

(ATTACHMENT 68) ACTION ON THE AWARD OF PROFESSIONAL SERVICES CONTRACTS

Contract Requisition Number: CR038433

Contract Number: B0001325

Vendor Number: V000870

MILWAUKEE BOARD OF SCHOOL DIRECTORS PROFESSIONAL SERVICES CONTRACT

This Contract is being entered into this 1st day of July, 2018, by and between **Pearson Education, Inc.** (“Contractor”) and Milwaukee Board of School Directors (“MPS”). This Contract results from an open competitive procurement, specifically MPS Request for Proposal (“RFP”) 975.

1. SCOPE OF SERVICES

Contractor shall specifically perform the following tasks:

In accordance with the terms of this Contract, Contractor’s “Licensed Product Agreement” attached hereto as Exhibit A, the terms of RFP 975 and Contractor’s Response to RFP 975, which are hereby incorporated by reference, Contractor shall provide MPS with the rights to purchase online student licenses for the following research/evidence-based intervention product:

Product	RFP 975 Category	Grade Band	Maximum # Licenses
SuccessMaker Math	A: Math for English and non-English speaking students in grades K5-12th (or specific grades within).	K-8	6,000

Contractor represents that SuccessMaker Math meets the requirements set forth in § 2.1.1 Section 2 of RFP 975.

Contractor shall also provide up to 6 hours of professional development for MPS staff associated with the licenses. Professional development sessions will held at MPS’ North Division High School (1011 W. Center Street, Milwaukee, WI 53206) from the hours of 4:30-6:00 pm, as mutually agreed upon by the parties.

Contractor shall provide, at its own expense, all personnel required to perform the services under this Contract.

2. TERM

This Contract shall be in effect from July 1, 2018 through June 30, 2019 (the “Initial Term”) with the possibility of two one-year extensions. MPS will base its renewal decisions on the following performance metrics to be rated by MPS personnel. Contractor must attain a minimum score of 90 points to be eligible for contract renewal; however, 90 points does not guarantee renewal.

Performance Metrics	Points
Access to professional development and further support needs	25
Reporting features meeting the needs of the schools and district	25
Ability for school-based staff and student to use intervention	25
Communication with district personal with concerns from schools	25
Total	100

No work shall commence before a Contractor receives a fully executed Contract and has been given approval to proceed. Any work performed by the Contractor prior to obtaining a fully-executed Contract with approval to proceed shall not be compensated pursuant to this Contract. Any continuation of the Contract beyond this term must be set forth in writing and signed by the original signatories to the Contract.

3. COMPENSATION

Total compensation under this Contract shall not exceed \$362,202 in the Initial Term; however, there is no guarantee of the level or quantity of services that will be utilized by MPS under this Contract. Contractor will bill MPS at a rate of \$60.00 per license. MPS will order increments of licenses from Contractor on an as-needed basis.

Professional development shall be billed at a rate of \$367 per hour.

MPS reserves the right to determine in its sole discretion whether services have been adequately and fully delivered; to withhold payment until services are fully and adequately delivered; or to disallow a pro rata share of payments for services not fully and adequately delivered.

Milwaukee Public Schools does not pay in advance for services. No payment shall be made until a properly submitted invoice is approved. Invoices shall be submitted to:

Milwaukee Public Schools
ATTN: Dr. Melanie Stewart
5225 W. Vliet Street
Milwaukee, WI 53208

A properly submitted invoice must include a detailed description of the dates and times worked, and the tasks performed. As a matter of practice, MPS attempts to pay all invoices in 30 days. It is mutually agreed that State Prompt pay law does not apply to this Contract.

Unless otherwise specified, MPS shall not pay invoices submitted more than 60 days after actual work. In the case of grant funding, no payments shall be made after grant close out. Final invoices must be marked as such.

4. NON APPROPRIATION OF FUNDS

This Contract is contingent upon the appropriation of sufficient funds by appropriate MPS officials. If funds are not appropriated, Contractor agrees to take back any commodities furnished under the Contract, terminate any services supplied to MPS under the Contract, and relieve MPS of any further obligations under the Contract.

5. NON-DISCRIMINATION

In the performance of work under this Contract, Contractor shall not discriminate in any way against any employee or applicant for employment on the basis of a person's sex, race, age, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, disability, or socio-economic status. This prohibition includes but is not limited to employment; promotions, demotions and transfers; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor is required to include a similar provision in all subcontracts to this Contract.

If MPS determines Contractor has violated this non-discrimination policy, MPS may terminate this Contract without liability for undelivered services or materials. MPS may also deem the Contractor ineligible to participate in future contracts with MPS.

6. INDEMNITY

Contractor shall indemnify MPS and hold MPS harmless against any loss, damage, liability, claim or expense resulting from injury or death to any person or from damage to any tangible property resulting from Contractor's performance of this Contract. Notwithstanding the foregoing, Contractor shall only be responsible for any loss, damage, liability, claim or expense to the extent that (1) it is alleged and established that such loss, damage, liability, claim or expense was occasioned by the negligence or willful misconduct of Contractor or its employees or agents; and (2) Contractor is given prompt written notice of any such claim.

In accordance with applicable laws, MPS shall be responsible for defending and paying judgments on behalf of its officers, employees and agents while acting within the scope of their employment or agency for any claims that may arise out of MPS's negligence for acts, policies, or directives that affect the activities covered by this Contract.

7. BACKGROUND CHECKS

Contractor will conduct, at Contractor's expense, a criminal information records background check, (hereinafter referred to as "background check"), through the Wisconsin Department of Justice and other appropriate states' agencies, on all current and potential administrators, board members, officers, and employees who have, or who are anticipated to have, "direct, unsupervised contact" with MPS students in the performance of this Contract.

An out of state background check should be completed in the state(s) in which the individual resided for at least six months within the last two years and was eighteen years or older at the time.

Contractor will submit to MPS's Department of Employment Relations (DER), (via mail to Milwaukee Public Schools Background Checks, Attn: Department of Employment Relations, Room 116, 5225 West Vliet Street, Milwaukee, WI 53208, or via email at 564@milwaukee.k12.wi.us), all completed background checks. Such records will be reviewed and MPS will notify Contractor of any individual(s) who, based on MPS standards, are unfit and should not have contact with MPS students. All determinations made by MPS with regards to whether an individual is fit to provide services pursuant to this Contract are made in MPS's sole discretion.

The following will each be a material failure to comply with the terms of this Contract and cause for immediate termination of this Contract by MPS: failure to perform background checks as outlined in this Section 7; failure to submit background checks to MPS as outlined in this Section 7; allowing services to be provided by an individual who has not be subjected to a background

check; and allowing services to be performed by an individual who has been determined to be unfit by MPS as outlined in this Section 7.

8. INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY

Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor’s employees and agents, shall rest with the Contractor. Contractor and its subcontractors shall effect and maintain any insurance coverage, including, but not limited to, Workers’ Compensation, Employers’ Liability, General Liability, Contractual Liability, Automobile Liability and Umbrella Liability to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers’ Compensation laws or other insurance provisions.

The minimum limits of insurance required of the Contractor by MPS shall be:

Workers’ Compensation	Statutory Limits
Employers’ Liability	\$100,000 per occurrence
General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate
Auto Liability	\$1,000,000 per occurrence
Umbrella (excess) Liability	\$1,000,000 per occurrence

The Milwaukee Board of School Directors shall be included as an additional insured under Contractor’s commercial general liability insurance. Evidence of all required insurances of Contractor shall be submitted electronically to MPS via its third party vendor, EXIGIS Risk Management Services. Waivers and exceptions to the above limits will be in the sole discretion of MPS and shall be recorded in the EXIGIS system, which records are incorporated into this Contract by reference. MPS shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by Contractor regarding coverages required by MPS for the duration of this Contract.

9. SHIPPING /TAXES

If goods are provided pursuant to this Contract, please note that MPS is exempt from Federal Excise and Wisconsin Sales Taxes. All vendor quotes, bids and invoices must include delivery FOB destination to the MPS location receiving the goods and freight must be prepaid. This means any freight, shipping, processing, handling or like charges must be part of a unit price. Any separate line items for freight, shipping, processing, handling or like charges listed on an invoice will be deleted and NOT PAID.

All textbook purchases shall be governed by the terms and conditions in the Milwaukee Board of School Directors’ Textbook Contract, which provides that textbooks shipped to MPS or its schools must be done at no additional charge to MPS or its schools.

MPS reserves the right to reject any items that do not conform to the bid, quote or Purchase Order. All return freight charges associated with the rejected materials shall be borne by the vendor.

10. IRREPARABLE HARM

The breach of this Contract on Contractor’s part shall entitle MPS to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances.

11. TERMINATION

If either party fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, the non-breaching party shall thereupon have the right to terminate it by giving thirty (30) days written notice before the effective date of termination of the Contract, specifying the alleged violations, and effective date of termination. The Contract shall not be terminated if, upon receipt of the notice, the breaching party promptly cures the alleged violation within thirty (30) days. In the event of termination, MPS will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Contract.

12. [INTENTIONALLY OMITTED]

13. TERMINATION BY MPS

MPS further reserves the right to terminate this Contract at any time for any reason by giving Contractor written notice by Registered or Certified Mail of such termination. MPS will attempt to give Contractor 20 days’ notice, but reserves the right to give immediate notice. In the event of said termination, Contractor shall reduce its activities hereunder, as mutually agreed to, upon receipt of said notice. Upon said termination, Contractor shall be paid for all services rendered through the date of

termination, including any retainage. This section also applies should the Milwaukee Board of School Directors fail to appropriate additional monies required for the completion of the Contract.

14. INDEPENDENT CONTRACTOR

Contractor agrees and stipulates that in performing this Contract, it is acting as an Independent Contractor, and that no relationship of employer and employee, partnership or joint venture is created by this Contract. Contractor has exclusive control over work hours, location, and other details of such services, and MPS's sole interest is to ensure that said service shall be performed and rendered in a competent, safe, efficient, timely and satisfactory manner in accordance with the terms of this Contract.

Contractor has the sole obligation to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income. Contractor specifically covenant not to file any complaint, charge, or claim with any local, state or federal agency or court in which Contractor claims to be or to have been an employee of MPS during the period of time covered by this Contract and that if any such agency or court assumes jurisdiction of any complaint, charge or claim against MPS on Contractor's behalf, Contractor will request such agency or court to dismiss such matter. MPS shall not be charged any obligation or responsibility whatsoever of extending any fringe benefits which may be extended to MPS employees, including any insurance, or pension plans.

Contractor further agrees that MPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of MPS from time-to-time.

15. ASSIGNMENT LIMITATION

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns.

16. PROHIBITED PRACTICES

- A. Contractor during the period of this Contract shall not hire, retain or use for compensation any member, officer, or employee of MPS to perform services under this Contract, or any other person who, to the knowledge of Contractor, has a conflict of interest.
- B. Contractor hereby attests it is familiar with MPS's Code of Ethics, providing in pertinent part, "[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group or any firm which does business with or is attempting to do business with MPS."
- C. No person may enter into this Contract for services that the MPS employee would otherwise perform as an employee.
- D. No current or former MPS employee may perform services on a professional services contract without the prior written consent of the MPS Chief Human Capital Officer or his/her designee.
- E. If the Contract is for apparel for \$5,000.00 or more, the Contractor agrees to provide only items manufactured by responsible manufacturers. Contractor is required to include a similar provision in all subcontracts to this Contract.

17. LIVING WAGE REQUIREMENT

Contractor shall comply with, and ensure its subcontractors performing work under this Contract comply with, Milwaukee Board of School Directors' Administrative Policy 3.09(17), which requires that employees be paid a "living wage."

18. NOTICES

Notices to either party provided for in this Contract shall be sufficient if sent by Certified or Registered mail, postage prepaid, addressed to the signatories on this Contract, or to their designees.

19. WAIVER

The waiver or failure of either Party to exercise in any respect any rights provided for in this Contract shall not be deemed a waiver of any further right under this Contract.

20. INTEGRATION / SEVERABILITY

This Contract and its exhibits and addenda, if any, constitute the entire Contract among the Parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions and Contracts among the Parties

concerning the subject matter hereof. No amendment or modification of any provision of this Contract shall be effective unless the same shall be in writing and signed by both Parties.

The District shall not be bound by any terms and conditions included in of Contractor's packaging, service catalog, brochure, technical data sheet or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions contained herein.

If any term or provision of this Contract should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Contract shall be interpreted as if such invalid Contracts or covenants were not contained herein.

21. CHOICE OF LAW & FORUM

The state courts of Wisconsin shall be the sole forum for all disputes arising of this Contract. The validity, construction, enforcement and effect of this Contract shall be governed solely by the laws of the State of Wisconsin.

22. TIMING

Time is of the essence in this Contract.

23. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

Contractor certifies that neither Contractor or its principals; its subcontractors or their principals; the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to Executive Orders 12549 and 12689. Contractor specifically covenants that neither the Contractor or its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA").

24. FORCE MAJEURE

MPS will not be liable to pay Contractor for any work that the Contractor is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond MPS's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

25. STUDENT DATA

Contractor acknowledges that student data is protected by both federal and state law. *See* Wis. Stat. § 118.125; 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.1 *et seq.* If MPS determines that Contractor has disclosed any student record information in violation of either federal or state law, without prejudice to any other rights or remedies the MPS may have, MPS shall be entitled to immediately terminate this and every other existing Contract without further liability. Moreover, MPS may bar Contractor from future MPS contracts for varying periods up to and including permanent debarment.

26. NON-DISCLOSURE

Absent prior written consent of the person listed in Section 3 or his/her designee, Contractor shall not: (1) disclose, publish, or disseminate any information, not a matter of public record, that is received by reason of this Contract, regardless of whether the Contractor is or is not under contract at the time of the disclosure; or (2) disclose, publish, or disseminate any information developed for MPS under this Contract. Contractor agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the same information.

MPS recognizes and agrees that, pursuant to Section 4.1 of the Licensed Product Agreement, SuccessMaker Math is proprietary to Contractor, and is protected by copyright, trade secret, and other intellectual property rights. Title to all complete or partial copies, and all applicable rights to copyrights, patents, trademarks and trade secrets are and shall remain the property of Contractor. MPS shall not decompile, disassemble or reverse engineer SuccessMaker Math or attempt to create source code for SuccessMaker Math by any means without Contractor's express written authorization.

Within thirty business days of receipt of MPS' written request Contractor will return all documents, records, and copies thereof it obtained during the development of the work product covered by this Contract.

27. MPS LOGO/PUBLICITY

No Contractor shall use the MPS Logo in its literature or issue a press release about the subject of this Contract without prior written notice to and written approval of MPS's Executive Director of Communications & Outreach.

28. ORDER OF PRIORITY

In the event of a conflict among the documents constituting this Contract, the order of priority to resolve the conflict shall be: 1) this Contract; 2) the Licensed Product Agreement; 3) RFP 975; and 4) Contractor's Response to RFP 975.

29. PUBLIC RECORDS

Both parties understand that the Board is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Contractor acknowledges that it is obligated to assist the Board in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the Contractor must defend and hold the Board harmless from liability under the law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Contract.

30. CONTRACT COMPLIANCE REQUIREMENT

The HUB requirement on this Contract is 0%. The student engagement requirement of this Contract is 0 hours. The Career Education requirement for this Contract is 12 hours per 12-month term. Failure to achieve these requirements may result in the application of some or all of the sanctions set forth in Administrative Policy 3.10, which is hereby incorporated by reference.

IN WITNESS WHEREOF, the parties here to have executed this Contract on the day, month and year first above written.

CONTRACTOR (Vendor #: V000870)

MILWAUKEE BOARD OF SCHOOL DIRECTORS

By: _____
Authorized Representative

By: _____
Thomas P. Conjurski
Chief Financial Officer, Office of Finance

Date: _____

Date: _____

PEARSON EDUCATION, INC.
330 HUDSON STREET
NEW YORK, NY 10013
319-358-4476

By: _____
Keith P. Posley, Ed.D.,
Interim Superintendent of Schools

Date: _____

SSN / FEIN:

Budget Code: 000-0-0-000-BL-ECTS

By: _____
Mark A. Sain, President
Milwaukee Board of School Directors

Date: _____

Reviewed by Risk Management:

By: _____

Date: _____



EXHIBIT A

IMPORTANT: DO NOT ALLOW LICENSED PRODUCT (AS DEFINED BELOW) TO BE INSTALLED OR USED WITHOUT READING THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE NOT WILLING TO ACCEPT THESE TERMS AND CONDITIONS, YOU MUST RETURN THE LICENSED PRODUCT TO PEARSON WITHIN TEN (10) DAYS OF RECEIPT. BY INSTALLING AND USING THE LICENSED PRODUCT AS PERMITTED BY THIS LICENSE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

LICENSED PRODUCT AGREEMENT FOR SUCCESSMAKER SOFTWARE

1. DEFINITIONS. This Licensed Product Agreement (“Agreement”) is between NCS Pearson, Inc. (“Pearson”), and the school, school district or other entity licensing Licensed Product from Pearson (“Customer”). In addition, the following definitions shall apply:

1.1 “Concurrent User License” shall mean a license granted to Customer by Pearson for use of Licensed Product whereby the number of users who may use such Licensed Product simultaneously at a given Licensed Site or group of Licensed Sites is limited to a specified number of concurrent users.

1.2 “Documentation” shall mean all written user information, whether in electronic, printed or other format, delivered to Customer by Pearson with respect to Licensed Product, now or in the future, including, but not limited to, instructions, manuals, training materials, and other publications provided by Pearson that contain, describe, explain or otherwise relate to Licensed Product.

1.3 “Licensed Product” shall mean Pearson’s SuccessMaker software, and all related Documentation, licensed to Customer pursuant to this Agreement, regardless of the language, medium, format or system in which they may be accessed, stored, recorded or delivered.

1.4 “Licensed Sites” shall mean those schools or other sites at which Customer is authorized to utilize Licensed Product, as specified in writing by Pearson in Pearson’s applicable price quotation and/or in an invoice or other confirmation of Customer’s order by Pearson.

1.5 “Per Student License” shall mean a license granted to Customer by Pearson for use of Licensed Product whereby the number of students with active user accounts may not exceed the number of licenses purchased. For example, if Customer purchases one hundred Per Student Licenses, then Customer will be able to set up user accounts for up to one hundred students. If five of those students discontinue using the Licensed Product for any reason (e.g., they leave Customer’s school district), Customer may delete the accounts of those five students and assign those five Per Student Licenses to five other students for the remainder of the applicable license term.

1.6 “Site License” shall mean a license granted to Customer by Pearson for use of Licensed Product whereby such Licensed Product may be used by an unrestricted number of users and on an unrestricted number of computers, but only within a particular Licensed Site. If Customer is granted a Site License, while Customer may use the Licensed Product at the applicable Licensed Site without restriction as to the number of users to whom Customer makes the Licensed Product available, the number of users that may actually use the Licensed Product simultaneously will be subject to Pearson’s system requirements and Customer’s hardware and network capacity.

2. LICENSE GRANT.

2.1 Basic Terms. Subject to the terms and conditions of this Agreement, Pearson grants to Customer a restricted, personal, non-exclusive, non-transferable license to use Licensed Product to support its internal educational functions, only at the Licensed Sites. In no event may Licensed Product be used other than at the Licensed Sites or made available via a network or otherwise to any school, school district or other location other than the Licensed Sites, or to any person other than employees or students at the Licensed Sites. Licensed Product may be used in executable code form only; source code to Licensed Product will not be provided. Licensed Product shall only be used as expressly authorized by this Agreement.

2.2 Copies. Customer shall not make copies of or otherwise reproduce any Licensed Product, including Documentation, without the express written permission of Pearson, except that (a) Customer shall have a license to make a single copy of any software component of any Licensed Product, in executable code form, only for backup or archival purposes, and (b) Customer may print, for Customer’s internal use only, an unlimited number of copies of any Documentation that is provided electronically. Customer shall retain and include all of Pearson’s and its licensors’ copyright and other proprietary rights notices on any such backup or archival copies of Licensed Product, printed copies of Documentation, or any other copies of Licensed Product made with the permission of Pearson.

3. LICENSE TERM AND DEPLOYMENT MODELS. The Licensed Product is available in varying deployment models, as further described below. In some cases, the Licensed Product is licensed on a perpetual license basis, while in other cases it is licensed for a specific term (i.e., on a subscription basis). If Licensed Product is licensed to Customer for a specific term (as opposed to a perpetual license), the length of this term will be specified in Pearson’s applicable price quotation and/or in an invoice or other confirmation of Customer’s order by Pearson. Whether Licensed Product is licensed on a perpetual license basis or for a specific term, in all cases, licenses are subject to termination in accordance with Section 9 of this Agreement.

3.1 License Type. The Licensed Product may be licensed to Customer on a Concurrent User License basis, a Per Student License basis, or a Site License basis. The type of license granted, along with other details relating to Customer’s order, shall be as set forth in Pearson’s applicable pricing quotation, invoice or other written confirmation of Customer’s order.

3.2 Deployment Options. The Licensed Product may be licensed to Customer for deployment via one of three models: (i) a perpetual license for local deployment by Customer; (ii) a perpetual license, but with Customer paying Pearson an additional fee to provide product hosting services; or (iii) a license for a specific term, with Pearson providing product hosting services. Specific terms relating to each of these deployment models are set forth below. Certain deployment models are not available with certain license types. For example, Per Student Licenses are not available for purchase on a perpetual license basis; they may only be purchased under the deployment option of a term license hosted by Pearson.

(a) Perpetual License, Locally Deployed by Customer. In this model, Customer purchases perpetual licenses to the Licensed Product, and is responsible for maintaining the Licensed Product in Customer’s own network environment. Any installation, support or other technical services required or desired to be provided by Pearson are at an additional charge.

(b) Perpetual License, Hosted by Pearson. In this model, Customer purchases perpetual licenses to the Licensed Product, but chooses to have Pearson host the product on its behalf (which service is available only at an additional annual, renewable cost). The fee paid for such hosting services also includes the benefits of Pearson’s Software Maintenance and Support Plan (as described in Section 2.2.5 of the Support and Services Policies). If at a later date, Customer chooses to discontinue paying the separate charge for hosting services (or if Pearson discontinues providing such services after notice as described in Section 3.3(d) below), Customer will still own the perpetual licenses it purchased, and may request that Pearson provide to Customer, for local deployment, the most current version of the software as of the end date of Customer’s most recent subscription for hosting services. If Customer desires any assistance from Pearson in connection with transitioning from the hosted environment to local

deployment (e.g., installation services, migration of data from the hosted environment, or other technical assistance), such services will be provided at Pearson's then-current rates. In addition, after moving to local deployment, Customer will be required to pay Pearson's then-current rates for such support plan as Customer may choose from among Pearson's then-current support options, if Customer desires to continue receiving the benefits of a support plan.

(c) **Term License, Hosted by Pearson.** In this model, Customer purchases licenses to the Licensed Product for a specified term, and Pearson hosts the product as a service to Customer. Customer pays a subscription fee that includes, for the specified license term: (1) the applicable licenses to the Licensed Product; (2) hosting services; and (3) the benefits of Pearson's Software Maintenance and Support Plan (as described in Section 2.2.5 of the Support and Services Policies). At the end of the applicable license term, if Customer renews its license by paying Pearson's then-current subscription fees for such renewal, then this Agreement will continue to govern Customer's license to the Licensed Product (unless Pearson provides new terms and conditions to Customer at the time of such renewal, in which case such new terms and conditions shall apply). If Customer does not renew its license to the Licensed Product, then Customer's license will terminate and Customer will no longer be able to access the Licensed Product upon the expiration of Customer's current license term.

3.3 Additional Terms Applicable to Hosted Deployment Models. For the two deployment models described in Sections 3.2(b) and (c) above, Pearson will provide hosting services for the Licensed Product. The following additional terms are applicable to these deployment models:

(a) As described in Sections 3.2(b) and (c) above, the deployment models under which Pearson provides hosting services include the benefits of Pearson's Software Maintenance and Support Plan for the Licensed Product. Thus, Customer will have access to Pearson's call center support services, and will automatically receive not only Fixes and Updates but also Version Upgrades to the Licensed Product for as long as Customer maintains the hosting relationship with Pearson. Pearson will install Fixes, Updates and Version Upgrades within its hosting environment shortly after their release so that Customer will always be on the most up-to-date version of the software.

(b) While Pearson will automatically install Fixes, Updates and Version Upgrades as part of the hosting services Customer receives, Customer acknowledges that if Customer desires training or consulting services regarding the new features and functionality included in any Update or Version Upgrades, such training or consulting services must be purchased at Pearson's then-current rates for same.

(c) Pearson will attempt to schedule any planned maintenance or upgrades within its hosting environment at times when usage is typically low in the continental United States (e.g., nights and weekends), and will attempt to communicate any outages associated with planned maintenance or upgrades to its customers in advance. Customer acknowledges that as the hosted deployment model is dependent on the Internet, information is transmitted over local exchange and Internet carrier lines, as well as through routers, switches and other devices owned, maintained and serviced by third parties, all of which are beyond the control of Pearson and which can be impaired or disrupted through no fault of Pearson. Customer further acknowledges and agrees that the hosted Licensed Product may be inaccessible or inoperable from time to time due to unscheduled maintenance or causes beyond the control of Pearson or not reasonably foreseeable by Pearson, including, but not limited to: the interruption or failure of telecommunication or digital transmission links; hostile network attacks; network congestion; or other failures (collectively, "Downtime"). Pearson will use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the hosted Licensed Product caused by Downtime, but assumes no liability should Downtime occur despite such commercially reasonable efforts.

(d) Pearson will provide Customer with at least one hundred eighty (180) days' notice if Pearson determines that it will no longer offer hosting services for the Licensed Product (but in any event Pearson will continue providing hosting services for the balance of the current term for which Customer has prepaid for such services). In such event, if Customer previously purchased a perpetual license to the Licensed Product as described in Section 3.2(b) above, Customer may move to local deployment at the termination of such hosting services as described in such Section. If Customer purchased a license for a specific term as described in Section 3.2(c) above, Customer will have the option of purchasing perpetual licenses for local deployment if Customer desires to continue using the

Licensed Product upon the termination of such hosting services. If Customer chooses to purchase such perpetual licenses for local deployment, then the last two sentences of Section 3.2(b) will apply.

(e) Customer acknowledges and agrees that Pearson may utilize in-house services or a third party to provide hosting services for the Licensed Product under these deployment models.

(f) The term of Customer's hosting services (for perpetual licenses hosted by Pearson as described in Section 3.2(b)), or the term of Customer's license to the Licensed Product and accompanying hosting services (for subscription licenses hosted by Pearson as described in Section 3.2(c)), as applicable, will begin on the date that Pearson has set up Customer's instance of the Licensed Product within Pearson's hosting environment and made the software available for Customer's use.

(g) Customer acknowledges and agrees that upon termination of hosting services for any reason, Pearson may delete any Customer data from any hosted instance of the Licensed Product pursuant to Pearson's standard data retention practices. It is Customer's responsibility to extract any reports or other Customer data that Customer desires to retain prior to termination of such hosting services.

(h) For hosted implementations, Pearson tracks a variety of data regarding usage of the Licensed Product. Among other things, Pearson may use cookies to measure traffic patterns, personalize content and control security. Pearson may record IP addresses or other information (such as the browser type used to access the Licensed Product's website; the country, state and telephone area code where the user's Internet service provider's servers are located; and the pages that users viewed during their visit). Collection of IP addresses is generally for system administration and security purposes, to gather broad demographic information and to monitor the level of activity on the website. Pearson may also use a variety of analytical tools to obtain aggregated data (not including any personally identifiable information regarding Customer's students or other users) regarding usage of the Licensed Product, in order to assist Pearson in providing, maintaining and improving the Licensed Product and other Pearson products and services.

4. RESTRICTIONS ON USE OF LICENSED PRODUCT.

4.1 Intellectual Property Rights. Licensed Product is proprietary to Pearson and/or its licensors, and is protected by copyright, trade secret, and other intellectual property rights. The placement of a copyright notice on any portion of Licensed Product does not mean that such portion has been published and will not derogate any claim of trade secret protection for the same. Title to all complete or partial copies, and all applicable rights to copyrights, patents, trademarks and trade secrets in Licensed Product, are and shall remain the property of Pearson or its licensors. Customer shall not modify Licensed Product, or provide any person with the means to do so, without Pearson's express written authorization. In addition, Customer shall not decompile, disassemble or reverse engineer Licensed Product or attempt to create source code for Licensed Product by any means without Pearson's express written authorization.

4.2 Confidentiality. Customer agrees to keep Licensed Product supplied by Pearson confidential and to utilize reasonable efforts to protect and prevent Licensed Product from unauthorized disclosure or use. Customer shall not transfer, assign, provide or otherwise make Licensed Product available, in any form or via any medium, to another party (including, without limitation, any schools or other locations of Customer that are not Licensed Sites), without the prior written consent of Pearson. Any attempted sublicense, assignment or transfer by Customer of any rights, duties or obligations hereunder without Pearson's consent shall be void. Customer agrees to maintain records of the number and location of the original and all copies of Licensed Product, and shall be responsible for the use, operation, storage, management and safety of the copies of Licensed Product in its possession or control. All copies of Licensed Product except those made for backup and archive purposes will be retained at the Licensed Sites. Upon request, Customer shall provide Pearson with access to Customer's applicable records and computer systems to enable Pearson to audit Customer's compliance with the provisions of this Agreement. In addition, Customer acknowledges that, for hosted implementations, Pearson reserves the right to audit Customer's usage of the Licensed Product within Pearson's hosting environment to ensure compliance with the terms and quantities of the licenses purchased by Customer. Before disposing of any equipment or media containing Licensed Product, Customer agrees to destroy or erase all Licensed

Product codes, programs and other proprietary information of Pearson and its licensors contained on such equipment or media. Customer shall provide notice to Pearson immediately, in writing, of any unauthorized use or distribution of Licensed Product of which Customer becomes aware, and shall take all steps necessary to ensure that such unauthorized use or distribution is terminated. The Licensed Product utilizes passwords to access such Licensed Product. Customer shall advise all users that such passwords must be maintained in confidence and not transmitted or shared. Pearson is not responsible for any failure of users to maintain the confidentiality of such information.

5. SUCCESSMAKER AGENT. The Licensed Product includes certain programming (the "SuccessMaker Agent") that allows the observation of metrics that provide Pearson the capability to effectively interact with our customers' environments. The SuccessMaker Agent will allow certain data to be shared between Customer's systems and Pearson's servers via the Internet, allowing visibility to Pearson of certain information regarding Customer's environment and use of the SuccessMaker product, and enabling Pearson to fine tune, regulate and troubleshoot Customer's environment for an optimal SuccessMaker experience. If Customer desires that the SuccessMaker Agent not be deployed in Customer's environment, Customer may deactivate the SuccessMaker Agent. For assistance with deactivating the SuccessMaker Agent, Customer may contact Pearson technical support. The SuccessMaker Agent will not be used to collect any personally identifiable information regarding Customer's users, unless Customer has specifically authorized such usage.

6. SUPPORT AND SERVICES. If Customer has purchased any support and/or other professional services in conjunction with its license of Licensed Product, Pearson will supply such support or other professional services pursuant to the terms of Pearson's Support and Services Policies, a copy of which is attached hereto and which are hereby made a part of this Agreement.

7. CHARGES AND PAYMENTS.

7.1 Fees and Taxes. Customer agrees to pay Pearson the fees charged for Licensed Product and related support and services ordered by Customer, together with any other charges made in accordance with this Agreement, and all applicable sales, use or other taxes or duties, however designated, except for taxes based on Pearson's net income. If Customer claims tax exempt status, Customer agrees to provide Pearson with evidence of such tax exemption upon Pearson's request. To the extent that such tax exemption cannot be properly claimed or does not extend to certain taxes or transactions, Customer shall be responsible for any and all taxes and assessments that arise from this Agreement and related transactions (except for taxes based upon Pearson's net income). All pricing set forth in any quotation or invoice supplied by Pearson is in United States dollars, unless otherwise specified.

7.2 Payment Terms. All charges set out in this Agreement shall be due and payable according to Pearson's invoice terms. Customer shall pay a monthly charge of 1.5% (18% annually) on all amounts not paid when due, or, if a lower maximum rate is established by law, then such lower maximum rate.

8. WARRANTIES.

8.1 Limited Warranty. Pearson cannot assure that the performance of Licensed Product will be uninterrupted or error-free, or that all Licensed Product problems will be corrected, despite Pearson's reasonable efforts to do so. Pearson does, however, warrant for a period of ninety (90) days after the original shipment of Licensed Product hereunder (for Licensed Product that is shipped to Customer on tangible media), or for ninety (90) days after Licensed Product is made available to Customer electronically (for Licensed Product that is hosted by Pearson or made available for Customer to download), that such Licensed Product, as originally delivered under this Agreement, will substantially conform to the applicable description and specifications contained in the Documentation delivered with such Licensed Product. The foregoing warranty shall not apply to Licensed Product that has been modified in any way by Customer, damaged, or used in a manner that does not conform to the instructions and specifications contained in the Documentation for such Licensed Product or to Pearson's hardware specifications for such Licensed Product, which are available upon request. In the event that Licensed Product does not meet the requirements of this warranty, Customer shall be responsible to so notify Pearson in writing during the warranty period and provide Pearson with sufficient detail to allow Pearson to reproduce the problem. After receiving such notification, Pearson will undertake to correct the problem, either itself or through its licensors, by

programming corrections, reasonable "work-around" solutions and/or Documentation corrections. If Pearson is unable to correct the problem after a reasonable opportunity, Pearson will refund the license fees paid for such Licensed Product and Customer's license to use such Licensed Product will terminate. The foregoing states the complete and entire remedies that Customer has under this warranty. Pearson shall have no responsibility for any warranty claims made outside of the warranty period. This warranty does not apply to any Updates or Version Upgrades, if any, that may be supplied to Customer pursuant to a support plan that offers access to such Updates and/or Version Upgrades.

8.2 Media Warranty. In the event that any CD-ROMs, DVD's, USB drives or other physical media through which Licensed Product is provided to Customer are damaged or defective upon receipt by Customer, Pearson will replace such physical media at Customer's request. Fees will apply for subsequent replacement of damaged media.

8.3 Hardware Warranties. If, in conjunction with Customer's licensure of Licensed Product, Customer is purchasing any hardware through Pearson, Customer acknowledges that such hardware purchase is being facilitated by Pearson as an accommodation to Customer only. The warranties on any hardware not manufactured by Pearson will be limited to those provided by the manufacturers of such hardware and/or the vendors through which such hardware is being supplied. Pearson will pass through any manufacturer's or other vendor's warranty to the extent permitted by the manufacturer or other vendor, as applicable. Customer agrees to look solely to the applicable manufacturer or other vendor, and not to Pearson, to fulfill any such warranties and any maintenance, repair, or other service obligations related to such hardware. Customer further agrees that any claims related to any such hardware, whether for breach of warranty or otherwise, must be made directly against the applicable manufacturer or other vendor, and not against Pearson, and that Pearson shall have no liability whatsoever in connection with such claims.

8.4 DISCLAIMER OF OTHER WARRANTIES AND CONDITIONS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS IN RELATION TO THE PRODUCTS, SUPPORT OR SERVICES THAT ARE THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES OR CONDITIONS OTHERWISE ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE. THE LIMITED WARRANTIES SET FORTH ABOVE GIVE CUSTOMER SPECIFIC LEGAL RIGHTS. CUSTOMER MAY HAVE OTHER RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION.

9. TERMINATION.

9.1 Suspension or Termination for Breach. Pearson shall have the right to suspend performance under this Agreement in the event that Customer is in breach of any of its obligations under this Agreement. In addition, either party shall have the right to terminate this Agreement in whole or in part upon thirty (30) days written notice to the other party, in the event the other party materially breaches this Agreement and fails to correct such breach within such thirty (30) day period, provided that Pearson shall have the right to terminate this Agreement immediately upon written notice in the event that Customer breaches any of its obligations under Section 4.

9.2 Effects of Termination. In the event of any termination of all or any portion of this Agreement, Customer shall not be relieved of any obligation to pay any sums of money that have accrued prior to the date of termination. In addition, the provisions of Sections 4, 7, 8.3, 8.4, 9.3, 10 and 11 shall survive termination of this Agreement.

9.3 Return of Licensed Product. Immediately upon any termination of a license of any Licensed Product under this Agreement, Customer shall, at its own expense, either return to Pearson or destroy all copies of such Licensed Product in its possession or control, and shall forward written certification to Pearson that all such copies of such Licensed Product have either been destroyed or returned to Pearson. If Customer fails to submit such certification to Pearson within ten (10) days after the date of termination, Pearson shall have the right, to the extent permitted by law, to enter on Customer's premises to remove or

repossess all copies of such Licensed Product that Customer has in its possession or control.

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

SUPPORT AND SERVICES POLICIES

These Support and Services Policies (“Policies”) supplement the terms of the Licensed Product Agreement between Pearson and Customer to which they are attached. Capitalized terms not defined in these Policies shall have the same meanings ascribed to them elsewhere in the Agreement.

1. DEFINITIONS. For purposes of these Policies, the following additional definitions shall apply:

1.1 “Error” shall mean a reproducible failure of Licensed Product to operate in accordance with its standard Documentation, despite the proper installation and use of Licensed Product in a proper operating environment and on hardware and system software sufficient to meet Pearson’s minimum requirements, which are subject to change from time to time as Updates and/or Version Upgrades are released. User mistakes are not Errors as defined herein. Errors may be due to problems in Licensed Product, the Documentation, or both.

1.2 “Fix” shall mean a patch, service pack or similar modification to Licensed Product that Pearson, in its discretion, deems ready for distribution and makes generally available to eligible customers on an interim basis (prior to issuance of an Update or Version Upgrade) to correct programming Errors that prevent or obstruct normal operation of Licensed Product in accordance with the applicable then-current Documentation.

1.3 “Software Maintenance and Support Plan” or “SMS Plan” shall mean a specific support plan applicable to the SuccessMaker product, which includes access to Version Upgrades as well as Fixes and Updates. Other support plans are also available for SuccessMaker, but only the SMS Plan includes the right to receive Version Upgrades.

1.4 “Update” shall mean a modification to Licensed Product that Pearson, in its discretion, deems ready for distribution and makes generally available

11. GENERAL.

11.1 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MINNESOTA. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

11.2 General Provisions. Neither party shall be held liable to the other party for failure of performance where such failure is caused by supervening conditions beyond that party’s control, including acts of God, civil disturbance, or labor disputes. If any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, this Agreement shall be enforced to the maximum extent possible to effectuate the original express intent of the parties. Breach of the provisions of Section 4 could result in irreparable injury to Pearson; accordingly, Pearson shall have the right to seek equitable relief against any actual or threatened breach of any provisions of Section 4, without proving actual damages. Customer may bring no action arising out of this Agreement, regardless of form, more than one (1) year after the cause of action has arisen. In the case of notices to Pearson, notices shall be sent to: NCS Pearson, Inc., Attn.: Contracts Department, 3075 W. Ray Road, Suite 200, Mailstop 315, Chandler, AZ 85226. In the case of notices to Customer, such notices shall be sent to Pearson’s address of record for Customer. Either party may change its notice address by notifying the other in like manner. Customer agrees that the terms of this Agreement and all pricing for Pearson products and services shall be kept confidential and not disclosed to any third party without the prior written consent of Pearson; provided, however, that Pearson’s consent shall not be required if Customer is required to disclose the provisions of this Agreement or any such pricing information in order to comply with applicable public records statutes or other laws or regulations.

11.3 Entire Agreement. This Agreement, inclusive of the Support and Services Policies attached hereto, constitutes the complete and entire agreement between the parties with respect to its subject matter, and supersedes all prior discussions, understandings, arrangements, proposals and negotiations with respect to same. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any purchase order or other documentation submitted by Customer. Except as otherwise expressly provided herein, this Agreement shall not be modified, amended, or canceled in whole or in part without the written agreement of both parties.

to eligible customers as an Update. Updates may include Fixes, together with such other enhancements or modifications to Licensed Product that Pearson may, in its discretion, develop and deem ready for distribution. An Update will generally have a new number to the right of the decimal point in the product number. For example, a change of the product numbering from version 2.2 to version 2.3 would constitute an Update.

1.5 “Version Upgrade” shall mean a modified or enhanced version of Licensed Product that Pearson, in its discretion, deems ready for distribution and makes generally available to those customers that pay an additional license fee for such version. A Version Upgrade will generally have a new number to the left of the decimal point in the product number. For example, a change of the product numbering from version 2.3 to version 3.0 would constitute a Version Upgrade.

2. PROVISION OF SUPPORT AND OTHER SERVICES.

2.1 Scope of Services. Pearson agrees to perform the support services and/or other professional services specified in Pearson’s price quotation or other written confirmation of Customer’s order, or subsequently requested by Customer and agreed to be performed by Pearson, provided that Pearson may, at its option, arrange for any such services to be performed by another entity on behalf of Pearson. Customer agrees to pay for such services at the rates and charges specified in Pearson’s pricing quotation which has been accepted by Customer, or at the rates otherwise agreed upon in writing by Customer and Pearson. Pearson reserves the right to require a purchase order or equivalent documentation from Customer prior to performing any services, or to require prepayment of certain services. Unless otherwise specified, all rates quoted are for services to be performed during Pearson’s normal business hours; additional charges may apply for evenings, weekends or holidays. The rates and charges specified in Pearson’s price quotation or otherwise mutually agreed upon in writing shall apply to those services

originally ordered; however, Pearson reserves the right to change service rates or other terms as a condition of entering into any subsequent service engagement.

2.2 Support and Service Packages. Pearson offers a variety of support and service options. If Customer purchases any support and/or service package offered by Pearson, Customer shall be entitled to the then-current benefits of such support and/or service package, subject to the terms of these Policies. Specific descriptions for any such support or services package are available upon request. Additional terms and/or restrictions may apply. For example, with certain training packages, Customer may be required to schedule consecutive training days; for other packages, Customer may be allowed to schedule training days consecutively or separately, subject to a cap on the total number of trips by Pearson to deliver the total number of days of training. In addition, the following terms apply to certain support or service offerings:

2.2.1 Call Center Support. For any offering that includes call center support services for Licensed Product (whether or not in addition to other services, such as on-site service), such call center support services are limited to Monday through Friday during Pearson's normal business hours, exclusive of Pearson holidays. Call center support services include a variety of methods of contact, including telephone, email and online "chat" support. Call center support services for Licensed Product are limited to teachers and administrative staff at the Licensed Sites. Call center support is not available to students, or to any home users (e.g., parents or guardians) for Licensed Product configurations that permit home usage. Call center support is limited to support for technical issues that Customer experiences in use of Licensed Product. Call center support is not a substitute for training and does not include instructional guidance in the use of Licensed Product.

2.2.2 Term. For a support package that includes call center support services only, or call center support services in conjunction with other benefits, the term of that support package will begin upon shipment of Licensed Product, if the support package is included with or being purchased simultaneously with the license of Licensed Product, and will continue for a period consistent with the fees paid by Customer. For renewals of such support packages, the term of the support package will be stated on Pearson's invoice, price quote or other documentation. If any professional services such as access to Internet-based training sessions are included in a support package, such services are available only during the support term for that package. For professional services (e.g., professional development or consulting services) that Customer orders that are not part of a call center support package, unless otherwise specifically provided in Pearson's price quotation, invoice or other written confirmation of Customer's order, all services must be scheduled and delivered within twelve (12) months after the placement of the order for services. Any unused services expire at the end of such twelve (12) month period.

2.2.3 Package Renewals. If Pearson offers to renew any support and/or service package and Customer agrees to renew such package, the support and/or other services that will be provided for the renewal period shall be consistent with Pearson's then-current description of such support and/or service package. The other terms of these Policies shall continue to apply, unless Pearson provides new terms and conditions to Customer at the time of renewal, in which case such new terms and conditions shall apply. Renewals shall be at Pearson's then-current rates.

2.2.4 Eligibility to Receive Fixes, Updates and Version Upgrades. Certain support packages include the right for Customer to receive Fixes and Updates to Licensed Product, and if Customer maintains such a support package, Customer will receive any Fixes and Updates released by Pearson for the applicable Licensed Product for which Customer maintains a support package. The SMS Plan is the only support package that includes the right to receive Version Upgrades. Other support plans for the SuccessMaker product do not include access to Version Upgrades. In addition, in no event will any support plan include access to new product offerings of Pearson. Customer acknowledges that, based on technology changes over time, Updates or Version Upgrades to Licensed Product may require changes to Customer's computing environment (hardware upgrades or availability of additional computing capacity; upgrades to new versions of operating systems, browsers or other system software; and the like). Customer is responsible for any associated upgrades or changes to its

hardware, operating systems or other technology that may be required to utilize any Update or Version Upgrade that Customer is provided under any support plan. Further, any eligibility of Customer to receive Updates under a support plan (and Version Upgrades, in the case of the SMS Plan) is limited to those portions of Licensed Product licensed by Customer. For example, if Customer licensed only a specified bundle of courses of the SuccessMaker software, Customer would be entitled to an Update only of those courses. Updates to the Licensed Product provided to Customer under any support plan, as well as Version Upgrades provided under the SMS Plan (if Customer maintains a subscription to the SMS Plan), are not incremental to the licenses already being used by Customer, but rather will replace licenses already in use. For example, a school with fifty (50) licenses covered by a support plan that receives an Update to those fifty (50) licenses will be entitled to use fifty (50) licenses of the updated version, not one hundred licenses (100) licenses in total of which fifty are the new version and fifty are the previous version.

2.2.5 Software Maintenance and Support Plan. Pearson offers a support plan for the Licensed Product that includes the right to receive Version Upgrades as well as Fixes and Updates. This support offering is called the Software Maintenance and Support Plan ("SMS Plan"). Other support offerings may also be available for the Licensed Product; only the SMS Plan, however, includes the right to receive Version Upgrades. If Customer subscribes to the SMS Plan for the Licensed Product, then Customer will receive, for the software licenses covered by the SMS Plan, all Version Upgrades (as well as Fixes and Updates) to the Licensed Product that are released by Pearson during the term of Customer's subscription to the SMS Plan. If Customer does not renew or otherwise discontinues its subscription to the SMS Plan at any time, then in order to resume the SMS Plan at a later date, Customer must either (a) pay all charges that would have been due under the SMS Plan for the period from the termination of Customer's subscription to the SMS Plan to the present plus a minimum 12-month subscription to the SMS Plan going forward (at Pearson's then-current rates for same), or (b) purchase the most current version of the applicable product at Pearson's then-current rates plus the then-current charges for a new subscription (minimum 12 months) to the SMS Plan. In addition to the right to receive Fixes, Updates and Version Upgrades, the SMS Plan includes call center support services as described in Section 2.2.1 of these Policies, access to Pearson's product support website, and access to Pearson's MyTrainingConnection website, which offers on-demand training through product tutorials and interactive webinars, as well as a library of training guides and other resources.

2.3 Expenses. In most cases, for the Licensed Products licensed under this Agreement, travel expenses are included in the fees for any on-site services provided by Pearson. However, for on-site services rendered in certain geographic areas, or if otherwise specified by Pearson in writing to Customer, these expenses are an additional charge, and in those situations, Customer shall, in addition to the fees charged for performance of services hereunder, pay Pearson for travel expenses, lodging, meals and other related expenses incurred in the performance of such services. All such additional charges will be due and payable concurrently with payment for services.

2.4 Support of Prior Releases or Versions. After the distribution of an Update or Version Upgrade of Licensed Product, support or other services will be available for the prior release or version only until the service "end-of-life" of such prior release or version, as determined by Pearson in its sole discretion; provided, however, that Pearson will continue to provide call center and/or email support for the prior release or version for a minimum of one (1) year after Pearson makes an Update or Version Upgrade available. Fixes and other code maintenance for prior releases or versions will be available only at Pearson's discretion.

2.5 Out-of-Scope Services. Any support or services requested by Customer that are outside the scope of any support or other service package to which Customer is entitled, or that are required as a result of Customer's failure to fulfill its responsibilities set forth in these Policies, will be subject to Pearson's standard time and materials or other rates for such services.

3. CUSTOMER RESPONSIBILITIES. For any package that includes support services for Licensed Product, to be eligible for such support services, Customer shall: (a) supply Pearson with sufficient information and data to reproduce any Error or problem that is the subject of a support request; (b) procure, install, operate and maintain computer systems and operating

systems that are compatible with the version of Licensed Product to be supported; (c) establish adequate operational back-up provisions in the event of malfunctions or errors; (d) maintain an operating environment free of any programming that might interfere with the functioning of Licensed Product as supplied by Pearson; (e) maintain hardware and system software consistent with Pearson's minimum requirements (including an anti-virus software package that Customer keeps up-to-date throughout the support period); and (f) have installed the most current release or version of Licensed Product, or a prior release or version supported under Section 2.4 of these Policies, as well as any Fixes made available to Customer by Pearson. In addition, Customer acknowledges that for support offerings that include on-site service, Customer shall first use best efforts to resolve the issue or problem via call center support; Pearson will not be obligated to dispatch a technician for on-site service unless Customer has followed Pearson's instructions and recommendations provided via call center support and such instructions and recommendations are insufficient to solve the problem. Customer acknowledges that, for support packages that include the right to receive Fixes, Updates and/or Version Upgrades, such Fixes, Updates and/or Version Upgrades may be made available electronically, via Pearson's online support website or otherwise. Customer must monitor Pearson's online support website regularly to check for the availability of Fixes, Updates and/or Version Upgrades. In addition, in some cases, Pearson may maintain e-mail distribution lists that are used to notify customers of the availability of Fixes, Updates and/or Version Upgrades, and to provide other information to customers that are maintaining a current support subscription. Customer shall be responsible for including the appropriate Customer personnel on any such e-mail distribution lists of Pearson so that Customer receives such notifications and other information.

4. ACCESS/FACILITIES. For any services that are to be performed on Customer's premises, Customer agrees to provide, at Customer's expense, utilities, work space and other on-site accommodations reasonably necessary to enable Pearson to perform such services, and shall provide unencumbered access to all servers, workstations and other equipment with respect to which such work is to be performed.

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

6. CANCELLATION. Once scheduled, any on-site service days may be cancelled only with the written consent of Pearson, and only upon payment of reasonable cancellation charges that take into account expenses already incurred and commitments made by Pearson