

## SCHOOLCITY CONTRACT AND SOFTWARE LICENSE AGREEMENT

This CONTRACT AND SOFTWARE LICENSE AGREEMENT is made and entered into as of **July 1, 2017** ("**Effective Date**") between **SCHOOLCITY INC.** ("**LICENSOR**"), a Delaware Corporation with its principal place of business located at 2900 Lakeside Drive, Suite 270, Santa Clara, CA 95054 and **CALEXICO UNIFIED SCHOOL DISTRICT** ("**LICENSEE**"), with offices located at 901 Andrade Ave. Calexico, CA 92231.

LICENSEE wishes to license LICENSOR's Software Programs. LICENSOR has agreed to provide such license services to LICENSEE, subject to the terms and conditions of this Agreement

### **1. DEFINITIONS**

- 1.1 "**Agreement**" means this Agreement, the Service Level Agreement (Appendix A) and all of the Exhibits.
- 1.2 "**Authorized User**" means a user of the Software Program, as identified by a unique user id.
- 1.3 "**Consulting Services**" means any consulting and development services performed by LICENSOR to implement and customize the Software Program or to provide any modifications, enhancements, integration with third party software, updates, training or other changes requested by LICENSEE, or any other features and functionality above, beyond and outside of the features and functionality of the Software Program, that is not addressed or foreseen within the terms and conditions of this Agreement. Consulting Services will be governed by and in accordance with the terms and conditions of a separate consulting agreement
- 1.4 "**LICENSOR's Software Programs**" include programs owned and developed by LICENSOR
- 1.5 "**LICENSEE Data**" means the proprietary information input into the Software Program's information fields by LICENSEE or Authorized Users in the course of using the Software Program.
- 1.6 "**Intellectual Property Rights**" means patent rights, copyright rights (including, but not limited to, rights in audiovisual works and moral rights), trade secret rights, and any other intellectual property rights recognized by the law of each applicable jurisdiction.
- 1.7 "**License Fees**" means the fees payable for the license granted pursuant to this Agreement, by LICENSEE to LICENSOR.
- 1.8 "**Maintenance and Support**" means any bug fixes, updates and upgrades that LICENSOR may provide or perform with respect to the Software Program, as well as any other support services provided to LICENSEE hereunder, all as further described in, pursuant to and governed by the Service Level Agreement (SLA), Appendix A.
- 1.9 "**Updates**" means permanent solutions developed for software errors that are incorporated from time to time in planned updates to the Software Program.
- 1.10 "**Upgrades**" shall mean new modules that adds new functionality not present in the Software Program or enhances existing functionality in the Software Program and that LICENSOR elects in its discretion to make available at additional cost to LICENSEE. Each Upgrade shall have a new decimal number identifying the version of the Software.
- 1.11 "**Third Party Software**" shall mean all software licensed to the LICENSOR as well as programs provided through a partnership agreement with another vendor.

### **2. LICENSE**

- 2.1. Subject to the terms and conditions of this Agreement and Exhibits, LICENSOR hereby grants LICENSEE a subscription based, non-exclusive, non-transferable license under LICENSOR's Intellectual Property Rights to allow Authorized Users to access to LICENSOR's Software Programs listed in **Exhibit A**.

### **3. OWNERSHIP**

- 3.1. LICENSEE acknowledges and agrees that LICENSOR's Software Programs are proprietary to LICENSOR, including all copies, regardless of media and will at all times remain the property of LICENSOR or its licensors as applicable. LICENSOR does not convey any proprietary interest in and to the Software Programs to LICENSEE and LICENSEE will have no right, title or interest therein other than the license rights set forth herein.
- 3.2. LICENSOR acknowledges and agrees that LICENSEE shall retain ownership of all LICENSEE's student and other data imported into the software during the life of this Agreement ("**LICENSEE's data**"). Upon the termination of this agreement, LICENSOR agrees to return the LICENSEE's data to the LICENSEE in the form of an industry standard data extract at no charge. LICENSOR shall remove and/or destroy the

LICENSEE's data from any and all LICENSOR's computer servers and systems within sixty (60) days of the date of termination.

#### **4. FEES AND EXPENSES**

- 4.1. LICENSEE shall pay any applicable subscription License Fees set forth in a LICENSOR generated invoice as per the **Exhibit A**. LICENSOR per-student License Fees are calculated by using the most current Student Enrollment numbers and multiplying by the per student license fee. LICENSOR per-site (school) License Fees are calculated by using the number of sites desired and multiplying by the per-site license fee. The Student Enrollment numbers and number of sites are set forth in **Exhibit B**.
- 4.2. Any fees for a particular month, including but not limited to License Fees and any Consulting Fees, are payable on or before the fifteenth day following the end of that month, or the month in which the applicable invoice was sent to LICENSEE by LICENSOR ("Due Date"). If LICENSOR has not received payment within thirty days (30) days after the Due Date, interest shall accrue on past due amounts at the rate of 1.5% per month or the maximum allowed by law, whichever is less, commencing on the due date and continuing until fully paid. .
- 4.3. Any custom programming or support required by LICENSEE from LICENSOR for any expansion, integration, maintenance or customization, which is not dealt with in this Agreement shall be considered Consulting Services pursuant to the fees and terms generally described in a separate agreement.

#### **5. DEPLOYMENT**

- 5.1. **Implementation:**
  - 5.1.1. **Hosting:** Access to LICENSOR's Software Programs will be provided via secure servers located at an off-site location. Hosting fees (if applicable) are described in **Exhibit A**.
  - 5.1.2. **User Participation:** LICENSEE's appropriate and authorized staff will have access to all LICENSOR Software Programs as set forth in **Exhibit A**.
  - 5.1.3. **Billing:** Invoices will be generated as described in **Exhibit A**.
- 5.2. **Support:** The support shall be as per the Service Level Agreement (SLA) in **Appendix A**.
- 5.3. **Training:** All training will be held at the District or School premises. Training material and equipment will be provided by the District. Training services (if applicable) are described in **Exhibit A**.
  - 5.3.1. **Cost and Group Size:** Each training session shall be limited to no more than 30 users. Additional training may be purchased as per pricing shown in **Exhibit A**.
- 5.4. **Division of Labor:** **Exhibit A** describes the scope of tasks that each party will generally be responsible for. Additional tasks not listed in this Exhibit will be addressed in the Statement of Work (SOW).
- 5.5. **Modification to LICENSOR Software Programs**
  - 5.5.1 Any modifications to LICENSOR Software Programs that pertain to this Agreement are set forth in **Exhibit A**.

#### **6. WARRANTY**

- 6.1. LICENSOR Software Programs. LICENSOR warrants that the LICENSOR Software Programs [shall be performed consistent with generally accepted industry standards] provided that, such warranty shall not apply to the extent any failure to perform that is caused by use of the LICENSOR Software Programs contrary to LICENSOR's instructions or modification or alteration of the LICENSOR Software Program by any party other than LICENSOR.
- 6.2. Curriculum Standards. THE LICENSOR contracts with Academic Benchmarks, Inc. to provide updated curriculum standards for Licensor's Software Program. Accordingly, the LICENSEE accepts the products, sites and services related to the curriculum standards provided by Academic Benchmarks Inc. "as is" and "as available" without any warranty whatsoever as to the performance or results licensee may obtain from use of the products, services or sites. Licensor makes no warranty that use of the products or services or access to the sites will be uninterrupted, timely, secure or error-free. Any content downloaded or otherwise obtained from the sites and any content aligned using the system is done at licensee's discretion and risk, and licensee will be solely responsible for any damage to licensee's computer system or loss of data that results from the download of any such content. LICENSOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ASSUMES THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE PRODUCTS, SERVICES AND SITES, THE CONTENT RECEIVED AS PART THEREOF AND THE CONSEQUENCES OF ANY ACTION TAKEN BY LICENSEE BASED UPON THE SAME.

- 6.3. Disclaimer. OTHER THAN THE EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT, LICENSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER MATTER. NO REPRESENTATION OR STATEMENT SHALL BE BINDING UPON LICENSOR AS A WARRANTY OR OTHERWISE UNLESS EXPRESSLY CONTAINED IN THIS AGREEMENT.

## **7. CONFIDENTIALITY**

- 7.1 Definition. By virtue of their activities in conjunction with this Agreement, the parties may have access to each other's Confidential Information. "**Confidential Information**," as used in this Agreement, means information that is proprietary or confidential and is either clearly labeled as such or identified as Confidential Information in Section 7.1 and 7.2 below, whether delivered by the disclosing party ("**Disclosing Party**") to the receiving party ("**Receiving Party**") before or after the Effective Date. The Parties agree that for purposes of this Agreement, Confidential Information shall include the following types of information:
- 7.1.1. All data, documents, materials, drawings and information marked "Proprietary" or "Confidential" by the Disclosing Party;
- 7.1.2 Student/Parent data, including Student/Parent lists, names of existing, past or prospective LICENSEE students, parents, faculty, staff or alumni and their representatives, data provided by or about prospective, existing or past Students/Parents/Grandparents of Students/Faculty/Staff/Alumni such as names addresses, phone numbers, financial information, grades, or other personal information.
- 7.2. Except for the information described in 7.1.2 above, a party's Confidential Information shall not include information that: (a) is or becomes publicly known through no act or omission of the Receiving Party; (b) was in the Receiving Party's lawful possession prior to the disclosure; (c) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; (d) is disclosed by the Disclosing Party to third parties, without restriction on disclosure; or (e) is independently developed by the Receiving Party, which independent development can be shown by written evidence.
- 7.3 Return of Confidential Information. The Receiving Party will either, at its option, return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party or the expiration or termination of this Agreement, whichever comes first. Upon the written request of the Disclosing Party, the Receiving Party will certify in writing that it has fully complied with its obligations under this Section 7

## **8. TERM AND TERMINATION**

- 8.1. Term. The term (the "Term") of this Agreement shall commence on the Effective Date and continue for up to three (3) years. Thereafter, LICENSEE shall have the option to renew this Agreement for subsequent successive one-year periods. LICENSOR reserves the right to increase or decrease the license fees for each of the successive one-year periods. LICENSOR will provide LICENSEE with sixty (60) days prior written notice of pricing changes if they occur. Notwithstanding the above, LICENSEE may terminate this Agreement upon the first or any subsequent successive anniversary of the Effective Date with no penalty; provided that, LICENSEE provides LICENSOR at least sixty (60) days prior written notice thereof.
- 8.2. Termination for Breach. If a party is in material breach of this Agreement (the "Defaulting Party"), and the Defaulting Party does not remedy that breach or default within thirty (30) calendar days after receipt from the other party of written notice of breach, the non-defaulting party shall after the expiration of such thirty (30) calendar day period have the right to terminate the Agreement. Termination of this Agreement shall be without prejudice to any other rights or remedies that the non- defaulting party may have in law.
- 8.3 Termination for Force Majeure. Neither party shall be liable for any default in its obligations under the Agreement resulting from causes beyond its reasonable control (an "Event of Force Majeure") which shall include without limitation, acts of God, embargoes, governmental restrictions, strikes, riots, wars or other military action, civil disorders, rebellion, fires, floods, vandalism by any third parties, external sabotage, or other uncontrollable acts by any third parties.
- 8.4 Use of Proprietary Programs. Upon termination of this Agreement, the LICENSEE shall discontinue the use of the LICENSOR's Software Programs and Third Party Software and uninstall and remove all programs and applications provided under this Agreement from their systems.

## **9. INDEMNIFICATION**

- 9.1. Indemnification. Except as provided in Section 6 (Warranty), LICENSEE assumes sole responsibility for use of the LICENSOR Software Program by LICENSEE and Authorized Users, including all results

obtained from, and conclusions drawn from, such use. LICENSEE shall be solely responsible for the determination, application, enforcement, liability or defense of any terms and conditions of any agreement it decides to enter into with Authorized Users or any other third party. LICENSOR shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to LICENSOR by LICENSEE in connection with the Delivery of the Software Program, the Consulting Services or any actions taken by LICENSOR at LICENSEE's direction.

## **10. LIMITATION OF LIABILITY**

10.1. EXCEPT FOR BREACH OF THE PROVISIONS IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS OR REVENUE, BUSINESS INTERRUPTION, OR COST OF SUBSTITUTED FACILITIES, EQUIPMENT OR SERVICES, OR OTHER ECONOMIC LOSS, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER ANY CLAIM FOR RECOVERY IS BASED ON THEORIES OF CONTRACT, NEGLIGENCE OR TORT (INCLUDING STRICT LIABILITY).

10.2. Notwithstanding the foregoing provision, in case of a breach of the Warranty, Licensee's exclusive remedy is as follows: Licensee will return all copies of the Software to Licensor, at Licensee's cost, along with proof of purchase. At Licensor's option, Licensor will either send Licensee a replacement copy of the Software, at Licensor's expense, or issue a full refund.

## **11. GENERAL**

11.1. Other Projects. This Agreement shall not prevent LICENSOR from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services that are similar to those provided hereunder.

11.2. Privacy Law. With regard to this Agreement, LICENSOR and LICENSEE agree to abide by the No Child Left Behind Act Publication 107-110, Family Educational Rights and Privacy Act (FERPA). LICENSOR's Privacy Policy can be found on its public website at [www.schoolcity.com](http://www.schoolcity.com).

11.3. Governing Law. This Agreement and all matters arising out of or relating to this Agreement shall be governed by the laws of the State of California, excluding its conflict of law provisions.

11.4. Jurisdiction. Any legal action or proceeding relating to this Agreement shall be exclusively instituted in a state court in Santa Clara County, California, or in a federal court in the Northern District of California.

11.5. Waiver. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

11.6. Severability. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

11.7. Change Process. Upon written notice to LICENSOR, LICENSEE may modify, change or add to the services without impairing, affecting or voiding this Agreement. A "Change Request Form" (CRF) will be the vehicle for communicating change. A CRF that has been signed by all parties will become an automatic amendment to this Agreement. Any changes may incur additional cost.

11.8. Survival. The parties agree that their respective obligations under Sections 1 (Definitions), 3 (Ownership), 4 (Fees and Expenses), 6 (Warranty), 7 (Confidential Information), 8 (Term and Termination), 9 (Indemnification), 10 (Limitation of Liability), 11 (General) and 12 (Third Party Provisions) will survive any termination of this Agreement.

11.9. Applicability of third party provisions. If the LICENSEE does not avail the use of any Third Party Software, the provisions and references to Third Party Software shall not apply to the LICENSEE.

## **12. Third Party Provisions**

12.1. The LICENSOR has been granted licenses to distribute certain third-party software. As a condition of those licenses, the LICENSOR is required to distribute the software subject to specific terms and conditions, which may be different from or additional to those contained in this Agreement. The current applicable provisions are provided herein:

12.2. INSPECT™ Item Bank

12.2.1. LICENSE GRANT: The LICENSEE is hereby granted a limited, non-exclusive, non-transferable right and license to access and use the Item Bank within the State in which the LICENSEE is organized, authorized and resides (the "Licensee Territory") to provide noncommercial access and use of any or all of the items from Key Data Systems' ("KDS") Identifying Needs: Standards Proficiency Exams for California Teachers

(referred to herein as the “Item Bank” or individual items, materials associated with the items such as reading passages and graphics, and scoring materials from the Item Bank as “Items”) to students registered within the Licensee’s schools/districts for the sole purpose of performing formative assessments of those students (the “License”). The LICENSEE is strictly prohibited from using or promoting any Items in the Item Bank as high stakes assessments. All rights, licenses and privileges not expressly granted to the Licensee under the License will remain exclusive to KDS. Without limiting the generality of the foregoing, the LICENSEE acknowledges that KDS retains all rights under copyright and all other intellectual property rights in and to the Item Bank, all Items included therein and all modifications and derivative works created there from. The LICENSEE’S rights to access and use the Item Bank, the Items and all modifications and derivative works thereof shall terminate upon the earlier of (i) termination of the agreement between the LICENSEE and LICENSOR granting this License, or (ii) termination of LICENSOR’S right and license to distribute the Item Bank. LICENSEE acknowledges that use the Item Bank, the Items and all modifications and derivative works thereof after termination of the License is strictly prohibited and would constitute infringement of KDS’ proprietary rights.

- 12.2.2. Pursuant to the License, the LICENSEE acknowledges and agrees that certain Items in the Item Bank may include material licensed by third parties to KDS (“Third Party Content”) and that KDS’ rights in and to such Third Party Content may expire or otherwise terminate during the term of the License. Any rights in and to Third Party Content will at all times be limited and subject to KDS’ rights in and to the respective Third Party Content, notwithstanding anything to the contrary in the LICENSEE’S agreement with LICENSOR. Throughout the term of the License KDS will have the right, at its sole discretion, to modify the Item Bank, and to delete, and require the deletion by the Licensee, of specific Items and/or passages from the Item Bank.
- 12.2.3. KDS REPRESENTATIONS, WARRANTIES AND LIMITATIONS OF LIABILITY. KDS represents that it has the right to grant this License. KDS MAKES NO WARRANTY WHATSOEVER, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INFRINGEMENT, TITLE. KDS IS NOT RESPONSIBLE FOR THE VALIDITY, FAIRNESS OR QUALITY OF ASSESSMENTS THAT ARE ULTIMATELY PREPARED BY THE LICENSEE USING THE ITEM BANK. KDS WILL HAVE NO RESPONSIBILITY WITH RESPECT TO ANY USE OF THE ITEM BANK OR ANY ITEMS (A) TO THE EXTENT THAT ANY ITEMS HAVE BEEN MODIFIED WITHOUT PRIOR WRITTEN APPROVAL BY KDS OR (B) FOR ANY PURPOSE OTHER THAN FOR FORMATIVE STUDENT ASSESSMENTS OR (C) FOR FAILURE TO USE THE ITEMS OR ITEM BANK IN ACCORDANCE WITH THE LICENSE OR THE LICENSEE’S AGREEMENT WITH LICENSOR. KDS IS NOT RESPONSIBLE FOR THE CONTENT, ACCURACY, COMPLETENESS OR ADEQUACY OF ANY STATE STANDARDS ACCESSIBLE THROUGH THE COVERED PLATFORM.
- 12.2.4. KDS will have no liability under the LICENSEE’S agreement with LICENSOR. In no event shall KDS be liable for consequential, incidental, punitive or other indirect damages. FURTHERMORE, NOTWITHSTANDING ANYTHING CONTAINED IN THE AGREEMENT TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL KDS BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY DAMAGES IN EXCESS OF THE FEES PAID TO KDS BY OR ON BEHALF OF THE LICENSEE PURSUANT TO THE LICENSE OR THE LICENSEE’S AGREEMENT WITH LICENSOR DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING SUCH CLAIM.
- 12.3. GradeCam™ Software
  - 12.3.1. The LICENSEE shall not reproduce, copy, modify, translate, decompile, disassemble, or reverse engineer any component of the GradeCam™ Software (a proprietary software owned by GradeCam Corporation), whole or in part to create Derivative Work of any component. For the purpose of this clause, “Derivative Work” shall mean any derivative work (the term “derivative work” being used in the same meaning as in United States Copyright Act of 1976, as amended) that is based on one or more pre-existing works of the GradeCam™ Software.
  - 12.3.2. The LICENSEE shall, within 30 days of the termination of this Agreement or the termination of the agreement between the LICENSOR and GradeCam Corporation (the notice of which shall be given to the LICENSEE by the LICENSOR), whichever is earlier, uninstall the GradeCam™ Software plugin and provide information of such uninstallation within ten (10) days of such uninstallation.
- 12.4. Any use of Third Party Software used by the LICENSEE which shall be returned to the LICENSOR in the time and manner specified for such Third Party Software in Section 12 (Third Party Provisions) of this Agreement.

**In Witness Whereof**, the parties have caused this Agreement to be signed by their duly authorized representatives.

**SCHOOLCITY, INC.**  
**(LICENSOR)**

**CALEXICO UNIFIED SCHOOL DISTRICT**  
**(LICENSEE)**



Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: Vaseem Anjum

Name: \_\_\_\_\_

Title: President/CEO

Title: \_\_\_\_\_

Date: June 1, 2017

Date: \_\_\_\_\_

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Processing Instructions:

1. **District should send a signed original and a valid Purchase Order document to SchoolCity.**
  - a. Documents can be faxed to (650) 963-3293 or emailed to [contracts@schoolcity.com](mailto:contracts@schoolcity.com).
2. **District should remit payment (as per the SchoolCity Invoice) to the address below**
  - a. SchoolCity Inc., 2900 Lakeside Drive, Suite 270, Santa Clara, CA 95054, Attn: Contracts

## APPENDIX A SCHOOLCITY SERVICE LEVEL AGREEMENT

The SchoolCity CustomerFirst Support Program (CFSP) provides our valued customers with ongoing technical support, enhancements and new versions of our products as they are released in the market. This Service Level Agreement ("SLA") is an agreement between SchoolCity Inc. (LICENSOR) and (LICENSEE) under the terms and conditions specified in this document and applicable amendments or appendices.

LICENSOR and the LICENSEE hereby agree that the following terms and conditions shall govern the delivery of support services by LICENSOR to LICENSEE under the LICENSOR CFSP with respect to applicable LICENSOR products ("Products") as set forth in **Exhibit A**:

1. **SLA Objectives and Effective Date:** This SLA outlines the parameters of all services covered as they are mutually understood by the parties. This SLA shall be effective on the date of signing of this Agreement by the parties.
2. **Support Process:** LICENSOR will provide direct (level 1) technical support under this SLA to LICENSEE's technical and district/administration staff. LICENSEE will provide direct (level 1) technical support under this SLA to LICENSEE's school staff (teachers, principals etc.). Support such as on-site assistance and support, end user training is not covered under this SLA and may be purchased under a separate Consulting agreement or on a time and materials basis by LICENSEE.
3. **Services Provided:** The service provided to LICENSEE includes support for LICENSOR products licensed to LICENSEE.
4. **Exclusions.** LICENSOR shall not be required to provide any services relating to problems arising out of (i) LICENSEE or Authorized User's use of the Products in a manner for which they were not designed, (ii) LICENSEE or Authorized User's negligence, lack of training, lack of follow up by LICENSEE technical staff, trained staff turnover at the LICENSEE or with LICENSEE's Authorized Users, misuse or modification of the Products, (iii) versions of Products other than the most recent released version, or (iv) LICENSEE provides erroneous, outdated or incomplete data.
5. **Term and Termination.** This SLA shall terminate immediately upon the termination of the Agreement.
6. **Warranty and Disclaimer.** LICENSOR will use reasonable commercial, industry level efforts to provide the Services under this Agreement in a professional manner; LICENSOR cannot guarantee that every question or problem raised by the LICENSEE or the LICENSEE's technical staff will be resolved. Nothing in this Agreement shall be construed as expanding or adding to the warranty for the LICENSOR Software Program in the Agreement.
7. **LIMITATION OF LIABILITY.** LICENSOR'S LIABILITY UNDER THIS SLA IS LIMITED TO THE AMOUNTS PAID BY LICENSEE FOR THE SERVICES ORDERED BY LICENSEE FOR THIS SUPPORT AGREEMENT. IN NO EVENT SHALL LICENSOR HAVE ANY LIABILITY FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF DATA, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE OF EQUIPMENT OR FACILITIES, OR INTERRUPTION OF BUSINESS, ARISING IN ANY WAY OUT OF THIS SERVICE AGREEMENT UNDER ANY THEORY OF LIABILITY, WHETHER OR NOT LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
8. **Additions.** Any changes to this SLA shall be communicated to the LICENSEE in writing and such changes will be governed by the terms of this SLA.
9. **LICENSOR Responsibilities:** LICENSOR agrees to
  - (a) Resolve problems with LICENSOR products and notify LICENSEE of resolutions to problems in a timely manner, as set forth in the Response and Resolution Target section of this SLA for further information.
  - (b) Maintain procedures to monitor and verify LICENSOR's performance under the CFSP and LICENSEE satisfaction. Maintain a log of LICENSEE feedback, observations, suggestions and complaints.
  - (c) Provide advance notice to LICENSEE of scheduled software and hardware maintenance.
10. **LICENSEE Responsibilities:** LICENSEE agrees to:
  - (a) Send LICENSOR a clear description of the perceived performance issue, defect or software bug in writing (or symptom of defect).

- (b) Provide reasonably conclusive evidence that the problem is (or is highly likely) caused by a LICENSOR product or service, including, if deemed necessary by LICENSOR, a test case that reproduces the defect.
- (c) Provide the operating system setup, browser version and other pertinent information such as other applications running on the specific computer on which the software defect or bug was observed, screen shots of the perceived software bug, all data and files needed for LICENSOR to re-create the perceived software bug.
- (d) Make available to LICENSOR a qualified and responsive engineer or user capable of executing tests or trials remotely, and communicating additional facts or properties, as may be needed from time to time, to assist LICENSOR in diagnosing and resolving the problem.

**11. Policies and Procedures:**

- (a) LICENSOR will provide support for software as specified in **Exhibit A**. Software and hardware not specified in Exhibit A and or in the License Agreement are not covered.
- (b) LICENSOR will be available via telephone and email during regular business hours, 4:00 AM to 5:00 PM (Pacific), Monday through Friday, excluding predetermined holidays.
- (c) A good faith, industry acceptable effort will be made to resolve issues as expeditiously as possible.
- (d) Problem prioritization is the mutual responsibility of LICENSEE and LICENSOR.

**12. RESPONSE AND RESOLUTION TARGETS:**

Service	Definition	Response
<b>Scheduled</b>	Routine maintenance and software updates. These should be requested by email or by phone.	Response within 2 business days. Resolution within 5 business days.
<b>Expedited</b>	Problems for which solutions exist. These can be requested by email or phone.	Response within 8 business hours. Resolution within 2 business days if resolvable by LICENSOR.
<b>Emergency</b>	Outages involving critical software or hardware. These can be requested by email or phone.	Response within 2 business hours. Resolution within 4 business hours if resolvable by LICENSOR.

- 13. Absent specific prioritization and other considerations, LICENSOR will respond to requests for assistance in the general order that they are received and will make every effort within the timeframes listed above. Please note that integrated software and content provided by third parties may take longer and be dependent on the 3<sup>rd</sup> party's resolution.
- 14. LICENSOR values all of its customers. Problem resolution commitments are based on LICENSOR's best efforts. In some cases LICENSOR may make exceptions to accommodate customer needs, but these will be evaluated on a case-by-case basis.
- 15. **Escalation:** In the event that a full solution to a LICENSEE problem cannot be provided in a time frame acceptable to the LICENSEE, the LICENSEE may escalate the problem. It is LICENSOR's objective to be an excellent partner, and it may be possible to reprioritize requests based on special needs, circumstances, or business opportunities. The LICENSEE may request that the Support Manager escalate their issue to the President, and Chief Executive Officer.
- 16. **Support Contact Information:** Support Phone: **800-615-0254 (toll free)**, Email: [support@schoolcity.com](mailto:support@schoolcity.com)
- 17. **Fees:** All fees are as set forth in **Exhibit A**.
- 18. In the event of a conflict between the terms of the Agreement and the terms of this SLA with respect to the provision of services contemplated under this SLA, the terms of this SLA shall control.



## **APPENDIX B**

### **CALIFORNIA ASSEMBLY BILL NO. 1584 COMPLIANCE**

As of January 1, 2015, the California State Assembly enacted a new law, AB No. 1584, Education Code, Section 49073.1 addressing privacy of pupil records. Appendix B is SchoolCity's response to the requirements listed in AB No. 1584. SchoolCity's current Privacy Policy can also be viewed by going to [www.schoolcity.com](http://www.schoolcity.com).

#### **California Assembly Bill No. 1584 Provisions**

1. A statement that pupil records continue to be the property of and under the control of the school district.
  - a. SchoolCity complies with this provision.
  - b. SchoolCity ensures that pupil records are the property of and under the control of the school district or local education agency. See also paragraph 3.2 of the SchoolCity License Agreement.
2. A description of the means by which pupils may retain possession and control of their own pupil-generated content, if applicable, including options by which a pupil may transfer pupil-generated content to a personal account.
  - a. SchoolCity complies with this provision.
  - b. Contact SchoolCity with requests to 800-343-6572, or [info@schoolcity.com](mailto:info@schoolcity.com).
3. A prohibition against the third party using any information in the pupil record for any purpose other than those required or specifically permitted by the contract.
  - a. SchoolCity complies with this provision.
  - b. SchoolCity prohibits using any student information for any purpose outside those required or permitted by contract.
4. A description of the procedures by which a parent, legal guardian, or eligible pupil may review personally identifiable information in the pupil's records and correct erroneous information.
  - a. SchoolCity complies with this provision.
  - b. Contact SchoolCity with requests to 800-343-6572, or [info@schoolcity.com](mailto:info@schoolcity.com).
5. A description of the actions the third party will take, including the designation and training of responsible individuals, to ensure the security and confidentiality of pupil records.
  - a. SchoolCity complies with this provision.
  - b. SchoolCity ensures that staff are trained and systems are in place to provide required security and confidentiality of student records.
6. A description of the procedures for notifying the affected parent, legal guardian, or eligible pupil in the event of an unauthorized disclosure of the pupil's records.
  - a. SchoolCity complies with this provision.
  - b. In the unlikely case of an unauthorized disclosure of student records, SchoolCity will make every effort to notify the affected parents or legal guardian.
7. A certification that a pupil's records shall not be retained or available to the third party upon completion of the terms of the contract and a description of how that certification will be enforced. (NOTE: These requirements do not apply to pupil-generated content if the pupil chooses to establish or maintain an account with the third party for the purpose of storing that content either by retaining possession and control of their own pupil-generated content, or by transferring pupil-generated content to a personal account).
  - a. SchoolCity complies with this provision.
  - b. SchoolCity ensures that student data is destroyed after completion of the terms of our contract.
  - c. It is SchoolCity policy to remove and/or destroy student data (pupil records) from any and all SchoolCity computer servers and systems within sixty (60) days of the date of termination. See also paragraph 3.2 of the SchoolCity License Agreement.
8. A description of how the district and the third party will jointly ensure compliance with the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g).
  - a. SchoolCity complies with this provision.
  - b. See SchoolCity's Privacy Policy posted at [www.schoolcity.com](http://www.schoolcity.com)
9. A prohibition against the third party using personally identifiable information in pupil records to engage in targeted advertising.
  - a. SchoolCity complies with this provision.
  - b. It is SchoolCity policy not to sell, trade, or rent personal identification information in student records to anyone outside our organization.

See SchoolCity's Privacy Policy posted at [www.schoolcity.com](http://www.schoolcity.com)

## EXHIBIT A: COST

<b>District Name:</b>	<b>Calexico Unified School District</b>	<b>Effective Date:</b>	<b>7/1/2017</b>
<b>Student Count:</b>	<b>9,252</b>	<b>Renewal Date:</b>	<b>7/1/2018</b>
<b>School Count:</b>	<b>11</b>	<b>LEA Type:</b>	<b>Unified K-12</b>
<b>County:</b>	<b>Imperial</b>	<b>State Code:</b>	<b>1363099</b>

Proposed Products and Services	Rate	Units	Total
SchoolCity SUITE Assessment Software and Item Bank	\$6.00	9,252 students	\$55,512
Onsite Product Training	\$2,000	5 days	\$10,000
Product License and Service Renewal Fees			<b>\$65,512</b>

### Notes:

1. Travel fees for training are per FTE and included in per day pricing (2 day consecutive minimum)
2. Unless otherwise stated, this agreement supersedes any previous proposals or agreements, modifications may affect pricing.

### Modules and Services Included:

- **SchoolCity SUITE Assessment Software and Item Bank** includes assessment creation, online delivery, plain-paper scanning, item bank repository, educational resources, analysis & reporting, GradeCam™ Software LITE, ongoing maintenance, applicable upgrades, customer support and SaaS vendor hosting services.
- **Inspect® Item Bank** includes items covering ELA, Math, Science & SS. The bank also include premade interim and summative assessments covering ELA, and Math content areas.

### Modules Not Included (additional cost)

- *Navigate Assessment Item Bank™ (formerly FAIB)*
- *RapidResponse Assessments*
- *GradeCam™ Third-party document camera scanning software*

## EXHIBIT B: STUDENT ENROLLMENT BY SCHOOL AND DISTRICT

The list below represents the school sites to be included under the Agreement, the associated student enrollment for each and a total for the district. The enrollment data is based on the most recent state enrollment data. The student count will be reviewed annually during the renewal period. Current numbers are used in calculating annual license fees.

Count	School Sites	State Code
1	Aurora High (Continuation)	1332154
2	Blanche Charles Elementary	6106975
3	Calexico High	1332204
4	Cesar Chavez Elementary	113985
5	Dool Elementary	6008346
6	Enrique Camarena Jr. High	112318
7	Jefferson Elementary	6008361
8	Kennedy Gardens	6099485
9	Mains Elementary	6008387
10	Rockwood Elementary	6008379
11	William Moreno Junior High	6111587
	<b>Total School Count- 11</b> <b>Total Student Count- 9,252</b>	

Source Used for Enrollment: Dataquest (CBEDS) 2016-2017 report  
School(s) Excluded from License: None, all schools are included