# PaySchools

## General Terms and Conditions

Effective Date: June 1, 2017

THIS DOCUMENT CONTAINS IMPORTANT INFORMATION REGARDING DISTRICT'S RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT MAY APPLY TO DISTRICT. PLEASE READ IT CAREFULLY.

These PaySchools General Terms and Conditions (the "**Agreement**") are between District and CP-DBS, LLC d/b/a PaySchools (referred to as "**us**", "**we**", "**our**" or "**PaySchools**" as the context may require) and include terms and conditions that apply to District's access and use of software and services as further set forth herein. The Agreement is subject to change by as set forth in **Section 20** below.

Capitalized terms used in this Agreement are referred to in the body of the agreement or in Section 25 (Definitions).

1. Authority to Contract

   1.1    Each party represents, warrants and covenants to the other that:

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

   (b)    it has the full right, power and authority to enter into and perform its obligations under this Agreement, and that such action has been duly authorized and, if applicable, this Agreement and all expenditures hereunder have been approved and authorized by all applicable boards or other governing bodies in accordance with applicable law; and

   (c)    when entered into, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

   1.2    Upon our written request, District shall provide us with written evidence that this Agreement has been duly authorized by the applicable board or governing body.

1.3     The parties agree that that a breach of any of the representations, warranties, or covenants in Section 1.1 shall constitute a material breach of this Agreement.

2. License

2.1     License Grant

(a)     General. Subject to Sections 2.1(b), 2.1(c), and 2.1(d) below and conditioned on District's and its End User's compliance with this Agreement, PaySchools hereby grants a non-exclusive, non-sublicensable and non-transferable, limited license to District and its End Users to access and use the Licensed Software and Documentation solely for the benefit of the District in the ordinary course of its school operations in the United States during the Term.

(b)     Outward Facing Applications. For Licensed Software specifically designed to allow District's Authorized Parent Users to interact with the Licensed Software, such use by District's Authorized Parent Users is permitted under this Agreement in the ordinary course of District's school operations. Use of Licensed Software by Authorized Parent Users shall be subject to a User Terms and Conditions posted on the applicable website, which may change from time to time.

(c)     Open-Source Licenses. The Licensed Software may include Open Source Components. Any Open-Source Components are licensed under the applicable open source license (each, an "**Open-Source License**").

(d)     Third-Party Software. PaySchools will provide notice to District if the license terms that are applicable to a particular item of Third-Party Software differ from those set forth in Section 2.1.

3.  Use Restrictions. Except as this Agreement expressly permits, and subject to **Section 2.1(c)** with respect to Open-Source Components or **Section 2.1(d)** with respect to Third-Party Software, District shall not, and shall not permit any other Person to:

(a)     copy the Licensed Software, in whole or in part, without the written consent of PaySchools. Any permitted copy of the Licensed Software made by District: (i) will remain the exclusive property of PaySchools; (ii) be subject to the terms and conditions of this Agreement; and (iii) must include all copyright or other Intellectual Property Rights notices contained in the original;

(b)     modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of any Licensed Software;

(c)     rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Licensed Software to any Person, including on or in connection with the

internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;

(d) reverse engineer, disassemble, decompile, decode or adapt the Licensed Software, or otherwise attempt to derive or gain access to the source code of the Licensed Software, in whole or in part;

(e) bypass or breach any security device or protection used for or contained in the Licensed Software or Documentation;

(f) remove, delete, efface, alter, obscure, translate, combine, supplement or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers, or Intellectual Property Rights, proprietary rights or other symbols, notices, marks or serial numbers on or relating to any copy of the Licensed Software or Documentation;

(g) use (i) the Licensed Software or Documentation other than as permitted hereunder or in any manner or for any purpose or application not expressly permitted by this Agreement or the Documentation; or (ii) any Open-Source Components in any manner or for any purpose or application not expressly permitted by the controlling Open-Source License.

4. Delivery; No Installation. PaySchools shall provide District with access to the Licensed Software. Risk of loss of any tangible media on which the Licensed Software is delivered shall pass to District on delivery. District will be responsible for installing Licensed Software as permitted under this Agreement unless otherwise agreed to in writing by the parties.

5. Services

5.1 Services. Subject to and conditioned on District's and its End Users' compliance with the terms and conditions of this Agreement, during the Term, PaySchools will use commercial reasonable efforts to provide District any Services purchased by District in accordance with the Documentation, terms and conditions hereof, and in compliance with applicable law as it relates to this Agreement and the subject matter hereof.

5.2 Maintenance and Support Services. During the Term, PaySchools will provide the following standard maintenance and support services ("**Maintenance and Support Services**"):

(a) PaySchools will provide District with all Maintenance Releases (including updated Documentation) that PaySchools may, in its sole discretion, make generally available to its licensees at no additional charge. All Maintenance Releases, on being provided by PaySchools to District hereunder, are deemed Licensed Software subject to all applicable terms and conditions in this Agreement. District will install all Maintenance Releases as soon as practicable after receipt. District does not have any right hereunder to receive any New Versions of the Licensed Software that PaySchools may release from time to time.

(b)     The Maintenance and Support Services include PaySchools' standard customer support services. District may purchase enhanced support services as Professional Services separately at PaySchools' then current rates.

5.3     Payment Processing Services. If purchased by District, PaySchools or its designee shall provide to District payment processing services ("**Payment Processing Services**") in accordance with this Agreement.

5.4     Hosted Services. If purchased by District, PaySchools shall provide to District the managed hosting services (the "**Hosted Services**") in accordance with this Agreement.

5.5     Equipment Support Services.  If purchased by District, PaySchools shall provide to District equipment support and maintenance services ("**Equipment Support Services**"), which are subject to PaySchools equipment sale and maintenance and support service terms.

5.6     Professional Services.  If purchased by District, PaySchools shall provide Professional Services as described in an Ordering Document, statement of work, or other document agreed to by the parties.

6.  System Requirements. District is responsible for maintaining minimum system requirements necessary to operate the Licensed Software. To maintain minimum system requirements, District must maintain and utilize a current version of Microsoft's operating system and SQL server. District is responsible for updating such systems and servers with the latest updates and patches. System requirements may change from time to time upon reasonable notice to District.

7.  Integrations with Non-PaySchools Applications

7.1     We or a third-party may make available software or other functionality that allows District to interoperate the Licensed Software or Services with Non-PaySchools Applications (each an "**Integration**").  Use of an Integration may require District to purchase software licenses access to a Non-PaySchools Application from a third-party provider. Further, District may be required to provide PaySchools with access to its account with such Non-PaySchools Applications in order for the Integration to function. To the extent we make an Integration available and District decides to use it, PaySchools grants District a non-exclusive, non-sublicensable and non-transferable, limited license to access and use the provided Integration so that the Services and/or Licensed Software, as applicable, will interoperate with the intended Non-PaySchools Application. We may modify an Integration or cease to make an Integration available to District at any time for any reason without refund or liability to District.

7.2     If District uses an Integration, then District grants us permission to make District Data available to the applicable Non-PaySchools Application provider. Conversely, District grants us permission to use District Data that we may obtain from a Non-PaySchools Application provider as a result of District's use of an Integration. We are not responsible and disclaim all liability for a Non-PaySchools Application provider's access, use, disclosure, modification, or destruction of District Data

when such District Data is obtained by a Non-PaySchools Application provider as a result of District's use of an Integration.

8. DISTRICT OBLIGATIONS

8.1    District is responsible for understanding the legal and regulatory requirements applicable to it and for selecting and using the Licensed Software and Services and for procuring and using the Licensed Software and Services in a manner that complies with the applicable legal and regulatory requirements. **District shall comply with all laws and regulations applicable to District.**

8.2    **District shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. In addition, District shall implement commercially reasonable physical, administrative and technical controls, and security procedures and other safeguards that are reasonably necessary to prevent unauthorized access to and use of the Licensed Software and Services.**

9. Confidentiality

9.1    Confidential Information. In connection with this Agreement each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). Subject to **Section 9.2**, "**Confidential Information**" means information in any form or medium (whether oral, written, electronic or other), whether disclosed before or after the effective date of this Agreement, that Receiving Party should reasonably understand to be confidential or proprietary including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, whether or not marked, designated or otherwise identified as "confidential". Without limiting the foregoing, the Licensed Software and Documentation are the Confidential Information of PaySchools. District Data is Confidential Information of District.

9.2    Exclusions and Exceptions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

9.3    Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall: (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in

accordance with this Agreement; (b) except as may be permitted by and subject to its compliance with Section9.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 9.3; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 9.3; (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; (d) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and cooperate with the Disclosing Party to prevent further unauthorized use or disclosure; and (e) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 9.

9.4     Compelled Disclosures. Subject to Section 9.5, if the Receiving Party or any of its Representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 9.3; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 9.4, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

9.5     Public Records Information Requests.  If District is a public or governmental agency or entity, as those terms are defined by the federal Freedom of Information Act, 5 U.S.C. § 552 ("**Federal FOIA**"), or by the laws of any state regarding disclosure of public records by public or governmental agencies or entities ("**State FOIAs**"), then District shall provide prompt written notice to PaySchools when District receives a request for disclosure of PaySchools' Confidential Information. In response to a request for disclosure of PaySchools' Confidential Information, District shall invoke the Federal FOIA's exemption for trade secrets and confidential commercial or financial information and shall invoke similar exemptions under State FOIAs. District understands that PaySchools may seek an injunction or other relief against District to prevent District from disclosing PaySchools' Confidential Information.

9.6     Survival of Confidentiality Obligations. Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 9 with respect to any Confidential Information that constitutes a trade secret under any applicable law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

10. Fees and Payment

10.1     License Fees. In consideration of the rights granted to District under this Agreement, District shall pay to PaySchools the license fees set forth on the applicable Ordering Document in accordance with that schedule and the terms of this Section 10. If the Term is renewed for any Renewal Term(s) pursuant to Section 15.2, District shall pay the then-current license fees that PaySchools charges for the Licensed Software during the applicable Renewal Term.

10.2     Payment Processing Service Fees

   (a)     Use of Payment Processing Services may be subject to a non-refundable credit card processing, convenience or other fees ("**Payment Processing Service Fees**") as set forth on our website. District can choose whether the Authorized Parent Users or other users are responsible for payment of Payment Processing Service Fees or whether Payment Processing Service Fees should be deducted from payments made to the District.

   (b)     The Payment Processing Service Fees may change from time to time, and we reserve the right to modify them at any time for any reason upon notice to you or by posting on our website. In addition, we may add or modify certain offerings related to our Payment Processing Services and we reserve the right to charge you additional or different fees in consideration for providing such new or modified Payment Processing Services to you.

10.3     Additional Fees and Expenses. In consideration of PaySchools providing Services under this Agreement, District shall pay to PaySchools the fees set forth on an applicable Ordering Document, statement of work, or other similar document and shall reimburse PaySchools for out-of-pocket expenses incurred by PaySchools in connection with performing these Services, in accordance with that schedule set forth on the Ordering Document and the terms of Section 10.

10.4     Taxes. All fees and other amounts payable by District under this Agreement are exclusive of taxes and similar assessments.  Without limiting the foregoing, District is responsible for all sales, service, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by District hereunder, other than any taxes imposed on PaySchools' income.

10.5     Payment. District shall pay all amounts due and owing under this Agreement within 30 days after the date of PaySchools' invoice. District shall make all payments hereunder in US dollars by check or ACH to the address or account specified in the Ordering Document, invoice, or such other address or account as PaySchools may specify in writing from time to time.

10.6     Right to Set-Off. Without prejudice to any other right or remedy PaySchools may have, PaySchools reserves the right to set off at any time any amount owing to it by District under this Agreement or otherwise.

11. Security Measures. The Licensed Software may contain technological measures designed to prevent unauthorized or illegal use of the Licensed Software. District acknowledges and agrees that: (a) PaySchools may use these and other lawful measures to verify District's compliance with the terms of

this Agreement and enforce PaySchools' rights, including all Intellectual Property Rights, in and to the Licensed Software; (b) PaySchools may deny any individual access to the Licensed Software on written notice to District if PaySchools, in its reasonable discretion, believes that person's use of the Licensed Software would violate any provision of this Agreement, regardless of whether District authorized that person to be an End User or Authorized Parent User; and (c) PaySchools and its Representatives may collect, maintain, process and use diagnostic, technical, usage and related information, including information about District's computers, systems and software, that PaySchools may gather periodically to improve the performance of the Licensed Software or develop Maintenance Releases.

12. <u>Audits</u>. PaySchools or its Representatives may, in PaySchools' sole discretion, audit District's use of the Licensed Software under this Agreement. District shall fully cooperate with PaySchools' audit and provide reasonable access to records, equipment, information and personnel requested by PaySchools. PaySchools may conduct audits only during District's normal business hours and in a manner that does not unreasonably interfere with District's business operations. If the audit determines that District's usage of the Licensed Software exceeded the usage permitted by this Agreement, District shall pay to PaySchools all fees due for such excess usage of the Licensed Software, plus any reasonable costs incurred by PaySchools in conducting the audit, within 30 days of the date of written notification of the audit results.

13. <u>Rights in District Data; Education Records</u>

13.1    The parties acknowledge that PaySchools may have access to District Data during PaySchools performing Services for District under this Agreement. The parties agree that as between them, all rights including all intellectual property rights in and to District Data shall remain the exclusive property of the District.

13.2    **If PaySchools will have access to "education records" for the District's students as defined under Family Educational Rights and Privacy Act (FERPA), District represents and warrants that it has determined that PaySchools meets the criteria set forth in the its annual FERPA rights notification for being a "school official" with a "legitimate educational interest" in the District education records. PaySchools is and will remain under the direct control of District with respect to use and maintenance of education records and will use and disclose District Data only for the purpose of fulfilling its duties and providing services under the Agreement and for improving services under the Agreement. PaySchools will not share District Data with or disclose it to any third-party except as provided in the Agreement, required by law, or as authorized in writing by the District. Further, PaySchools will not use District Data in any manner that is inconsistent with its privacy policy.**

13.3    <u>Data Sharing Requests from District</u>

(a)    District may request that PaySchools release District Data including Personally Identifiable Information to third parties outside the scope of the Services (e.g., to a third-party vendor of the District whereby the services to be performed by such vendor will be performed pursuant to a contract between the District and such vendor). In PaySchool's

reasonable discretion, it will agree to release such District Data under the District's written instructions and on the District's behalf, subject to the following requirements:

(i) District must properly complete, execute, and transmit to PaySchools a copy of PaySchools' Data Release Form available from PaySchools;

(ii) District will be responsible, to the extent required by law, for (1) notifying the relevant individual that PaySchools will disclose their Personally Identifiable Information to the District or the relevant third parties for the specified purpose; (2) obtaining any consents or approvals of individuals to release such Personally Identifiable Information; and (3) ensuring that the disclosure complies with applicable law, regulations, and policies; and

(iii) District will promptly notify PaySchools in writing if the District becomes aware of any unlawful access, use or disclosure of District Data (including Personally Identifiable Information) covered by the Data Release Form, including a description of the incident and the type of Personally Identifiable Information that was subject to the incident.

(iv) District shall promptly notify PaySchools in the event that an authorized third-party is no longer authorized to access District Data and District shall be responsible for any claims arising from District's failure to notify PaySchools that a third-party should no longer have access to District Data.

14. Intellectual Property Rights

14.1    Licensed Software and Documentation. District acknowledges and agrees that: (a) the Licensed Software and Documentation are licensed, not sold, to District by PaySchools and District does not and will not have or acquire under or in connection with this Agreement any ownership interest in the Licensed Software or Documentation, or in any related Intellectual Property Rights; and (b) as between the parties, PaySchools and its licensors are and will remain the sole and exclusive owners of all right, title and interest in and to the Services, Hosted System (as defined in 23.5(b)), Licensed Software and Documentation, including all Intellectual Property Rights relating thereto, subject only to the rights of third parties in Open-Source Components and the limited license granted to District under this Agreement.

14.2    District Cooperation and Notice of Infringement. District shall, during the Term: (a) promptly notify PaySchools in writing if District becomes aware of: (i) any actual or suspected infringement, misappropriation or other violation of PaySchools' Intellectual Property Rights; or (ii) any claim that the Services, Licensed Software or Documentation infringe, misappropriate or otherwise violates the Intellectual Property Rights or other rights of any Person; and (iii) at PaySchools' sole expense, reasonably cooperate with PaySchools' investigation of such activities or enforcement of its rights in the Licensed Software or Documentation.

15. Term and Termination.

15.1    Initial Term. The initial term of this Agreement commences as of the date set forth in the applicable Ordering Document and will continue in effect until June 30 of the next calendar year unless terminated earlier pursuant any of the Agreement's express provisions (the "**Initial Term**").

15.2    Renewal Term. This Agreement will automatically renew for additional successive one (1) year terms unless earlier terminated pursuant to any of the Agreement's express provisions or either party gives the other party written notice of non-renewal at least 30 days prior to the expiration of the then-current term (each a "**Renewal Term**" and, collectively, together with the Initial Term, the "**Term**").

15.3    Termination. This Agreement may be terminated at any time:

(a)    by PaySchools, effective on written notice to District, if District fails to pay any amount when due under this Agreement, where such failure continues more than thirty (30) days after PaySchools' delivery of written notice thereof ("**Payment Failure**"); or

(b)    by either party, effective on written notice to the other party, if the other party materially breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; or

(c)    District may terminate this Agreement at any time without cause, without penalty to District, on giving PaySchools at least seven (7) days prior written notice of such termination.

15.4    Effect of Termination or Expiration. On the expiration or earlier termination of this Agreement:

(a)    all rights, licenses and authorizations granted to District hereunder will immediately terminate and District shall: (i)  immediately cease all use of and other activities with respect to the Licensed Software and Documentation other than those described in this Section 15.4(a)(ii); (ii) within thirty (30) days deliver to PaySchools, or at PaySchools' written request destroy and permanently erase from all devices and systems District directly or indirectly controls, the Licensed Software, the Documentation and the PaySchools' Confidential Information, including all documents, files and tangible materials (and any partial and complete copies) containing, reflecting, incorporating or based on any of the foregoing, whether or not modified or merged into other materials; provided that, District shall not be required to undertake any action contrary to applicable public records laws; (iii) certify to PaySchools in a signed written instrument that it has complied with the requirements of this Section 15.4; and

(b)    all amounts payable by District to PaySchools of any kind under this Agreement, which shall include the entire year's software license fee to the extent not yet paid by District,

are immediately payable and due no later than thirty (30) days after the effective date of the expiration or ten (10) days after termination of this Agreement under Section 15.3. In the event that District terminates this Agreement pursuant to Section 15.3(c), all amounts prepaid by District under this agreement for Licensed Software, Maintenance and Support Services, and Hosted Services are non-refundable.

15.5     Surviving Terms. The provisions set forth in the following sections, and any other right, obligation or provision under this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: this Section 15.5, Section 9 (Confidentiality), Section 12 (Audits), Section 13 (Rights in District Data; Education Records), Section 14 (Intellectual Property Rights), Section 16 (Representations and Warranties; DISCLAIMER), Section 17 (DISCLAIMER), Section 18 (Third Party Claims), Section 19 (Limitations of Liability), Section 20 (Modifications and Additional Terms), Section 21 (Miscellaneous), and Section 25 (Definitions). If Hosted Services are purchased, the following additional terms shall survive: 23.4(a) and 23.5(d).

16. Representations and Warranties

16.1        Limited Warranties: Services

(a)     General.  Service PaySchools warrants that any Services provided hereunder (excluding Third-Party Services) will be performed in a professional and workman-like manner consistent with industry standards reasonably applicable to the performance of such Service for ninety (90) days following the performance of the applicable Service.

(b)     Third-Party Services. Any third-party representations and warranties for the Third-Party Services will be passed through to District to the extent that PaySchools is permitted to pass through such warranty to District.

(c)     Sole Remedy for Services. If District notifies PaySchools that the warranty set forth Section 16.1(a) has been breached during the warranty period, then PaySchools, at its sole option and discretion, will either (i) re-perform the applicable Service; or (ii) refund the fees paid by PaySchools for the applicable Service. THIS SECTION 16.1(c) SETS FORTH DISTRICT'S SOLE REMEDY AND PaySchools' ENTIRE LIABILITY FOR ANY BREACH OF ANY WARRANTY RELATING TO SERVICES.

16.2    Limited Warranty: Software

(a)     Subject to the limitations and conditions set forth in Section 16.2(b) and Section 16.2(c), PaySchools warrants to District throughout the applicable license term: (i) the Licensed Software will substantially conform in all material respects to the specifications set forth in the Documentation, when installed, operated and used as recommended in the Documentation and in accordance with this Agreement; and (ii) no Maintenance Release, when installed in accordance with the Documentation, will have a material adverse effect

on the functionality of the Licensed Software; and (iii) any media on which PaySchools supplies the Licensed Software to District will be free of damage and defects in materials and workmanship under normal use.

(b)    District Requirement. The limited warranties set forth in Section 16.2 apply only if District: (i) notifies PaySchools in writing of the warranty breach before the expiration or termination of the applicable license term; (ii) has promptly installed all Maintenance Releases to the Licensed Software that PaySchools previously made available to District; and (iii) as of the date of notification, is in compliance with all terms and conditions of this Agreement (including the payment of all license fees then due and owing).

(c)    Exceptions. Notwithstanding any provisions to the contrary in this Agreement, the limited warranty set forth in Section 16.2 shall not apply to problems arising out of or relating to: (i) Licensed Software, or the media on which it is provided, that is modified or damaged by District or its Representatives; (ii) any operation or use of the Licensed Software other than as specified in the Documentation including any combination, operation or use of the Licensed Software in or with, any technology (including any software, hardware, firmware, system or network) or service not specified for District's use in the Documentation, unless otherwise expressly permitted by PaySchools in writing; (iii) District's failure to install or update any required third-party software (whether or not provided by or through PaySchools) including, without limitation, District's failure to apply security updates or other patches or updates to its operating system or database servers; (iv) District's or any third party's negligence, abuse, misapplication or misuse of the Licensed Software, including any use of the Licensed Software other than as specified in the Documentation or expressly authorized by District in writing; (v) District's failure to promptly install all Maintenance Releases that PaySchools has previously made available to District; (vi) any Open-Source Components, beta software, software that PaySchools makes available for testing or demonstration purposes, temporary software modules or software for which PaySchools does not receive a license fee; (vii) District's material breach of any provision of this Agreement; or (viii) any other circumstances or causes outside of the reasonable control of PaySchools (including abnormal physical or electrical stress).

(d)    Remedial Efforts. If PaySchools breaches, or is alleged to have breached, any of the warranties set forth in Section 16.2, PaySchools may, at its sole option and expense, take any of the following steps to remedy such breach: (i) replace any damaged or defective media on which PaySchools supplied the Licensed Software;(ii) amend, supplement or replace any incomplete or inaccurate Documentation;(iii) repair the Licensed Software; (iv)  replace the Licensed Software with functionally equivalent software (which software will constitute Licensed Software hereunder); and/or (v) terminate this Agreement and, provided that District fully complies with of its post-termination obligations as set forth in Section 15.4, promptly refund to District, on a *pro rata* basis, the share of any license

fees prepaid by District for the remaining Term of this Agreement following the date of such termination.

(e) <u>Sole Remedy for Licensed Software</u>. If PaySchools does not cure a warranty breach or terminate this Agreement as provided in Section 16.2(d) within a reasonable amount of time  after PaySchools' receipt of written notice of such warranty breach, District shall have the right to terminate this Agreement as provided in Section 15.3(b). Provided that District fully complies with its post-termination obligations as set forth in Section 15.4, PaySchools shall promptly refund to District, on a *pro rata* basis, the share of any license fees prepaid by District for the remaining Term of this Agreement following the date of such termination. THIS SECTION 16.2(e) SETS FORTH THE DISTRICT'S SOLE REMEDY AND THE PaySchools' ENTIRE OBLIGATION AND LIABILITY FOR ANY BREACH OF ANY PaySchools WARRANTY OF THE LICENSED SOFTWARE OR DOCUMENTATION SET FORTH IN THIS AGREEMENT.

17. <u>DISCLAIMER</u>. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH IN SECTION 16, ALL LICENSED SOFTWARE, DOCUMENTATION, INTEGRATIONS AND OTHER PRODUCTS, INFORMATION, MATERIALS AND SERVICES PROVIDED BY PAYSCHOOLS ARE PROVIDED "AS IS." PAYSCHOOLS HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER (INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE), AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, PAYSCHOOLS MAKES NO WARRANTY OF ANY KIND THAT THE LICENSED SOFTWARE OR DOCUMENTATION, OR ANY OTHER PAYSCHOOLS OR THIRD-PARTY GOODS, SERVICES, TECHNOLOGIES OR MATERIALS (INCLUDING ANY THIRD-PARTY SOFTWARE OR HARDWARE), OR ANY PRODUCTS OR RESULTS OF THE USE OF ANY OF THEM, WILL MEET DISTRICT'S OR OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, TECHNOLOGIES OR MATERIALS (INCLUDING ANY THIRD-PARTY SOFTWARE, HARDWARE, SYSTEM OR NETWORK), OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL OPEN-SOURCE COMPONENTS AND OTHER THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN DISTRICT AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH OPEN-SOURCE COMPONENTS AND THIRD-PARTY MATERIALS.

18. <u>Third Party Claims</u>

18.1 <u>PaySchools Indemnification</u>. PaySchools shall indemnify, defend and hold harmless District from and against any and all Losses incurred by District arising out of or relating to any claim, suit, action, or proceeding (each, an "**Action**") by a third party to the extent that such Losses arise from any allegation in such Action that the Licensed Software, or any use of the Licensed Software, in the U.S. in accordance with this Agreement (including the Documentation) infringes any U.S. Intellectual Property

Right. The foregoing obligation does not apply to the extent that such Action or Losses arise from any allegation of or relating to any:

(a)     Open-Source Components, Third-Party Software, Integration, or other third-party materials;

(b)     patent issued on a patent application published in the U.S. after the effective date of this Agreement;

(c)     combination, operation or use of the Licensed Software in or with, any technology (including any software, hardware, firmware, system or network) or service not provided by PaySchools or specified for District's use in the Documentation, unless otherwise expressly permitted by PaySchools in writing;

(d)     modification of the Licensed Software other than: (i) by PaySchools or its contractor in connection with this Agreement; or (ii) with PaySchools' express written authorization and in strict accordance with PaySchools' written directions and specifications;

(e)     failure to timely implement any Maintenance Release, modification, update or replacement of the Licensed Software made available to District by PaySchools;

(f)     use of the Licensed Software after PaySchools' notice to District of such activity's alleged or actual infringement, misappropriation or other violation of a third party's rights;

(g)     negligence, abuse, misapplication or misuse of the Licensed Software or Documentation by or on behalf of District, District's Representatives or a third party;

(h)     use of the Licensed Software or Documentation by or on behalf of District that is outside the purpose, scope or manner of use authorized by this Agreement or in any manner contrary to PaySchools' instructions; or

(i)     events or circumstances outside of PaySchools' commercially reasonable control (including any third-party hardware, software or system bugs, defects or malfunctions).

18.2     <u>Indemnification Procedure</u>. District shall promptly notify PaySchools in writing of any Action for which District believes it is entitled to be indemnified pursuant to Section 18.1.  PaySchools shall control of the defense and investigation of such Action. This obligation of PaySchools shall not apply if District fails to timely notify PaySchools in writing of any such claim; however, District's failure to provide or delay in providing such notice shall not relieve PaySchools of its obligations under this Section except to the extent PaySchools is prejudiced by District's failure to provide or delay in providing such notice. PaySchools is permitted to control fully the defense and any settlement of any such claim as long as such settlement shall not include a financial obligation on or admission of liability by District. In the event District declines PaySchools' proffered defense, or otherwise fails to give full control of the defense to PaySchools' designated counsel, then District waives PaySchools' obligations

under this Section 18.2. District shall reasonably cooperate in the defense of such claim and may appear, at its own expense.

18.3     Mitigation. If the Licensed Software, or any part of the Licensed Software, is, or in PaySchools' opinion is likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if District's use of the Licensed Software is enjoined or threatened to be enjoined, PaySchools may, at its option and sole cost and expense: (a) obtain the right for District to continue to use the Licensed Software materially as contemplated by this Agreement; (b) modify or replace the Licensed Software, in whole or in part, to seek to make the Licensed Software non-infringing, while providing materially equivalent features and functionality, and such modified or replacement software will constitute Licensed Software under this Agreement; or (c) if, after PaySchools' exercise of commercially reasonable efforts, none of the remedies set forth in the above Section 18.3 or Section 18.3 is reasonably available to PaySchools, terminate this Agreement, in its entirety or with respect to the affected part or feature of the Licensed Software, effective immediately on written notice to District, in which event: (i) District shall cease all use of the Licensed Software and Documentation immediately on receipt of District's notice; and (ii) provided that District fully complies with its post-termination obligations set forth in Section 15.4, PaySchools shall promptly refund to District, on a *pro rata* basis, the share of any license fees prepaid by District for the remaining Term of this Agreement following the date of such termination.

18.4     Sole Remedy. THIS SECTION 18.4 SETS FORTH DISTRICT'S SOLE REMEDIES AND PAYSCHOOLS' SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE LICENSED SOFTWARE AND DOCUMENTATION) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

19. Limitations of Liability

19.1     EXCLUSION OF DAMAGES. EXCEPT AS OTHERWISE PROVIDED IN SECTION 19.3, TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL PAYSCHOOLS, OR ANY OF ITS SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY (a) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES OR PROFITS, (b) LOSS OF GOODWILL OR REPUTATION, (c) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY LICENSED SOFTWARE OR OPEN-SOURCE COMPONENTS OR OTHER THIRD-PARTY MATERIALS, (d) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, (e) COST OF REPLACEMENT GOODS OR SERVICES, OR (e) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND

NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

19.2    CAP ON MONETARY LIABILITY. EXCEPT AS OTHERWISE PROVIDED IN SECTION 19.3, TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL THE AGGREGATE LIABILITY OF PAYSCHOOLS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL OF THE AMOUNTS PAID BY DISTRICT TO PAYSCHOOLS UNDER THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

19.3    Exceptions to Limitations of Liability. The exclusions and limitations of in Section 19.1 and Section 19.2 do not apply to liability for PaySchools' gross negligence or willful misconduct.

20. Modifications and Additional Terms

20.1    From time to time, PaySchools may modify this Agreement.  In addition, PaySchools reserves the right to provide District with additional terms and conditions that may govern District's use of the Licensed Software or Services generally, unique parts of the Services, additional functionality or applications made available to you as part of the Services, or any or all of these ("**Additional Terms**"). Any such Additional Terms that PaySchools may provide to District will expressly reference this Agreement. All such Additional Terms are hereby incorporated by reference into this Agreement.

20.2    Subject to Section 20.3, any modifications to this Agreement or Additional Terms will become effective three (3) days after posting on PaySchools' website or, if we notify District by email or conventional mail, as stated in the email message or conventional mailing, except that changes addressing new or modified functionality or changes made to comply with applicable law may become effective immediately. District's access and use of the Services after the effective date of any modification of this Agreement will signify its assent to and acceptance of the same.  If District objects to any modification to this Agreement or any Additional Terms, immediately discontinue use of the Services.

20.3    If a dispute arises out of or relates to the site or this Agreement including, without limitation, any Additional Terms or their breach (the "**Dispute**"), we agree that the Agreement and/or any Additional terms, as applicable, in effect at the time the Dispute arose shall apply to the Dispute.  No modification to the Agreement or Additional Terms shall apply to any Dispute as to which we had notice prior to posting the amendment or Additional Terms, as applicable.

21. Miscellaneous

21.1    Force Majeure. Excepting only District's payment obligations under this Agreement, neither party shall be in default hereunder by reason of any failure or delay in the performance of its obligations

hereunder where such failure or delay is due to any cause beyond its reasonable control, including strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning or licensee equipment, loss and destruction of property or any other circumstances or causes beyond such party's reasonable control.

21.2    Electronic Communications. District consents to receiving communications from PaySchools electronically including, without limitation, by email.  District agrees that all agreements, notices, disclosures and other communications that PaySchools may provide to District electronically satisfies any legal requirement that such communications be in writing.

21.3    Electronic Signatures. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties that may be included in or in relation to this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures pursuant to the Tennessee Uniform Electronic Transactions Act (T.C.A. § 47-10-101 et seq.) as amended from time to time.

21.4    Subcontractors. PaySchools reserves the right to use one or more subcontractors to perform all or part of the Services (each a "**Subcontractor**") and to change Subcontractors from time to time without notice to District. PaySchools agrees to share the name (or names) of subcontractors with District upon written request. All subcontractors of PaySchools will be subject to terms and conditions that are consistent with PaySchools' obligations under the Agreement.

21.5    Further Assurances. On a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Agreement.

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

21.7    Public Announcements. Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other party's trademarks, service marks, trade names, logos, domain names or other indicia of source, association or sponsorship, in each case, without the prior written consent of the other party, which shall not be unreasonably delayed or withheld, provided, however, that PaySchools may, without District's consent, include District's name and/or other indicia in its lists of PaySchools' current and/or, as the case may be, former customers of PaySchools in promotional and marketing materials.

21.8    Notices. District's routine communications regarding the Licensed Software and Services as well as any legal notices to PaySchools relating to this Agreement and its terms should be sent by either first class United States Mail to: CP-DBS, LLC, 40 Burton Hills Blvd., Suite 415, Nashville, TN 37215, Attn: LEGAL or by email legal@i3verticals.com.

PaySchools' routine communications regarding the Licensed Software and Services as well as any legal notices to District will be sent to the individuals that District designates as contacts on its account either by electronic mail, United States mail, or overnight courier. Notices are deemed received as of the time posted or delivered, or if that time does not fall within a Business Day, as of the beginning of the first Business Day following the time posted or delivered. Notices must be given in English.

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

21.10   Assignment. District may not, without PaySchools' prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement or any of its rights or obligations under this Agreement, to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation. PaySchools may assign this Agreement to an affiliate with sufficient financial standing in order to meet its obligations under this Agreement or as part of a bona fide corporate reorganization or a sale of its business. All PaySchools successor entities will be subject to the terms of this Agreement.

21.11   No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

21.12   Waiver. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

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

21.14   Governing law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Tennessee without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Tennessee, except that matters concerning or relating to

school district issues shall be governed by the state laws applicable to the District. Any legal suit, action or proceeding arising out of or in any way related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Tennessee in each case located in the city of Nashville and County of Davidson, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

21.15   Entire Agreement. This Agreement including any related Ordering Documents, privacy policy (which is available here and incorporated by reference), and any Additional Terms incorporated by reference constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. All counteroffers to this Agreement (or amendments to the same) are categorically rejected. **In no event shall the provisions of any purchase order or any associated documentation used by District, constitute a binding agreement between the parties or serve to modify the provisions of this Agreement, regardless of any failure of PaySchools to object to any purchase order or associated documentation.**

22. Specific Product and Service Terms. The following terms apply only to the specific product or service to which the terms relate.

22.1   QuickApps. Without limiting the generality of Section 8.1, in the event that District licenses PaySchools' QuickApps product to allow Authorized Parent Users to submit online applications for free and reduced price meals in the National School Lunch Program, the School Breakfast Program, or other similar program, District is responsible for ensuring that QuickApps software's application, certification, verification, and data sharing processes meet all regulatory requirements and policies applicable to District. For example, and without limitation, District is responsible for determining whether District is permitted to accept legally binding electronic signatures under applicable state and local law and for ensuring that QuickApps electronic signature functionality is compliant with applicable electronic signature law.

22.2   Integrated Forms. PaySchools' Integrated Forms is a is a hosted-solution. If District purchases the Integrated Forms product, then the product will be hosted in accordance with PaySchools hosting terms and conditions in Section 23.

22.3   Payment Processing Services. The following terms apply if District uses Payment Processing Services:

    (a)   Payment Ownership, Scheduling, and Disbursement.

        (i)   PaySchools or its designee will pay the District any proceeds from payments collected on behalf of District on the schedule selected by District.

(ii) Prior to disbursement to the District, PaySchools shall cause to be deposited all funds received from Purchasers in a non-interest-bearing deposit account at a financial institution in the United States. Such account is owned and maintained by its payment processor (the "**Settlement Account**"). The Settlement Account will be a commingled account containing funds for other customers of PaySchools' payment processor in addition to the funds deposited for the benefit of the District. PaySchools shall maintain records of subaccounts for each District ("**Subaccount(s)**"). PaySchools is not a bank, savings and loan or regulated financial institution. PaySchools is not a money transmitter. At no time does PaySchools own, control, or transfer the funds in the Settlement Account, which are owned and controlled by PaySchools' payment processor. PaySchools uses Instruction Based Funding services provided by its payment processor to cause the fund transfers required for the Payment Processing Services. PaySchools' payment processor will initiate funds transfers or check, as applicable, to District from the Settlement Account consistent with funding instruction files received from PaySchools. Neither Purchaser nor District will receive interest on any amounts transferred for time which elapses during payment processing.

(b) Reversals, Returns and Chargebacks. District agrees to be liable for any reversals, returns, or chargebacks ("**Disputed Amounts**") incurred by PaySchools, and authorizes PaySchools to instruct its payment processor to set off the amount of such Disputed Amount against funds held in the District's Subaccount in order to reimburse PaySchools for the amount of such Disputed Amount, and if the balance in its subaccount is insufficient to cover the Disputed Amount, District will immediately upon request from PaySchools transfer funds to the Settlement Account for credit to PaySchools in the Disputed Amount.

23. Hosting Terms and Conditions. The following specific service apply if District purchases Hosted Services:

23.1     Access to and Use of Hosted Services. Subject to and conditioned on District's payment of the fees and compliance and performance in accordance with all other terms and conditions of the Agreement, if purchased by District, PaySchools hereby authorizes District and its End Users and Authorized Parent Users to access and use, solely in the United States and during the Term, the Hosted Services in the ordinary course of its school operations.

23.2     Security. PaySchools will employ security measures in accordance with reasonable and appropriate industry practices, including appropriate administrative, physical, and technical safeguards to secure any hosted District Data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure PaySchools' own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved.

23.3     Data Breach. PaySchools will have a written incident response plan, which will include prompt notification of the District in the event that PaySchools becomes aware of unauthorized access or

release of Personally-Identifiable Information of District of ("**Data Breach**"). In the event of a Data Breach, PaySchools shall implement the procedures required in its written incident response plan, keep District informed of the status of its investigation, and shall coordinate any required communications with District in conformance with applicable law.

23.4    District Obligations

   (a)    District Control and Responsibility. District has and will retain sole responsibility for: (a) all District Data, including the accuracy of its content; (b) all information, instructions and materials provided by District to any End User and Authorized Parent Users in connection with use of the Hosted Services; (c) District's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by District or through the use of third-party services ("**District Systems**"); (d) the security and use of District's Access Credentials. "**Access Credentials**" means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Hosted Services.

   (b)    Access and Security. District shall employ commercially reasonable security precautions including, without limitation, physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Hosted Services; and (b) control the content and use of District Data, including the uploading or other provision of District Data to the Hosted Services.

   (c)    District Data Security; Backups.  District acknowledges that District is responsible for taking steps to maintain appropriate security, protection, and backups of District Data. The Hosted Services do not replace the need for District to maintain regular data backups or redundant data archives. PaySchools does not promise to retain its own data backup for longer than the data retention period required by law. PaySchools HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF DISTRICT DATA.

23.5    Hosted District Data

   (a)    Data Location. District Data will not be stored outside the United States without prior consent from the District.

   (b)    Access to District Data. Any District Data held by PaySchools that is not available to District directly through District's ordinary interactions with the Hosted System or functionality made available to District by PaySchools will be made available to District by PaySchools upon written request of District; provided that, PaySchools reserves the right to charge District its applicable hourly rates for professional services to accomplish

such task. "**Hosted System**" means a combination of hardware, software and networking elements that comprise the information technology system hosted by PaySchools or its Subcontractor.

    (c)    <u>Response to Specific Data Destruction or Return Requests</u>. PaySchools shall destroy or return and then destroy any specific District Data that is in its possession promptly after receiving a written request from the District; provided that, PaySchools' standard hourly rates for professional services may apply.

    (d)    <u>Data Destruction or Transfer Upon Termination or Expiration</u>. Upon termination or expiration of the Agreement, PaySchools will use commercially reasonable means or methods to return to the District or to destroy all District Data in possession, as directed by the District. If District elects to have District Data transferred, either to the District or to a third-party, then PaySchools shall return the data in a reasonable time in a format mutually agreed upon by the parties; provided that, District shall pay PaySchools' applicable hourly rates for professional services to accomplish such transfer. Upon successful transfer of District Data, as confirmed in writing by the District's authorized representative, Contractor shall destroy all District Data.

23.6    <u>Suspension of Services</u>. PaySchools may suspend Hosted Services without liability if: (i) PaySchools reasonably believes that the Hosted Services are being used in violation of the Agreement; (ii) District does not cooperate with our reasonable investigation of any suspected violation of the Agreement; (iii) there is an attack on District's Hosted System or District's Hosted System is accessed or manipulated by a third party without District's consent, (iv) PaySchools is required by law, or a regulatory or government body to suspend District's Hosted Services, (v) there is another event for which PaySchools reasonably believes that the suspension of Hosted Services is necessary to protect the PaySchools' network or PaySchools' other customers, or (vi) PaySchools reasonably believes that the District or any End User or Authorized Parent User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with the Hosted Services. PaySchools will give District advance notice of a suspension under this paragraph unless we determine in our reasonable commercial judgment that a suspension on shorter or contemporaneous notice is necessary to protect PaySchools or its other customers from imminent and significant operational, legal, or security risk.

24. <u>State-Specific Terms</u>. The following state-specific terms may apply to District if District is located in one of the following states:

    24.1    **California**

    (a)    The definition of "**District Data**" shall include "pupil records" as that term is defined in AB 1584.

    (b)    Pupil records obtained by PaySchools from District continue to be the property of and under the control of the District.

(c)     District shall be responsible for providing parents, legal guardians, and eligible pupils access to personally identifiable information in the pupil's records and for facilitating the correction of such information upon request. Upon request of District, PaySchools agrees to provide District with assistance on an as needed, case-by-case basis; provided that, PaySchools' standard hourly rates for professional services may apply.

(d)     PaySchools shall take steps to ensure the security and confidentiality of pupil records including, without limitation, by designating and training of individuals responsible for ensuring the security and confidentiality of pupil records, developing and implementing its own internal written information security plan and procedures, and complying with this Agreement.

(e)     In the event of an unauthorized disclosure or of pupil records, PaySchools shall comply with its data breach notification obligations in its Agreement with District.

(f)     District may request that PaySchools delete individual pupil records in its possession by contacting PaySchools as set forth in Section 21.8; provided that PaySchools' standard hourly rates for professional services may apply. Upon completion, Districts can request certification that no pupil records have been retained or are otherwise available to PaySchools by contacting PaySchools as set forth in Section 21.8.

(g)     Upon expiration or termination of the Agreement, PaySchools shall delete or transfer pupil records to District as described in its Agreement with District and shall certify that pupil records have neither been retained nor are otherwise available to PaySchools upon completion of such process; provided that, PaySchools' standard hourly rates for professional services may apply.  Districts can request certification by contacting PaySchools as set forth in Section 21.8.

(h)     PaySchools and District will jointly ensure compliance with FERPA by through each party's compliance with the terms of this Agreement.

(i)     PaySchools shall not use personally identifiable information in pupil records to engage in targeted advertising.

24.2   **Connecticut**

(a)     Student information, student records and student-generated content as those terms are defined in Connecticut's Student Data Privacy Law (Public Act 16-189) (collectively, "**Student Data**") are neither the property of nor under the control of PaySchools.

(b)     District may request that PaySchools delete any Student Data in its possession by contacting PaySchools as set forth in Section 21.8; provided that PaySchools' standard hourly rates for professional services may apply.

(c) Student Data shall not be retained or available to PaySchools upon expiration or termination of the Agreement unless a student, parent or legal guardian of a student chooses to establish or maintain an electronic account with PaySchools for the purpose of storing student-generated content.

(d) PaySchools shall not use Student Data for any purposes other than those authorized pursuant to the Agreement.

(e) District shall require any students, parents, or legal guardians of students (collectively, "**Parents**") who would like to review personally identifiable information contained in Student Data, to request such Student Data from District and District shall provide Parents with such information using the functionality of the Licensed Software or database queries. District may request that PaySchools provide support to District with this process; provided that, PaySchools' standard hourly rates for professional services may apply.

(f) The definition of District Data (as defined in the Agreement) shall include Student Data. PaySchools shall take actions designed to ensure the security and confidentiality of Student Data.

(g) In the event of an unauthorized release, disclosure, or acquisition of Student Data, PaySchools shall comply with its data breach notification obligations in the Agreement.

(h) PaySchools and District shall be responsible for ensuring compliance with the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g, as amended from time to time.

(i) Notwithstanding anything in the Agreement to the contrary, laws of the state of Connecticut shall govern the rights and duties of PaySchools and District.

(j) If any provision of the Agreement or application of the Agreement is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the contract which can be given effect without the invalid provision or application.

24.3 **Kentucky**

(a) PaySchools certifies that it will comply with Ky. Rev. St. Ann. § 365.734(2).

24.4 **Louisiana**

(a) PaySchools shall not allow access to, release, or allow the release of student information to any person or entity except as specified in the Agreement and subject to the confidentiality obligations set forth in the Agreement.

(b) <u>Data Breach</u>. In the event PaySchools discovers a breach in the security of a system containing "personal information" (as that term is defined in Louisiana's Database Security Breach Notification Law, La.Stat.Ann. 51:3073 et seq.) that requires notification of Louisiana residents, PaySchools shall comply with its data breach notification obligations in its Agreement with District.

(c) <u>Audits</u>. Upon District's written request and no more than once per calendar year, to audit and confirm compliance with this Agreement, as well as any applicable laws and industry standards, PaySchools shall promptly complete and return a written information security questionnaire provided by District, or a third party on District's behalf, regarding PaySchools business practices and information technology environment in relation to all District Data being handled and/or services being provided by PaySchools to District pursuant to this Agreement. District shall treat the information provided by PaySchools in the security questionnaire as PaySchools Confidential Information.

(d) <u>Data Disposition</u>. Upon expiration or termination of the Agreement, unless otherwise directed by an applicable legal requirement or otherwise specified in the Agreement, PaySchools shall delete or transfer (and then delete) student information to District as described in its Agreement; provided that, PaySchools' standard hourly rates for professional services may apply.

## 24.5 **New York**

(a) Section 2-d of the New York State Education Law ("**Education Law § 2-d**") requires that a parents' bill of right for data privacy and security be included with every contract an educational agency enters into with a third-party contractor, where the third-party contractor receives student data or teacher or principal data. Accordingly, if District is a New York "educational agency" as that term is defined Section 2-c of the New York State Education Law, the Agreement is deemed to include the District's parents bill of rights for data privacy and security; provided that, District has provided PaySchools a copy of the same.

(b) District may send a copy of its parents' bill of rights to PaySchools by email or regular mail as set forth in Section 21.8. District may also send District's policy on data and security—to the extent that it is separate from the parents' bill of rights—to the same address.

(c) PaySchools shall perform services in compliance with all applicable provisions of Education Law § 2-d and any rules and regulations of the New York State Education Department issued thereunder including any amendments to either of these.

(d) PaySchools agrees that "student data" as that term is defined in Section 2-c of New York State Education Law and be considered "District Data" for purposes of the Agreement.

Such "student data" is confidential and is to be maintained in accordance with federal and state law.

(e) Data Security and Privacy Plan. Unless otherwise agreed in writing by the parties, the parties' data security and privacy plan shall include: (1) the Agreement; (2) Districts' parents bill of rights that District has provided to PaySchools; and (3) District's policy on data and security that District has provided PaySchools. In addition, as part of the parties' data security and privacy plan, PaySchools agrees to train any of its officers and employees that have access to student data on the federal and state law governing confidentiality of such data.

(f) Conflicts. To the extent there is a direct conflict between the Agreement, New York Education Law 2-d, and the District's parents bill of rights or policy on data and security, the following order of precedence will control: New York Education Law 2-d, District's parents bill of rights (provided that PaySchools has been provided notice of such bill of rights as set forth above), District's policy on data and security (provided that PaySchools has been provided notice of such bill of rights as set forth above), and then the Agreement.

## 24.6 **Nevada**

(a) If a court of competent jurisdiction makes a final determination that PaySchools is in noncompliance with the Agreement and that such noncompliance by PaySchools was intentional or grossly negligent, then (a) District's termination of this Agreement because of such noncompliance shall be without liability to District; and (b) PaySchools agrees to make a one-time payment to District in the amount of $500 as a penalty for such noncompliance as required by Nev.Rev.Stat.Ann. 388.272.

## 24.7 **Utah**

(a) Audits. Upon District's written request and no more than once per calendar year, to audit and confirm compliance with this Agreement, as well as any applicable laws and industry standards, PaySchools shall promptly complete and return a written information security questionnaire provided by District, or a third party on District's behalf, regarding PaySchools' business practices and information technology environment in relation to all District Data being handled and/or services being provided by PaySchools to District pursuant to this Agreement. District shall treat the information provided by PaySchools in the security questionnaire as PaySchools Confidential Information.

## 25. Definitions

"**Action**" has the meaning set forth in Section 18.1.

"**Authorized Parent User**" means a parent, guardian, or other individual who has been granted remote access to the Licensed Software by District. Authorized Parent Users shall not include End Users.

"**Confidential Information**" has the meaning set forth in Section 9.1.

"**Disclosing Party**" has the meaning set forth in Section 9.1.

"**District**" means the school, school district, or other entity that has purchased a license to use the Licensed Software and/or Services from PaySchools.

"**District Data**" includes all PII and other non-public information of District to which PaySchools has access including, but not limited to, student data, metadata, and other content provided by or through District's End Users and Authorized Parent Users. Without limitation, District Data includes student "education records" as that term is defined by the Federal Education Rights Privacy Act.

"**Documentation**" means any and all manuals, instructions and other documents and materials that PaySchools provides or makes available to District in any form or medium which describe the functionality, components, features or requirements of the Licensed Software (including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof) or Services.

"**End User**" means an employee or contractor of District who has been granted access to the Licensed Software, or granted remote access to the Licensed Software, by the District. End Users shall not include Authorized Parent Users.

"**Equipment Support Services**" has the meaning set forth in Section 5.5.

"**Hosted Services**" has the meaning set forth in Section 5.3.

"**Hosted System**" has the meaning set forth in Section 23.4(b).

"**Initial Term**" has the meaning set forth in Section 15.1.

"**Integration**" has the meaning set forth in Section 7.1.

"**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"**Licensed Software**" means (i) any and all software products licensed to District under this Agreement as specified in an Ordering Document, all as developed by or for PaySchools, and delivered to District hereunder; and (ii) any Maintenance Releases provided to District pursuant to this Agreement.

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

"**Maintenance and Support Services**" has the meaning set forth in Section 5.2.

"**Maintenance Release**" means any update, upgrade, release or other adaptation or modification of the Licensed Software, including any updated Documentation, that PaySchools may provide to District from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Licensed Software, but does not include any New Version.

"**New Version**" means any new version of the Licensed Software that PaySchools may from time to time introduce and market generally as a distinct licensed product (as may be indicated by PaySchools' designation of a new version number), and which PaySchools may make available to District at an additional cost.

"**Non-PaySchools Application**" shall mean a software application or functionality that is provided by District (regardless of whether owned by the District or licensed by District from a third-party) that interoperates with the Licensed Software or Services.

"**Open-Source Components**" means any software component that is subject to any open-source copyright license agreement, including any GNU General Public License or GNU Library or Lesser Public License, or other obligation, restriction or license agreement that substantially conforms to the Open Source Definition as prescribed by the Open Source Initiative or otherwise may require disclosure or licensing to any third party of any source code with which such software component is used or compiled.

"**Open-Source License**" has the meaning set forth in Section 2.1(c).

"**Ordering Document**" means a document (either in electronic or paper form) provided to District that describes or specifies the Licensed Software, Third-Party Software, or Open-Source Components to be licensed by the District for the applicable term and/or Services to be provided to the District by or through PaySchools.

"**Payment Failure**" has the meaning set forth in Section 15.3(a).

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

"**Personally Identifiable Information**" (or PII) means any information that, individually or in combination, does or can identify a specific individual or by or from which a specific individual may be identified, contacted or located. Personally Identifiable Information includes "personally identifiable

information" contained in student "education records" that as those terms are defined in the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

"**Professional Services**" means professional services provided by or through PaySchools to District on a task basis as described in more detail in a statement of work, Ordering Document, or other document mutually agreed to by the parties. Professional Services excludes Maintenance and Support Services, Payment Processing Services, Hosted Services, and Equipment Support Services.

"**Receiving Party**" has the meaning set forth in Section 9.1.

"**Renewal Term**" has the meaning set forth in Section 15.2.

"**Representatives**" means, with respect to a party and that party's employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors and legal advisors. PaySchools' Representatives also includes PaySchools' affiliates and its employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors and legal advisors.

"**Services**" means any services acquired by District from or through PaySchools including Maintenance and Support Services, Payment Processing Services, Hosted Services, Equipment Support Services, and Professional Services.

"**Subcontractor**" has the meaning set forth in Section 21.4.

"**Term**" has the meaning set forth in Section 15.2.

"**Third-Party Services**" means third-party services purchased by District through PaySchools under this Agreement.

"**Third-Party Software**" means third-party software provided by or through PaySchools to District under this Agreement, and all maintenance releases thereto. Third-Party Software excludes any Non-PaySchools Applications.