMO).
- Providing functional and technical knowledge of [SIS Vendor]’s SIS Software.
- Assist OCPS in conducting business process re-engineering around major SIS data entry, management, and reporting procedures.
- Providing an OCPS and FLDOE-compliant [SIS Vendor] SIS software and assisting OCPS in implementing OCPS and FLDOE functionality.
- Providing Consultation and Assistance on the development of site-specific business rules and providing FL-specific templates for consideration by OCPS.
- Providing Consultation and Assistance on business processes and “best practices” in the use of [SIS Vendor]’s SIS Software.
- Configuring [SIS Vendor]’s SIS Software in accordance with the approved Product Plan and associated Configuration/Specification Documents.
- Documenting application configuration selections and providing training to District application administrators on the methods and consequences of making application configuration changes related to site-specific business rules.
- Designing, building, testing, and verifying new modules, functions, and capabilities for [SIS Vendor]’s SIS Software.
- Designing, building, testing, and verifying the interfaces from [SIS Vendor]’s SIS Software and any OCPS Third Party Software packages and services. Any none [SIS Vendor] products, OCPS will pay the hourly rate described in the RFP.

- Supplying and deploying a web-based compliant release of the [SIS Vendor]'s SIS Software system on an OCPS District-wide basis, with the features required herein in connection with the deployment of the implementation phase of the Project.
- Utilizing Microsoft Project 2010 as its electronic project management system for management and communication during the Project that is acquired by OCPS.
- Developing the data conversion programs to load the data from the systems outlined in Appendix C of the RFP into [SIS Vendor]'s SIS Software.
- Defining and testing of conversion programs to and from existing legacy systems.
- Leading and collaborating with OCPS on data conversion activities and assisting OCPS in verifying the accuracy of data following conversion.
- Transferring technical knowledge of the [SIS Vendor]'s SIS Software to the OCPS project team members and users outlined in the Training section of the RFP.
- Designing and developing OCPS training programs, including course materials tailored to OCPS processes as outlined in the Training section of the RFP.
- Delivering training, as specified for OCPS technical staff and facility/school personnel as set forth in the approved Training Plan.
- Providing Consultation and Assistance to OCPS, within the OCPS hardware architecture environment, in the evaluation of alternative technical platforms, including hardware, systems and operating software, database management software, and application support software.
- Developing specifications for the technical platform selected by OCPS after recommendations from the [SIS Vendor], within the architected framework, including hardware, systems and operating software, database management software, and application support software.
- Testing of interfaces during unit and integration testing. Hourly rates defined in the RFP apply for non [SIS Vendor] applications.
- Defining and overseeing systems integration and performance tests for each release of [SIS Vendor]'s SIS Software as part of the operational integration and deployment process.
- Facilitating OCPS's systems integration and performance tests by collaborating with OCPS in its review.
- Assisting in developing production support processes for problem management, escalation and tracking.
- Assisting in developing systems operations procedures and processes, including tuning and capacity planning.
- Providing Consultation and Assistance in planning for the deployment of each new release of the [SIS Vendor]'s SIS Software in the OCPS operating environment.
- Providing Level 3 assistance, as defined in Appendix D: Software Maintenance Services Agreement, during post Production support.
- Providing Level 2 assistance, as defined in Appendix D: Software Maintenance Services Agreement, during each deployment phase.

- Providing project leadership and responsibility, with OCPS, for managing the Project.
- Conducting quarterly Project Status Reviews to assure the Project is making adequate progress towards meeting contract requirements.
- Providing non-District contact information ([SIS Vendor] email address, [SIS Vendor] telephone number, pager numbers, and mobile phone numbers).

1.5 OCPS Responsibilities

OCPS shall provide the following support, services, and facilities during the term of the Project as further set forth in this Statement of Work:

- Coordinating with [SIS Vendor] in building, revising as necessary, and maintaining a single, comprehensive Project Work Plan.
- Ensuring executive sponsorship, knowledge of existing systems, knowledge of OCPS's functional requirements, and – with [SIS Vendor] – project management.
- Collaborating and cooperating with [SIS Vendor] to accomplish the objectives of the Project through providing the resources set forth in the OCPS Resource Plan to the best of their ability (to be determined during Contract Negotiations).
- Providing timely review and approval of project Deliverables and timely resolution of project issues.
- Describing the processes and procedures OCPS uses to manage student and school information.
- Testing, and verifying interfaces from the OCPS legacy systems or any third party packages licensed directly by OCPS and not provided under this Contract.
- Testing and verifying the [SIS Vendor]'s security and authorization functionality in Production.
- Assisting in developing end user training material.
- Assisting in delivery of training for facility/school personnel.
- Planning and conducting organizational change management activities, such as modifying business processes, where appropriate and practicable; building and delivering project communications to interested stakeholders; negotiating with collective bargaining units for changes in collective bargaining agreements where appropriate and practicable; and developing process improvement and efficiency measures and metrics.
- Determining, installing, and maintaining site-specific business rules.
- Providing assistance in system development and System Testing.
- Reviewing and approving the design and execution of integration and performance tests specifically tailored to address technical issues in the OCPS environment.
- Ensuring that the telecommunications network is appropriately configured, sized, and functioning properly after receiving results of Lead testing from [SIS Vendor].

- Acquiring, implementing, and maintaining all components of the Technical Platform as specified by [SIS Vendor] in the Specifications and subsequently the Product Plan.
- Maintaining all systems software (e.g., operating systems, DBMS, etc.) as well as application development software at supported release levels.
- Providing facilities and required infrastructure for training OCPS staff.
- Providing facilities and Test Environment infrastructure for testing of releases of the software provided by [SIS Vendor].
- Completing final acceptance testing for each release of the software and Deliverables.
- .
- Working with [SIS Vendor] to verify data accuracy following conversion.
- Operating the OCPS SIS in the Production environment.
- Providing a [SIS Vendor] trained production help desk for both Level 1 and Level 2 support as defined in the Maintenance Service Schedule.

1.6 Scope Management

Neither the functional requirements of the Licensed Software nor the specifications, manner of delivery, or schedule of activities set forth in the Statement of Work, nor shall the charges therefore be modified, except in accordance with the procedures set forth in the Scope Management Process (Appendix F). In particular, [SIS Vendor]'s response to a Change Request from the District (or [SIS Vendor] offer of a Change Request) shall constitute its firm offer to perform the additional or modified Services and/or provide the additional or modified Deliverables as set forth in the Scope Management Process. Notwithstanding the foregoing, no provision set forth in this Contract shall be deemed amended, except in strict compliance with the terms outlined in this Contract.

1.7 SIS Vendor's SIS Software Modules

The Project Implementation will include the following [SIS Vendor]'s SIS software modules.

1.7.1 SIS Vendor's SIS software Student Information System and Supplemental modules:

- Student Demographic Information
- Emergency Contact Information
- Online Gradebook and Teacher Portal
- Discipline/Suspension Information
- Student Grades
- Attendance
- Grade Transcripts / GPA / NPA / Class Rank
- Standards alignment

- State and “High Stakes” Test Scores
- Local benchmark test scores
- Online Course Requests
- User-defined fields
- Field Validation
- Ad-hoc reporting
- Automated imports/exports
- Fees and Fines
- Student Enrollment/Withdrawal
- Admissions
- Health and Immunization Records
- Parent and Student Portal
- Exceptional Education Information
- Athletics and Activities
- Assignment, Test, Homework, Grades
- Absence Tracking and Reporting
- Graduation Requirements/ Planning
- Student Schedules
- Locker assignment and management
- FL State Reporting

1.7.2 [SIS Vendor] will provide all FL State Reporting requirements including:

- All current and future FL DOE reporting requirements, See www.doe.k12.fl.us
- Provides a single extract for all schools for each data collection
- Provide extracts for FTE, Student Record, [define data extracts here]
- In addition to having a data extract for the different FTE cycles, the [SIS Vendor] Reporting Module applies the rules of each different FTE cycle to the editor and disables the ability to update/edit the data by the rule that applies.
- All extracts allow data for concurrently enrolled students’ data to be reported at their “home school.”
- No manual updating or transferring of data for any extract
- Allows historical entry for special education and other data and future entry for items past count date that will not be submitted
- Ability for school to review data being reported (user can “see/validate” data segments)
- When data edits are made in the State Reporting module, all values are saved to a change log table. This feature captures the history of any edits done to the state

reporting data. [SIS Vendor] provides reports which display the information stored in the change log table

- Participation in FL DOE Vendor conference calls pertaining to the requirements
- Updates and maintenance of all FL DOE reporting requirements.
- Maintain field level validations for all state reporting fields.

1.8 System of Record

SIS Vendor's SIS software will become OCPS's System of Record when the following are true:

- 80% of district's schools have been fully deployed in the[SIS Vendor]'s SIS software;
- interface(s) are constructed between [SIS Vendor]'s SIS software and the systems that will be retained as listed in the RFP.

1.9 Electronic Delivery Protocols

All deliveries of [SIS Vendor]'s SIS Software and Documentation required under the Contract shall be transmitted electronically and not by the delivery of any printed or tangible medium, in accordance with the following protocols:

- [SIS Vendor] shall establish on a computer under its direct control not owned or otherwise controlled by OCPS, an "FTP Site," in which all of such Deliverables are stored in digital formats.
- The FTP Site shall contain, at the minimum, a repository of the[SIS Vendor]'s SIS Software, including error corrections, Updates and Releases to be delivered under this Contract, indexed with release dates and other descriptive information about each Release.
- Delivery shall be accomplished by causing the Test Environment computing hardware to access the FTP Site over the public Internet, and request the transmission of all applicable modules for storage in the Test /Production Environment, so as to create a duplicate of the repository in the Test/Production Environment.
- Release to Production shall take place as described in this Statement of Work.

2. Specific Resources to Be Supplied by OCPS

2.1 Personnel

OCPS shall provide, at District expense, those certain staff and employees identified in the OCPS Resource Plan attached hereto during the times indicated for the purpose of managing the Project and performing the activities required of OCPS.

2.2 Facilities

OCPS shall provide and operate (to the extent required) the following physical resources at District expense in support of the Project:

- Facilities and infrastructure for personnel assigned pursuant to Section 2.1 above.
- A Test Environment, consisting of the hardware and software described in [SIS Vendor]'s] RFP response.
- A host computer (which may be the test computer), if necessary, or a third-party hosting arrangement for the operation of the Electronic Project Management Office software selected by the Parties.
- Data telecommunications means suitable to the development of the OCPS SIS, by which deliverables may be received electronically by OCPS.
- Limited space to be temporarily used by [SIS Vendor] employees when their presence is required in connection with the Deliverables.
- Facilities for the co-location of the [SIS Vendor] Project Management Office with OCPS Project Management Office.
- All facilities, equipment, Platform Software, telecommunications services and other items required for the operation of the OCPS SIS in Production.
- All facilities and infrastructure to accommodate training.

Except as expressly set forth above, [SIS Vendor] shall be responsible for leasing or otherwise acquiring all office space, computing equipment, telecommunications equipment and services, supplies and other facilities required by [SIS Vendor] in order to perform the Services.

3. Third Party Software

3.1 Software Supplied by [SIS Vendor] as quoted in RFP

Third party software may be utilized as part of the total [SIS Vendor]'s SIS Software OCPS Student Information System solution. Unless specified in this Statement of Work to be supplied by OCPS at District expense, [SIS Vendor] shall be responsible for supplying the SIF agent.

4. Project Management

4.1 Project Management Generally

The Project will be managed through active cooperation and communication between the Parties and the formation of working teams consisting of District Personnel and [SIS Vendor] staff designated under this Statement of Work to support the Project.

4.2 Project Managers

At the time of execution of this Contract, each Party shall designate in writing and communicate to the other, an individual as its Project Manager, who shall serve as a single authoritative point of contact for the other Party during the course of its activities pursuant to this Contract. Neither Party shall change its Project Manager for a period of at least three (3) months after designation, except (i) in the event such Project Manager ceases all employment with the Party, (ii) the other Party reasonably requests a change in such Project Manager, or (iii) the other Party consents to such change on notice which is reasonable in light of the circumstances. Thereafter, changes in [SIS Vendor]'s Project Managers shall be subject to the same provisions of Section 6.2 of the Contract as are applicable to any others of [SIS Vendor]'s designated management personnel. Project Managers shall have authority to negotiate all Change Orders in accordance with the Scope Management Process (Appendix F), other than those requiring approval by the Board of Education or [SIS Vendor] or District Executive Sponsors, and shall be authorized by their respective Party to make reasonable staff re-assignments (subject to the provisions of Section 6.2 of the Contract) and to make all communications to the other Party and its designated Project Manager as are required or convenient to the efficient progress of the Project. Nothing herein, however, shall be construed as precluding communication between subordinate persons for the purpose of consultation and cooperation, provided that no such subordinate shall have actual or ostensible authority to authorize Change Orders, except as expressly provided in the Scope Management Process.

4.3 OCPS Project Management Personnel

OCPS will establish a Project Management Office ("OCPS PMO"), comprised of representatives reasonably representative of various constituencies within OCPS. Participation at the local facility/school level will be managed and controlled by the OCPS PMO. Other staffing shall be in accordance with the OCPS Resource Plan and Project Work Plan developed by the Parties.

4.4 [SIS Vendor] Project Management Personnel

[SIS Vendor] shall designate a Project Manager, who shall be available to manage the Project. Such person may alternate physical presence between facilities of OCPS and [SIS Vendor]'s offices at which [SIS Vendor] is doing the work required under this Contract. Other staffing shall be consistent with the Project Work Plan developed by the parties. [SIS Vendor] will also designate additional staff to support the PMO that will be co-located with the PMO to provide leadership in the various technical areas of the Project. Such individual(s) shall be highly expert and have demonstrable experience in logistic coordination of highly complex software development and deployment projects.

4.5 **Steering Committee**

OCPS and [SIS Vendor] will appoint and convene a Steering Committee consisting of senior level executives. The Steering Committee shall meet at intervals set forth in the Project Work Plan to review the project and coordinate the activities of the Parties.

4.6 **Dispute Resolution Process**

In the event that there are differences of opinion or delays in responses by either Party in connection with Project Management activities, the Issue Resolution process will be guided by Section 10 of the Contract.

4.7 **Electronic Project Management**

[SIS Vendor] in collaboration with OCPS will develop an overall Project Work Plan utilizing Microsoft Project 2007. The Project Work Plan shall, when approved by both Parties, state the final Specifications for the Project. The project plan shall be modeled after the Project Management Institute's (PMI) standards. If the Parties cannot reach agreement as to such Project Work Plan within 90 days after the Commencement Date, the matter shall be escalated in accordance with the dispute resolution process set forth in Section 9 of the Contract. Notwithstanding the foregoing, nothing herein shall constitute the District's waiver of or agreement to waive any requirements from [SIS Vendor] for the SIS as set forth in the RFP. The Project Management Plan shall, at the least provide the following features:

- Information about all personnel and other resources required for the Project at each stage of the Project.
- Assignment of Resources to each task and Deliverable.
- Identification of task dependencies.
- Monitoring of progress on each task.
- Identification of personnel and resources that are current pacing items.
- Tracking of actual and budgeted expenditures
- Identification of each version of [SIS Vendor]'s SIS Software and the status of development, testing, and deployment.
- Identification of all reported faults or defects in software and the status of efforts to correct such faults or defects.
- A common repository of all Change Requests and Change Orders and a list of sections affected.

4.8 **Reporting**

During the entire term of the Project, [SIS Vendor] shall provide the district a secured web site where personnel can review all outstanding issues, updated programs, releases, and documentation, not just those associated with OCPS. In addition, [SIS Vendor] shall provide periodic status and performance reports on a bi-weekly basis to include accounting of payments to date and remaining deliverable schedule.

4.9 Management Meetings

SIS Vendor's managers and their District counterparts shall meet via video conference, phone or at the SDOC Kissimmee, FL 34744 office if requested by either party. It is expected that weekly project status meetings and monthly executive steering committee meetings will be held.

5. Establishment of Testing Environment and Testing Protocols

5.1 District Facilities

Within 30 days after the completion of the planning phase, OCPS will provide the following equipment, operating system and other Platform Software, on premises under OCPS's control for the purpose of establishing a Test Environment for testing software deliverables prior to release to production:

- Test Server and the DBMS software installed
- A Disk Subsystem configured to accommodate initial data load requirements for the OCPS school deployments
- Backup Data Center Server

5.2 Pre-Delivery Test Requirements

Prior to Delivery to OCPS of any subsequent software release, [SIS Vendor] shall conduct tests of the respective Deliverable to assure its compliance with requirements for such Deliverable, including unit testing, load testing and System Testing.

5.3 Minimum Test Criteria

Unless otherwise expressly agreed in this Statement of Work no Software Deliverable need be accepted by OCPS in connection with any deployment phase unless it passes the tests outlined in the [SIS Vendor] RFP response Section 3.7.1, 3.7.2, and 3.7.3

- **Unit Testing.** [SIS Vendor] shall provide reports of satisfactory pre-delivery unit testing. That is, [SIS Vendor] shall test all system components, customizations, interfaces, etc. that are coded or modified, as individual units, prior to incorporating these components into the Test Environment. These tests shall be done by [SIS Vendor]'s unit test standards and processes, and shall be consistent with industry best practices.
- **Functional Compliance.** The Deliverable shall perform all functions strictly in accordance with the Product Plan and Configuration/Specification Deliverables.
- **Integration Testing.** The Deliverable shall work properly in connection with all other OCPS SIS and OCPS technical infrastructure components as specified in the Product Plan. District must notify in writing of any and all changes to the

network, 3rd party application software, Operating systems or any other software or hardware that may have a negative impact on the Deliverable.

- **Load Testing**????????????????
- **Regression.** No modification shall adversely affect the accuracy of any previously operational feature of the system.

5.4 Testing Configuration

[SIS Vendor] will provide Consultation and Assistance to the OCPS in the installation and configuration of the Test Environment so as to (a) permit the realistic simulation of the Production Environment for the purpose of testing any, some, or all of the software Deliverables, and (b) permit identification and correction of errors and inefficiencies determined during testing, and (c) permit the pre-assembly of an operational system to support migration of new releases, patches and other modifications and enhancements to the Production Environment once they have passed acceptance tests.

5.5 Test Database

During each phase of the Project, OCPS shall extract a set of student and school/facility information of its choosing (“Test Database”) from its existing records of the requisite types for the phase in process, in the format specified by [SIS Vendor] for data conversion and make it available for import into the Testing Environment. Such Test Database shall not be copied or removed from facilities under the direct control of OCPS and may only be exposed to [SIS Vendor] employees and [SIS Vendor]s who are subject to the confidentiality obligations and security protocols otherwise imposed by the Contract and this Statement of Work.

5.6 Test Scripts

At least 15 Business Days prior to the due date for each software Deliverable, [SIS Vendor] shall deliver a proposed sequence of data and operational procedures (“Test Script”) to be used to verify the accuracy and reliability of the Deliverable. OCPS shall review such proposed Test Script and make such additions and changes as it reasonably deems appropriate. The Test Script as edited and agreed to by the Parties shall be used to conduct the applicable acceptance tests for such Deliverable.

5.7 Software Acceptance Testing

All acceptance testing protocols shall at the minimum verify that the modules being tested with the RFP responses. Upon the Delivery of each software Deliverable and the approval of applicable Test Scripts, OCPS shall conduct tests within 10 Business Days of receipt of the applicable Deliverable in the Test Environment with requested Consultation and Assistance from [SIS Vendor]. OCPS shall determine in accordance with the provisions of the Contract if the results of such acceptance tests are satisfactory to indicate conformity with the Product Plan and Configuration/ Specification Deliverables in all material respects. Payment will be made for [SIS Vendor] application software by module for successful completion of acceptance testing.

5.8 Faults or Defects

In the event that the software Deliverable fails to meet the standards set for Acceptance Testing, OCPS, shall itemize the Faults or Defects, and [SIS Vendor] shall perform such root cause analysis and other procedures to isolate the problem, develop corrections as soon as practicable, and rerun the applicable portions of the tests and such of the other tests as OCPS determines to repeat to ensure the faults have been corrected. The process of fault detection, analysis, correction, and retest shall continue until the applicable Deliverable has successfully passed the acceptance test.

5.9 Release to Production

Deliverables that have passed the designated acceptance tests shall be migrated to the Production Environment in accordance with the mutually agreed upon migration procedures, provided that OCPS's Project Manager has given written approval.

6. Data Conversion/Data Conversion Services

6.1 Data Conversion Generally

[SIS Vendor] shall provide the mechanisms for converting or importing data and formats specified by [SIS Vendor] responses in the RFP. To the extent practicable, OCPS will use the same tools and processes for data conversion as are used for interfaces and data integration employed by the OCPS SIS.

6.2 Responsibilities of OCPS

Cleansing and extracting relevant existing data from legacy systems and providing it for conversion.

6.3 Testing of Conversion Databases

For the purpose of accomplishing the conversion required to migrate systems to Production, at least 15 days prior to the scheduled migration, [SIS Vendor] shall cause a test of the conversion in the Test Environment, verifying that the conversion programs are reliable and accurate and will not interfere with the necessary operation of the Production Environment. The Parties will work cooperatively to confirm the accuracy of the data and to perform manual corrections in the Test Environment.

7. Training

7.1 Development of Training Program

In accordance with the Project Work Plan, [SIS Vendor] shall design and develop the Training Plan, comprised of training curriculum and training materials for each phase of the OCPS SIS implementations, i.e. OCPS high schools, middle schools and elementary schools.

7.2 Training of OCPS Technical Staff

[SIS Vendor] will provide training for OCPS Technical Staff identified in the OCPS Staffing Plan to facilitate the transfer of knowledge for operation, technical support, help desk support (Levels 1 and 2 as specified in the Maintenance Service Schedule), and software maintenance (installation, testing, and deployment of new [SIS Vendor]'s SIS Software Releases). Once [SIS Vendor] has delivered the initial technical training as specified in the Training Plan approved by OCPS and within the constraints of the Level of Effort set forth in the approved Project Work Plan and [SIS Vendor]'s RFP Proposal, OCPS will be responsible for ongoing training of technical staff.

7.3 Training District End Users

[SIS Vendor] will provide training for OCPS End Users in accordance with the Training Plan approved by OCPS and within the constraints of the Level of Effort set forth in the approved Project Work Plan and the RFP. After the [SIS Vendor] completes the "go-live" training, OCPS will assist [SIS Vendor] to provide retraining, additional training, supplemental training, and training for new school staff in the event of employee turnover, changing job assignments, and the like.

7.4 Responsibilities of OCPS

OCPS is responsible for providing qualified staff that will become OCPS SIS trainers in accordance with the OCPS Staffing Plan, the approved Project Work Plan, and the Training Plan accepted by OCPS. OCPS will assume the primary training responsibility for the new SIS after initial deployment in accordance with the OCPS Staffing Plan, the approved Project Work Plan, and the Training Plan accepted by OCPS, with [SIS Vendor] providing Consultation and Assistance. OCPS shall also audit classes to assure consistent quality of training delivery across OCPS. OCPS will be responsible for providing retraining, additional training, supplemental training, and training for new school staff for all schools in the event of employee turnover, changing job assignments, and the like.

7.5 Adjustment of Plan

The Training Plan will be based on the accepted Project Plan and will focus on the changes to OCPS's student records administration business processes within the context of the OCPS SIS implementation. The Training Plan will be adjusted based on the detailed Configuration/ Specification deliverables developed for each [SIS Vendor]'s SIS Software release as well as the "lessons learned" during the rollout of the SIS.

8. Organizational Change Management

8.1 Organizational Change Management Requirements

In addition to determining the functional and technical requirements that will best meet the needs of OCPS in this project, it will also be important for OCPS to consider the organizational change management requirements for the new system. These include the

extent to which changes need to be made in existing operating practices and procedures to accommodate and support the new student information system. It also includes any staff issues or concerns that have to be included in the training for this project, in order to help staff accept and use the new system.

8.2 District Responsibility

OCPS has the responsibility for organizational change management with Consulting and Assistance from [SIS Vendor]. The change management needs for the project will be addressed in at least two key ways, as highlighted below.

8.3 Initial Organizational Change Management Readiness Review

As a first step, OCPS will conduct a formal change management readiness review and complete the same by the conclusion of the planning phase of the Project, focusing on such issues as:

- The extent to which staff currently use automation and are ready to work with and accept the level of technical functionality planned for the new OCPS SIS systems.
- The extent to which adequate data input processes and procedures are in place to support the data input requirements for the new system.
- The extent to which current work methods, practices, and procedures, such as the way that teachers record their daily attendance or prepare and enter grades, support the way the new system is designed to work in the classroom and in the administrative setting.
- The extent to which teachers and administrative staff will have to change their current operating practices to best use the new system.
- The extent to which any teacher or staff resistance can be expected as the new system is implemented, and the best ways to address this potential resistance in the training planned for the new system.
- The extent to which current hardware may hinder acceptability of the new system.

This information will be useful for finalizing the training requirements and curriculum for the new system. It will also be useful for determining the extent to which changes need to be made in existing work methods, practices, and procedures. The OCPS staff assigned to this project will be responsible for completing all change management reviews and interviews. OCPS is responsible for the collection of the information. [SIS Vendor] will provide Assistance to OCPS in interpreting the results of this review effort.

8.4 Continuing Organizational Change Management Perspective

[SIS Vendor] will consider OCPS organizational change management needs for this project as a formal review element at key decision points in the project. During the Fit/Gap Analysis, [SIS Vendor] will bring to the attention of the OCPS PMO any requirements issues that the [SIS Vendor]'s SIS Software may have change management

impact. The team will follow this same approach in planning all system training and implementation steps.

B. Project Phases and Steps

9. Project Initiation

9.1 Project Charter and Kick-off

Promptly after the Commencement Date, the Parties shall work together to establish a Project Charter, including, but not limited to, the following activities:

- Conduct a visioning session to establish project “branding” and logo.
- Establish the Project Management infrastructure described in Section 4, above.
- Complete comprehensive, integrated Project Work Plan to manage all activities related to the Project.
- Refine and confirm Project Charter and other project management documents.
- Plan and conduct Project Kick-Off.

9.2 Services

[SIS Vendor] shall provide the following Services during the Project Initiation Phase:

- Make the Baseline [SIS Vendor]’s SIS Software available to OCPS on the [SIS Vendor] FTP Site.
- Permit OCPS to conduct Beta Testing activities by individuals designated by OCPS through unrestricted access to the Host Environment for the purpose of examining all completed features of the Baseline Software.

9.3 Project Work Plan

No later than 30 days after the Commencement Date, [SIS Vendor] will develop and recommend an overall Project Work Plan, subject to the approval of OCPS, which approval will not be unreasonably withheld or delayed. The Project Work Plan will include all tasks and activities with appropriate staffing assignments as agreed upon by OCPS and [SIS Vendor]. The Project Work Plan take into account all the project phases, tasks and activities outlined in [SIS Vendor]’s RFP response Section 4.3 Project Management Approach Requirements, 4.4 Proposed Technical Environment, 4.5 Proposed Solution Approach, 4.6 Proposed Approach to Enhancements and Customizations, 4.7 Testing Strategy, 4.8 SIS Data Conversion Strategy, and 4.11 Training Strategy.

9.4 Responsibilities of OCPS

OCPS shall provide the following during the Project Initiation Phase:

- Define Key Project Success Factors in collaboration with [SIS Vendor]
- Respond with comments, approvals, and rejections on a timely basis.

- Review and approve or reject Product Plan and Work Plan on a timely basis.

10. SIS Vendor's SIS Software Enhancements

10.1 Enhancements

[SIS Vendor] will develop, test, and make available for testing and installation enhancements, improvements, and new modules for the [SIS Vendor]'s SIS Software as defined in the Product Plan and the agreed upon Software Enhancements.

The purpose of [SIS Vendor]'s SIS Software Enhancements to design, code, and test [SIS Vendor]'s SIS Software modifications and enhancements as specified in the Product Plan and the RFP. In all cases, as appropriate, every attempt will be made by [SIS Vendor] to include all enhancements in the national release so as to avoid multiple product paths; and OCPS-unique patches or add-ons.

10.2 Specific Features

The following features were either marked as under development or planned for release no later than Month 1, 20xx:

To be added.

The following items were marked as "no cost" customizations which will be addressed by [SIS Vendor] in accordance with the Product Plan prior to the "go-live" deployment:

To be Added.

**Appendix F:
Scope Management Process
for the
Student Information System
for the
School Board of Orange County
Month xx, 2013**

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Appendix F: Scope Management Process

The purpose of this document is to define a series of processes by which changes may be made to any aspect of the work being performed or Deliverable being delivered by [SIS Vendor]. (“[SIS Vendor]”) to School Board of Orange County (“OCPS”) pursuant to that certain Contract dated Month xx, 2013 by and between [SIS Vendor] and OCPS (“the Contract”). All capitalized terms used in this document shall have the meanings specified in the Contract, or if no meanings are defined in the Contract, such meanings as may be specified in this document.

1. Definitions

- 1.1 **“Change Order”** shall mean a modification or clarification of the Project Documents that is duly adopted by the Parties in accordance with the Scope Management Process.
- 1.2 **“Change Request”** shall mean a request by a Party for a Change Order made in accordance with the Scope Management Process.
- 1.3 **“Emergency Change Order”** shall mean a Change Order resulting from a Change Request which OCPS has designated as having an emergency status.
- 1.4 **“Initial Specification”** shall mean the description or specification of a computer program, process, method, or other item which is called for under the terms of the Statement of Work, but which has not yet been specified in full as of the Execution Date of the Agreement.
- 1.5 **“Priced Resource”** shall mean a component of labor, materials, or other expense in providing a service under the Agreement, including without limitation, hours or other units of work of individuals, units of supplies, license fees, travel and lodging expenses, and other items.
- 1.6 **“Scope Process”** shall mean, as the context requires, either this Scope Management Process document, or the applicable procedures set forth in this Scope Management Process document.
- 1.7 **“Work Order”** shall mean a request for specific words of a relatively routine nature that does not affect any Specification and that is priced on a time and materials basis.

2. The Change Request Process

2.1 Change Requests Logging and Numbering

All change requests will be entered into [SIS Vendor]’s customer portion of the website. The [SIS Vendor] RFE (Request For Enhancement) process will be used.

2.2 Initial Specification Process

Each RFE initiated will contain a thorough description of the business problem to be solved, an impact statement, and the system components, if applicable. Additional documentation shall be provided, such as screen shots, reports samples, etc. if necessary.

2.3 RFE from OCPS

RFEs initiated by OCPS shall have a completed RFE, be in a Tutorial and shall be signed by the designated OCPS Project Manager. Duly executed Change Requests shall be delivered to the [SIS Vendor] Project Manager.

3. Responses to RFEs

3.1 Initial Specifications

In the event that additional clarifications are necessary to the specifications submitted, [SIS Vendor] shall assign a representative to meet with the person(s) initiating their request and acquire additional documentation or other forms of clarification necessary to proceed.

3.2 Time to Respond

The Party receiving a Change Request shall respond in writing to such change request with the materials required by this Article within ten (10) Business Days of its receipt of the Change Request.

3.3 Contents of [SIS Vendor] Response

SIS Vendor's response to a Change Request received from OCPS shall include the following items:

- A. A binding price of the work requested computed in accordance with the procedures set forth in this Scope Process.
- B. A complete Technical Assessment of the Change Request, as described herein.
- C. The amount of time required to complete the work requested.
- D. Any Additional acceptance criteria.

3.4 Technical Assessment

A technical assessment of a Change Request shall contain a technical evaluation of the proposed change and an estimate of the effect of the Change Request on all material aspects of the Project or any Deliverable, including without limitation (a) any anticipated changes in time to complete any and all affected milestones, (b) the estimated effects of the changes on the accuracy, speed, reliability, or other characteristics of any and all functions of [SIS Vendor]'s Student Information System software and (c) the risk analysis associated with preceding with this Change Request.

3.5 Effect on Acceptance Criteria

Unless otherwise approved in a Change Order, no acceptance process, test, or criteria and shall be modified as the result of the adoption of a Change Order, except to the narrow and limited extent made necessary by the approved technical changes.

4. Pricing of Change Orders

4.1 Fixed Prices on All Change Orders

Except in the case of Work Orders, all price quotes for Change Orders will be the agreed upon price of the specific RFE.

4.2 Relief for Unforeseeable Circumstances

Notwithstanding the foregoing, in the event that [SIS Vendor] can demonstrate that its quotation for a Change Order proposed by and subsequently accepted by OCPS was based on information collected by [SIS Vendor] which was substantially inaccurate and which [SIS Vendor] should not have known at the time was materially inaccurate, the parties shall negotiate in good faith as to the revision of the quoted price. [SIS Vendor] understands and acknowledges that this procedure is only to be used under extraordinary circumstances. OCPS is expecting that [SIS Vendor] will use its best efforts in all cases to collect accurate information upon which to base a response to a Change Request. In no event shall [SIS Vendor] be entitled to price relief on any Change Request initiated by [SIS Vendor].

4.3 Work Orders

OCPS may from time to time request in writing for [SIS Vendor] to perform services related to the [SIS Vendor] PRODUCT, not exceeding the maximum aggregate amount set forth in the Contract, to provide additional minor functionality or to provide services not otherwise required by the Statement of Work. Such requests shall take the form of Work Orders, shall be priced on a Time and Materials basis, not to exceed the amount set forth in the Work Order, and shall be directed to the [SIS Vendor] Project Manager.

4.4 Resource Estimation

Each price quotation by [SIS Vendor] in response to a Change Requests initiated by OCPS shall be based on a reasonable estimate of a quantity of each Resource required to be supplied or expended in connection with the Services to be performed in the event that the Change Requests is accepted and implemented. In addition, [SIS Vendor] shall notify OCPS of Resources that will not be required (or will be replaced) in the event that the Change Request is accepted and implemented. The Resource estimate shall be accompanied by a Gantt Chart or Work Breakdown Schedule identifying when Resources affected by the Change Request are to be deployed, such as to identify increases or decreases in staffing or other components which would affect [SIS Vendor]'s costs.

4.5 Resource Prices

The price for a District Change Request shall be equal to the sum of the prices for all Resources to be supplied or expended under the Change Request, applying the rates set forth in the Pricing Schedule attached to the Contract, plus the cost of any resources which will not be required or will be replaced as a result of the acceptance and implementation of the Change Request. In the event that a Resource is required that is not listed in the Pricing Schedule, the price shall be quoted prior to the start of the Change Order.

5. Request for Enhancements

5.1 Effect of Response

SIS Vendor's response to a OCPS RFE (or its own Change Request) shall constitute [SIS Vendor]'s offer to provide for services and Deliverables specified in the Change Request on the terms set forth in such response or [SIS Vendor] RFE, which offer shall be irrevocable for a period of 90 days from its submission to OCPS, subject to modification only in the event of the discovery of unforeseeable circumstances as described in Section 4.2.

5.2 Acceptance of RFE

OCPS's PMO team will conduct a review of each [SIS Vendor] RFE and each response by [SIS Vendor] to an OCPS Change Request prior to making a recommendation for acceptance or rejection of such response or [SIS Vendor] RFE. OCPS may accept [SIS Vendor]'s offer made pursuant to Section 5.1 above by delivering an acceptance, executed by OCPS's Executive Sponsor, to [SIS Vendor] at any time prior to the effective revocation of such offer by [SIS Vendor]. Upon acceptance by OCPS, the terms and conditions of the RFE shall become a Change Order and be deemed to amend the Statement of Work in all applicable respects, as well as to amend the provisions of any Specification, the Pricing Schedule, or any other applicable Project Documents specified by the parties in the Change Request and/or response thereto.

5.3 Effect of Non-acceptance

In the event that OCPS either rejects an offer from [SIS Vendor] pursuant to Section 5.1 above or fails to accept such offer prior to its revocation, all provisions of the Statement of Work, Pricing Schedule and other Project documents shall remain unchanged as if no Change Request had been submitted.

5.4 Form of RFE

Upon OCPS's acceptance of [SIS Vendor] response to a RFE (or of a [SIS Vendor] RFE), [SIS Vendor] shall promptly prepare a Change Order for the approval by OCPS, which shall contain the following items:

- A. An itemization of all Deliverables under the Change Order
- B. A description of all acceptance criteria for all new Deliverables

- C. The prices and terms and conditions for payment for all Deliverables under the Change Order
- D. A list of all sections of a Project Documents affected by the Change Order
- E. A signature line for approval by appropriate OCPS and [SIS Vendor] personnel

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