

## MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT

THIS MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT (this "Agreement") is made and entered into as of the effective date set forth in Schedule 1 to this Agreement (the "Effective Date"), by and between Excent Corporation, a Georgia corporation with offices at 60 King Street, Roswell, GA 30075 ("Excent"), and the school district, state school system, education cooperative or other entity set forth in Schedule 1 to this Agreement ("Client").

### RECITALS:

WHEREAS, Excent has developed certain proprietary Software and Software Services (as such terms are defined below);

WHEREAS, Client desires to either license the Software and/or receive the Software Services specified herein; and

WHEREAS, Excent is willing to provide such Software and/or Software Services, subject to the terms and conditions of this Agreement;

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

1. **Definitions.** Capitalized terms used and not otherwise defined in this Agreement shall have the following meanings:

1.1 "**Agreement**" means this Agreement, and any Schedules, Statements of Work, exhibits, attachments and amendments hereto.

1.2 "**Ancillary Products**" mean any third party software products, content or accompanying documentation provided by Excent pursuant to this Agreement.

1.3 "**Assumptions**" mean those assumptions set forth in a Schedule or Statement of Work, which are material conditions precedent to Excent's performance of its obligations herein and therein.

1.4 "**Client Data**" means all data transmitted by or on behalf of Client through the Solution or utilizing the Software and/or Software Services, and any such data processed or stored by Excent on Client's hardware as part of Hosting Services (if any), including without limitation, Personal Information, all of which shall be transmitted in accordance with the Client Data Procedures.

1.5 "**Client Data Procedures**" mean the procedures specified by Excent or applicable law from time to time to be observed by Client when transmitting or receiving sensitive data, including without limitation, Personal Information, which may include, without limitation, transmission of Client Data in an encrypted file format designated by Excent.

1.6 "**Confidential Information**" means any information, reports, data, records and other materials obtained by either party from the other party prior to or during the Term that has value to the disclosing party and is not generally known to its competitors and (a) has been marked as confidential; (b) whose confidential nature has been made known to the receiving party; or (c) due to its character and nature, a reasonable person under like circumstances would recognize to be or otherwise treat as confidential. Notwithstanding any other provision of this Agreement, (a) the Software, Solution, Software Services, Documentation and the terms and conditions of this Agreement (including, without limitation, pricing) and Software Services shall constitute the Confidential Information of Excent, and (b) the Client Data constitutes the Confidential Information of Client.

1.7 "**Custom Software**" means any interfaces specific to Client's implementation of the Software and/or Software Services, or changes or modifications to the Software or Software Services made by Client or on Client's behalf.

1.8 "**Deliverable**" means any Work Product required to be delivered to Client pursuant to a Statement of Work under the Professional Services Terms.

1.9 "**Documentation**" means the user manual or other documentation describing the Software or Software Services provided by Excent to Client hereunder, as modified by Excent from time to time.

1.10 "**Hosting Services**" mean the hosting services, if any, selected by Client to be received with respect to Software licensed to Client under this Agreement, as identified on the applicable Schedule, which Hosting Services will be provided in accordance with the Hosting Terms.

1.11 "**Hosting Terms**" mean, if Client has selected Hosting Services, the terms and conditions for the performance of Hosting Services set forth on Exhibit A attached hereto.

1.12 "**Intellectual Property Rights**" means, on a world-wide basis, any and all (a) rights associated with works of authorship, including without limitation, copyrights, copyrightable rights, moral rights and mask work rights; (b) trademark, service mark and trade name rights and any similar rights recognized under applicable law; (c) trade secret rights and Confidential Information; (d) patents and patentable rights; (e) all rights with respect to inventions, discoveries, improvements, know-how,

formulas, algorithms, processes, technical information and other technology; (f) all other intellectual and industrial property rights of every kind or nature, whether arising by operation of law, contract, license or otherwise; and (g) all international, national, foreign, state and local registrations, applications for registration and any renewals and extensions thereof (including, without limitation, any continuations, continuations-in-part, divisions, reissues, substitutions and reexaminations), all goodwill associated therewith, and all benefits, privileges, causes of action and remedies relating to any of the foregoing (including, without limitation, the exclusive rights to apply for and maintain all such registrations, renewals and extensions; to sue for all past, present and future infringements or other violations relating thereto; and to settle and retain all proceeds from any such actions).

**1.13** "Personal Information" means information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, healthcare records, etc. whether alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, or protected health care information under HIPAA or Medicaid.

**1.14** "Production Use" means to activate the processing capabilities of the Software, and to load, execute, access and employ the Software, or display information resulting from such capabilities, solely for Client's internal business purposes.

**1.15** "Professional Services Terms" means the terms and conditions for the performance by Excent of implementation, consulting and training services attached hereto as Exhibit B.

**1.16** "Schedule(s)" means the schedule(s), and any amendments thereto, executed by the parties and which references this Agreement and identifies the Software to be licensed or the Software Services to be received by Client. Each Schedule with the terms of this Agreement, and any exhibits and amendments to such Schedule, is a separate and independent contractual obligation of Excent from any other Schedule.

**1.17** "Software" means (a) the object-code version(s) only of Excent's proprietary software programs identified in a Schedule and delivered to Client pursuant to this Agreement; (b) Updates to such software provided to paid subscribers of Support Services; and (c) any complete or partial copies of the foregoing. Software does not include Ancillary Products or Custom Software. All Software is delivered to Client only if and when generally commercially available.

**1.18** "Software Services" means the processing, storage, reporting and other subscription based services to be provided by Excent to Client utilizing the Solution and identified in a Schedule.

**1.19** "Solution" means Excent's proprietary software and the server grade computers and related networks maintained by or on behalf of Excent and its third party providers to host the software, certain third party software and Client Data, and, if applicable, to provide the Software Services and/or Hosting Services to Client, all as hereafter modified, added to or replaced by Excent, but excluding any Client or other third party networks, systems, computers or Intellectual Property Rights and any products or services marketed or priced separately by Excent from the Software or Software Services.

**1.20** "Support Services" means the maintenance and support services with respect to Software licensed under this Agreement, as identified on the applicable Schedule as more fully described in Section 3.

**1.21** "Trade Secret" means information, without regard to form, which: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

**1.22** "Update" means any bug fixes, error corrections, enhancements and subsequent releases to the Software and associated Documentation which are made available by Excent to paid subscribers of Support Services for no additional charge. Updates shall not include any releases, enhancements, functionality, modules, programs or products that Excent licenses separately or charges for separate from Support Services. In the event an Update includes third party software, the use of an Update may be subject to additional terms relating to the use of such third party software and Client may be required to agree to such terms in writing prior to receiving an Update.

**1.23** "Work Product" means any and all designs, copyrightable works, ideas, inventions, technology and other Intellectual Property Rights (including, without limitation, software, design and performance specifications, reports and other documentation), and any improvements or modifications to the foregoing, created, developed or conceived by Excent (alone or jointly) in connection with Excent's performance under this Agreement.

## **2. Licenses.**

**2.1** Software License Grant. To the extent Client is granted a license to use Software at its premises pursuant to a Schedule, Excent hereby grants Client a limited, non-exclusive, and nontransferable license during the Term to: (a) install the Software on a single server located at facilities owned or leased by Client in the geographic area identified in the applicable Schedule, solely for Production Use; (b) access the Products from any location in the United States solely for Production Use; (c) copy and install the Products on a non-production test or staging server located at facilities owned or leased by Client in the geographic region identified in the applicable Schedule, solely for the purposes of (i) having a readily available "hot" backup system in the event of failure of the primary production system; (ii) evaluating proposed system changes or Updates prior to migrating those changes or Updates to Production Use; or (iii) internal training; (d) make a reasonable number of copies of the Software solely for archival and back-up of data on a non-production storage device at facilities owned or leased by Client, as designated in the applicable Schedule; and (e) make a reasonable number of copies of the Documentation for use of the Software as authorized in this Section 2.1. The licenses granted to Client above shall terminate upon the termination or expiration of this Agreement for any reason. Client shall provide a suitable hardware and software environment for installation and operation of the Software, including

the installation, configuration, maintenance or support, backup, security, restart or recovery of such environment, except as otherwise expressly agreed in connection with the provision of Hosting Services pursuant to Section 3.4.

**2.2 Provision of Software Services.** To the extent Client subscribes for Software Services pursuant to a Schedule, Client hereby engages Excent, and Excent hereby agrees, to provide such Software Services, and in connection therewith, Excent hereby grants to Client during the Term a non-exclusive, non-transferable, non-sublicensable, limited right and license to access the Solution and to transmit and receive Client Data to and from the Solution in accordance with the Client Data Procedures and solely for school or district-wide internal Production use by Client's employees. Excent will provide Client access to the Solution by issuance of a confidential site (I.P.) address and passwords to Client. Client is responsible for maintaining the confidentiality of such address and passwords and any activity that transpires through the use of such address or passwords. Client may only access and use the Software Services within the United States and solely for internal use on behalf of the school or districts specified in the applicable Schedule in accordance with all applicable laws, rules and regulations and Excent's specified procedures. The rights granted to Client in this Section 2.2 shall terminate upon the termination or expiration of this Agreement for any reason. Client acknowledges that Excent's performance of the Software Services and its ability to perform in accordance with the terms of this Agreement are expressly conditioned upon Client's performance of its obligations and responsibilities hereunder. Excent shall have no liability for its failure to perform any Software Services or to meet any obligation if such failure is caused, in whole or in part, by Client' or a third party' failure to timely perform its respective obligations or responsibilities.

**2.3 Ancillary Products.** Notwithstanding anything to the contrary in this Agreement, Client acknowledges and agrees that the license grant to use, access and/or obtain any services for specified Ancillary Products shall be as set forth in the Ancillary Products Terms attached hereto as Exhibit C, if such Exhibit is attached hereto. Excent hereby assigns to Client all assignable warranties and indemnities granted to Excent by the third party providers of the applicable Ancillary Products. To the extent Excent is not permitted to assign any such warranties and indemnities, Excent will use its commercially reasonable efforts to enforce such protections on Client's behalf to the extent it is permitted to do so under the terms of the applicable third party agreements.

**2.4 Restrictions.** Client acknowledges that the license grants set forth in this Section 2 do not include any right or license with respect to the source code form of the Software or Ancillary Products. All rights in the Software, Ancillary Products, Documentation and Software Services and other services not expressly granted to Client in this Agreement are hereby reserved to Excent and its licensors. Without limiting the foregoing, Client agrees that it will not: (a) access or use any portion of the Software, Ancillary Products, Software Services or Documentation not expressly licensed and paid for by Client; (b) cause or permit de-compilation or reverse engineering or disassembly of all or any portion of the Software, Ancillary Products, Software Services or Solution or create derivative works based on any of the foregoing or the Documentation, or any portions thereof; (c) disclose or publish performance benchmark results or test results to non-affiliated third parties with respect to the Software, Ancillary Products, Software Services or Solution without Excent's prior written consent in each instance; (d) transfer the Software or Ancillary Products to a different software database platform, operating system or environment or use all or any portion of the Software, Ancillary Products, Software Services or Documentation with any other computer software programs, except as may be specifically provided for in the applicable Schedule or Documentation; (e) export or use the Software, Ancillary Products, Software Services, Solution or Documentation in violation of U.S. applicable laws or regulations, including the U.S. Department of Commerce export administration regulations; (f) use, authorize or permit any third party to use or access, the Software, Ancillary Products, Software Services, Solution or Documentation, except as expressly permitted herein; (g) translate, modify or transmit the Software, Ancillary Products, Software Services, Solution or Documentation, except as expressly permitted herein; (h) reproduce or copy the Software, Ancillary Products, Software Services, Solution or Documentation, or any portion thereof, except as expressly permitted herein, or delete, fail to reproduce or modify any patent, copyright, trademark or other proprietary rights notices which appear on or in the Software, Ancillary Products, Software Services, Solution or Documentation; (i) use Ancillary Products except solely in conjunction with the Software or Software Services; or (j) directly or indirectly market, sell, sublicense, relicense, distribute, disclose, transfer, use, rent or lease the Software, Ancillary Products, Software Services, Solution or Documentation, or any portion thereof, for third party use, third party training, facilities management or time-sharing, or for use as an application service provider or service bureau. Client shall not place any portion of the Software, Ancillary Products, Software Services, Solution, Documentation or other materials online in a manner that is available to the public. All such postings will be behind adequate firewalls and will be subject to Excent's inspection and approval. Client shall permit representatives of Excent at all reasonable times to inspect any location at which the Software is installed or the Software Services are being accessed or used, including online, Internet and intranet locations.

### **3. Services.**

**3.1 Support Services for Software.** Provided that (a) this Agreement has not been terminated as provided herein, and (b) Client has paid all applicable fees and, if Hosting Services are not being provided, Client has incorporated all required Updates, Excent will provide the Support Services set forth in Section 3.2 below as part of the payment of the fees set forth in the applicable Schedule. Support Services are provided for only the then-current and immediately prior release of the Software. Excent shall not under any circumstances be obligated to provide Support Services for Custom Software. Client acknowledges and agrees that if Excent agrees to provide Support Services for any Custom Software, Excent shall charge additional Support Services fees based on the nature of the Custom Software that will receive Support Services, and the applicable Schedule shall be amended accordingly.

**3.2 Solution Support Services.** Excent will allow up to three (3) specifically named qualified representatives of Client reasonably acceptable to Excent (the "Client Representatives") to contact Excent with technical questions with respect to the Software, Software Services or Solution and to report Software Errors or Software or Solution outages or failures. Client may change or replace its Client Representatives upon written notice to Excent. Excent will provide a representative or help desk during Excent's normal business hours (excluding holidays) to answer such technical support questions from the Client Representatives and to log and commence the process of responding to Software Errors or Software Services or Solution outages or failures in accordance with Excent's standard procedures. Excent is under no obligation to provide functional Updates to the Software, Software Services or Solution by any time certain. Excent will keep the Excent controlled functionality comprising the Software,

Software Services and Solution compliant with current state and federal HIPPA requirements. Client is solely responsible for procuring and maintaining any hardware or software necessary to access or use the Software, Software Services or Solution through the Internet.

**3.3 Solution Availability.** Excent uses commercially reasonable efforts to enable access to the Software Services and Solution with no more than approximately two (2) hours of down time between the hours of 5 a.m. to 5 p.m. Eastern Time. Excent also uses commercially reasonable efforts to ensure that any such down time will not impact normal business operations. However, Client acknowledges and agrees that certain portions of the Software Services and Solution, including without limitation, data storage and hosting are currently and may in the future be provided by a third party service provider(s). Excent will provide ongoing management of the system hardware, located at the third party provider's location, as required by Excent's agreement with the third party provider(s), in order to maintain the best possible availability of the Solution. Excent may change its third party data hosting provider to another tier 1 hosting provider, at Excent's sole discretion, in the future. In such event, Client acknowledges and agrees that the Solution and Software Services may be down or unavailable for some period of time. Excent will notify Client of the identity of any such third party hosting or other service provider. Client acknowledges that such terms and conditions may be amended, or the Software Services relocated, from time to time by the third party service provider pursuant to its agreement with Excent. In the event that Excent changes any such third party service provider or relocates such services, Excent will notify Client of the new provider and Client agrees to abide by such reasonable terms and conditions as the replacement third party service provider may require.

**3.4 Hosting Services.** Provided that Client has paid all applicable fees, Excent will provide the Hosting Services elected by Client in the applicable Schedule, if any, in accordance with the Hosting Services Terms and any additional terms set forth in such Schedule.

**3.5 Data Storage.**

(a) Excent will provide the current type of encryption as supported by applicable browser software to provide as secure an environment as practical for the Software Services and Hosting Services. If subscribed for as part of the Software Services or Hosting Services, Excent will backup Client's data each night as part of the subscription or hosting fee. At Client's request, Excent will restore Client's data to the previous day's status. Client acknowledges and agrees that Client is responsible for the nature, content and legality of the Client Data. Excent will not be responsible for the content of Client Data. Client agrees that Client Data will not violate the rights of third parties and will comply with all applicable laws and regulations. In regard to disaster recovery, full backups of all databases are done once per day. The backup information is stored on a separate backup server and on tape. Weekly backups are stored in a secured, offsite location to further protect against major disasters.

(b) Any Medicaid-related Software or Software Services that the Client may license or access transfers data entered by the Client to the state government in a manner designed to meet the data security requirements of HIPAA, as enacted on the Effective Date. However, Client acknowledges and agrees that the Software and/or Excent merely provides an online conduit to the state government for the filing of Medicaid claims. Accurate, complete, and correct data necessary for the filing of Medicaid claims hereunder shall be the sole responsibility of Client. Excent shall not be responsible for any delays or failure to process a claim because of incomplete, inaccurate, or incorrect data input by Client. With respect to filing Medicaid claims, Client shall (i) hold Excent harmless from any and all claims, expenses, costs including actual attorneys' fees, judgments, damages and lost revenues arising from, or in any manner associated with, Client's use of the Software Services or Excent's electronic, Medicaid filing conduit whether arising out of HIPAA claims for data security or out of other types of claims and regardless of whether such claims are asserted by Client, by Client's students, the students' parents or by governmental organizations; and (ii) arrange for Client's staff to attend training sessions related to time study forms and oversee the completion of time study forms by Client's staff.

**3.6 Professional Services.** Excent will provide Client with the implementation, consulting and training services set forth in any mutually agreed to Statement of Work in accordance with the Professional Services Terms.

**3.7 Project Coordinators.** Each party will select and advise the other party of the name, business address, telephone number and e-mail address of its authorized representative (the "Project Coordinators") for coordination of each party's services and obligations set forth herein. Official communications between the parties relating to the performance of this Agreement shall take place between the Project Coordinators. Either party may replace its Project Coordinator with another person reasonably acceptable to the other party; provided that at no time shall either party be without a Project Coordinator.

**4. CLIENT OBLIGATIONS**

**4.1 Resources.** Except as expressly set forth herein, Client and its end users shall be solely responsible for providing all resources, equipment, hardware and software at its or their respective facilities which are necessary for them to use the Software or remotely access and/or receive the Software Services. To the extent Excent's performance of its services (including, without limitation, the Software Services or Hosting Services) requires data, documents, information or materials of any nature to be furnished, in whole or in part, by Client or its employees, agents, contractors, representatives or authorized users, Client will cause such employees, agents, contractors, representatives and authorized users to furnish such data, documents and information in a manner which permits Excent to perform its services as contemplated herein.

**4.2 Third Party Coordination; Required Consents.** To the extent the Excent's services require access to a third party service provider who is under contract with Client, or access or use of such provider's information or interconnection with such provider's services, facilities, technology or systems in order to receive or transmit Client Data, Client shall be responsible for obtaining any required third party licenses or consents necessary for Excent to access and use such information, services, facilities, technology or systems.

**4.3 Accuracy and Completeness of Client Data.** As between the parties, Client shall be responsible for the accuracy and completeness of all Client Data transmitted or received by Client. Excent does not warrant the correctness, completeness, merchantability or fitness for a particular purpose of any Client Data transmitted hereunder, and Client shall hold Excent harmless from any and all Claims arising out of Client's use or dissemination of any such Client Data, except to the extent such Claims are the direct result of Excent's gross negligence or willful misconduct.

**4.4 Compliance with Laws.** Client will comply with all applicable laws, rules and regulations relating to Client's or its authorized user's receipt or use of the Software, Software Services, Solution and Documentation. Without limiting the foregoing, Client will be solely responsible for determining the extent to which the design or provision of the Software, Software Services, Solution or Documentation is subject to any privacy laws or regulations ("Privacy Laws") or the oversight of any regulatory agency charged with the enforcement thereof ("Regulatory Oversight"). To the extent that the design and operation of the Software, Software Services, Solution or Documentation or the provision of any services hereunder is subject to any Privacy Laws or Regulatory Oversight, Client will specify any procedures to be taken by Excent during the customization and provision of the Software, Software Services, Solution, Documentation or services to cause the same to be in compliance with such Privacy Laws and Regulatory Oversight. Without limiting the foregoing, Client will be responsible for complying with the Privacy Standards and Security Provisions of the Health Insurance Portability and Accountability Act, as amended, and as codified at 45 C.F.R. Parts 160, 162 and 164, and with any other applicable federal or state confidentiality laws applicable to Client's use of the Software, Software Services, Solution or Documentation or the transmission or receipt of Client Data. Client shall not use or permit the use of the Software, Software Services, Solution and Documentation or Solution for any unlawful, tortious, threatening, obscene, vulgar, abusive, defamatory, harassing, fraudulent, or otherwise illegal, wrongful or inappropriate activities or communications, including the transmission, distribution or storage of material in violation of any applicable state, local, federal or foreign law, statute, regulation, ordinance, treaty or other legal authority whatsoever.

Excent is familiar with and agrees to be responsible for its compliance with the Children's Online Privacy Protection Act of 1998 and the Federal Trade Commission's implementing regulations at 16 CFR Part 312 ("COPPA"), the Family Educational Rights and Privacy Act and the U.S. Department of Education's implementing regulations at 34 CFR Part 99 ("FERPA"), Colorado Open Records Act' 24-72-201. *et seq.* ("CORA") and all other applicable laws, rules or regulations, as amended (collectively, the "Confidentiality Laws"), concerning the collection, use and disclosure of "Personnel files," which means and includes home addresses, telephone numbers, financial information, and other information maintained because of the employer-employee relationship, and other documents specifically exempt from disclosure or any other provision of law. Personnel files does not include applications of past or current employees, employment agreements, any amount paid or benefit provided incident to termination of employment, performance ratings, final sabbatical reports required under section C.R.S. 23-5-123, or any compensation, including expense allowances and benefits, paid to employees by the state, its agencies, institutions, or political subdivisions and "directory information," "education records," and "personally identifiable information," of Client's "students" and "parents," as those quoted terms are used in this Agreement and defined in FERPA, and all information concerning Client's, students' names, performance information, test results, test results analyses and all other student or school identifying information and personal data and all rights thereto (collectively, Client's "Information"). In the event of a conflict between this Agreement and the Confidentiality Laws, the Confidentiality Laws shall control the Children's Online Privacy Protection Act of 1998 ("COPPA"), the Federal Educational Rights & Privacy Act of 1974 ("FERPA") and other applicable laws, regulations and statutes and (v) the use and integrity over the dissemination of all the Client Data.

## **5. Prices, Ordering, Payment.**

**5.1 Delivery and Acceptance.** To the extent Client licenses Products for use at Client's premises pursuant to a Schedule, all deliveries of Products hereunder shall be F.O.B. per the Uniform Commercial Code from Excent's Roswell, Georgia, USA facility or other designated shipping location, and shall be deemed accepted upon delivery to the carrier. Without limiting the foregoing, if Product is downloaded electronically, acceptance of the Products shall be deemed to have occurred as of the date electronic access to the Products is first provided.

**5.2 Fees.** As consideration for any Software licensed to Client or any Software Services provided to Client pursuant to a Schedule, Client shall pay to Excent the applicable annual Software license or Software Services fees set forth on such Schedule within thirty (30) days following the effective date of such Schedule. To the extent Client subscribes for extra Support Services or Hosting Services pursuant to a Schedule, Client shall pay to Excent the applicable annual Support Services and/or Hosting Services Fees set forth in such Schedule within thirty (30) days following the effective date of such Schedule. Fees for implementation are due on the effective date of the applicable Schedule. Any fees and expenses for Professional Services in addition to implementation Services shall be as specified in the applicable Statement of Work and paid as provided therein. In the absence of any such designation, Professional Services fees are billed monthly on a time and materials basis as incurred. Other than fees that are specifically fixed in a Schedule for the Initial Term, Excent reserves the right to change its fees at any time.

**5.3 Invoicing.** Except as otherwise specified in a Schedule or Statement of Work, Client shall pay to Excent all fees, charges and expenses due and owing in U.S. dollars to the address designated on the invoice within thirty (30) days following Excent's invoice date. Client may not set-off any amounts owing to Client against any payments owing to Excent hereunder. Excent may issue invoices for annual renewable fees up to ninety (90) days in advance of the next renewal annual period with payment due by the beginning of such renewal annual period. Payments which are not received within thirty (30) days following the due date thereof shall bear interest at the lesser of eighteen percent (18%) per annum or the maximum rate allowed under applicable law. In addition, in the event Client fails to timely pay any fees or charges when due, Excent may, in its discretion, suspend or terminate any services hereunder following a written notice that will include a thirty (30) day cure period, and Excent may change its credit terms for subsequent Schedules or Statements of Work. Client will continue to be charged for all services during any period of suspension.

**5.4 Taxes and Duties.** Excluding taxes based on Excent's net income, Client is liable and responsible for paying all federal, state and local sales, foreign withholding, value added, use, property, excise, service and other taxes, and all duties and

customs fees relating to Client's receipt or use of the Software, Software Services, Documentation or other services provided by Excent hereunder, whether or not Excent invoices Client for such taxes, duties or customs fees, unless Client timely provides Excent with a valid tax exemption or direct pay certificate showing Client is exempt from such payments

**5.5 Audits.** During the term of this Agreement, upon five (5) days prior written notice, Excent may audit Client's use of the Software, Software Services, Documentation and Solution to verify Client's compliance with the terms and conditions of this Agreement and the number of students and/or children for which the Software is utilized by Client. Such audits shall occur during regular business hours and shall be conducted in a manner designed to limit disruption to Client's business. In the event an audit reveals that Client underpaid any fees or charges owing to Excent Client shall immediately pay such underpaid fees.

## 6. TERM AND TERMINATION

**6.1 Term.** Client's right to use the Software or receive the Software Services specified on any Schedule shall be for an initial term as set forth on such Schedule (the "Initial Term"), and shall automatically renew for successive periods of one (1) year each (a "Renewal Term") unless either party gives the other party at least ninety (90) days prior written notice of its intent not to renew such Schedule prior to the expiration of the Initial Term or then-current Renewal Term. The Initial Term and any Renewal Terms for a Schedule are collectively referred to as the "Term."

**6.2 Termination for Cause.** Either party may terminate this Agreement or any Schedule in the event the other party commits a material breach of this Agreement and fails to cure such breach: (i) in the case of non-payment, within ten (10) days following the breaching party's receipt of written notice from the non-breaching party setting forth the amount due; or (ii) in all other cases, within thirty (30) days following the breaching party's receipt of a written notice from the non-breaching party setting forth the nature of such breach (unless the breach, by its nature, is curable but incapable of being cured within such thirty (30) day period, in which case the breaching party shall have a reasonable period of time thereafter provided it promptly commences to cure such breach and proceeds diligently therewith until cured).

**6.3 Termination due to Legal Concerns.** Excent may terminate this Agreement immediately, at any time, upon notice and without opportunity to cure, in the event (a) Client infringes or violates Excent's ownership, proprietary or Intellectual Property Rights, or (b) Excent believes, upon advice of counsel, that any element of the Software, Software Services or Solution or Client's receipt or use thereof, violates any applicable law, rule or regulation.

**6.4 Termination for Insolvency.** Either party may terminate this Agreement immediately upon notice and without opportunity to cure in the event of the other party's insolvency; adjudication of insolvency; filing of a voluntary petition in bankruptcy or a voluntary petition or answer seeking reorganization, arrangement or readjustment of its debts or any agreement of the other party indicating its consent to, approval of or acquiescence in any such petition or proceeding; or the application by the other party for or the consent or acquiescence of the other party to the appointment of a receiver or trustee over all or a substantial part of the other party's property or assets; or the filing of an involuntary petition against the other party seeking reorganization, rearrangement or readjustment of its debts or for any other relief under any insolvency act or law, now or hereafter existing (which petition is not dismissed within 60 days); or the involuntary appointment of a receiver or trustee over all or a substantial part of the other party's property or assets.

**6.5 Termination for Convenience.** Following the Initial Term, either party may terminate this Agreement without liability upon sixty (60) days prior written notice to the other party. In addition, either party may terminate this Agreement upon written notice to the other party if no Schedule is currently in effect.

**6.6 Suspension of Services.** Without prejudice to any other remedy Excent may have, if Client fails to pay Excent any fees, charges or expenses due hereunder, Excent may, after providing ten (10) days' prior written notice to Client, and without liability, suspend all activity related to this Agreement until the non-payment is remedied.

**6.7 Obligations Upon Termination.** Upon termination or expiration of this Agreement for any reason, (a) all financial obligations of Client hereunder shall be immediately due and payable in full including, but not limited to, (i) any fees due up to the date of termination or expiration, as applicable, including any interest that may be due thereon in accordance with Section 5.3, and (ii) any outstanding and undisputed fees, charges and expenses and other sums that have accrued or are otherwise outstanding or owed by Client to Excent as of the date of termination or expiration; (b) notwithstanding Excent's submission of an invoice or the payment terms in Section 5.3, Client shall immediately pay Excent all amounts due to Excent (including on all outstanding invoices); (c) Client's right to use the Software and/or access the Software Services or Solution shall immediately cease; and (d) the parties shall immediately at no cost cost or expense, return the other party's property, including, but not limited to, the Software, Documentation and all Confidential Information of Excent, together with all copies or extracts thereof.

**6.8 Survival.** Upon termination or expiration of this Agreement, Sections 2.4, 4.3, 4.4, 5, 6, 7, 8, 9, 10, 11, 13 and 14 and other Sections of this Agreement and its Exhibits that expressly, or by their nature, survive any termination or expiration of this Agreement or which impose any obligations following the termination or expiration of this Agreement, shall continue and survive in full force and effect.

## 7. REPRESENTATIONS AND WARRANTIES

**7.1 Mutual Representations and Warranties.** Each party represents and warrants to the other party that: (a) it is duly organized and validly existing under the laws of its jurisdiction of organization; (b) it has the legal power and authority to execute and deliver this Agreement and to fully perform its obligations hereunder; (c) the execution, delivery and performance of this

Agreement by it have been duly authorized by all necessary actions and do not violate its organizational documents or any other material agreements to which it is a party; and (d) this Agreement constitutes the legally valid and binding obligation of such part enforceable against it in accordance with its terms, except as such enforcement may be limited by applicable laws, rules or regulations.

## **7.2 Excent Representations and Warranties.**

(a) Provided that Client notifies Excent of the nonconformance within the warranty period, Excent warrants that the Software, as delivered to Client, will perform substantially in accordance with its Documentation for a period of ninety (90) days following delivery, except to the extent any breach of the foregoing warranty is caused by: (a) Client's failure to be a compliant subscriber to Support Services or Client's failure to install any Update whose installation would cure the nonconformance; (b) use of the Software other than in accordance with this Agreement and the Documentation or in conjunction with a central processing unit or any other computer systems, hardware, software or peripherals not approved in writing by Excent; (c) any Error, defect or nonconformance which cannot be reproduced; (d) modification of the Software by anyone other than Excent; or (e) Ancillary Products or third party hardware, software, databases or systems.

(b) Excent warrants that the Software Services and other services will be performed in a professional and workman-like manner; provided that Client notifies Excent within thirty (30) days of performance of the Software Services or other services that Client believes were not performed as warranted. No specific result from the provision of Software Services or other services is assured or guaranteed.

## **7.3 Remedies.**

(a) For any breach of the warranty contained in Sections 7.2(a), Excent shall as Client's sole and exclusive remedy: (i) repair or replace the nonconforming Software after receiving notice from Client of such nonconformance within the warranty period; or (ii) in the event such repair or replacement is commercially impractical, refund the amount of license fees paid by Client for the nonconforming Software upon return of the Software to Excent and the execution of an amendment to this Agreement by Client pursuant to which the license for the portion of the Software for which Client is receiving a refund is terminated.

(b) For any breach of the warranties contained in Section 7.2(b), Excent shall as Client's sole and exclusive remedy: (i) re-perform the Software Services or other services which were not performed as warranted at no additional charge after receiving notice from Client of such nonconformance within thirty (30) days following the date such Software Services or other services were performed; or (ii) in the event Excent is unable to re-perform such Software Services or other services after exercising commercially reasonable efforts to do so, refund the fees paid to Excent for the Software Services or other services which were not performed as warranted.

**7.4 Disclaimer of All Other Excent Warranties.** CLIENT UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT EXCEPT FOR THE LIMITED EXPRESS WARRANTIES SET FORTH IN SECTION 7.2, THE SOFTWARE, ANCILLARY PRODUCTS, DOCUMENTATION, SOFTWARE SERVICES, SOLUTION AND OTHER SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. EXCENT HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE WITH RESPECT TO THE SOFTWARE, ANCILLARY PRODUCTS, DOCUMENTATION, SOFTWARE SERVICES, SOLUTION, OTHER SERVICES AND THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. CLIENT FURTHER ACKNOWLEDGES THAT WITHOUT ITS AGREEMENT TO THE DISCLAIMERS AND LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, THE FEES AND CHARGES CHARGED BY EXCENT HEREUNDER WOULD BE HIGHER.

**7.5 Special Acknowledgements.** Excent does not make any guarantees of speed or availability of end-to-end connections. Client acknowledges that Excent does not control the transfer of data over the Internet or to or from Excent's technology platform and other portions of the Internet and Excent does not warrant that it will be able to prevent third party disruptions of such transfers. EXCENT DOES NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY OR NON-CORRUPTION OF ANY INFORMATION TRANSMITTED THROUGH THE INTERNET.

## **8. CONFIDENTIALITY**

**8.1 Confidentiality.** Each party (the "Receiving Party") will be provided and exposed to Confidential Information and Trade Secrets of the other party (the "Disclosing Party"). The Receiving Party shall keep secret and hold as strictly confidential all Confidential Information and Trade Secrets of the Disclosing Party and shall not sell, transfer, rent, use, disclose or otherwise make available, without the Disclosing Party's prior written consent, any of the Confidential Information or Trade Secrets of the Disclosing Party to any person or entity, except as provided below in this Section 8. The Receiving Party agrees to use the Trade Secrets and Confidential Information of the Disclosing Party solely for purposes of performing its obligations or exercising its rights under this Agreement and not to disclose the Confidential Information or Trade Secrets of the other party except to its employees, consultants and contractors to whom such information must be provided to carry out the purpose and intent of this Agreement and who have agreed in writing to be bound by terms of confidentiality no less restrictive than those contained in this Section 8. The parties acknowledge and agree that the terms of any previously executed confidentiality or nondisclosure agreement shall remain in effect with respect to the information exchanged thereunder.

**8.2 Security Precautions.** The Receiving Party shall take commercially reasonable security precautions to prevent unauthorized use and disclosure of the Trade Secrets and Confidential Information of the Disclosing Party and shall use at least the same degree of care the Receiving Party employs with respect to its own Trade Secrets and Confidential Information, but

in no event less than a reasonable standard of care. The Receiving Party shall not permit unauthorized access to the Trade Secrets or Confidential Information of the Disclosing Party.

**8.3 Exceptions to Obligations.** Notwithstanding anything to the contrary contained in this Agreement, the Receiving Party shall not be obligated to treat as confidential, or otherwise be subject to the restrictions on use, disclosure or treatment contained in this Agreement for, any Confidential Information or Trade Secrets of the Disclosing Party which: (a) is rightfully known to the Receiving Party prior to its disclosure by the Disclosing Party; (b) is publicly available through no breach of the Disclosing Party; (c) is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information or Trade Secrets; or (d) is or later becomes publicly available without violation of this Agreement or may be lawfully obtained by a party from any non-party that does not have a duty or obligation to maintain Disclosing Party's Confidential Information or Trade Secrets confidential. In addition, the Receiving Party may disclose Confidential Information and Trade Secrets of the Disclosing Party to the extent such disclosure is required by any rule, law, regulation, court, court order, or government or quasi-governmental authority, provided the Receiving Party notifies the Disclosing Party, if permitted by law, of the applicable legal requirements before such disclosure occurs so as to enable the Disclosing Party to obtain such protection as may be available to preserve the confidentiality of such information.

**8.4 No Adequate Remedy; Survival.** The Receiving Party agrees that the Disclosing Party will have no adequate remedy at law if there is a breach or threatened breach of this Section 8 and, accordingly, the Disclosing Party shall be entitled (in addition to any legal or equitable remedies available to such Disclosing Party) to injunctive or other equitable relief to prevent or remedy such breach. The obligations under this Agreement with regard to Confidential Information that constitutes a Trade Secret shall remain in effect during the term of this Agreement and for the longer of (a) as long as such information remains a Trade Secret or (b) five (5) years after the expiration or termination of this Agreement. The obligations with regard to Confidential Information that does not constitute a Trade Secret shall remain in effect during the term of this Agreement and for five (5) years after the expiration or termination hereof.

**8.5 Use of the Internet.** The parties understand and acknowledge that the Internet and communications over it may not be secure, and that connecting to it provides the opportunity for unauthorized access to computer systems, networks, and all data stored therein. The information and data transmitted through the Internet or stored on any equipment through which Internet information is transmitted may not remain confidential and neither party makes any representation or warranty regarding privacy, security, authenticity, non-corruption or destruction of any such information. Use of any information transmitted or obtained over the Internet is at each party's own risk and neither party shall be responsible to the other for any adverse consequence or loss whatsoever from use of the Internet.

**8.6 Return of Confidential Information.** Upon written request of the Disclosing Party or upon termination of this Agreement, the Receiving Party shall cease using the Disclosing Party's Confidential Information and Trade Secrets and promptly return to the Disclosing Party (or destroy at the Disclosing Party's request) such Confidential Information and Trade Secrets and all copies thereof, and upon request of the Disclosing Party, certify in writing that the Receiving Party has complied with the obligations set forth in this Section.

## **9. INTELLECTUAL PROPERTY RIGHTS**

**9.1 Ownership.** Client acknowledges and agrees that, as between Client and Excent, all Intellectual Property Rights in and to the Software, Software Services, Documentation and Solution are vested solely in Excent, and Client agrees not to challenge the validity of Excent's Intellectual Property Rights therein. Nothing herein shall be construed to convey any ownership or proprietary right or interest in the Software, Software Services, Documentation or Solution, or any portion or copy thereof, to Client or any other person. Except as expressly provided herein, Excent hereby reserves any and all rights in the Software, Software Services, Documentation and Solution including, without limitation, all Intellectual Property Rights. Excent shall also retain all ownership of and Intellectual Property Rights in all Work Product.

**9.2 Residuals.** This Agreement shall not be construed to limit Excent's right to independently develop or acquire ideas, inventions, technology and other creations without use of Client's Confidential Information, Trade Secrets or Intellectual Property Rights. Excent shall be free to use for any purpose the residual information of its personnel resulting from performance of its services hereunder. The term "residual information" means general knowledge, skills and experience in non-tangible form which may be retained in the unassisted memories of persons involved in the performance of this Agreement. Excent shall have no obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residual information.

**9.3 Work Product.** All Intellectual Property Rights in and to Work Product shall be vested solely in Excent and Client agrees not to use any such Work Product except as expressly provided herein. Client agrees not to challenge the validity of Excent's Intellectual Property Rights in the Work Product.

**9.4 Acts to Effectuate Allocation of Intellectual Property Rights.** If for any reason, Client acquires or may be deemed to have acquired any rights in or to any of the Intellectual Property Rights of Excent, Client, at no cost or expense, shall execute such acknowledgements, grants and assignments of rights in and to such Intellectual Property Rights, as Excent may request for the purpose of evidencing, enforcing, registering and defending such Intellectual Property Rights.

**9.5 License to Client Data.** Client hereby grants to Excent the non-exclusive right and license to (a) receive, retrieve, process, use and transmit any Client Data or content necessary or reasonably desirable to perform its services; (b) use,

copy, manipulate and store any Client Data) that will be archived, stored or otherwise transmitted in connection with such services, subject to applicable requirements under state and federal law, including without limitation, applicable HIPAA requirements; and (c) to aggregate Client data with data from other clients ("Data Aggregations") for purposes including, without limitation, product development and quality improvement initiatives. Excent will blind Client Data in such a way as to not divulge student or Personal Information. Client agrees that the foregoing license includes the right for Excent to access Client's Medicaid information for the purpose of calculating invoices. Client acknowledges that access to Client Data may be necessary in order for system administration and trouble shooting.

**9.6 Access.** Access to Client Data will be accomplished by user names and passwords assigned to Client's Designated Users/ Client Representative. Client shall select and communicate to Excent the identity of such person and Client shall be responsible for the distribution of, and appropriate levels of confidentiality with respect to, such user names and passwords once the same are received by Client's designated system administrator.

**9.7 No Implied Licenses.** Neither party shall be deemed to have any rights by implied license.

## **10. Defense and Indemnification.**

**10.1 Limited Covenant to Defend.** Excent will defend any third party claim brought against Client to the extent that the claim, if true, would constitute an infringement or misappropriation by the Software, Software Services, Documentation or Solution of any valid and subsisting patent or copyright recognized under the laws of the United States; provided, however, that: (a) Client immediately advises Excent of the claim upon learning of the assertion of the claim; and (b) Excent is given the sole right to control the defense and/or settlement of the claim, in litigation or otherwise.

**10.2 Injunctions Obtained by Third Parties.** If a third-party infringement claim, of which Excent is notified in accordance with Section 10.1 (or of which Excent is otherwise aware or believes is likely) results, or in Excent's opinion is likely to result, in an injunction prohibiting Client from continued use of the Software, Software Services, Solution or Documentation that is the subject matter of the claim, then Excent shall, in its sole discretion and at its expense: (a) procure for Client the right to continue to use the Software, Software Services, Solution or Documentation that is the subject matter of the claim; (b) replace or modify the Software, Software Services, Solution or Documentation that is the subject matter of the claim to make it non-infringing, but, where reasonably possible, preserving the functionality; or (c) terminate the license for the infringing Software, Software Services, Solution or Documentation, and return a prorated portion of the license or subscription fees paid by Client for the infringing Software or Software Services prorated over a three (3) year term from the effective date of the applicable Schedule.

**10.3 Exceptions to Duties to Defend and Indemnify.** Notwithstanding any other provisions hereof, Excent shall have no obligation to indemnify or defend Client for any third party claim pursuant to this Section 10, nor be required to pay losses, damages or expenses under this Section 10, if Client agrees to settle any such claim without the prior written consent of Excent, or if the claim arises out of, in whole or in part: (a) a modification of the Software, Software Services, Solution or Documentation by Client without the express written consent of Excent; (b) use of the Software, Software Services or Solution or Documentation other than in accordance with the Documentation or the terms of this Agreement; (c) use of a release of the Software or Software Services without having implemented Updates timely provided by Excent, the use of which would have cured the alleged infringement; (d) any Ancillary Products; (e) use of the Software, Software Services, Solution or Documentation in combination with any third party hardware, software, database or materials where, absent such combination, the Software, Software Services, Solution or Documentation without the express written consent of Excent it would not be infringing; or (f) Client's negligence or willful misconduct.

**10.4 Sole Obligation.** This Section 10 states Excent's sole obligation, and Client's sole and exclusive remedy, with respect to infringement of proprietary and intellectual Property Rights.

**10.5 Indemnification by Client.** Client is solely responsible for using services involving Client's designated third party licensor or hosting service provider against any and all costs, liabilities, losses, and expenses (including, without limitation, actual attorneys' fees) resulting from any claim, suit, action, demand, or proceeding brought by any third party alleging or arising from the conduct of Client or its employees, agents, or invitees, in the performance or non-performance of its obligations hereunder, or (ii) arising from any failure by Client or its employees, agents, or invitees, to comply with applicable law.

## **11. LIMITATION OF LIABILITY AND EXCLUSION OF DAMAGES**

**11.1 Limitation of Liability.** EXCENT'S TOTAL LIABILITY FOR ANY AND ALL DAMAGES TO CLIENT OR ANY OTHER PERSON OR ENTITY ONLY IN THE AMOUNT REQUIRED TO DEFEND AGAINST THE CLAIM, REGARDLESS OF THE FORM OF ACTION (WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE).

**11.2 Exclusion of Certain Damages.** EXCEPT AS OTHERWISE PROVIDED HEREIN, IN NO EVENT SHALL EXCENT OR ITS AFFILIATES, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SUPPLIERS, AGENTS, EXCENTS OR REPRESENTATIVES BE LIABLE HEREUNDER FOR ANY LOSS OF DATA OR OTHER DAMAGES RESULTING FROM ANY DELAY OR DEFECT IN OR NON-DELIVERY OF ANY DATA TRANSMISSIONS OR SERVICES, NOR FOR ANY LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL OR OTHER SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY OF THE FOREGOING ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, SOFTWARE SERVICES OR SOLUTION OR ANY BREACH OF ANY REPRESENTATION, WARRANTY OR COVENANT, WHETHER OR NOT EXCENT HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING AND REGARDLESS OF THE NATURE OF THE CLAIM OR FORM OF ACTION (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE). Excent shall not be liable to any person, entity or governmental agency for unauthorized

release of protected health information alleged to arise or arising from Client's receipt of the Software or Software Services. It is expressly understood and agreed that Client retains all liability for any such claim, demand or action.

**11.3 Duty to Mitigate; Limitation of Claims.** Each party shall use commercially reasonable efforts to minimize any damages it may incur as a result of the other party's performance or non-performance of this Agreement. No legal proceedings, regardless of form, arising under or relating to this Agreement may be brought by Client more than one (1) year after it first knew, or reasonably should have known, of the facts giving rise to the cause of action.

## **12. MARKETING EFFORTS**

**12.1 Publications.** Client will allow, and hereby grants a license to, Excent during the term of this Agreement to use those trademarks, service marks and logos of Client identified on Exhibit D, if any (the "Client Marks") but only for the purpose of listing Client as a client of Excent on Excent's client page on the Excent website and in other similar marketing publications and materials. Excent acknowledges and agrees that Excent's use of the Client Marks shall be in accordance with Client's trademark and service mark guidelines if effect from time to time.

**12.2 Public Announcements.** Promptly following execution of this Agreement, the parties may issue a press release, the form and substance of which shall be mutually agreeable to the parties, announcing the relationship created by this Agreement. Except as expressly contemplated herein, neither party shall issue any additional press release or public announcement which mentions the other party or the transactions contemplated by this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

## **13. FORCE MAJEURE**

Excent shall not be liable to Client or any other person for any delay or failure to perform any provision of this Agreement to the extent such delay or failure to perform is caused by an act of God, war, terrorism, or any other event beyond the reasonable control of Excent (including, without limitation, the failure of Client to perform its obligations hereunder).

## **14. MISCELLANEOUS**

**14.1 Severability.** If any one or more of the provisions in this Agreement or any application of such provision is held to be invalid, illegal or unenforceable in any respect by a competent tribunal, the validity, legality and enforceability of the remaining provisions of this Agreement and all other applications of the remaining provisions will not in any way be affected or impaired by such invalidity, illegality or unenforceability.

**14.2 Assignment.** Except as otherwise set forth in this Agreement, this Agreement and all rights and obligations hereunder may not be assigned in whole or in part by Client party, without the prior written consent of Excent. Any purported assignment in violation of this Section 14.2 shall be null and void.

**14.3 Restricted Rights.** The Excent Software and all other software programs comprising the Solution are "Restricted Computer Software" as defined in the Rights in Data-General Clause at FAR 52.227-14. Such programs may not be transferred to the United States Government without Excent's prior written consent. Any use, duplication or disclosure by or to the United States government is subject to the restrictions, as applicable, set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, subparagraphs (c)(1) and (2) of the Commercial Computer Software--Restricted Rights at C.F.R. 52.227-19, and/or particular department or agency regulations providing protection equivalent to or greater than such cited clauses and subparagraphs. The manufacturer is Excent Corporation, 60 King Street, Roswell GA 30075, (678) 735-4210.

**14.4 Choice of Law; Venue.** The validity, construction, and enforcement of this Agreement, and the determination of the rights and duties of the parties, shall be governed by and construed in accordance with the laws of the State of Colorado (excluding any choice of law principle that would result in the application of the laws of any other jurisdiction). The Parties agree that the sole and exclusive jurisdiction and venue for purposes of any and all lawsuits, disputes, causes of action, arbitrations or mediations shall be in any appropriate forum in the City and County of Denver.

**Availability of Funds and Annual Appropriations.** Client's obligation for payment of any amount herein shall extend only to annual appropriations by its Board of Education as provided in the Client Budget Law of 1964, C.R.S. § 22-44 Part 1 and C.R.S. § 22-32-127, as now or hereafter amended. In the event funds are not so appropriated, Client shall have no obligation to make such payment.

**Open Records.** The parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*, as now or hereafter amended and that in the event of a request to Client for disclosure of such information, Client will advise Excent of such request in order to give Excent the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, Client will tender all such material to the court for judicial determination of the issue of disclosure and Excent agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same.



**14.8 Non-Solicitation.** Neither party, directly or indirectly, shall hire or solicit for employment (including for employment by a parent or subsidiary) any employee of the other with whom the party has significant contacts arising out of this Agreement or the providing of services hereunder during the term of this Agreement and for a period of one (1) year thereafter.

**14.9 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**14.10 Captions, Sections, Articles and Exhibits.** The premises, captions and headings in this Agreement are for convenience of reference only and may not be referred to in the construction or interpretation of this Agreement. Unless otherwise noted, any reference in this Agreement to an "Exhibit," a "Section" or an "Article" refers, respectively, to exhibits, sections or articles in this Agreement. The content and terms of all Exhibits (including any Exhibits that are not completed as of the execution of this Agreement, but are subsequently agreed upon by the parties, and any amended Exhibits) are incorporated into this Agreement by reference.

**14.11 Interpretation.** This Agreement shall not be construed more strongly against either party, regardless of which party is responsible for its preparation, it being agreed that this Agreement was fully negotiated by both parties. By execution and acceptance of this Agreement, the parties acknowledge that they have had the opportunity to consult counsel regarding this Agreement, and that they have read the same and understand each provision, term and obligation contained in this Agreement and its Exhibits.

**14.12 Entire Agreement.** This Agreement (including any agreement attached as or referred to in an Exhibit or an addendum) constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any prior statement or writing not a part of this Agreement, and neither party shall be bound by any prior or contemporaneous representation, statement, promise, warranty, covenant, or agreement pertaining thereto unless set forth in this Agreement. If there is a conflict between the terms and conditions of this Agreement and those of any Exhibit, the terms and conditions of this Agreement control over those of the Exhibit. However, to the extent possible, the parties shall construe the terms and conditions of this Agreement and the Exhibits as complementary to each other. If the parties hereto are currently parties to a separate agreement related to the license or subscription of software not listed on a Schedule hereto, such prior agreement shall continue in effect in accordance with its terms with respect to such specific software but shall, notwithstanding anything therein to the contrary, not supersede any of the terms of this Agreement.

**14.13 Amendments and Waiver.**

(a) No amendment, change, or modification of this Agreement or any of the terms, conditions or provisions hereof, and no waiver of a right, remedy, privilege, power, or discharge of an obligation or liability, conferred upon, vested in, or imposed upon any party under or pursuant to this Agreement, and no consent to any act or omission pertaining hereto will be effective unless duly embodied in a written instrument that is signed by the duly authorized representatives of both parties.

(b) No failure to exercise and no delay in exercising any right, remedy, privilege, or power under or pursuant to this Agreement will operate as a waiver thereof; nor will any single or partial exercise of any right, remedy, privilege, or power provided for under or pursuant to this Agreement by either party hereto preclude or limit such party from any other or further exercise thereof or from pursuing any other right, remedy, privilege, or power available pursuant to this Agreement, at law or in equity.

**14.14 Further Assurances.** The parties hereto further agree that they shall take any and all necessary steps and sign and execute any and all necessary documents or agreements required to implement the terms of this Agreement.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have signed their names in the spaces indicated below.

The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing to sign this Agreement and to bind their respective party hereto.

CLIENT

DENVER PUBLIC SCHOOLS  
Legal Name of School District

[Signature]  
Authorized Signature

THOMAS O'LEARY DIRECTOR OF OPERATIONS  
Printed Name and Title

Date: 8-13-15

EXCENT CORPORATION

[Signature]  
Authorized Signature

David Craig President  
Printed Name and Title

Date: 8-17-15

Approved as to form

Michael J. Dukeman

Office of DPS General Counsel

Date: 8/12/2015

**SCHEDULE 1**  
**CLIENT AND SOFTWARE INFORMATION**

**Client's Legal Name:** Denver Public Schools

**Client's Notice Address:** 780 Grant Street  
Denver, CO 80203

**Billing Contact:** Tom O'Keefe, Director of Operations  
720-423-3365  
Thomas\_o'keefe@dpsk12.org

**Modules Licensed:** Enrich ALP

**Effective Date:** July 1, 2015

**Initial Term:** One year -- July 1, 2015 through June 30, 2016

**License and Services Fees**

<b>Costs</b>	<b>Year 1 (2015-2016)</b>	<b>Year 2 (2016-2017)</b>	<b>Year 3 (2017-2018)</b>	<b>Year 4 (2018-2019)</b>	<b>Year 5 (2019-2020)</b>
<b>Annual License Fee</b> Enrich ALP License Fee	\$69,395	\$69,395	\$69,395	\$69,395	\$69,395
<b>Professional Services</b> One time implementation and training fees	\$17,400				
<b>Total Cost:</b>	\$86,795	\$69,395	\$69,395	\$69,395	\$69,395

Prices are valid for 90 days from date of proposal

**Notes/Comments:**

**EXHIBIT A  
HOSTING TERMS**

Hosting for Excent Enrich is included as part of your license fee

**EXHIBIT B  
PROFESSIONAL SERVICES TERMS**

This Professional Services Terms Exhibit (the "Professional Services Exhibit") is hereby annexed to and made a part of the Master Software License and Services Agreement (the "Agreement") between Excent and Client. In the event any provisions of this Professional Services Exhibit contradict or are inconsistent with the provisions of the Agreement, the provisions of this Professional Services Exhibit shall prevail and govern.

1. **Services.** Upon request by Client, Excent will provide consultants to perform consulting and Professional Services to the extent such Professional Services are identified in any mutually agreed upon Statement(s) of Work ("SOW" or "Statement of Work") more fully describing the project Assumptions, specifications, scope, work plan, responsibilities, duration and fees for such Services, which SOW(s) shall reference the Agreement and be sequentially numbered. Any material modifications to an SOW (including without limitation modifications to the fees, specifications or work plan) shall be made by written change order, in Excent's standard form, executed by both parties to this Agreement (a "Change Order"). Each Change Order complying with this Section shall be deemed to be an amendment to the applicable SOW to which it applies and shall become a part thereof.

2. **Cooperation.** All Services will be coordinated with the designated Client Representative, as identified in each SOW. Client shall cooperate and provide information as is reasonably necessary or desirable for the timely completion of the Professional Services. Client shall at all times make available its functional and/or information technology personnel as reasonably required or desirable for Excent to perform the Professional Services, and Client shall timely fulfill its obligations and responsibilities set forth in each SOW. To the extent required or as specified in any SOW or work plan, Client shall provide Excent with access to its facilities, software, systems, data, information and support materials to perform the Professional Services. Client acknowledges that Excent's performance hereunder is contingent on Client's timely and effective performance of Client's responsibilities and Client's timely decisions and approvals. If Client fails to provide required information and/or make decisions as agreed or in a reasonably expeditious and timely manner, and such failure results in a delay in delivery of any Deliverables or to the overall project, Client agrees to extend the time frame for delivery of the Deliverable or project, as applicable, on a day for day basis and compensate Excent for any additional work required as a result of such delay.

3. **Project Control.** Excent shall have the sole right to supervise, manage, contract, direct, procure, perform, or cause to be performed, all Professional Services performed by it pursuant to an SOW. Excent will endeavor to honor a request for a specific consultant, subject to staffing or scheduling considerations; provided, however, Excent reserves the right to determine the assignment of its personnel. Excent may subcontract all or a portion of the Professional Services to a qualified third party. In recognition that Excent personnel may perform similar services for third parties, this Agreement shall not prevent Excent from providing services or developing materials that may be perceived as competitive with those developed or provided hereunder, subject to the confidentiality provisions of the Agreement.

4. **Satisfaction with Performance.** If at any time Client or Excent is dissatisfied with the performance of an assigned consultant or a Client project team member, the dissatisfied party shall immediately report such dissatisfaction to the other party in writing and may request a replacement. The other party shall use commercially reasonable efforts to address any valid concerns of the dissatisfied party.

5. **Compensation.** All Professional Services will be provided by Excent on a time, materials and expense basis at Excent's then current rates, unless otherwise agreed by the parties in an SOW.

6. **Evaluation and Acceptance.**

6.1 **Evaluation.** Both parties acknowledge that timely delivery and acceptance of interim project Deliverables may be a prerequisite for downstream efforts, and that delay in delivery or acceptance is likely to jeopardize a project schedule. Unless otherwise stated in an SOW, for a period beginning upon delivery of a Deliverable and ending no later than 5:00 p.m. local time on (a) the third (3rd) business day following delivery of interim Deliverables; or (b) the tenth (10th) business day following delivery of the final project Deliverable ("Evaluation Periods"), Client shall diligently evaluate each Deliverable delivered to determine whether the Deliverable contains the features, and is capable of performing the operations, that are specifically set forth in the applicable SOW ("Specifications"). Excent may observe or participate with Client in any evaluation of the Deliverables. For purposes of clarification, the Evaluation Periods specified above have been used in most Excent implementation projects and have been proven effective. Additional evaluation times beyond such Evaluation Periods will add additional time (and cost) to the project on a day-for-day basis.

6.2 **Acceptance.** Prior to the termination of the applicable Evaluation Period, Client shall notify Excent in writing either (a) of its acceptance of the Deliverable; or (b) the specific Nonconformity(ies) of the Deliverable if Client determines there is any failure of the Deliverable to conform in all material respects to its Specifications (a "Nonconformity"). If a Nonconformity exists and notice of the Nonconformity is delivered within the Evaluation Period, Excent shall promptly use commercially reasonable efforts to correct all Nonconformities and re-deliver the corrected Deliverable. Upon delivery thereof, Client shall have an additional Evaluation Period to reevaluate the Deliverable to determine if the Nonconformities have been corrected. If the Nonconformities have not been corrected, Client will have the option of (i) providing Excent a new notice of Nonconformity within the Evaluation Period; or (ii) accepting the Deliverable as-is. The acceptance process described in this Section 6.2 shall be Client's sole remedy for any Nonconformity. "Acceptance" shall be deemed to have occurred upon the earlier to occur of the following: (x) Client's delivery of written acceptance; (y) the end of the applicable Evaluation Period, if no notice of Nonconformity has been received by Excent during such Evaluation Period; or (z) the date the Deliverable is used for Production Use, other than for the purpose of conducting testing.

7. **Termination.** The terms of this Professional Services Exhibit shall be effective as of the Effective Date of the Agreement and shall remain in effect until (a) terminated by either party upon thirty (30) days prior written notice in the event no SOW is outstanding; or (b) as provided in the Agreement, whichever is earlier. Client shall be liable for payment to Excent for all Professional Services provided or performed prior to the effective date of any such termination, including any expenses incurred pursuant to the provision of such Professional Services.

8. **Additional Services.** Any services performed by Excent at the request of Client that are outside the scope of any Professional Services described in the applicable SOW shall be governed by these terms and will be billed at Excent's then current rates.

**EXHIBIT C  
ANCILLARY PRODUCT TERMS**

**Not Applicable.**