State of Oklahoma

Office of Management and Enterprise Services

ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH INFINITE CAMPUS, INC.
RESULTING FROM STATEWIDE CONTRACT NO. 1066

This Addendum 1 ("Addendum") is an Amendment to the Contract awarded to Infinite Campus, Inc. in connection with Solicitation No. 0900000370 ("Solicitation") and is effective May 12, 2020.

Recitals

Whereas, the State issued a Solicitation for proposals to provide Oklahoma K-12 public schools access to a list of Learning Management Systems (LMS) and Student Information Systems (SIS) to offer software, licensing, technical support, migration services (consulting), and hosting options, as more particularly described in the Solicitation;

Whereas, Infinite Campus, Inc. submitted a proposal which contained exceptions to the Solicitation terms and various other Contract Documents; and

Whereas, the State and Infinite Campus, Inc. have negotiated the final terms under which Infinite Campus, Inc. will perform the Services under the Contract.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. **Addendum Purpose.**

   This Addendum memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to Infinite Campus, Inc. as of even date with execution of this Addendum. The parties agree that Supplier has not yet begun performance of work contemplated by the Solicitation.

2. **Negotiated Documents of the Contract**.

   2.1. The parties have negotiated certain terms of the Contract as follows:

      i. certain exceptions to the Solicitation as contained in Attachment A to this Addendum titled "Negotiated Exceptions to the Solicitation";

      ii. the State's Hosting Agreement as contained in Attachment B to this Addendum; and

     iii. Infinite Campus, Inc.'s End User Agreement with three Exhibits as contained in Attachment C to this Addendum titled, "Infinite Campus End User License Agreement and Implementation Agreement"; and

     iv. Infinite Campus, Inc.'s Implementation Services Agreement contained in Attachment D.

2.2.   Accordingly, any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.

2.3.   Infinite Campus, Inc. affirmatively acknowledges that it will not ask the State, any agency, or Customer to execute additional documents not listed above in connection with this Contract.

State of Oklahoma by and through the Office of Management and Enterprise Services	**Infinite Campus, Inc.**
By: _DJerryMoore_	By: _(signature)_
Name: D. Jerry Moore	Name: Brian Page
Title: Chief Information Officer	Title: CFO
Date: 5/12/2020	Date: 5 / 12 / 2020

Negotiated Exceptions to the Solicitation

The Solicitation is hereby amended as set forth below and supersedes all prior Exceptions submitted by **Infinite Campus, Inc.** or discussed by the parties.

RFP Section	Exception
A. General Provisions, A.28. Confidentiality	Section A.28 is deleted and replaced in full with the following language: The Supplier shall maintain strict security of all State data and records entrusted to it or to which the Supplier gains access, in accordance with and subject to applicable federal and state laws, rules, regulations and policies and shall use any such data or records only as needed by Supplier for performance of its obligations hereunder, including the improvement of the products and services provided. The Supplier further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or state laws, rules and regulations. If Supplier utilizes a permitted subcontractor, Supplier shall obtain specific written assurance, and provide a copy to the State, that the subcontractor shall maintain this same level of security of all data and records entrusted to or accessed by the subcontractor and agree to the same obligations as Supplier, to the extent applicable. Such written assurance may be set forth in the required subcontractor agreement referenced herein. No State data or records shall be provided or the contents thereof disclosed to a third party unless specifically authorized to do so in writing by the State CIO or in compliance with a valid court order. Unless prohibited by law, the Supplier shall immediately forward to the State and the State CIO any request by a third party for data or records in the possession of the Supplier or any subcontractor or to which the Supplier or subcontractor has access and Supplier shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.
B. General Provisions, A.45.1 Ownership Rights	Section A.45.1 is deleted and replaced in full with the following language: Any customized software specially developed by the Supplier in the performance of this Contract is for the sole and exclusive use of the State including but not limited to the right to use, reproduce, re-use, alter, modify, edit, or change the software as it sees fit and for any purpose. Moreover, except with regard to any deliverable based on the Utilities, the State shall be deemed the sole and exclusive owner of all right, title, and interest therein, including but not limited to all source data, information and materials furnished to the State, together with all plans, system analysis, and design specifications and drawings, completed programs and documentation thereof, reports and listing, all data and test procedures and all other items pertaining to the work and services to be performed pursuant to this Contract including all copyright and proprietary rights relating thereto. With respect to Utilities embedded in the customized specially developed software, the Supplier grants the State, for no additional consideration, a perpetual, irrevocable, royalty-free license, solely for the internal business use of the State, to use, copy, modify, display, perform, transmit and prepare derivative works of Utilities.

RFP Section	Exception
C. General Provisions, A.45.2 Ownership Rights	A.45.2 is deleted and replaced in full with the following language: Except for any Utilities, all work performed by the Supplier of developing, modifying or customizing software and any related supporting documentation therefore, for which a separate agreement is entered into by the parties which expressly identifies the deliverable and states that it is being commissioned by the State, shall be considered as Work for Hire (as defined under the U.S. copyright laws) and, as such, shall be owned by and for the benefit of State.
D. General Provisions, A.45.3 Ownership Rights	A.45.3 is deleted and replaced in full with the following language: In the event that it should be determined that any portion of such customized software or its related supporting documentation does not qualify as "Work Made for Hire", Supplier hereby irrevocably grants to the State, for no additional consideration, a non-exclusive, irrevocable, royalty-free license to use, copy, modify, display, perform, transmit and prepare derivative works of such customized software and any Utilities embedded therein.
E. General Provisions, A.45.4 Ownership Rights	A.45.4 is deleted and replaced in full with the following language: Supplier shall assist the State and its agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering software developed, modified or customized for the State, but not including or covering any Utilities. Supplier shall sign any such applications, upon request, and deliver them to the State. The State shall bear all expenses that incurred in connection with such copyright, trademark, and/or patent applications.
F. General Provisions, A.45.5 Ownership Rights	A.45.5 is deleted and replaced in full with the following language: Either for any Utilities, if any Acquisition pursuant to this Contract is funded wholly or in part with federal funds, the source code and all associated customized software and its related documentation owned by the State may be shared with other publicly funded agencies at the discretion of the State without permission from or additional compensation to the Supplier.
G. General Provisions, A.45.6 Ownership Rights	A.45.6 is deleted and replaced in full with the following language: It is understood and agreed that customized software would be developed by the Supplier for the State would be memorialized in a separate agreement and would be for the sole and exclusive use of the State of Oklahoma. Moreover, except with regard to any deliverable based on Supplier's Utilities, the State of Oklahoma shall be deemed the sole and exclusive owner of all right, title, and interest therein, including all copyright and proprietary rights relating thereto. The Parties do not anticipate that Bidder will provide any deliverable that includes customized software, and that instead, Bidder will supply only its Utilities and related documentation in the performance of its services and provision of its products under this Contract.
H. General Provisions, A.45.7 Ownership Rights	A.45.7 is deleted and replaced in full with the following language: Except for any Utilities, all work performed by the Supplier of developing, modifying, or customizing software and any related supporting documentation therefore, for which a separate agreement is entered into by the parties which expressly identifies he deliverable and states that it is being commissioned by the State, shall be considered as Works for Hire (as such are defined under the U.S. Copyright Laws) and, as such, shall be owned by and for the benefit of State of Oklahoma.

This Hosting Agreement is hereby amended as set forth below and supersedes all prior documents discussed by the parties.

HOSTING AGREEMENT

This Hosting Agreement ("Hosting Agreement") is a Contract Document in connection with the Contract issued as a result of Solicitation No. 0900000370 (the "Contract") and entered into between Infinite Campus, Inc. ("Vendor") and the State of Oklahoma by and through the Office of Management and Enterprise Services ("State" or "Customer"), the terms of which are incorporated herein. This Hosting Agreement is applicable to any Customer Data stored, accessed, or processed by Vendor in connection with the Contract. Unless otherwise indicated herein, capitalized terms used in this Hosting Agreement without definition shall have the respective meanings specified in the Contract.

I.   Definitions

   a. "Customer Data" shall mean all data supplied by or on behalf of Customer in connection with the Contract, excluding any confidential information of Vendor.

   b. "Data Breach" shall mean the unauthorized access by an unauthorized person that results in the access, use, disclosure or theft of Customer Data.

   c. "Non-Public Data" shall mean Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by Customer as Non-Public Data, or that a reasonable person would deem confidential.

   d. "Personal Data" shall mean Customer Data that contains 1) any combination of an individual's name, social security numbers, driver's license, state/federal identification number, account number, credit or debit card number and/or 2) contains electronic protected health information that is subject to the Health Insurance Portability and Accountability Act of 1996, as amended.

e. "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the hosted environment used to perform the services.

II. Customer Data

a. Customer will be responsible for the accuracy and completeness of all Customer Data provided to Vendor by Customer. Customer shall retain exclusive ownership of all Customer Data. Non-Public Data and Personal Data shall be deemed to be Customer's confidential information. Vendor shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).

b. Vendor shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the hosted environment. Vendor shall notify the Customer by the fastest means available and also in writing pursuant to Contract notice provisions and the notice provision herein. Except to the extent required by law, Vendor shall not respond to subpoenas, service or process, FOIA requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of Vendor's proposed responses. Vendor agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.

c. Vendor will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by Vendor. Vendor will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Vendor will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Vendor as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Vendor's negligence or willful misconduct, Vendor, at the Customer's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

III. Data Security

a. Vendor will use commercially reasonable efforts, consistent with industry standards, to provide security for the hosted environment and Customer Data and to protect against both unauthorized access to the hosting environment, and unauthorized communications between the hosting environment and the Customer's browser. Vendor shall implement and maintain appropriate

administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Vendor applies to its own personal data and non-public data of similar kind.

b. All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Vendor is responsible for encryption of Personal Data.

c. Vendor represents and warrants to the Customer that the hosting equipment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Vendor will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Vendor will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to Customer by Vendor, Vendor will promptly notify Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Vendor has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Vendor is responsible for costs incurred by Customer for Customer to remediate the virus.

d. Vendor shall provide its services to Customer and its users solely from data centers in the U.S. Storage of Customer Data at rest shall be located solely in data centers in the U.S. Vendor shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Vendor shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Vendor's obligations under the Contract.

e. Vendor shall allow the Customer to audit conformance to the Contract terms. The Customer may perform this audit or contract with a third party at its discretion and at Customer's expense.

f. Vendor shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. Vendor may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

IV. **Security Assessment**

a. The State requires any entity or third-party vendor hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Vendor submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to maintain the State's minimum security standards during the term of the Contract, including renewals, constitutes a material breach.

b. To the extent Vendor requests a different sub-contractor than the third-party hosting vendor already approved by the State, the different sub-contractor is subject to the State's approval. Vendor agrees not to migrate State's data or otherwise utilize a different third-party hosting vendor in connection with key business functions that are Vendor's obligations under the Contract until the State approves the third-party hosting vendor's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party hosting vendor does not meet the State's requirements under the State Certification and Accreditation Review, Vendor acknowledges and agrees it may not utilize such third-party vendor in connection with key business functions that are Vendor's obligations under the Contract, until such third party meets such requirements.

V. **Security Incident or Data Breach Notification**: Vendor shall inform Customer of any Security Incident or Data Breach

a. Vendor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Security Incident involves Customer Data, Vendor will coordinate with Customer prior to making any such communication.

b. Vendor shall report a Security Incident to the Customer identified contact set forth herein within five (5) days of discovery of the Security Incident or within a shorter notice period required by applicable law or regulation (i.e. HIPAA requires notice to be provided within 24 hours).

c. Vendor shall: (i) maintain processes and procedures to identify, respond to and analyze Security Incidents; (ii) make summary information regarding such procedures available to Customer at Customer's request, (iii) mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Vendor; and (iv) documents all Security Incidents and their outcomes.

d. If Vendor has reasonable belief or actual knowledge of a Data Breach, Vendor shall (1) promptly notify the appropriate Customer identified contact set forth herein within 2 hours or sooner, unless shorter time is required by applicable law, and (2)

take commercially reasonable measures to address the Data Breach in a timely manner.

VI. **Breach Responsibilities:** This section only applies when a Data Breach occurs with respect to Personal Data or Non-Public Data within the possession or control of Vendor.

a. Vendor, unless stipulated otherwise, shall promptly notify the Customer identified contact within 2 hours or sooner, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a Data Breach. Vendor shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

b. Unless otherwise stipulated, if a Data Breach is a direct result of Vendor's breach of its obligation to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Vendor shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) credit monitoring services required by state or federal law; (4) a website or toll-free numbers and call center for affected individuals required by state law – (2), (3) and (4) not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and (5) complete all corrective actions as reasonably determined by Vendor based on root cause.

c. If a Data Breach is a direct result of Vendor's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Vendor shall indemnify and hold harmless the Customer against all penalties assessed to indemnified parties by governmental authorities in connection with the Data Breach.

VII. **Notice:** Contact information for Customer for notifications pursuant this Hosting Agreement are consistent with the Contract with a copy sent to:

Chief Information Officer
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

And

Chief Information Security Officer

3115 N. Lincoln Blvd
Oklahoma City, OK 73105

And

OMES Information Services General Counsel
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

For immediate notice which does not constitute written notice:
OMES Help Desk
405-521-2444
helpdesk@omes.ok.gov
Attn: Chief Information Security Officer

VIII. **Vendor Representations and Warranties:** Vendor represents and warrants the following

a. The product and services provided under this Hosting Agreement do not infringe a third party's patent or copyright or other intellectual property rights.

b. Vendor will protect Customer's Non-Public Data and Personal Data from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own confidential information and, in any event, will use no less than a reasonable degree of care in protecting such confidential information.

c. The execution, delivery and performance of the Contract, the Hosting Agreement and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Vendor will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Vendor and any third parties retained or utilized by Vendor to provide goods or services for the benefit of the Customer.

d. Vendor shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or though the Hosting Environment any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any "copy-protected" devices, or any other harmful or disruptive program.

IX. **Intentionally Omitted**

X.   Termination and Suspension of Service:

a. In the event of a termination of the Contract, Vendor shall implement an orderly return of Customer Data in a mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of Customer Data.

b. During any period of service suspension, Vendor shall not take any action to intentionally erase any Customer Data.

c. In the event of termination of any services or agreement in entirety, Vendor shall not take any action to intentionally erase any Customer Data for a period of:

    i. 10 days after the effective date of termination, if the termination is in accordance with the contract period

    ii. 30 days after the effective date of termination, if the termination is for convenience

    iii. 60 days after the effective date of termination, if the termination is for cause

    After such period, Vendor shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.

d. The State shall be entitled to any post termination assistance generally made available with respect to the services.

e. Vendor shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer.

Attachment C to
Addendum 1 to
STATE OF OKLAHOMA CONTRACT WITH INFINITE CAMPUS, INC.
RESULTING FROM STATEWIDE CONTRACT NO. 1066

This Infinite Campus End User License Agreement is hereby amended as set forth below and supersedes all prior documents submitted by Infinite Campus, Inc. or discussed by the parties.

INFINITE CAMPUS END USER LICENSE AGREEMENT

This Infinite Campus End User License Agreement ("**Agreement**") is made between **Infinite Campus, Inc.,** a Minnesota corporation located at 4321 109th Ave NE, Blaine, MN 55449-6794 ("**Company**") and **the State of Oklahoma, by and through the Office of Management and Enterprise Services ("State") for the benefit of State or Interlocal Entities** ("**Licensee**").

RECITALS

A. Company has developed certain proprietary student information software and as updated and revised by Company from time to time (the "Infinite Campus Product"), and Company has licenses from third parties or developed other products and services as offered by Company and as amended by Company from time to time (the "Infinite Campus Additional Products"). The Infinite Campus Product, and the Infinite Campus Additional Products are collectively referred to as the "Infinite Campus Products";

B. Company or a Company authorized service provider provides certain services for the Infinite Campus Products, including software implementation services, software maintenance services, training services, product support services, technical support services and application hosting services (the "Infinite Campus Services");

C. Company and State desire to enter into this Agreement for the purpose of facilitating the licensing of certain Infinite Campus Products, and delivery of certain Infinite Campus Services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the terms and conditions hereinafter stated, it is agreed as follows:

1.0 Grant of License

1.1 <u>Type of License.</u> Subject to the terms and conditions hereof, Company agrees to grant Licensee a non-exclusive, non-transferable, non-perpetual, right and license to the Infinite Campus Products and the related documentation ("Documentation") identified on the Order and Pricing Schedule(s) and other documents attached hereto (collectively, "Contract"). Licensee shall install and use the Infinite Campus Products and the Documentation solely for its own internal use and for the purposes for which such Infinite Campus Products and Documentation were designed.

1.2 <u>Initial Term and Fees.</u> Upon the Term Start Date indicated on the duly executed Order and Pricing Schedule(s) attached hereto, Company shall provide Licensee with the Infinite Campus Products and Infinite Campus Services and any associated Documentation (defined as users' manuals, reference guides, programmers' guides and/or system guides, as applicable) as indicated on the Order and Pricing Schedule(s). The fees for the licenses shall be valid from the Term Start Date in accordance with the pricing proposal submitted with Company's bid.

1.3   Annual Fees. Following the Initial Term, for each 12 month period thereafter (the "Subsequent Term"), Licensee shall pay annual fees according to the pricing proposal submitted with company's bid. Company shall review the number of students enrolled as certified by the state in which the Licensee resides, and, in the event that the total number of enrolled students has increased or decreased, Company may increase or decrease the Annual Fees according to the pricing proposal.

2.0   Ownership and Protection of Infinite Campus Products

2.1   Title: Ownership. Licensee acknowledges that the Infinite Campus Products; all source code, object code, class libraries, user interface screens, algorithms, development frameworks, repository, system designs, system logic flow, and processing techniques and procedures related thereto; the Documentation, any system user documentation, or other documentation related thereto; any copies and derivatives of any of the foregoing, in whole or in part; as well as all copyright, patent, trademark, trade secret and other proprietary rights in any of the foregoing; are and shall remain the sole and exclusive confidential property of Company or Company licensor. Licensee further acknowledges that any reports or other data generated by the Infinite Campus Products regarding traffic flow, system loads and/or product installation are the exclusive property of Company. and may be used, and Licensee hereby specifically authorizes the use of such reports and/or other data, by Company in order to improve products and services.

2.2   Protection of Infinite Campus Products and Documentation. Licensee shall not knowingly, and shall not knowingly allow any third party to:

2.2.a   adapt, modify, change, maintain, translate, decompile, disassemble, reconstruct, or reverse engineer the Infinite Campus Products or the Documentation, or any portion thereof;

2.2.b   identify or discover any source code of the Infinite Campus Products;

2.2.c   distribute, sell or sublicense copies of the Infinite Campus Products or the Documentation or any portion thereof;

2.2.d   create copies of the Infinite Campus Products or the Documentation except to make a copy of any program which is required as an essential step in its utilization or to make an archival or back-up copy of the Infinite Campus Products; or

2.2.e   incorporate any portion of Infinite Campus Products into or with any other Infinite Campus Products or other products, or create any derivative works of the Infinite Campus Products or Documentation.

2.3   Confidentiality. Licensee is a state agency and subject to the Oklahoma Open Records Act and Company acknowledges information marked Confidential Information will be disclosed to the extent permitted under Client's Open Records Act and in accordance with this section. Licensee agrees to use the same degree of care that each such party uses to protect its own confidential information, but in no event less than a reasonable amount of care. Licensee will not use Company's Confidential Information for purposes other than those necessary to directly further the purposes of the Agreement.

Exceptions. Information shall not be considered Confidential Information to the extent such information (i) is or becomes generally known or available to the public through no fault of the Client; (ii) was in the Client's possession before receipt from the Company; (iii) is lawfully obtained from a third party who has the right to make such disclosure; or (iv) has

been independently developed by Licensee without reference to any Confidential Information.

Compelled Disclosure. In the event that Licensee is requested or required by legal or regulatory authority to disclose any Confidential Information, Licensee shall promptly notify the Company of such request or requirement so that the Company may seek an appropriate protective order. In the event that a protective order or other remedy is not obtained, Licensee agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand.

The Licensee will be responsible for the accuracy and completeness of all Licensee Data provided to Company. Licensee Data shall mean all data supplied by the Licensee in connection with the Agreement. The Licensee shall retain exclusive ownership of all Licensee Data and Licensee Data shall be deemed to be the Licensee's Confidential Information, as set forth in the Agreement. Company shall restrict access to Licensee Data to Licensee's employees and agents as necessary to perform the Services, and to Company and its employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein). Company will protect the Licensee Data from unauthorized dissemination and use with the same degree of care that it uses to protect its own Confidential Information and, in any event, will use no less than a reasonable degree of care in protecting Licensee Data. Company shall promptly notify the Client upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Licensee Data or Licensee's use of Infinite Campus Products. In order to continuously improve the products and services it provides EAs, Company may use anonymized or de-identified non-PII data. Company shall notify the Licensee by the fastest means available and also in writing. In no event shall Company provide such notification more than 24 hours after Company receives the request. Except to the extent required by law, Company shall not respond to subpoenas, service or process, FOIA requests, and other legal request related to Licensee without first notifying the Licensee and obtaining the Licensee's prior approval, which shall not be unreasonably withheld, of Company's proposed responses. Company agrees to provide its completed responses to the Licensee with adequate time for Licensee's review, revision and approval.

3.0   Payment

3.1   <u>Payment Terms.</u> Licensee shall pay Company the Fees as provided in the Order and Pricing Schedule(s) attached heretoUpon submission of an accurate and proper invoice, the invoice shall be paid in arrears after products have been delivered or services provided and in accordance with applicable law, net forty-five (45) days.

4.0   Indemnification; Warranties

4.1   <u>Indemnifications</u>

4.1.a   If Licensee notifies Company in writing, Company will defend, hold harmless and indemnify Licensee and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees from any and all third party liability, actions, claims, demand, or suits, and all related costs attorney fees and expenses as a result of any claim or threat of claim brought by a third party against Licensee to the extent based on an allegation that: (i) Products for which Licensee has licensed from Company infringes any U.S.

patent, copyright, trademark, trade secret or other proprietary right of a third party, or (ii) a defective Product directly caused death or personal injury; provided that Licensee did not alter, modify, or otherwise change the Product or software that gave rise to such claim. The defense shall be coordinated by the Company with the Office of the Attorney General when Oklahoma state agencies are named defendants in any lawsuit and Company may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. Company and Licensee agree to furnish timely written notice to each other of any such claim.

4.1.b   THE FOREGOING STATES THE ENTIRE LIABILITY AND OBLIGATION OF COMPANY WITH RESPECT TO ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT BY THE INFINITE CAMPUS PRODUCTS OR ANY PART THEREOF, OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT

4.2   Warranties

4.2.a   Operational Warranty. Company warrants that, during the ninety (90) day period (the "Warranty Period") commencing on the date of acceptance of the Infinite Campus Product to Licensee, the Infinite Campus Products will operate in substantial conformity with the Documentation when used in strict compliance therewith.   This warranty is contingent upon Licensee's installation of all corrections, enhancements, updates and new releases provided by Company to Licensee and the absence of damage or abuse to the Infinite Campus Products.

4.2.b   Breach of Operational Warranty. Notwithstanding the foregoing, Licensee acknowledges that it is solely responsible for having the appropriate compatible network(s) and operating system environment(s), Company shall within a reasonable period of time, provide all reasonable programming services to correct programming errors in the Infinite Campus Products or replace the Infinite Campus Products. If Company is unable to repair or replace faulty products, then Company may terminate this Agreement and refund to the Licensee the unamortized portion of license fees paid to Company.   Any professional services provided under this Agreement are provided at a commercially reasonable standard.

4.2.c   Limitation. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH 4, COMPANY MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES OF QUALITY OR PERFORMANCE, OR AS A RESULT OF A COURSE OF DEALING OR USAGE OF TRADE, WITH RESPECT TO THE INFINITE CAMPUS PRODUCTS AND ANY MAINTENANCE, SUPPORT OR OTHER SERVICES.

5.0   Limitations of Liability

EXCEPT TO THE EXTENT INCLUDED IN AN AWARD SUBJECT TO COMPANY'S INDEMNITY OBLIGATION, IN NO EVENT WILL COMPANY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE, SUCH AS LOST BUSINESS PROFITS. COMPANY'S TOTAL LIABILITY WILL BE LIMITED TO THE LICENSE FEES ACTUALLY PAID BY LICENSEE TO INFINITE CAMPUS FOR THE APPLICABLE INFINITE CAMPUS PRODUCTS, SUBJECT HOWEVER TO A TWELVE (12) MONTH STRAIGHT LINE DEPRECIATION COMMENCING ON THE DATE OF DELIVERY OF SUCH INFINITE

CAMPUS PRODUCTS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, THE FOREGOING PROVISIONS SHALL NOT APPLY TO OR LIMIT DAMAGES, EXPENSES, COSTS, ACTIONS, CLAIMS AND LIABILITIES ARISING FROM OR RELATED TO PROPERTY DAMAGE, BODILY INJURY OR DEATH CAUSED BY COMPANY; COMPANY'S CONFIDENTIALITY OBLIGATIONS SET FORTH IN THIS CONTRACT; DATA SECURITY AND BREACH NOTIFICATION OBLIGATIONS SET FORTH IN THE CONTRACT; THE BAD FAITH, GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF COMPANY'S OR ITS EMPLOYEES AGENTS AND SUBCONTRACTORS; OR OTHER ACTS FOR WHICH APPLICABLE LAW DOES NOT ALLOW EXEMPTION FROM LIABILITY.

6.0   Agreement Term and Termination

6.1   <u>Agreement Term.</u> The term of this Agreement (the "Agreement Term") shall begin the date the Contract is signed ("Effective Date"), and shall remain in effect until terminated pursuant to Section 6.2.

6.2   <u>Responsibilities in the Event of Termination.</u>

6.2.a   Upon any termination of this Agreement and/or the license to use any Infinite Campus Products, Licensee shall cease to use the Infinite Campus Products and shall return to Company the Infinite Campus Products and all copies thereof and all proprietary and confidential property of Company. Licensee shall expunge all copies of the Infinite Campus Products from its computer(s) and server(s). Failure to comply with this Section shall constitute continued use of the Infinite Campus Products. Upon written request from Company, Licensee shall provide a certificate from an officer of Licensee stating compliance with this Section. Company shall also have such other legal and equitable rights and remedies to which it may be entitled with respect to Licensee's failure to comply with the provisions of this Agreement.

6.2.b   Upon 90 business days following the termination of this Agreement, or sooner at the request of the Licensee, Company warrants that the original and all copies of Licensee information, educational records and pupil records as such terms are defined by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99, "FERPA"), and any other State or Federal law relating to the protection of confidential student information, will be returned to the Licensee or destroyed in such a manner that such information cannot be read, executed, viewed or in any way accessed when destroyed. Subject to section 9 in the Hosting Agreement attached hereto.

6.3   <u>Survivorship</u>. Those sections that by their nature survive expiration or termination of this Agreement will survive such expiration or termination.

7.0   Software Support

Company and Licensee agree to the terms and conditions of the Software Support Services Agreement, which is attached hereto as Exhibit C and fully incorporated herein. Licensee shall be billed for the Infinite Campus Services , in accordance with the payment terms set forth in Section 3.0 of this Agreement.

8.0   Application Hosting

Licensee has a choice of either cloud hosting or on site application hosting. If Licensee chooses cloud hosting, Company and Licensee agree to the terms and conditions of the Cloud Hosting Services Agreement, which is attached hereto and fully incorporated herein as Exhibit A. Licensee shall be billed for the Infinite Campus Services in accordance with the payment terms set forth in Section 3.0 of this Agreement.

If Licensee chooses on site application hosting, Company and Licensee agree to the terms and

conditions of the On Site Application Hosting Services Agreement, which is attached hereto and fully incorporated herein as Exhibit B. Licensee shall be billed for the Infinite Campus Services in accordance with the payment terms set forth in Section 3.0 of this Agreement.

9.0   Training, Data Conversion and Project Management Services

Training Services, Data Conversion Services, or Project Management Services requested by Licensee during the Initial Term or following the Initial Term shall be provided for at the rates in accordance with the Pricing Proposal submitted by Company, in accordance with an Implementation Services Agreement provided by Infinite Campus or authorized service partner.

10.0   General Terms and Conditions

10.1   <u>Assignment.</u> Licensee shall not, voluntarily or involuntarily, sublicense, sell, assign, give or otherwise transfer this Agreement. Any such transfer or attempted transfer shall be null and void. Notwithstanding the foregoing, rights granted under the terms of this Contract may be assigned or transferred, at no additional cost, to other entities within the State with the written consent of Company, which will not be unduly withheld. Company has the right to assign or otherwise transfer its rights and obligations under any of this Agreement, whether voluntarily, involuntarily, or by operation of law with the written consent of licensee, which will not be unduly withheld.

10.2   <u>Amendments; Waiver</u>. This Agreement shall not be amended or modified except in writing by duly authorized representatives of the parties that refer specifically to this Agreement. The failure of either party to enforce at any time or for any period of time the provisions hereof shall not be construed to be a waiver of such provisions or of the right to enforce each and every such provision.

10.3   <u>Severability</u>. If a court of competent jurisdiction holds that any provision of this Agreement is invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect, and the parties will replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the original intent of the parties and economic effect of the Agreement.

10.4   <u>Headings and Construction</u>. Paragraph headings are for reference only and will not be considered as parts of this Agreement. Wherever the singular is used, it includes the plural, and, wherever the plural is used, the singular is included.

10.5   <u>Force Majeure</u>. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, acts of terrorism, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the actions or inactions of Company), provided that the delayed party: (i) gives the other party prompt notice of such cause, which will include a reasonable assessment of the nature and duration of the force majeure event and steps it is taking and plans to take to mitigate the effects of such event, and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. However, Licensee may terminate the agreement if Company cannot cause delivery of Products or Services in a timely manner to meet the business needs of the Licensee.

Non-suspended Obligations: Notwithstanding the foregoing or any other provisions in the Contract, (1) in no event will any of the following be considered a force majeure event: (a) shutdowns, disruptions or malfunctions in Company's systems or any of Company's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Company's systems; or (b) the delay or failure of Company or subcontractor personnel to perform any obligation of

Company hereunder unless such delay or failure to perform is itself by reason of a force majeure event; and (2) no force majeure event modifies or excuses Company's confidentiality, indemnification or data security and breach notification obligations set forth herein.

10.6   Entire Agreement. This Agreement, the Solicitation no. 0900000370, and the Company's response to the Solicitation constitute the entire agreement between the parties and supersede all previous agreements and representations of, between or on behalf of the parties in regard to the subject matter herein. This Agreement, the Solicitation no. 0900000370, and the Company's response to the Solicitation contain all of Company's and Licensee's agreements, warranties, understandings, conditions, covenants and representations in regard to the subject matter herein. To the extent allowed by law, neither Company nor Licensee will be liable for any warranties, understandings, conditions, covenants or representations not expressly set forth or referenced in this Agreement.

10.7   Refund of Fees. In the event of cancellation, termination, expiration, lapse, suspension, or discontinuation of this Agreement for any other reason Company shall issue a pro-rated refund for all fees paid in advance, including fees for subscription services.

10.8   Notices. Any notice under this Agreement must be in writing via personal delivery, registered or certified mail, postage prepared or next business day if sent by commercial overnight delivery service to the address set forth below for Company and to the address designated on page one (1) of this Agreement by Advocate for receipt of notices, or as may be provided by the parties.

Infinite Campus, Inc.

Sales Contracts Management

4321 109th Ave NE

Blaine, MN 55449-6794

Chief Information Officer

3115 N. Lincoln Blvd

Oklahoma City, OK 73105

With a copy, which does not constitute notice, to:

Information Services Deputy General Counsel

3115 N. Lincoln Blvd.

Oklahoma City, OK 73105

For immediate notice which does not constitute written notice:

OMES Help Desk

405-521-2444

helpdesk@omes.ok.gov

Attn: Chief Information Security Officer

Either party may give notice of its change of address for receipt of notices by giving notice in accordance with this section.

10.9   <u>Applicable Law.</u> Company complies and shall comply with applicable laws governing online privacy and student data privacy, including the Child Privacy Protection and Parental Empowerment Act, FERPA, the Children's Online Privacy Protection Act, and state laws. Licensee may review these laws and their related regulations by logging on to the U.S. Federal Trade Commission's website at http://www.ftc.gov.

10.9.a.   In the course of providing services during the term of this Agreement, Company may have access to student education records that are subject to FERPA. Such information is considered confidential and is protected. To the extent that Company has access to "education records" under this Agreement, it is deemed a "school official," as each of these terms are defined under FERPA. Company agrees that it shall not use education records for any purpose other than in the performance of this Agreement. Except as required by law or court order, Company shall not disclose or share education records with any third party unless: a) permitted by the terms of this Agreement, b) directed to do so, in writing, by Licensee, or c) to subcontractors who have agreed to maintain the confidentiality of the education records to the same extent required of Company under this Agreement.

10.9.b.   In the event any third party seeks to access education records that are subject to FERPA beyond the access that is provided to Company affiliated individuals for purpose of providing the services under the Agreement, whether said third party request is in accordance with FERPA or other Federal or relevant State law or regulations, Company shall immediately inform Licensee of such request in writing. Company shall not provide direct access to such data or information or respond to said third party requests, unless compelled to do so by court order or lawfully issued subpoena from any court of competent jurisdiction. Should Company receive a court order or lawfully issued subpoena seeking the release of such data or information, Company shall provide immediate notification, along with a copy thereof, to Licensee prior to releasing the requested data or information, if allowed by law or judicial and/or administrative order/subpoena.

10.9.c.   If Company experiences a security breach concerning any education record covered by this Agreement, Company shall immediately notify Licensee and take immediate steps to limit and mitigate such security breach to the extent possible. The Parties agree that any material breach by Company of the confidentiality obligation set forth in this Agreement may, at Licensee's discretion, result in cancellation of this Agreement and the eligibility for Company to receive any information from Licensee for a period of not less than five (5) years. Company further agrees to indemnify and hold State, Licensee, and/or their officers, agents, employees, representatives, contractors, assignees, and/or designees harmless for any loss, cost, damage or expense suffered by the Licensee, including but not limited to the cost of notification of affected persons, as a direct result of the breaching Party's unauthorized disclosure of education records that are subject to FERPA, or any other confidentiality/privacy provision, whether federal, state or administrative in nature. These rights are in addition to those provided for in the attached Hosting Agreement. In the event of a conflict, the Hosting Agreement will control.

10.9.d.   Upon termination of this Agreement, Company shall return and/or destroy all data or information that it received from Licensee hereunder as, and in accordance with, Section 6.3.b of this Agreement. Company shall not knowingly retain copies of any

data or information received from Licensee once Licensee has directed Company as to how such information shall be returned and/or destroyed. Furthermore, Company shall ensure that it disposes of any and all data or information received from Licensee in a commercially reasonable manner that maintains the confidentiality of the contents of such records (e.g. shredding paper records, erasing and reformatting hard drives, erasing and/or physically destroying any portable electronic devices).

10.10   Export Rules. Licensee agrees that the Infinite Campus Products will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Infinite Campus Products are identified as export controlled items under the Export Laws, Licensee represents and warrants that Licensee is not a citizen, or otherwise located within, an embargoed nation (including without limitation Iran, Iraq, Syria, Sudan, Libya, Cuba, North Korea and Serbia) and that Licensee is not otherwise prohibited under the Export Laws from receiving the Infinite Campus Products. All rights to use the Infinite Campus Products under this Agreement are granted on the condition that such rights are forfeited if Licensee fails to comply with the terms of this Section 10.11

10.11   U.S. Government End-Users. Each component licensed under this Agreement that constitute the Infinite Campus Products and Services is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all end users acquire the Infinite Campus Products and Services with only those rights set forth within the Contract.

10.12   Electronic Signatures; Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document shall be deemed (a) to be "written" or "in writing," (b) to have been signed and (c) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. For purposes hereof, "electronic signature" means a manually signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

EXHIBIT A
CLOUD HOSTING SERVICES AGREEMENT

1.0 Reference to Agreement

This Cloud Hosting Services Agreement is subject to and incorporates all of the provisions stated in the End User License Agreement between **Infinite Campus, Inc.**, ("**Company**") and **the State of Oklahoma, by and through the Office of Management and Enterprise Services ("State") for the benefit of State or Interlocal Entities** ("**Licensee**") as of the Effective Date.

2.0 Initial Term and Fees

Upon the Term Start Date indicated on the Order and Pricing Schedule attached hereto Company shall provide Licensee with the Infinite Campus Cloud Hosting Services according to the quantity indicated on the Order and Pricing Schedule. The quantity of shall be valid from the Term Start Date until twelve (12) months thereafter (the "Initial Term").

3.0 Annual Fees

Following the Initial Term, for each 12 month period thereafter (the "Subsequent Term"), Licensee shall pay annual fees according to the pricing proposal for the licensed Infinite Campus Products (the "Annual Fees"). Company shall review the number of students enrolled as certified by the state in which the Licensee resides, and, in the event that the total number of enrolled students has increased or decreased, Company may increase or decrease the Annual Fees according to the pricing proposal for the licensed Infinite Campus Products and Services.

4.0 Services

During each term of the License, and subject to payment of the fees for the Infinite Campus Products and the fees for the Infinite Campus Services, Company shall provide the following services (the "Cloud Hosting Services" or the "Cloud Choice Hosting Services") to Licensee:

4.1 Included Services

    4.1.a System Access. Company shall provide remote access to a digital information processing, transmission and storage system (the "System Hardware") enabling Licensee to perform operations using a single, Production instance of the Infinite Campus Products. Computing hardware, system software, database software and database storage shall be located at Company's facilities.

    4.1.b Additional Software and Middleware. Company will provide all additional required middleware and software necessary for the Product ("Middleware"), including installation and licensing of Window OS, Windows SQL Server, Apache Tomcat, Sun Microsystems Java, drivers, and SSL certificate(s).

    In accessing Middleware, Licensee may use software and related documentation developed and owned by Microsoft Corporation or its licensors (collectively, the "Microsoft Software"). If Licensee chooses to use the Microsoft Software, Microsoft and its licensors require that Licensee agree to these additional terms and conditions:

        • The Microsoft Software is neither sold nor distributed to Licensee and Licensee

may use it solely in conjunction with the Infinite Campus Services.

- Licensee may not transfer or use the Microsoft Software outside the Infinite Campus Services.
- Licensee may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Microsoft Software.
- Licensee may not reverse engineer, decompile or disassemble the Microsoft Software, except to the extent expressly permitted by applicable law.
- Microsoft disclaims, to the extent permitted by applicable law, all warranties by Microsoft and any liability by Microsoft or its suppliers for any damages, whether direct, indirect, or consequential, arising from the Services.
- Microsoft is not responsible for providing any support in connection with the Infinite Campus Services. Do not contact Microsoft for support.

4.1.c   Application Updates. Company will support the Infinite Campus Products through implementation of vendor-provided modifications including remedial "Patches" addressing reported performance or functionality problems, and "Updates" or "Upgrades" consisting of a new releases or versions of the Infinite Campus Products or supporting Middleware issued by the vendor. Company will implement Patches, Updates and Upgrades in accordance with the Change Management Section set forth herein. Company is responsible for procuring and administering vendor-provided maintenance for any Middleware or Product supplied by Infinite Campus.

4.1.d   Backup. Company shall create and maintain a backup plan whereby Licensee Content is backed up. Company shall retrieve each business day an electronic backup of the Licensee Content, as defined below, for the purpose of archival storage in the case of Disaster Recovery.

4.1.e   Disaster Recovery. Company shall maintain backup servers and data communications connections to such servers and maintain backups of Licensee Content on such backup servers such that Company shall be capable of providing Cloud Hosting Services on and from such backup servers within twenty-four (24) hours of any catastrophic disruption of Cloud Hosting Services ("Disaster Recovery").

4.1.f   ODBC Access. Company will provide ODBC access to a designated employee of the Licensee, upon completion of the ODBC Access Request Form.

4.1.g   Test and Training Environment. For Licensee selecting Cloud Choice Hosting Services, in addition to the single "Production" system environment, Company will provide an additional Test and Training Environment ("Staging") for the purpose of testing upcoming updates or code changes, training end users in a non-production environment and other non-production uses upon the request of the Licensee.

4.2   Excluded Services

(a) Support of Client Desktops
(b) Support or diagnosis of Local Area Network connectivity
(c) Local Area Network device configuration such as proxy servers

5.0   Availability of Services

Subject to the terms and conditions of this Agreement, Company shall use its best commercial efforts to provide the Cloud Hosting Services for twenty-four (24) hours a day, seven (7) days a week throughout the term of this Agreement, subject to Section 10.6 Force Majeure.

5.1 Downtime

Licensee agrees that from time to time the Infinite Campus Services may be inaccessible or inoperable for various reasons, including (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which Company may undertake from time to time; or (iii) causes beyond the control of Company or which are not reasonably foreseeable by Company, including interruption or failure of telecommunications or digital transmission links, hostile network attacks, network congestion or other failures (collectively "Downtime"), subject to Section 10.6 Force Majeure.

5.2 Advance Notice

Company shall provide five (5) business days' advance notice to Licensee in the event of any scheduled Downtime and shall provide notice to Licensee of unscheduled Downtime as soon as reasonably possible. If Company needs physical access to Licensee's premises, access will be granted during normal business hours and Company shall abide by all guidelines and procedures governing Licensee's premises.

6.0 Security

Company shall operate and maintain the System Hardware in good working order with access restricted to authorized employees of Company and persons specifically designated by Licensee. Company shall maintain systems consistent with security controls as described in the National Institute of Standards and Technology (NIST) Standards Publication (SP) 800-26, Security Self-Assessment Guide for Information Technology Systems. Company shall undertake to perform reasonable measures to ensure the security, confidentiality and integrity of all Licensee Content and other proprietary information transmitted through or stored on the System including:

(a) firewall protection of the Remote Data Center;

(b) maintenance of independent archival and backup copies of the Infinite Campus Products and Licensee Content; and

(c) protection from network attack or other malicious harmful or disabling data, work, code or program.

This Section is subject to the Hosting Agreement, which will control in the event of a conflict. Company shall submit to an annual assessment of its security controls.

7.0 Change Management

7.1 For all Production Environments, Company will follow "Change Management Procedures" in completing changes in the Products or product release levels used in the Service and in implementing Patches and Upgrades (collectively "Change Events").

7.1.a Change Management Procedures will in all cases provide for the following:
(a) advance notification to the Licensee of the Change Event, its nature and expected timetable;

(b) pre-testing of changes in Company or Licensee non-Production testing environments; and

(c) coordination of the implementation of the Change Event with the Licensee.

7.1.b   <u>Product Version.</u> Product Version. Licensee selecting Standard Cloud Hosting Services will receive Updates Change Events made available by Company which shall be applied with 30 days of its General Availability at such a date determined solely by the Company. Licensee selecting Cloud Choice Hosting Services may coordinate the Update Change Event date with Company.

8.0   Licensee Proprietary Rights

8.1   <u>Licensee Content.</u> Licensee shall be solely responsible for providing, updating, uploading and maintaining the Site and any and all files, pages, data, works, information and/or materials on, within, displayed, linked or transmitted to, from or through the Site, including without limitation, trade or service marks, images, photographs, illustrations, graphics, audio clips, video clips, e-mail or other messages, metatags, domain names, software and text (the "Licensee Content"). The Licensee Content shall also include any registered domain names provided by Licensee or registered on behalf of Licensee in connection with the Cloud Hosting Services.

8.2   <u>Grant of Use.</u> In consideration of Company's satisfactory performance of all obligations of this Agreement, for the term of this Agreement, Licensee grants to Company a nonexclusive, worldwide and royalty-free "Grant of Use" to copy, display, use and transmit on and via the Internet the Licensee Content, **solely for the benefit of Licensee** and in accordance with Company's performance or enforcement of this Agreement.

8.3   <u>Alterations.</u> Except as provided herein or by law, Company may not alter, modify, change, remove or disable access to all or any portion of the Site or Licensee Content stored on the Server.

8.4   <u>Ownership of Licensee Content.</u> Company acknowledges that the Licensee Content is owned solely by the Licensee. Within five (5) days of any termination of this Agreement Licensee shall remove or request that the Company remove on a fee for service basis all Licensee Content from Infinite Campus Products, subject to Section 9 in the Hosting Agreement

8.5   <u>Warranty of Licensee.</u> Licensee warrants that the Site and Licensee Content do not and shall not knowingly contain any content, materials, data, work, trade or service mark, trade name, link, advertising or services that violate any applicable law or regulation or infringe or misappropriate any proprietary, intellectual property, contract or tort right of any person; and Licensee owns the Licensee Content and all proprietary or intellectual property rights therein, or has express written authorization from the owner to copy, use and display the Licensee Content on and within the Site.

EXHIBIT B
ONSITE APPLICATION HOSTING SERVICES AGREEMENT

1.0 Reference to Agreement

This Hosting Services Agreement is subject to and incorporates all of the provisions stated in the End User License Agreement between **Infinite Campus, Inc.**, ("**Company**") and **the State of Oklahoma, by and through the Office of Management and Enterprise Services ("State") for the benefit of State or Interlocal Entities**, ("**Licensee**") as of the Effective Date.

2.0 Initial Term and Fees

Upon the Term Start Date indicated on the Order and Pricing Schedule attached hereto Company shall provide Licensee with the Infinite Campus Onsite Hosting Services according to the quantity indicated on the Order and Pricing Schedule. The quantity of shall be valid from the Term Start Date until twelve (12) months thereafter (the "Initial Term").

3.0 Annual Fees

Following the Initial Term, for each 12 month period thereafter (the "Subsequent Term"), Licensee shall pay annual fees according to the fees in the pricing proposal for the licensed Infinite Campus Products (the "Annual Fees"). Company shall review the number of students enrolled as certified by the state in which the Licensee resides, and, in the event that the total number of enrolled students has increased or decreased, Company may increase or decrease the Annual Fees according to the pricing proposal for the licensed Infinite Campus Products and Services.

4.0 Services

During each term of the License, and subject to payment of the fees for the Infinite Campus Products and the fees for the Infinite Campus Services, Company shall provide the following services (the "Application Hosting Services") to Licensee:

4.1 Included Services

    4.1.1   System Sizing. Company will determine the system components (number and type of applications server(s), database server(s), and load balancing hardware, etcetera) based on the size and needs of the Licensee, using commercially reasonable methods and historical data from other similarly sized licensees. This sizing is the basis for the System Hardware and Additional Software and Middleware required, and may change from time to time as system requirement change.

    4.1.2   System Hardware. Company shall provide access to a digital information processing, transmission and storage system (the "System Hardware") enabling

Licensee to perform operations using a single production instance of the Infinite Campus Products. Computing hardware, system software, database software and database storage shall be located at Licensee's facilities

4.1.3 <u>Additional Software and Middleware</u>. Company will provide all additional required middleware and software necessary for the Product ("Middleware"), including installation and licensing of Window OS, Windows SQL Server, Apache Tomcat, Sun Microsystems Java, drivers, and SSL certificate(s).

In accessing Middleware, Licensee may use software and related documentation developed and owned by Microsoft Corporation or its licensors (collectively, the "Microsoft Software"). If Licensee chooses to use the Microsoft Software, Microsoft and its licensors require that Licensee agree to these additional terms and conditions:
- The Microsoft Software is neither sold nor distributed to Licensee and Licensee may use it solely in conjunction with the Infinite Campus Services.
- Licensee may not transfer or use the Microsoft Software outside the Infinite Campus Services.
- Licensee may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Microsoft Software.
- Licensee may not reverse engineer, decompile or disassemble the Microsoft Software, except to the extent expressly permitted by applicable law.
- Microsoft disclaims, to the extent permitted by applicable law, all warranties by Microsoft and any liability by Microsoft or its suppliers for any damages, whether direct, indirect, or consequential, arising from the Services.
- Microsoft is not responsible for providing any support in connection with the Infinite Campus Services. Do not contact Microsoft for support.

4.1.4 <u>Configuration</u>. Initial configuration including OS installation, database installation, patching the operating system and database, and installing and configuring all Middleware. Creation and configuration of Production and optional Sandbox environments and Production and optional Sandbox database. Upon delivery and installation, a final configuration for setting proper site specific information. Ongoing configuration of additional module add-ons or changes to Licensee infrastructure that require changes to the System configuration.

4.1.5 <u>Application Updates</u>. Company will support the Infinite Campus Products through implementation of vendor-provided modifications including remedial "Patches" addressing reported performance or functionality problems, and "Updates" or "Upgrades" consisting of a new releases or versions of the Infinite Campus Products or supporting Middleware issued by the vendor. Company will implement Patches, Updates and Upgrades in accordance with the Change Management Section set forth herein. Company is responsible for procuring and administering vendor-provided maintenance for any Middleware or Product supplied by Infinite Campus.

4.1.6 <u>Test and Training Environment</u>. In addition to the single "Production" system environment, Company will provide an additional Test and Training Environment ("Sandbox") for the purpose of testing upcoming updates or code changes, training end users in a non-production environment and other non-production uses upon the request of the Licensee.

4.1.7 <u>Backup</u>. Company shall create and maintain a backup plan whereby Licensee Content is backed up to a Company owned remote data center located at 4321 109th Avenue NE, Blaine, MN ("Remote Data Center"), subject to change from time to time at Company's sole discretion. Company shall retrieve each business day an electronic backup of the Licensee Content, as defined below, for the purpose of off-site archival in the case of disaster recovery, subject to the Hosting Agreement.

4.1.8 <u>Disaster Recovery</u>. Company shall maintain backup servers and data communications connections to such servers in the Remote Data Center and maintain backups of Licensee Content (defined below) on such backup servers such that Company shall be capable of providing Application Hosting Services on and from such backup servers within seventy-two (72) hours of any disruption of Application Hosting Services.

4.2 <u>Additional Services</u>

4.2.1 <u>Network Analysis and Documentation</u>. Prior to the installation of the Infinite Campus Products and System Hardware, a Network Analysis and resulting Documentation of the analysis is required. The resulting Documentation is the defined supported environment, identifying all network components, including firewalls, proxy servers, routers, switches, etcetera. This can be provided by the Licensee, accomplished with Licensee resources or can be provided by Company for an additional fee provided in the pricing proposal.

4.2.2 <u>Installation</u>. Company will ship System Hardware, preconfigured, to a location determined by Licensee. For an additional fee provided in the pricing proposal, Company can perform the installation of the System Hardware in the Licensee data center.

4.3 <u>Excluded Services</u>

(a) Support of Client Desktops
(b) Support or diagnosis of Local Area Network connectivity
(c) Local Area Network device configuration such as proxy servers

5.0 Availability of Services

Subject to the terms and conditions of this Agreement, Company shall use its best commercial efforts to provide the Application Hosting Services for twenty-four (24) hours a day, seven (7) days a week throughout the term of this Agreement, subject to Section 10.5 Force Majeure.

5.1 Downtime

Licensee agrees that from time to time the Application Hosting Services may be inaccessible or inoperable for various reasons, including (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which Company may undertake from time to time; or (iii) causes beyond the control of Company or which are not reasonably foreseeable by Company, including interruption or failure of telecommunications or digital transmission links, hostile network attacks, network congestion or other failures (collectively "Downtime"), subject to Section 10.5 Force Majeure.

5.2 Advance Notice

Company shall provide five (5) business days' advance notice to Licensee in the event of any scheduled Downtime and shall provide notice to Licensee of unscheduled Downtime as soon as reasonably possible. If Company needs physical access to Licensee's premises, access will be granted during normal business hours and Company shall abide by all guidelines and procedures governing Licensee's premises.

6.0 Security

Company shall operate and maintain the System Hardware in good working order with access restricted to authorized employees of Company and persons specifically designated by Licensee. Company shall maintain systems consistent with security controls as described in the National Institute of Standards and Technology (NIST) Standards Publication (SP) 800-26, Security Self-Assessment Guide for Information Technology Systems. Company shall undertake to perform reasonable measures to ensure the security, confidentiality and integrity of all Licensee Content and other proprietary information transmitted through or stored on the System Hardware or the Remote Data Center, including:

(d) firewall protection of the Remote Data Center;

(e) maintenance of independent archival and backup copies of the Infinite Campus Products and all Licensee Content; and

(f) protection from network attack or other malicious harmful or disabling data, work, code or program.

Subject to the attached Hosting Agreement herein. In the even of a conflict, the Hosting Agreement will control.

7.0 Access to System

In order to provide included services, Licensee will provide the following access restricted to Company's and/or Company's authorized service providers IP address range outlined:

(a) MS Remote Desktop Access on port 3389 for secure remote access to development workstation if applicable and/or for Provider remote access to administer
(b) http access on port 80 which redirects to port 443 used for secure login on the core SIS web services
(c) https access on 443 used for secure login on the core SIS web services
(d) Campus administration (Backups and updates) on port 4329 for all Company provided servers.

8.0 Change Management

For all Production Environments, Company will follow "Change Management Procedures" in completing changes in the products or product release levels used in the Service Resources and in implementing Application Patches and Upgrades (collectively "Change Events"). Those Change Management Procedures will in all cases provide for the following:

(a) advance notification to the Licensee of the Change Event, its nature and expected timetable;
(b) written notice of application changes and modifications to screens or code;
(c) pre-testing of changes, including any modifications to screen or code in Company or Licensee non-Production environments; and
(d) coordination of the implementation of the Change Event with the Licensee.

9.0 Hardware Failure

In the event of hardware failure Company will correct the failure through one of the following, at the sole discretion of the Company:

9.1 Replace entire unit

Upon notice of the hardware failure, company will immediately begin the process of shipping a replacement unit. Typical replacement time is 24 hours, and in no event will be greater than 72 hours, at Company's cost

9.2 Onsite Service

When appropriate, onsite service from a certified hardware technician, with a service level of next business day. Access will be granted during normal business hours and Company shall abide by all guidelines and procedures governing Licensee's premises.

9.3 Field replaceable

When appropriate, shipment of field replaceable components or parts to Licensee for replacement of failed redundant component, such as power supply or hard drive in RAID array.

10.0 Proprietary Rights

10.1   Licensee Content

Licensee shall be solely responsible for providing, updating, uploading and maintaining the Site and any and all files, pages, data, works, information and/or materials on, within, displayed, linked or transmitted to, from or through the Site, including without limitation, trade or service marks, images, photographs, illustrations, graphics, audio clips, video clips, e-mail or other messages, metatags, domain names, software and text (the "Licensee Content"). The Licensee Content shall also include any registered domain names provided by Licensee or registered on behalf of Licensee in connection with the Application Hosting Services.

10.2   Grant of Use

In consideration of Company's satisfactory performance of all obligations of this Agreement, for the term of this Agreement, Licensee grants to Company a nonexclusive, worldwide and royalty-free "Grant of Use" to copy, display, use and transmit on and via the Internet the Licensee Content, solely for the benefit of Licensee and in accordance with Company's performance or enforcement of this Agreement.

10.3   Alterations

Except as provided herein or by law, Company may not alter, modify, change, remove or disable access to all or any portion of the Site or Licensee Content stored on the Server.

10.4   Ownership of Licensee Content

Company acknowledges that the Licensee Content is owned solely by the Licensee.   Within five (5) business days of any termination of this Agreement, Licensee shall remove or request that the Company remove on a fee for service basis, all Licensee Content from Infinite Campus Products and thereafter expunge all copies of the Infinite Campus Products from its computer(s) and server(s) and provide a certificate of an officer of Licensee confirming compliance with the same. Company further warrants that shall not lease, sell, rent or otherwise disclose Licensee Content to any third party without prior consent of the Licensee. Subject to Section 9 of the Hosting Agreement.

11.0   Assurance of Licensee

Licensee warrants that the Site and Licensee Content do not and shall not knowingly contain any content, materials, data, work, trade or service mark, trade name, link, advertising or services that violate any applicable law or regulation or infringe or misappropriate any proprietary, intellectual property, contract or tort right of any person; and Licensee owns the Licensee Content and all proprietary or intellectual property rights therein, or has express written authorization from the owner to copy, use and display the Licensee Content on and within the Site.

EXHIBIT C
SOFTWARE SUPPORT SERVICES AGREEMENT

1.0   Reference to Agreement

This Software Support Services Schedule is subject to and incorporates all of the provisions stated in the End User License Agreement between **Infinite Campus, Inc.**, ("**Company**") and **the State of Oklahoma, by and through the Office of Management and Enterprise Services ") for the benefit of State or Interlocal Entities** , ("**Licensee**") as of the Effective Date.

2.0   Initial Term and Fees

Upon the Term Start Date indicated on the Order and Pricing Schedule attached hereto Company shall provide Licensee with the Infinite Campus Software Support Services according to the fees indicated on the Order and Pricing Schedule. The quantity of shall be valid from the Term Start Date until twelve (12) months thereafter (the "Initial Term").

3.0 Annual Fee

Following the Initial Term, for each 12 month period thereafter (the "Subsequent Term"), Licensee shall pay annual fees according to the pricing proposal for the licensed Infinite Campus Products (the "Annual Fees"). Company shall review the number of students enrolled as certified by the state in which the Licensee resides, and, in the event that the total number of enrolled students has increased or decreased, Company may increase or decrease the Annual Fees according to the pricing proposal for the licensed Infinite Campus Products and Services

4.0 Infinite Campus Services

During the term of the License, and subject to payment of the fees for the Infinite Campus Products and the fees for the Infinite Campus Services, Infinite Campus shall provide the following Infinite Campus Services (the "Software Support Services") to Licensee:

4.1 Software Maintenance
Updates to the licensed Infinite Campus Products, electronic manuals, training modules, tech notes.

4.2 E-Support Services

Reponses to Licensee's Authorized Representatives technical and products questions of the licensed Infinite Campus Products via the Infinite Campus support website.

4.3 Telephone Support Services

Reponses to Licensee's Authorized Representatives technical and products questions of the licensed Infinite Campus Products via telephone.

5.0 Hours of Service

Company personnel shall be normally available either via phone or via e-mail Monday through Friday, 6:00 a.m. to 6:00 p.m., Central Standard Time. Company's offices are closed in observance of the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day,

Thanksgiving Day, the day after Thanksgiving Day, the day Before Christmas Day, Christmas Day and New Year's Eve Day.

6.0 Authorized Contact Personnel

Licensee shall identify up to three (3) authorized support contacts. Two (2) of the contacts will be responsible for functional issues experienced by end users and one (1) will serve as the technical contact. Licensee understands and acknowledges that no more than the number of authorized contact personnel may be in communication with Company at any one time. Licensee shall provide Company with a written list of such authorized personnel within thirty (30) days of the execution of this Order. Licensee further agrees to keep Company informed of changes made to this authorization list as they take place.

7.0 Payment

7.1 Costs Related to Modified Software

If Company corrects defects or problems attributable solely to errors made knowingly by Licensee or corrections or modifications made by Licensee, Licensee agrees to pay Company the Company's then current standard rates.

7.2 Diagnostic Expenses

In the event Company performs services to diagnose a defect that Licensee claims exists in the Infinite Campus Products and Company subsequently demonstrates the Infinite Campus Products conforms to specifications as described in Section 4.2 of the Infinite Campus End User License Agreement, Licensee will reimburse Company for such services in accordance with the provided pricing proposal.

8.0   Major Alarm

8.1 Definition of a Major Alarm
A "Major Alarm" is defined as one of the following: (i) a complete failure of the Infinite Campus software system that results in the inability by Licensee to use the Infinite Campus software, (ii) the loss, corruption or unintended migration of Infinite Campus SIS data, (iii) the loss of an Infinite Campus function that supports an urgent business process (i.e. report card issuance), or (iv) an Infinite Campus interface failure that results in the inability by the Licensee to use the Infinite Campus software.

8.2 Definition of Response

"Response" is defined as contacting the Licensee in response to receipt of a trouble ticket and working with Licensee to solve the problem. Once a trouble ticket has been documented, updates will be provided to the Licensee a minimum of twice a day until a Major Alarm has been resolved or the urgency level associated with the trouble ticket has been downgraded by the Licensee. Company will work diligently to solve all Licensee problems; however, Company cannot provide any guarantee as to when a Major Alarm will be resolved.

8.3 Response Time for a Major Alarm.

8.3.1   E-support response time – within two (2) hours.

8.3.2   Phone support – within one (1) hour.

9.0   Non-Major Alarm

    9.1 <u>Definition of Response</u>

"Response" is defined as contacting the Licensee in response to receipt of a trouble ticket and working with the Licensee to solve the problem. Once a trouble ticket has been documented, updates will be provided to the Licensee on a reasonable ongoing basis until a Non-Major Alarm is resolved.   Company will work diligently to solve all Licensee problems; however, Company cannot provide any guarantee as to when a Non-Major Alarm will be resolved.

    9.2 <u>Response Time for a Non-Major Alarm</u>

    9.1.1 E-support response time – within two (2) business days.

    9.1.2 Phone support – within one (1) business day.

10.0   Proprietary Rights

Licensee acknowledges and agrees that corrected or replacement Software and associated Documentation remain the property of Company and constitute a trade secret of Company. Licensee further agrees that corrected or replacement Software and associated Documentation are subject to the terms of the License Agreement and shall be delivered to Licensee only after Licensee executes a subsequent license agreement with Company governing its use, unless Company, at its option, waives this requirement for the execution of a subsequent license agreement**.**

10.0   Modifications Excluded

Company shall not be obligated to provide maintenance services pursuant to this Agreement with respect to any modifications to the Software made by Licensee not at the direction of Company or to any computer program incorporating all or any part of the Software.

11.0   Access to Data and Computer

On request, Licensee agrees to provide Company with printouts of the Software or of data in storage that shows evidence of a programming error. Licensee further agrees to provide Company with supervised access to Licensee's computer and further agrees to provide sufficient computer time to enable Company to duplicate the problem, determine that it results from the Software, and, after corrective action or replacement has taken place, determine that the problem has been alleviated.

12.0   Warranty Provisions

Replaced or corrected Software shall be subject to the warranties, warranty remedies and warranty limitations or disclaimers set forth in the License Agreement pursuant to which Licensee acquired the original Software for the period designated therein. The warranty provisions contained in that License Agreement are incorporated herein by reference.

The Infinite Campus Implementation Services Agreement is hereby amended as set forth below and supersedes all prior documents submitted by Infinite Campus, Inc. or discussed by the parties. The parties agree to use this Implementation Services Agreement or a document substantially similar in the form of this Agreement.

INFINITE CAMPUS IMPLEMENTATION SERVICES AGREEMENT

This Infinite Campus Implementation Services Agreement ("**Agreement**") is made between **Infinite Campus, Inc**, a Minnesota corporation located at 4321 109th Avenue NE, Blaine, MN 55449-6794 ("**Company**") and _____, with offices located at _____, ("Licensee").

This Infinite Campus End User License Agreement ("**Agreement**") is made between **Infinite Campus, Inc.,** a Minnesota corporation located at 4321 109th Ave NE, Blaine, MN 55449-6794 ("**Company**") and **the State of Oklahoma, by and through the Office of Management and Enterprise Services ("State") for the benefit of State or Interlocal Entities** ("**Licensee**").

RECITALS

A. Licensee finds that the Company is willing to perform certain work hereinafter described in accordance with the provisions of this Agreement; and

B. Licensee finds that the Company is qualified to perform the work, all relevant factors considered, and that such performance will be in furtherance of Licensee's business.

C. Company has developed certain proprietary (i) student information software and as updated and revised by Company from time to time (the "**Infinite Campus Product**"), and (ii) such other products and services as offered by Company and as amended by Company from time to time (the **"Infinite Campus Additional Products**"). The Infinite Campus Product, and the Infinite Campus Additional Products are collectively referred to as the "**Infinite Campus Products**";

D. Company or a Company authorized service provider provides certain services for the Infinite Campus Products, including project management, data conversion and training services, (the "**Infinite Campus Services**");

E. Company and Licensee desire to enter into this Agreement for the purpose of facilitating the implementation of certain Infinite Campus Products subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the terms and conditions hereinafter stated, it is agreed as follows:

1.0 Infinite Campus Services, Fees

During the Term of this Agreement, Company shall provide Licensee with Infinite Campus Services according to the fees described in the following table:

Type of Service	Services Fees*		
	On-site daily rate	Via Web daily rate	Hourly rate via Web
Project Management	$1,600	$1,200	$150
Process Consulting	$1,600	$1,200	$150
On-site Go Live Support	$1,600	NA	NA
Training	$1,600	$1,200	$150
Data Conversion	$1,600	$1,200	$150
Custom Development	NA	$1,300	$162.50
*Quantity depends on size of district (students, staff, etc.) and other options (premium products, customizations, etc.) that district selects.			

2.0 Agreement Term and Termination

2.1 Agreement Term

The term of this Agreement (the "Term") shall begin on the Effective Date of this Agreement, and remain in effect until completed or terminated pursuant to the Contract.

2.2 No Liability for Termination

Except as provided for in this Agreement, neither party shall be liable to the other for damages of any kind, including incidental or consequential damages, damages for loss of prospective business or loss of continuing business, or otherwise which arise due to the expiration or termination of this Agreement. This does not relieve either party from responsibility for damages caused by its actions or breaches of the Agreement, but only for damages related to or resulting from the expiration or termination of the business relationship.

2.3 Survivorship

Those sections that by their nature survive expiration or termination of this Agreement will survive such expiration or termination.

3.0 Payment Terms

3.1 Payment Terms

Licensee will pay Company the Fees and Expenses monthly as incurred, net 45 days from date of invoice.

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4.0 Limitations of Liability

EXCEPT TO THE EXTENT INCLUDED IN AN AWARD SUBJECT TO COMPANY'S INDEMNITY OBLIGATION, IN NO EVENT WILL COMPANY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE, SUCH AS LOST BUSINESS PROFITS. COMPANY'S TOTAL LIABILITY WILL BE LIMITED TO THE LICENSE FEES ACTUALLY PAID BY LICENSEE TO INFINITE CAMPUS FOR THE APPLICABLE INFINITE CAMPUS PRODUCTS, SUBJECT HOWEVER TO A TWELVE (12) MONTH STRAIGHT LINE DEPRECIATION COMMENCING ON THE DATE OF DELIVERY OF SUCH INFINITE CAMPUS PRODUCTS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, THE FOREGOING PROVISIONS SHALL NOT APPLY TO OR LIMIT DAMAGES, EXPENSES, COSTS, ACTIONS, CLAIMS AND LIABILITIES ARISING FROM OR RELATED TO PROPERTY DAMAGE, BODILY INJURY OR DEATH CAUSED BY COMPANY; COMPANY'S CONFIDENTIALITY OBLIGATIONS SET FORTH IN THIS CONTRACT; DATA SECURITY AND BREACH NOTIFICATION OBLIGATIONS SET FORTH IN THE CONTRACT; THE BAD FAITH, GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF COMPANY'S OR ITS EMPLOYEES AGENTS AND SUBCONTRACTORS; OR OTHER ACTS FOR WHICH APPLICABLE LAW DOES NOT ALLOW EXEMPTION FROM LIABILITY.

5.0 General Terms and Conditions

5.1 Performance

Company represents and warrants that, (a) the work to be performed and services to be provided by it under this Agreement will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel; (b) the work will be configured using commercially reasonable technical specifications; (c) the work will operate in conformance with the terms of this Agreement; (d) the work to be performed by it under this agreement will not violate any law, statute, ordinance or regulation (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination or false advertising; (e) the work to be performed by it under this Agreement will not be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; (f) the work to be performed by it under this Agreement will not be obscene, child pornographic, or indecent; and (g) the work to be performed by it under this agreement will be free of any software disabling devices, internal controls, or computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.

5.2 Assignment

Licensee shall not, voluntarily or involuntarily, sublicense, sell, assign, give or otherwise transfer this Agreement. Any such transfer or attempted transfer shall be null and void. Company has the right to assign or otherwise transfer its rights and obligations under any of this Agreement, whether voluntarily, involuntarily, or by operation of law with the written consent of licensee,

which will not be unduly withheld.

5.3   Amendments; Waiver

This Agreement shall not be amended or modified except in writing by duly authorized representatives of the parties that refer specifically to this Agreement. The failure of either party to enforce at any time or for any period of time the provisions hereof shall not be construed to be a waiver of such provisions or of the right to enforce each and every such provision.

5.4   Severability

If a court of competent jurisdiction holds that any provision of this Agreement is invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect, and the parties will replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the original intent of the parties and economic effect of the Agreement.

5.5   Headings and Construction

Paragraph headings are for reference only and will not be considered as parts of this Agreement. Wherever the singular is used, it includes the plural, and, wherever the plural is used, the singular is included.

5.6   Force Majeure

Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, acts of terrorism, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the actions or inactions of Company), provided that the delayed party: (i) gives the other party prompt notice of such cause, which will include a reasonable assessment of the nature and duration of the force majeure event and steps it is taking and plans to take to mitigate the effects of such event, and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. However, Licensee may terminate the agreement if Company cannot cause delivery of Products or Services in a timely manner to meet the business needs of the Licensee.

5.7   Non-suspended Obligations: Notwithstanding the foregoing or any other provisions in the Contract, (1) in no event will any of the following be considered a force majeure event: (a) shutdowns, disruptions or malfunctions in Company's systems or any of Company's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Company's systems; or (b) the delay or failure of Company or subcontractor personnel to perform any obligation of Company hereunder unless such delay or failure to perform is itself by reason of a force majeure event; and (2) no force majeure event modifies or excuses Company's confidentiality, indemnification or data security and breach notification obligations set forth herein.Entire Agreement

5.8   This Agreement, the Solicitation no. XXX, and the Company's response to the Solicitation constitute the entire agreement between the parties and supersede all previous agreements and representations of, between or on behalf of the parties in regard to the subject matter herein. This Agreement, the Solicitation no. XXX, and the Company's response to the Solicitation contain all of Company's and Licensee's agreements, warranties, understandings, conditions, covenants and representations in regard to the subject matter herein. To the extent allowed by law, neither Company nor Licensee will be liable for any warranties, understandings, conditions, covenants or representations not

expressly set forth or referenced in this Agreement. <u>Notices</u>

Any notice under this Agreement, including notices of changes in the Specifications and Practices and Procedures, must be in writing and will be deemed given upon the earlier of actual receipt or ten (10) days after being sent by first class mail, return receipt requested, to the address set forth below for Company and to the address designated on page one (1) of this Agreement by Advocate for receipt of notices, or as may be provided by the parties

Infinite Campus, Inc.

Sales Contracts Management

4321 109th Ave NE

Blaine, MN 55449-6794

District:_____

Address:_____

_____

_____

Either party may give notice of its change of address for receipt of notices by giving notice in accordance with this section.

5.9   <u>Applicable Laws</u>

Company complies with applicable laws governing online privacy, including the Child Privacy Protection and Parental Empowerment Act, the Family Educational Right to Privacy Act and the Children's Online Privacy Protection Act. Licensee may review these laws and their related regulations by logging on to the U.S. Federal Trade Commission's website at http://www.ftc.gov

IN WITNESS WHEREOF, this Infinite Campus Implementations Services Agreement has been executed by the duly authorized representative of Company and Licensee as of the Effective Date below.

Infinite Campus, Inc.

By: _____

Name: _____

Title: _____

District:_____

By: _____

Name: _____ _____

Title: _____