

# INFINITE CAMPUS END USER LICENSE AGREEMENT

This Infinite Campus End User License Agreement (“Agreement”) is made between Infinite Campus, Inc., a Minnesota corporation located at 4321 109<sup>th</sup> Ave NE, Blaine, MN 55449-6794 (“Company”) and **Board of Education of Township High School District 214**, with offices located at 2121 S. Goebbert Road, Arlington Heights, IL 60005 (“Licensee”).

## RECITALS

- A. Company has developed certain proprietary student information software and as updated and revised by Company from time to time (the “Infinite Campus Product”), and Company has licenses from third parties or developed other products and services as offered by Company and as amended by Company from time to time (the “Infinite Campus Additional Products”). The Infinite Campus Product, and the Infinite Campus Additional Products are collectively referred to as the “Infinite Campus Products”;
- B. Company or a Company authorized service provider provides certain services for the Infinite Campus Products, including software implementation services, software maintenance services, training services, product support services, technical support services and application hosting services (the “Infinite Campus Services”);
- C. Company and Licensee desire to enter into this Agreement for the purpose of facilitating the licensing of certain Infinite Campus Products, and delivery of certain Infinite Campus Services, subject to the terms and conditions of this Agreement.

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

## 1.0 Grant of License

- 1.1 Type of License. Subject to the terms and conditions hereof, Company agrees to grant Licensee a non-exclusive, non-transferable, non-sublicensable, non-perpetual, right and license to the Infinite Campus Products and the related documentation (“Documentation”) identified on the Order and Pricing Schedule(s) attached hereto. Licensee shall install and use the Infinite Campus Products and the Documentation solely for its own internal use and for the purposes for which such Infinite Campus Products and Documentation were designed.
- 1.2 Initial Term and Fees. Upon the Term Start Date indicated on the duly executed Order and Pricing Schedule(s) attached hereto, Company shall provide Licensee with the Infinite Campus Products and Infinite Campus Services and any associated Documentation (defined as users’ manuals, reference guides, programmers’ guides and/or system guides, as applicable) as indicated on the Order and Pricing Schedule(s). The fees for the licenses shall be valid from the Term Start Date until twelve months thereafter (the “Initial Term”).
- 1.3 Recurring Annual Fees. Following the Initial Term, for each 12-month period thereafter (the “Subsequent Term”), Licensee shall pay annual fees according to the then current license fees for the licensed Infinite Campus Products (the “Recurring Annual Fees”). Company shall review the number of students enrolled as certified by the state in which the Licensee resides, and, in the event that the total number of enrolled students has increased or decreased, Company may increase or decrease the Recurring Annual Fees according to the then current fees for the licensed Infinite Campus Products and Services.

## 2.0 Ownership and Protection of Infinite Campus Products

- 2.1 Title: Ownership. Licensee acknowledges that the Infinite Campus Products; all source code, object code, class libraries, user interface screens, algorithms, development frameworks, repository, system designs, system logic flow, and processing techniques and

procedures related thereto; the Documentation, any system user documentation, or other documentation related thereto; any copies and derivatives of any of the foregoing, in whole or in part; as well as all copyright, patent, trademark, trade secret and other proprietary rights in any of the foregoing; are and shall remain the sole and exclusive confidential property of Company or Company licensor. Licensee further acknowledges that any reports or other data generated by the Infinite Campus Products regarding traffic flow, feature use, system loads, product installation, and/or similar information, are the exclusive property of Company and may be used, and Licensee hereby specifically authorizes the use of such reports and/or other data, by Company in any manner that it deems to be appropriate.

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

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

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

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

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

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

2.3 Confidentiality. Licensee agrees that the Infinite Campus Products contain proprietary information, including trade secrets, know-how and confidential information that are the exclusive property of Company or Company licensor. During the period this Agreement is in effect and at all times after its termination, Licensee and its employees and agents shall maintain the confidentiality of this information and not sell, license, publish, display, distribute, disclose or otherwise make available this information to any third party nor use such information other than to inform permitted users of the conditions and restrictions on the use of the Infinite Campus Products or the Documentation set, and to the extent permitted by law, Licensee will not disclose the terms and conditions of this Agreement without the prior written consent of Company.

### **3.0 Payment**

3.1 Payment Terms. Licensee shall pay Company or Company's Authorized Channel Partner the Fees as provided in the Order and Pricing Schedule(s) attached hereto.

3.2 Taxes. All amounts set forth for payment are exclusive of applicable sales and similar taxes and it shall be Licensee's responsibility to add to the amounts payable, and to pay all such taxes, if applicable.

### **4.0 Indemnification; Warranties**

4.1 Indemnifications

4.1.a If Licensee notifies Company in writing and gives Company sole control over the defense and all related settlement negotiations, Company will defend, hold harmless and indemnify Licensee against any damages finally awarded or amounts paid in settlement as a result of any claim or threat of claim brought by a third party against Licensee to the extent based on an allegation that: (i) Products for which Licensee has licensed from Company infringes any U.S. patent,

copyright, trademark, trade secret or other proprietary right of a third party, or (ii) a defective Product directly caused death or personal injury; provided that Licensee did not alter, modify, or otherwise change the Product or software that gave rise to such claim.

- 4.1.b To the extent permitted by law, Licensee will defend, hold harmless and indemnify Company against any claim or threat of claim brought by a third party against Company arising out of the acts or omissions of Licensee or its employees, excluding acts or omissions expressly required or prescribed by this Agreement.
- 4.1.c If either party seeks indemnification provided for in this Section, each party seeking indemnification will cooperate with and provide reasonable assistance in the defense or settlement of any claim or legal proceeding. Licensee and Company will not make public any terms, or the mere existence, of any settlements.
- 4.1.d THE FOREGOING STATES THE ENTIRE LIABILITY AND OBLIGATION OF COMPANY WITH RESPECT TO ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT BY THE INFINITE CAMPUS PRODUCTS OR ANY PART THEREOF, OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT.

#### 4.2 Warranties

- 4.2.a Operational Warranty. Company warrants that, during the ninety (90) day period (the "Warranty Period") commencing on the delivery date of the Infinite Campus Product to Licensee, the Infinite Campus Products will operate in substantial conformity with the Documentation when used in strict compliance therewith. This warranty is contingent upon Licensee's installation of all corrections, enhancements, updates and new releases provided by Company to Licensee and the absence of damage or abuse to the Infinite Campus Products.
- 4.2.b Breach of Operational Warranty. Notwithstanding the foregoing, Licensee acknowledges that it is solely responsible for having the appropriate compatible network(s) and operating system environment(s), and as Licensee's sole and exclusive remedy for any breach of this warranty, Company shall, at its sole option, within a reasonable period of time, provide all reasonable programming services to correct programming errors in the Infinite Campus Products, replace the Infinite Campus Products or terminate this Agreement and refund to the Licensee the license fees paid to Company under this Agreement for the defective Infinite Campus Products, as set forth in section 6.2(c) of this agreement, refunding the unamortized portion (assuming straight line amortization) of the annual license fees paid. Any professional services provided under this Agreement are provided "as is" without representation or warranty of any kind or nature.
- 4.2.c Limitation. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH 4, COMPANY MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES OF QUALITY OR PERFORMANCE, OR AS A RESULT OF A COURSE OF DEALING OR USAGE OF TRADE, WITH RESPECT TO THE INFINITE CAMPUS PRODUCTS AND ANY MAINTENANCE, SUPPORT OR OTHER SERVICES.

#### 5.0 **Limitations of Liability**

EXCEPT TO THE EXTENT INCLUDED IN AN AWARD SUBJECT TO COMPANY'S INDEMNITY OBLIGATION, IN NO EVENT WILL COMPANY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE, SUCH AS LOST BUSINESS PROFITS. COMPANY'S TOTAL LIABILITY WILL BE LIMITED TO THE LICENSE FEES ACTUALLY PAID BY LICENSEE TO INFINITE CAMPUS FOR THE APPLICABLE

INFINITE CAMPUS PRODUCTS, SUBJECT HOWEVER TO A TWELVE (12) MONTH STRAIGHT LINE DEPRECIATION COMMENCING ON THE DATE OF DELIVERY OF SUCH INFINITE CAMPUS PRODUCTS.

## **6.0 Agreement Term and Termination**

- 6.1 Agreement Term. The term of this Agreement (the "Agreement Term") shall begin Jul 26, 2021 ("Effective Date"), and shall remain in effect until terminated pursuant to Section 6.2.
- 6.2 Agreement Termination. This Agreement may be terminated as follows:
- 6.2.a either party may terminate this Agreement, with or without cause, with no less than thirty (30) days written notice.
  - 6.2.b either party may terminate this Agreement if one party's actions expose the other party to any violation of law and fails to cure such actions within 15 days of notice thereof;
  - 6.2.c either party may terminate this Agreement and any other active agreement with the other party if the other party fails to fully perform any material obligation under this Agreement with thirty (30) days to cure;
  - 6.2.d notwithstanding the foregoing, if the Licensee violates the provisions of Sections 2.0 of this Agreement the Company may terminate this Agreement immediately without notice.

In the event of termination of this Agreement by the Company pursuant to Section 6.2(a) prior to an anniversary date the Company shall refund the unamortized portion (assuming straight line amortization) of the annual license fees paid. In the event of termination of this Agreement by the Company pursuant to Sections 6.2(b), 6.2(c) or 6.2(d) prior to an anniversary date, the Company shall be entitled to prepaid license fees for the balance of the year of termination.

In the event of termination of this Agreement by the Licensee pursuant to Section 6.2(a) prior to an anniversary date the Company shall be entitled to prepaid license fees for the balance of the year of termination. In the event of termination of this Agreement by the Licensee pursuant to Section 6.2(b) or 6.2(c) Company shall refund the unamortized portion (assuming straight line amortization) of the annual license fees paid.

## **6.3 Responsibilities in the Event of Termination.**

- 6.3.a Upon any termination of this Agreement and/or the license to use any Infinite Campus Products, Licensee shall cease to use the Infinite Campus Products and shall return to Company the Infinite Campus Products and all copies thereof and all proprietary and confidential property of Company. Licensee shall expunge all copies of the Infinite Campus Products from its computer(s) and server(s). Failure to comply with this Section shall constitute continued use of the Infinite Campus Products. Licensee shall provide a certificate from an officer of Licensee stating compliance with this Section. Company shall also have such other legal and equitable rights and remedies to which it may be entitled with respect to Licensee's failure to comply with the provisions of this Agreement.
- 6.3.b Upon 90 business days following the termination of this Agreement, or sooner at the request of the Licensee, Company warrants that the original and all copies of Licensee information, educational records and pupil records as such terms are defined by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99, "FERPA"), and any other State or Federal law relating to the protection of confidential student information, will be returned to the Licensee or destroyed in such a manner that such information cannot be read, executed, viewed or in any way accessed when destroyed. Nothing herein, however, prohibits Company from continuing to possess and use any reports or other data

generated by the Infinite Campus Products or Infinite Campus Services regarding traffic flow, feature use, system loads, product installation, and/or similar information.

- 6.4 **No Liability for Termination.** Except as provided for in this Agreement, neither party shall be liable to the other for damages of any kind, including incidental or consequential damages, damages for loss of prospective business or loss of continuing business, or otherwise which arise due to the expiration or termination of this Agreement. This does not relieve either party from responsibility for damages caused by its actions or breaches of the Agreement, but only for damages related to or resulting from the expiration or termination of the business relationship.
- 6.5 **Survivorship.** Those sections that by their nature survive expiration or termination of this Agreement will survive such expiration or termination.

## **7.0 Software Support**

Licensee agrees to the terms and conditions of the Computer Information Concepts, Inc. Licensed Product Agreement, which is set forth separately. Licensee shall be billed for the Computer Information Concepts, Inc. services for maintenance and support of the Infinite Campus Products, as described in Computer Information Concepts, Inc. Licensed Product Agreement, in accordance with the payment terms set forth therein.

## **8.0 Application Hosting**

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

## **9.0 Training, Data Conversion and Project Management Services**

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

## **10.0 General Terms and Conditions**

- 10.1 **Assignment.** Licensee shall not, voluntarily or involuntarily, sublicense, sell, assign, give or otherwise transfer this Agreement. Any such transfer or attempted transfer shall be null and void. Company has the right to assign or otherwise transfer its rights and obligations under any of this Agreement, whether voluntarily, involuntarily, or by operation of law.
- 10.2 **Governing Law.** This Agreement will be governed and interpreted under the laws of the state of Minnesota, U.S.A, without regard to its conflict of laws provisions. Any action arising out of or related to this Agreement must be brought within one (1) year from the first date such action could have been brought, despite any longer period provided by statute. If a longer period is provided by statute, the parties hereby expressly waive it.
- 10.3 **Amendments; Waiver.** This Agreement shall not be amended or modified except in writing by duly authorized representatives of the parties that refer specifically to this Agreement. The failure of either party to enforce at any time or for any period of time the provisions hereof shall not be construed to be a waiver of such provisions or of the right to enforce each and every such provision.
- 10.4 **Severability.** If a court of competent jurisdiction holds that any provision of this Agreement is invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect, and the parties will replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the original intent of the parties and economic effect of the Agreement.
- 10.5 **Headings and Construction.** Paragraph headings are for reference only and will not be

considered as parts of this Agreement. Wherever the singular is used, it includes the plural, and, wherever the plural is used, the singular is included.

- 10.6 Force Majeure. Except for the obligation to make payments, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, acts of terrorism, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the actions or inactions of Company), provided that the delayed party: (i) gives the other party prompt notice of such cause, and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.
- 10.7 Entire Agreement. This Agreement supersedes all previous agreements and representations of, between or on behalf of the parties in regard to the subject matter herein. Any document, instrument, or agreement issued or executed contemporaneous or subsequent to this Agreement shall not alter the terms and conditions of this Agreement. This Agreement contains all of Company's and Licensee's agreements, warranties, understandings, conditions, covenants and representations in regard to the subject matter herein. Neither Company nor Licensee will be liable for any warranties, understandings, conditions, covenants or representations not expressly set forth or referenced in this Agreement. Licensee acknowledges that Company reserves the right to refuse any different or additional provisions in purchase orders, invoices or similar documents, and such refused provisions will be unenforceable.
- 10.8 Notices. Any notice under this Agreement must be in writing and will be deemed given upon the earlier of actual receipt or ten (10) days after being sent by first class mail, return receipt requested, to the address set forth below for Company and to the address designated on page one (1) of this Agreement by Advocate for receipt of notices, or as may be provided by the parties.

Infinite Campus, Inc.  
Sales Contracts Management  
4321 109<sup>th</sup> Ave NE  
Blaine, MN 55449-6794

Board of Education of Township High  
School District 214  
Tony Schlorff  
2121 S. Goebbert Road  
Arlington Heights, IL 60005

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

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

10.9.a. In the course of providing services during the term of this Agreement, Company may have access to student education records that are subject to FERPA. Such information is considered confidential and is protected. To the extent that Company has access to "education records" under this Agreement, it is deemed a "school official," as each of these terms are defined under FERPA. Company shall use education records only for the purposes of fulfilling its duties under this Agreement. In order to continuously improve the products and services it provides hereunder, Company may use anonymized or de-identified, non-PII data, as well as seek input from the Licensee and its employees regarding use of the Infinite Campus Products and Infinite Campus Services. Except as required by law or court order, Company shall not disclose or share education records with any third party unless:

(i) permitted by the terms of this Agreement, (ii) directed to do so, in writing, by Licensee, or (iii) to subcontractors who have agreed to maintain the confidentiality of the education records to the same extent required of Company under this Agreement.

- 10.9.b. In the event any third party seeks to access education records that are subject to FERPA beyond the access that is provided to Company affiliated individuals for purpose of providing the services under the Agreement, whether said third party request is in accordance with FERPA or other Federal or relevant State law or regulations, Company shall immediately inform Licensee of such request in writing, if it is allowed to do so. Company shall not provide direct access to such data or information or respond to said third party requests, unless compelled to do so by court order or lawfully issued subpoena from any court of competent jurisdiction. Should Company receive a court order or lawfully issued subpoena seeking the release of such data or information, Company shall provide immediate notification, along with a copy thereof, to Licensee prior to releasing the requested data or information, if allowed by law or judicial and/or administrative order/subpoena.
- 10.9.c. If Company experiences a security breach concerning any education record covered by this Agreement, Company shall immediately notify Licensee and take immediate steps to limit and mitigate such security breach to the extent possible. The Parties agree that any material breach by Company of the confidentiality obligation set forth in this Agreement may, at Licensee's discretion, result in cancellation of this Agreement and the eligibility for Company to receive any information from Licensee for a period of not less than five (5) years. The Parties further agree to indemnify and hold each other harmless for any loss, cost, damage or expense suffered by the non-breaching Party, including but not limited to the cost of notification of affected persons, as a direct result of the breaching Party's unauthorized disclosure of education records that are subject to FERPA, or any other confidentiality/privacy provision, whether federal, state or administrative in nature.
- 10.9.d. Upon termination of this Agreement, Company shall return and/or destroy all education records that it received from Licensee hereunder as, and in accordance with, Section 6.3.b of this Agreement. Company shall not knowingly retain copies of any education records received from Licensee once Licensee has directed Company as to how such information shall be returned and/or destroyed. Furthermore, Company shall ensure that it disposes of any and all education records received from Licensee in a commercially reasonable manner that maintains the confidentiality of the contents of such records (e.g. shredding paper records, erasing and reformatting hard drives, erasing and/or physically destroying any portable electronic devices).
- 10.10 Export Rules. Licensee agrees that the Infinite Campus Products will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Infinite Campus Products are identified as export controlled items under the Export Laws, Licensee represents and warrants that Licensee is not a citizen, or otherwise located within, an embargoed nation (including without limitation Iran, Iraq, Syria, Sudan, Libya, Cuba, North Korea and Serbia) and that Licensee is not otherwise prohibited under the Export Laws from receiving the Infinite Campus Products. All rights to use the Infinite Campus Products under this Agreement are granted on the condition that such rights are forfeited if Licensee fails to comply with the terms of this Section 10.10.
- 10.11 U.S. Government End-Users. Each component licensed under this Agreement that constitute the Infinite Campus Products and Services is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or

“commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all end users acquire the Infinite Campus Products and Services with only those rights set forth herein.

- 10.12 Electronic Signatures; Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document shall be deemed (a) to be “written” or “in writing,” (b) to have been signed and (c) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, “electronic signature” means a manually signed original signature that is then transmitted by electronic means; “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a “pdf” (portable document format) or other replicating image attached to an e mail message; and, “electronically signed document” means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.
- 10.13 Purchase of Online Registration. by agreeing to purchase Online Registration, Licensee is also agreeing to use Infinite Campus Digital Repository Services whose terms are governed by the terms and conditions linked here: [Digital Repository Services: Terms of Service.](#)

**IN WITNESS WHEREOF**, this Infinite Campus End User License Agreement has been executed by the duly authorized representative of Company and Licensee.

Infinite Campus, Inc.

Board of Education of Township  
High School District 214

By:   
Stephanie Svoboda (Jul 26, 2021 12:27 CDT)

Name: Stephanie Svoboda

Its: Authorized Signer

By: 

Name: Anthony Schlorff

Its: Director of Technology Services



# EXHIBIT A

## CLOUD HOSTING SERVICES AGREEMENT

### 1.0 Reference to Agreement

This Cloud Hosting Services Agreement is subject to and incorporates all of the provisions stated in the End User License Agreement between **Infinite Campus, Inc.**, ("**Company**") and **Board of Education of Township High School District 214**, ("**Licensee**") as of the Effective Date.

### 2.0 Initial Term and Fees

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

### 3.0 Recurring Annual Fees

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

### 4.0 Services

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

#### 4.1 Included Services

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

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

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

- The Microsoft Software is neither sold nor distributed to Licensee and Licensee may use it solely in conjunction with the Infinite Campus Services.
- Licensee may not transfer or use the Microsoft Software outside the Infinite

Campus Services.

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

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

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

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

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

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

#### 4.2 Excluded Services

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

### 5.0 **Availability of Services**

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

#### 5.1 Downtime

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

## 5.2 Advance Notice

Company shall provide twenty-four (24) hour advance notice to Licensee in the event of any scheduled Downtime.

## 6.0 **Security**

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

- (a) firewall protection of the Remote Data Center;
- (b) maintenance of independent archival and backup copies of the Infinite Campus Products and Licensee Content; and
- (c) protection from network attack or other malicious harmful or disabling data, work, code or program.

## 7.0 **Change Management**

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

7.1.a Change Management Procedures will in all cases provide for the following:

- (a) advance notification to the Licensee of the Change Event, its nature and expected timetable;
- (b) pre-testing of changes in Company or Licensee non-Production testing environments; and
- (c) coordination of the implementation of the Change Event with the Licensee.

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

## 8.0 **Licensee Proprietary Rights**

8.1 Licensee Content. Licensee shall be solely responsible for providing, updating, uploading and maintaining the Site and any and all files, pages, data, works, information and/or materials on, within, displayed, linked or transmitted to, from or through the Site, including without limitation, trade or service marks, images, photographs, illustrations, graphics, audio clips,

video clips, e-mail or other messages, metatags, domain names, software and text (the "Licensee Content"). The Licensee Content shall also include any registered domain names provided by Licensee or registered on behalf of Licensee in connection with the Cloud Hosting Services.

- 8.2 Grant of Use. In consideration of Company's satisfactory performance of all obligations of this Agreement, for the term of this Agreement, Licensee grants to Company a nonexclusive, worldwide and royalty-free "Grant of Use" to copy, display, use and transmit on and via the Internet the Licensee Content, **solely for the benefit of Licensee** and in accordance with Company's performance or enforcement of this Agreement. Nothing herein, however, prohibits Company from continuing to possess and use any reports or other data generated by the Infinite Campus Products or Infinite Campus Services regarding traffic flow, feature use, system loads, product installation, and/or similar information.
- 8.3 Alterations. Except as provided herein, in the Agreement, or by law, Company may not alter, modify, change, remove or disable access to all or any portion of the Site or Licensee Content stored on the Server.
- 8.4 Ownership of Licensee Content. Company acknowledges that the Licensee Content is owned solely by the Licensee. Within five (5) days of any termination of the Agreement, Licensee shall remove or request that the Company remove on a fee-for-service basis all Licensee Content from Infinite Campus Products.
- 8.5 Warranty of Licensee. Licensee warrants that the Site and Licensee Content do not and shall not contain any content, materials, data, work, trade or service mark, trade name, link, advertising or services that violate any applicable law or regulation or infringe or misappropriate any proprietary, intellectual property, contract or tort right of any person; and Licensee owns the Licensee Content and all proprietary or intellectual property rights therein, or has express written authorization from the owner to copy, use and display the Licensee Content on and within the Site.
- 8.6 Disclosure. Company may not disclose Licensee Content to any third party except: (i) its employees, consultants, and subcontractors who need access to such information and solely for purposes of providing services to Licensee under the Agreement, provided that such recipients are bound by confidentiality provisions no less restrictive than those set out in the Agreement; (ii) to the extent it was already capable of being known by or in the possession of the third party without restriction on use or disclosure; or (iii) to the extent compelled to do so by court order or lawfully issued subpoena from any court of competent jurisdiction, provided that Company shall provide immediate notification, along with a copy thereof, to Licensee prior to releasing the requested data or information, if allowed by law or judicial and/or administrative order/subpoena
- 8.7 Hold Harmless. Licensee will defend and hold harmless Company against any claim or threat of claim brought by a third party against Company to the extent based on an allegation that Licensee Content infringes any U.S. patent, copyright, trademark, trade secret or other proprietary right of a third party.

## Amendment to the Infinite Campus END USER LICENSE AGREEMENT

This Amendment (the "Amendment") to the Infinite Campus End User License Agreement (the "EULA"), is made between Infinite Campus, Inc. (the "Company") and **Board of Education of Township High School District 214** (the "Licensee") (each a "Party" and collectively "the Parties") and amends the agreement between the Parties titled End User License Agreement.

**NOW, THEREFORE**, the Parties agree as follows:

**Amendment to Section 6.3.b** Section 6.3.b to the End User License Agreement (EULA) is hereby deleted. Section 6.3.b, below, becomes Section 6.3.b to the EULA, as here amended.

6.3.b Upon 90 business days following the termination of this Agreement, or sooner at the request of the Licensee, Company warrants that the original and all copies of Licensee information, educational records and pupil records as such terms are defined by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99, "FERPA"), and any other State or Federal law relating to the protection of confidential student information, will be returned to the Licensee or destroyed in such a manner that such information cannot be read, executed, viewed or in any way accessed when destroyed. Nothing herein, however, prohibits Company from continuing to possess and use any reports or other data generated by the Infinite Campus Products or Infinite Campus Services regarding traffic flow, feature use, system loads, product installation, and/or similar information. At the request of Licensee, Company shall provide a certificate from an officer of Company stating compliance with this Section. Licensee shall also have such other legal and equitable rights and remedies to which it may be entitled with respect to Company's failure to comply with the provisions of this Agreement.

**Addition of Section 10.14 Data Protection Addendum.** The language below is added as Section 10.14 to the Agreement:

10.14 Data Protection Addendum. Addendum 1 (Data Protection Addendum) is attached and incorporated herein by reference.

Infinite Campus, Inc.

Board of Education of Township High School District 214

By:   
Stephanie Svoboda (Jul 26, 2021 12:27 CDT)

By: 

Name: Stephanie Svoboda

Name: Anthony Schlorff

Its: Authorized Signer

Its: Director of Technology Services

**Addendum 1**  
**Data Protection Addendum**

This Data Protection Addendum is attached to and forms a part of the Infinite Campus End User License Agreement (“EULA”), by and between **Board of Education of Township High School District 214** (“District”) and Infinite Campus, Inc. (“Infinite Campus”). This Addendum supersedes the Agreement by adding to, deleting from and modifying the Agreement as set forth herein. To the extent any such addition, deletion or modification results in any conflict or inconsistency between the Agreement and this Addendum, this Addendum shall govern and the terms of the Agreement that conflict with this Addendum or are inconsistent with this Addendum shall be of no force or effect. In consideration of the mutual covenants, promises, understandings, releases and payments described in the Agreement and this Addendum, the Parties agree to amend the Agreement by adding the following language:

**1. Definitions**

1.1 “*Designated Representative*” means District or Infinite Campus employees as specified on Schedule 1 to whom all notices required in this Addendum will be sent.

1.2 “*District Data*” means any Personally Identifiable Information, Record, Education Record and all Personally Identifiable Information included therein or derived therefrom that is not intentionally made generally available by the District on public websites or publications but is made available directly or indirectly by the District to Infinite Campus or that is otherwise collected or generated by Infinite Campus in connection with the performance of the Services. District Data includes any and all “covered information” as that term is defined in Section 5 of SOPPA (105 ILCS 85/5), and District Data shall constitute “school student records” as that term is defined in Section 2 of ISSRA (105 ILCS 10/2(d)).

1.3 “*De-identified Data*” means District Data from which all Personally Identifiable Information and attributes about such data, have been permanently removed so that no individual identification can be made.

1.4 “*Education Records*” means records, files, documents and other materials that: (a) contain information directly related to a student; and (b) are maintained by the District, or by a party acting for the District such as Infinite Campus.

1.5 “*End User*” means individuals authorized by the District to access and use the Services provided by the Infinite Campus under the EULA.

1.6 “*Incident*” means a suspected, attempted, or imminent threat of unauthorized access, use, disclosure, breach, modification, disruption or destruction to or of District Data.

1.7 “*Mine District Data*” means the act of searching through, analyzing, accessing, or extracting District Data, metadata, or information not necessary to accomplish the Services or purpose(s) of this Agreement for the benefit of the District.

1.8 “*Personally Identifiable Information*” or “*PII*” means information and metadata that, alone or in combination, is linked or linkable to a specific student so as to allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. Personally identifiable information includes but is not limited to: (a) the student’s name; (b) the name of the student’s parent or other family members; (c) the address or phone number of the student or student’s family; (d) personal identifiers such as the student’s state-assigned student identifier, social security number, student number or biometric record; (e) indirect identifiers such as the student’s date of birth, place of birth or mother’s maiden name; and (f) demographic attributes, such as race, socioeconomic information, and gender.

1.9 “*Record*” means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

1.10 “*Securely Destroy*” means to remove District Data from Infinite Campus’ systems, paper files, records, databases, and any other media regardless of format, in accordance with the standard detailed in National Institute of Standards and Technology (“NIST”) SP 800-88 Guidelines for Media Sanitization so that District Data is permanently irretrievable in Infinite Campus’ and its Subcontractors’ normal course of business.

1.11 “*Security Breach*” means an event in which District Data is exposed to unauthorized disclosure, access, alteration or use or a system configuration that results in a documented unsecured disclosure, access, alteration or use, in a manner not permitted in this Addendum, which poses a significant risk of financial, reputational or other harm to the affected End User or the District.

1.12 “*Services*” means any goods or services acquired by the District from the Infinite Campus, including computer software, mobile applications (apps), and web-based tools accessed by End Users through the Internet or installed or run on a computer or electronic device.

1.13 “*Subcontractor*” means Infinite Campus’ employees, subcontractors or agents, identified on Schedule 2, as updated by Infinite Campus from time to time in accordance with the requirements of this Addendum, who Infinite Campus has engaged to enable Infinite Campus to perform its obligations under the EULA.

1.14 “*Student Profile*” means a collection of PII data elements relating to a student of the District.

## **2. Rights and License in and to District Data**

The District owns all rights, title, and interest in and to District Data. The District hereby grants to Infinite Campus a limited, nonexclusive license to use District Data and De-identified Data solely for the purpose of performing its obligations specified in the EULA or as otherwise permitted by the Agreement. Infinite Campus shall have no rights, title, or interest implied or otherwise, to District Data or De-identified Data, except as expressly stated in the Agreement.

## **3. Data Privacy**

3.1 Use of District Data. Infinite Campus shall use District Data only for the purpose of performing the Services and fulfilling its duties under the EULA.

3.2 Prohibited Uses of District Data. With the exception of De-identified Data that the District has agreed in writing to allow Infinite Campus to use as specified in Section 3.5, Infinite Campus shall not:

3.2.1 Use, sell, rent, transfer, distribute, alter, mine, or disclose District Data (including metadata) to any third party without the prior written consent of the District, except as required by law;

3.2.2 Use District Data for its own commercial benefit, including but not limited to, advertising or marketing of any kind directed toward children, parents, guardians, or District employees, unless such use is specifically authorized by this Agreement or otherwise authorized in writing by the District;

3.2.3 Use District Data in a manner that is inconsistent with Infinite Campus’ privacy policy;

3.2.4 Use District Data to create a Student Profile other than as authorized or required by the District to perform the Services; and

3.2.5 Store District Data outside the continental United States unless Infinite Campus has given the District Designated Representative advance written notice of where and how the servers are housed, managed, and secured, and that the security standards required herein can be achieved.

3.3 Qualified FERPA Exception. If Infinite Campus will have access to Education Records, Infinite Campus acknowledges that, for the purposes of this Agreement, pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and its implementing regulations, 34 C.F.R. Part 99 (“FERPA”), it will be designated as a “school official” with “legitimate educational interests” in the District Education Records and PII disclosed pursuant to the EULA, and Infinite Campus agrees to abide by the FERPA limitations and requirements imposed on school officials. Infinite Campus will use the Education Records only for the purpose of fulfilling its duties under the EULA. Infinite Campus is performing an institutional service for which the school would otherwise use employees, is under the direct control of the District, for District’s and its End Users’ benefit and shall not share District Data with or disclose it to any third party except as provided for in the Agreement, as required by law, or if authorized in writing by the District. Infinite Campus warrants and represents that during the five-year period preceding the Effective Date of this Agreement, it has not been found in violation of FERPA by the Family Policy Compliance Office.

3.4 Subcontractor Use of District Data. To the extent necessary to perform its obligations specified in the EULA, Infinite Campus may disclose District Data to Subcontractors pursuant to a written agreement, specifying the purpose of the disclosure and providing that: (a) Subcontractor shall not disclose District Data, in whole or in part, to any other party; (b) Subcontractor shall not use any District Data to advertise or market to students or their parents/guardians; (c) Subcontractor shall access, view, collect, generate and use District Data only to the extent necessary to assist Infinite Campus in performing its obligations specified in the EULA; (d) at the conclusion of its/their work under its/their subcontract(s) Subcontractor shall, as directed by the District through Infinite Campus, Securely Destroy all District Data in its/their possession, custody or control, or return such District Data to the District, at the election of the District; (e) Subcontractor shall indemnify the District in accordance with the terms set forth in Section 10 herein below; and (f) Subcontractor shall utilize appropriate administrative, physical and technical safeguards in accordance with industry standards and best practices to secure District Data from unauthorized disclosure, access and use. Infinite Campus shall ensure that its employees and Subcontractors who have access to District Data have undergone appropriate background screening, including Criminal Records Search, (County), SSN Death Master Search, Sex Offender Registry Search, and Smart Scan, and possess all needed qualifications to comply with the terms of this Addendum.

3.5 Use of De-identified Data. Infinite Campus may use De-identified Data for purposes of research, the improvement of Infinite Campus’ products and services, and the development of new products and services. In no event shall Infinite Campus or Subcontractors re-identify or attempt to re-identify any De-identified Data or use De-identified Data in combination with other data elements or De-identified Data in the possession of a third-party affiliate, thereby posing risks of re-identification.

3.6 Privacy Policy Changes. Prior to making a material change to Infinite Campus’ privacy policies, Infinite Campus shall send District’s Designated Representative written notice, which includes a clear explanation of the proposed changes.

#### **4. Data Security**

4.1 Security Safeguards. Infinite Campus shall store and process District Data in accordance with commercial best practices, including implementing appropriate administrative, physical, and technical safeguards that are no less rigorous than those outlined in SANS Top 20 Security Controls, as amended, to secure such data from unauthorized access, disclosure, alteration, and use. Infinite Campus shall ensure that all such safeguards, including the manner in which District Data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with all applicable federal and state data protection and privacy laws, regulations and directives, as well as the terms and conditions of this Addendum. Without limiting the foregoing, and unless expressly agreed to the contrary in writing, Infinite Campus warrants that all electronic District Data will be encrypted in transmission and at rest in accordance with NIST Special Publication 800-53, as amended.



4.2 Risk Assessments. Infinite Campus shall conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.

4.3 Audit Trails. Infinite Campus shall take reasonable measures, including the availability of Data Change Tracker functionality (if purchased), to protect District Data against deterioration or degradation of data quality and authenticity.

4.4 Verification of Safeguards. Upon District's written request, Infinite Campus shall provide or make available to the District for review, the following, verifying Infinite Campus' administrative, physical and technical safeguards are in compliance with industry standards and best practices: (1) a third-party network security audit report, or (2) certification from Infinite Campus indicating that an independent vulnerability or risk assessment of the Infinite Campus' data security program has occurred.

## **5. Security Incident and Security Breach**

5.1 Security Incident Evaluation. In the event of an Incident, Infinite Campus shall follow industry best practices to fully investigate and resolve the Incident and take steps to prevent developments that may result in the Incident becoming a Security Breach at Infinite Campus' expense in accordance with applicable privacy laws.

5.2 Response. Immediately upon becoming aware of a Security Breach, or a complaint of a Security Breach, Infinite Campus shall notify the District Designated Representative in writing as set forth herein, fully investigate the Security Breach, cooperate fully with the District's investigation of and response to the Security Breach, and use commercially reasonable efforts to prevent any further Security Breach at Infinite Campus' expense in accordance with applicable privacy laws. Except as otherwise required by law, Infinite Campus shall not provide notice of the Security Breach directly to individuals whose Personally Identifiable Information was involved, to regulatory agencies, or to other entities, without first providing written notice to the District's Designated Representative.

5.3 Security Breach Report. If the District reasonably determines that Infinite Campus has committed a Security Breach, then the District may request Infinite Campus to submit, within seven (7) calendar days from discovery of such breach, a written report, and any supporting documentation, identifying (i) the nature of the Security Breach, (ii) the steps Infinite Campus has executed to investigate the Security Breach, (iii) what District Data or PII was used or disclosed, (iv) who or what was the cause of the Security Breach, (v) what Infinite Campus has done or shall do to remediate any deleterious effect of the Security Breach, and (vi) what corrective action Infinite Campus has taken or shall take to prevent a future Incident or Security Breach. The District reserves the right to require Infinite Campus to amend its remediation plans.

5.4 Effect of Security Breach. Upon the occurrence of a Security Breach caused by inadequacies in Infinite Campus' security systems, procedures, and or firewalls, the District may terminate this Agreement in accordance with District policies. The District may require Infinite Campus to suspend all Services, pending the investigation and successful resolution of any Security Breach, and Infinite Campus may be required to reimburse District all amounts paid for any period during which Services were not rendered, as provided herein. Infinite Campus acknowledges that, as a result of a Security Breach, the District may also elect to disqualify Infinite Campus and any of its Subcontractors from future contracts with the District. These provisions do not go into effect as a result of a Security Breach caused by the District or an individual user who self-compromises their own PII or user credentials.

5.5 Liability for Security Breach. In addition to any other remedies available to the District under law or equity, Infinite Campus shall reimburse the District in full for all costs incurred by the District in investigation and remediation of any Security Breach caused by Infinite Campus or Infinite Campus' Subcontractors, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract.

## **6. Response to Legal Orders, Demands or Requests for Data**

Note: In this section, when referring to data, it refers to data that is not customarily available to the district through the Student Information System. In most cases, the District will be able to access the data it needs as part of normal operations of the Student Information System.

6.1 Received by Infinite Campus. Except as otherwise expressly prohibited by law, Infinite Campus shall immediately notify the District of any subpoenas, warrants, other legal orders, or demands or requests received by Infinite Campus seeking District Data; consult with the District regarding its response; cooperate with the District's reasonable requests in connection with efforts by the District to intervene and quash or modify the legal order, demand or request; and, upon the District's request, provide the District with a copy of its response.

6.2 Received by District. If the District receives a subpoena, warrant, or other legal order, demand or request seeking District Data maintained by Infinite Campus, the District will promptly notify Infinite Campus and, within two (2) business days, excluding national holidays, Infinite Campus shall supply the District with copies of the District Data for the District to respond. If the requested data is so large that it cannot be reasonably compiled and provided within 2 days, the Infinite Campus shall inform the District of the reasons why the data cannot be compiled and provided within 2 days and how long it will take under reasonable conditions and at what cost to the District.

6.3 Parent Request. If a parent, legal guardian or student contacts the District with a request to review or correct District Data or PII, pursuant to FERPA, the District will promptly notify Infinite Campus' Designated Representative and Infinite Campus shall use reasonable and good faith efforts to assist the District in fulfilling such requests, as directed by the District, within ten calendar (10) days after receipt of District's notice with standard fees applied. Conversely, if a parent, legal guardian or student contacts Infinite Campus with a request to review or correct District Data or PII, within ten calendar (10) days after receipt of such notice, Infinite Campus shall promptly notify the District and shall use reasonable and good faith efforts to assist the District in fulfilling such requests, as directed by the District.

6.4 Access to District Data. District shall have the right to access and retrieve any or all District Data stored by or in possession of Infinite Campus upon written notice to Infinite Campus' Designated Representative. If another timeline for response is provided herein, then that, more specific, deadline shall control. Otherwise, Infinite Campus shall make the District Data available to the District within seven (7) calendar days from the date of request.

## **7. Compliance with Applicable Law**

7.1 School Service Contract Providers. If Infinite Campus provides a "school service," which is defined as an Internet website, online service, online application or mobile application that: (a) is designed and marketed primarily for use in a preschool, elementary school or secondary school; (b) is used at the direction of District teachers or other District employees; and (c) collects, maintains or uses District Data or PII, then Infinite Campus is a "school service contract provider" under the Act. To the extent not previously provided, within ten (10) calendar days after signing this Addendum, Infinite Campus shall provide to the District in a format acceptable to the District or that is easily accessible through Infinite Campus' website in language easily understandable to a layperson: (a) the data elements of District Data or PII that Infinite Campus collects, generates or uses pursuant to the EULA; (b) the educational purpose for which Infinite Campus collects and uses the District Data; (c) Infinite Campus' policies regarding retention and disposal of District Data; (d) how Infinite Campus uses, shares or discloses the District Data; and (e) statement whether Infinite Campus' EULA has ever been terminated by another school district for failure to comply with the same or substantially similar security obligations as those set forth herein. Infinite Campus shall update this information as necessary to maintain accuracy. District reserves the right to terminate this Agreement, as specified in Section 8, should the District receive information after the Effective Date that significantly modifies Infinite Campus' representations made in this Section 7.1.

7.2. Children's Online Privacy and Protection Act. In performance of the Services required by

the EULA, if Infinite Campus collects personal information (as defined in the Children's Online Privacy and Protection Act of 1998, 5 U.S.C. 6501 to 6505, and its implementing regulations) from children under thirteen (13) years of age, Infinite Campus warrants, represents, and covenants that such collection is and shall be for the use and benefit of the District and for no other commercial purpose. Infinite Campus has provided District with full notice of its collection, use, and disclosure practices.

7.3 Compliance with Laws. Infinite Campus warrants that it will abide by all applicable laws, ordinances, rules, regulations, and orders of all governmental agencies or authorities having jurisdiction over the Services including but not limited to: COPPA; FERPA; the Health Insurance Portability and Accountability Act, 45 C.F.R. Part 160.103, and Health Information Technology for Economic and Clinical Health Act, Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 U.S.C. 6809; Payment Card Industry Data Security Standards; Protection of Pupil Rights Amendment, 20 U.S.C. 1232h, 34 C.F.R. Part 98; Americans with Disabilities Act, and Federal Export Administration Regulations.

## **8. Termination**

8.1 Term. This Addendum will become effective when the Infinite Campus has executed this Addendum ("Effective Date"). Subject to Sections 8.2 and 12.3, this Addendum will automatically terminate without any further action of the Parties upon the termination or expiration of the EULA between the Parties or successful completion of the Services. Alternatively, upon re-execution of the EULA by the authorized persons of District and Infinite Campus, this Addendum shall also be revived and be of full force and effect.

### **8.2 Termination by the District.**

8.2.1 The District may immediately terminate the EULA in accordance with District policies if, at any time, the District determines in its sole discretion, that Infinite Campus has breached any of the requirements of this Addendum.

8.2.2 The District may terminate the EULA if District receives information that Infinite Campus has failed to comply with the same or substantially similar security obligations as set forth herein with another school district.

8.2.3 The District may terminate the EULA if the District receives information after execution of this Addendum, that any of Infinite Campus' representations or warranties have substantially changed after execution of this Addendum, including but not limited to the terms of Infinite Campus' privacy policy.

## **9. Data Transfer Upon Termination or Expiration**

9.1 Destruction or Return of District Data. With the exception of De-identified Data that District has specifically agreed in writing to allow Infinite Campus to use after termination or expiration of this Agreement, or District Data for which Infinite Campus has specifically obtained consent from the parent, legal guardian or student to keep, within thirty (30) calendar days after termination or expiration of this Agreement, Infinite Campus shall ensure that all District Data and PII that Infinite Campus collected, generated or inferred pursuant to the EULA ("EULA Data"), is securely returned or Securely Destroyed, as directed by the District. In the event that the District requests destruction, Infinite Campus agrees to Securely Destroy all District Data and EULA Data that is in its possession and cause its Subcontractors to Securely Destroy all District Data and EULA Data that is in the possession of any Subcontractors. If the District requests return, Infinite Campus shall securely return all District Data and EULA Data to the authorized person specified by the District, using the methods requested by the District, in its discretion, including any applicable fees charged to the District by the Infinite Campus. Infinite Campus shall promptly certify in writing to District that such District Data and EULA Data has been disposed of or returned securely.

9.2 Transfer and Destruction of District Data. If the District elects to have all District Data or EULA Data that is in Infinite Campus' possession or in the possession of Infinite Campus' Subcontractors transferred to a third party designated by the District, such transfer shall occur within a reasonable period

of time but no later than thirty (30) calendar days after expiration or termination of this Agreement, and without significant interruption in service or access to such District Data. Infinite Campus shall work closely with such third-party transferee to ensure that such transfer/migration uses facilities and methods are compatible with the relevant systems of the District or its transferee, and to the extent technologically feasible, that the District will have reasonable access to District Data during the transition. District will pay all costs associated with such transfer, unless such transfer is as the result of termination of this Agreement following Infinite Campus' breach of the terms of this Agreement. Upon successful transfer of District Data, as confirmed in writing by the District's Designated Representative, Infinite Campus shall Securely Destroy all District Data in accordance with Section 9.1.

9.3 Response to Specific Data Destruction or Return Requests. Infinite Campus shall Securely Destroy or return any specific District Data or EULA Data that is in its possession or in the possession of its Subcontractors within five (5) business days, excluding national holidays, after receiving a written request from the District.

## **10. Indemnification**

Infinite Campus shall indemnify and hold District and its directors, employees, board members and agents from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, award, penalties, fines, costs or expenses, including attorneys' fees, the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers, arising out of or resulting from any third-party claim against District or its directors, employees, board members and agents arising out of or resulting from Infinite Campus' failure to comply with any of its obligations under Sections 3, 4, 5, and 9 of this Addendum. These indemnification duties shall survive termination or expiration of this Agreement.

## **11. Miscellaneous**

11.1 No End User Agreements. In the event that Infinite Campus enters into terms of use agreements or other agreements or understandings, whether electronic, click-through, verbal or in writing, with End Users, the Parties agree that in the event of a conflict between the terms of any such agreement and this Addendum, the terms of this Addendum and the Agreement, in that order of precedence, shall control.

11.2 Public Inspection of Agreement. Infinite Campus acknowledges and agrees that this Agreement and all documents Infinite Campus provides District as required herein, are public records for purposes of SOPPA and shall at all times be subject to public inspection.

11.3 Survival. Infinite Campus' obligations under Sections 3, 4, 5, 6, 9, and 10, and any other obligations or restrictions that expressly or by their nature are to continue after termination, shall survive termination of this Agreement for any reason until all District Data has been returned or Securely Destroyed.

11.4 Governing Law. This Addendum shall be governed and construed in accordance with the laws of Illinois, excluding its choice of law rules. In performing their respective obligations under the Agreement, both parties shall comply with all Illinois laws and regulations pertaining to student data privacy and confidentiality, including but not limited to the Illinois School Student Records Act ("ISSRA"), 105 ILCS 10/, Mental Health and Developmental Disabilities Confidentiality Act ("MHDDCA"), 70 ILCS 110/, Student Online Personal Protection Act ("SOPPA"), 105 ILCS 85/, Identity Protection Act ("IPA"), 5 ILCS 179/, and Personal Information Protection Act ("PIPA"), 815 ILCS 530/.

11.5 No Assignment. Except for the sale of the business to which this Addendum relates, Infinite Campus shall not assign or subcontract any of its rights or obligations hereunder without the express written consent of District, which will not be unreasonably withheld.

11.6 No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to give any

rights or benefits to anyone other than District.

11.7 Schedules. The following schedules are attached hereto, or shall be attached hereto, and are specifically made a part hereof by this reference:

Schedule 1 -- Designated Representatives

Schedule 2 -- Subcontractors

11.8 Counterparts. This Addendum may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.