

END USER LICENSE AGREEMENT

READ THIS BEFORE CLICKING “I ACCEPT”

THIS AGREEMENT IS A CONTRACT

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE CLICKING “I ACCEPT.” CLICKING “I ACCEPT” MEANS YOU ACCEPT THESE TERMS AND CONDITIONS AND UNDERSTAND THAT THEY WILL BE LEGALLY BINDING ON THE OWNER OF THE COMPUTER OR DEVICE YOU ARE USING TO DOWNLOAD THIS SOFTWARE (THE “LICENSEE”). IF YOU DO NOT AGREE WITH THEM, OR DO NOT HAVE THE AUTHORITY TO BIND THE LICENSEE, DO NOT CLICK “I ACCEPT.”

PLEASE NOTE: THIS AGREEMENT MAY BE CONSIDERED THE “SERVICE AGREEMENT” FOR PURPOSES OF THE STUDENT DATA PRIVACY CONSORTIUM’S NATIONAL DATA PRIVACY AGREEMENT. THE TERM “SERVICE” FOR SUCH PURPOSE HAS NO LEGAL MEANING AND DOES NOT AFFECT THE FUNDAMENTAL NATURE OF THIS AGREEMENT AS A LICENSE. THIS IS NOT AN AGREEMENT FOR THE DELIVERY OF SERVICES.

Licensor and Licensee may be referred to collectively herein as the “Parties” and individually as a “Party.”

IN CONSIDERATION and exchange of the mutual covenants of the Parties and the mutual benefits to be received under this End User License Agreement (“Agreement”), the Parties agree as follows:

1. THE PARTIES

- a. Licensor: Marcia Brenner Associates, LLC, a Wisconsin limited liability company.
- b. Licensee: The owner of the computer or device used to download the copy of the Licensed Software that is authorized pursuant to this Agreement.

2. DEFINITIONS. As used in this Agreement, the following terms shall have the following meanings, unless otherwise expressly stated. Certain other terms may be defined elsewhere in this Agreement.

- a. "Authorized User" means an individual authorized by Licensee to Use a Plug-In.
- b. "Documentation" means Licensor’s standard manuals and functional specifications regarding the use of the Licensed Software and generally supplied by Licensor to its end user customers, whether in printed or online format, as well as complete or partial copies of the foregoing.
- c. "Installation Device" means the single device of Licensee on which the Licensed Software is installed. As appropriate to the context, the term “Installation Device” also includes the mobile device on which a Mobile Application is installed for use by an Authorized User.

- d. "Licensed Software" means the proprietary software application(s) identified in the purchase order to which this Agreement is attached and/or applicable, in machine-readable, object code form, including but not limited to Mobile Applications.
- e. "Mobile Application" means a mobile device application that Licensor makes available to Licensee for Use by Authorized Users.
- f. "NDPA" means the State-authorized version of the Student Data Privacy Consortium's National Data Privacy Agreement to which Licensee is or may be bound.
- g. "Plug-In" means the Licensed Software and the Documentation, collectively.
- h. "Term" means the continuous and uninterrupted period of time for which Licensee has paid the Subscription Fee.
- i. "Use" means to download, install, store, execute and operate the Plug-In on the Installation Device for the Plug-In's intended purposes only.

3. USE OF PLUG-IN

- a. Licensee agrees to Use the Plug-In subject to all of the terms and conditions of this Agreement, which Licensee hereby affirmatively accepts.
- b. Licensee shall be solely responsible for any/all use of the Plug-In by Authorized Users.
- c. Licensee understands that Licensee must separately purchase applicable licenses for the POWERSCHOOL[®] student information system, and that the Licensed Software will only work in conjunction with the POWERSCHOOL[®] platform.
- d. Without limiting any other provisions of this Agreement, Licensee understands and agrees that Licensee's use of the Plug-In is subject to Licensee's full and complete compliance with any and all applicable POWERSCHOOL[®] license requirements. Licensee's failure so to comply shall cause immediate termination of this Agreement, without the necessity of notice.

4. OWNERSHIP

- a. It is hereby understood and agreed that Licensor is the exclusive owner of all worldwide rights, title and interest to the Plug-In, and all copies thereof, regardless of the media or form in which such copies may exist. The Plug-In is made available to Licensee through the within license only, not sale, and Licensee does not and shall never acquire any ownership rights in or to the Plug-In.
- b. Licensee understands and agrees that, in the event Licensor develops customizations to the Plug-In for Licensee or at Licensee's request ("Customizations"), Licensor is the exclusive owner of all worldwide rights, title and interest to such Customizations, and all copies thereof, regardless of the media or form in which such copies may exist. Licensee further understands and agrees that, without limitation, Licensor may use Customizations for any purpose (including but not limited to making them available to others), exclusively and in perpetuity, without attribution or compensation of any sort to Licensee. Licensee's license to use Customizations shall be subject to all the terms and conditions of this Agreement applicable to the Plug-In, and shall terminate upon termination of this Agreement.
- c. Licensee shall not cause, nor permit either through its direct efforts or through any third party, the modification, disassembly, de-compilation, or reverse engineering of the Licensed Software, nor otherwise attempt to discover any source code or trade secret related to the Licensed Software. Without limiting other remedies

available to Licensor, all of which are expressly reserved: any use of the Plug-In not expressly authorized by this Agreement shall automatically terminate this Agreement.

5. LICENSE

- a. Licensee shall pay Licensor a one-time “Implementation Fee” for the Plug-In, along with a yearly “Subscription Fee” (individually and collectively, the “Fee”) as Licensor has determined and set forth in the purchase order(s) to which this Agreement is attached or applicable.
- b. Upon payment in full of the Fee, and conditioned upon Licensee’s compliance with all the terms and conditions of this Agreement, Licensor hereby grants Licensee, for the Term, a nonexclusive, non-transferable, revocable license to Use the Plug-In on the Installation Device only (the “License”).
- c. Licensee shall be entitled to Licensor’s standard support services and to Plug-In updates Licensor may offer during the Term.
- d. The Subscription Fee for Licensee’s first calendar year is set forth in the purchase order(s) to which this Agreement is attached or applicable.
- e. The Subscription Fee for subsequent years may increase in accordance with reasonable industry trends.
- f. Without limitation, Licensee shall not:
 - i. Copy, reproduce or make use of the Plug-In except as expressly set forth in this Agreement;
 - ii. Copy the Plug-In into any machine-readable or printed form except onto a single hard disk used exclusively for backup purposes;
 - iii. Modify, adapt, customize or create derivative works based on the Plug-In;
 - iv. Attempt to disassemble or reverse engineer the Plug-In;
 - v. Distribute the Plug-In;
 - vi. Publicly perform or display the Plug-In other than in the course of Licensee’s authorized Use;
 - vii. Merge the Plug-In into any other computer Plug-In (other than POWERSCHOOL[®]); or
 - viii. Exercise any other right or privilege not expressly granted herein.
- g. Reference anywhere in this Agreement to the “Plug-In” shall mean the entire Plug-In and/or any portion thereof, as required by the context.
- h. Licensee acquires no rights whatever, under this Agreement, to use or display for any purpose any trademarks, brand names, logos or trade dress of Licensor.
- i. All rights not expressly granted herein are reserved by Licensor.
- j. Upon expiration or termination of the Term for any reason, the License shall immediately terminate.
- k. The terms of the License are conditions and not merely covenants.

6. TERM AND TERMINATION

- a. Failure by Licensee to make timely payment of the Subscription Fee shall immediately terminate the Term.
- b. This Agreement is effective until terminated as provided herein.
- c. Excepting provisions which, by their nature, should survive, this Agreement shall terminate upon expiration or termination of the Term for any reason. In such case, the existence or survival of any separate agreement between the Parties shall under

no circumstances operate to keep either the License, the Term, or this Agreement in force.

- d. Licensee may terminate this Agreement at any time by providing Licensor with written notice and destroying all copies of the Plug-In, in all media, in Licensee's possession or control.
- e. Upon written notice to Licensee, Licensor may terminate this Agreement for purposes related to Licensor's dissolution, bankruptcy or ceasing to do business.
- f. Upon written notice to Licensee, Licensor may terminate this Agreement if Licensee materially breaches this Agreement and such breach is not cured within thirty (30) days of a written notice to Licensee detailing the nature of the breach and the requirements for curing such breach.
- g. Termination for any reason shall not prejudice or foreclose other remedies to which Licensor may be entitled, which remedies shall survive for so long as permitted by applicable law.
- h. Upon termination of this Agreement, Licensee agrees immediately to destroy all copies of the Plug-In in Licensee's possession or control, in any form or media, along with related printed or written materials; or to return same to Licensor at Licensee's expense.

7. RESTRICTIONS ON TRANSFER

- a. This Agreement shall run with the Plug-In.
- b. Licensee shall not sublicense, assign, or transfer this Agreement or the Plug-In except as expressly provided in this Agreement. Any attempt by Licensee otherwise to sublicense, assign, or transfer any of Licensee's rights, duties, or obligations hereunder is void.
- c. This Agreement is binding upon the heirs, executors, administrators, successors, assigns and other legal representatives of the Parties.

8. SUGGESTIONS

- a. At no time shall any end-user suggestion or request for enhancements, updates, fixes or customizations be considered the confidential information of the Licensee or end-user. All end-user suggestions or enhancement or customization requests from any end-user of the Plug-In automatically become the sole property of Licensor, without attribution or compensation of any sort to the Licensee or end-user. Without limiting any other provision of this Agreement: Licensee agrees that all copyright, patent, trade secret and other intellectual property or ownership rights to such suggestions, customizations or enhancements, are hereby assigned to Licensor and shall remain the sole property of Licensor, in perpetuity.

9. COPYRIGHT AND PROPRIETARY INFORMATION

- a. Excepting any POWERSCHOOL[®] components determined to be the intellectual property of that system's owner, Licensor is the sole and exclusive owner of, and hereby reserves, all right, title, and interest in and to the Plug-In, including but not limited to all worldwide copyright, patent, trademark, trade secret and other proprietary rights relating thereto. Licensor's claim includes but is not limited to the compilation of the Licensed Software and of the Plug-In. In no case shall Licensee or any end-user be considered a joint author or owner of the Plug-In.
- b. Licensee acknowledges that the Plug-In may contain Licensor's trade secrets and that, in any event, the Plug-In constitutes valuable confidential property of

Licensors, the disclosure or misappropriation of which would cause irreparable harm to Licensor.

- c. Licensee's obligation to maintain the confidentiality of Licensor's trade secrets shall survive termination of this Agreement, and shall be perpetual.
- d. Except as otherwise provided in this Agreement, Licensee shall not cause or permit copying, reproduction or disclosure of the Plug-In, or cause or permit the delivery, performance, display or distribution of any part thereof to any third person or entity, for any purpose whatsoever, without the prior written consent of Licensor.

10. LIMITED WARRANTY; LIMITED LIABILITY

- a. LICENSEE ACCEPTS THE PLUG-IN "AS IS" AND "AS AVAILABLE." LICENSOR DISCLAIMS ALL REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. LICENSOR DOES NOT ADOPT ANY REPRESENTATION OR WARRANTY OF ANY MANUFACTURER, SUPPLIER OR MERCHANT OF ANY INFORMATION, PRODUCT OR SERVICE, INCLUDING BUT NOT LIMITED TO THIRD-PARTY SOFTWARE. LICENSOR DOES NOT WARRANT THAT ERRORS IN THE PLUG-IN WILL BE CORRECTED. LICENSEE UNDERSTANDS THAT THE FOREGOING DISCLAIMERS ARE INTEGRAL TO LICENSOR'S FEE STRUCTURE AND THAT, WITHOUT SUCH DISCLAIMERS, THE FEE WOULD OF NECESSITY BE SUBSTANTIALLY HIGHER.
- b. USE OF THE PLUG-IN IS AT THE USER'S OWN RISK. UNLESS OTHERWISE EXPRESSLY SPECIFIED, LICENSOR, ITS PRINCIPALS, EMPLOYEES OR AGENTS SHALL NOT BE LIABLE TO LICENSEE OR TO ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY, PRIVACY OR DATA BREACH, DAMAGES FOR LOST REVENUE, LOST OR DAMAGED DATA OR OTHER COMMERCIAL OR ECONOMIC LOSS, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY, ARISING OUT OF USE OF THE PLUG-IN OR ANY CONSEQUENCES FLOWING, DIRECTLY OR INDIRECTLY, THEREFROM. IN NO EVENT SHALL LICENSOR BE LIABLE FOR HARDWARE OR SOFTWARE PROBLEMS DUE TO INTERFACING OF THE PLUG-IN WITH LICENSEE'S EXISTING HARDWARE OR SOFTWARE. LICENSOR SHALL NOT BE LIABLE FOR DAMAGES RESULTING FROM THE IMPROPER OR INCORRECT USAGE OR OPERATION OF THE PLUG-IN BY LICENSEE, ITS EMPLOYEES, OR ANY THIRD PARTIES. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF LICENSOR HAS BEEN ADVISED OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. IN NO EVENT WILL THE AGGREGATE LIABILITY OF LICENSOR AND ITS REPRESENTATIVES FOR ANY DAMAGES OR CLAIMS ARISING OUT OF OR RELATING TO USE OF THE PLUG-IN, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL LICENSE FEE LICENSEE HAS PAID TO LICENSOR UNDER THIS AGREEMENT. THIS SECTION

WILL SURVIVE AND APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

- c. LICENSEE ACKNOWLEDGES THAT IT HAS READ THE FOREGOING DISCLAIMERS OF WARRANTY AND LIMITATION OF LIABILITY AND UNDERSTANDS THAT LICENSEE ASSUMES THE ENTIRE RISK OF USE OF THE PLUG-IN.
- d. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES AND/OR LIABILITIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE.

11. DATA PRIVACY AND SECURITY

- a. Licensee acknowledges that:
 - i. The Plug-In is not cloud-based and is not delivered or made available as “software as a service.”
 - ii. Licensor does not host the Plug-In.
 - iii. Licensor is a data processor with respect to Student Data (as defined by the NFPA). Licensee is the data controller with respect to Student Data. All Student Data remains the property of and is solely controlled by Licensee.
 - iv. Licensor has delivered direct notice to Licensee regarding its practices as to the collection, use, or disclosure of personal information from children, such that Licensee may and does rely on Licensor’s “Consent” for purposes of the Children’s Online Privacy Protection Rule (16 CFR §312.4, as the same may be amended from time to time).
- b. Licensee agrees not intentionally to reveal or provide Licensor with any confidential information, Student Data or other information Licensee is bound by law, regulation or binding agreement to protect, otherwise than in accordance with Licensor’s Privacy Policy and Licensee’s Consent as defined above.
- c. Licensee acknowledges that it has reviewed and accepts Licensor’s Privacy Policy.

12. **COMPLIANCE WITH LAWS; EXPORT RESTRICTIONS** Licensee agrees to use the Plug-In only in accordance with all applicable laws, regulations and statutes, worldwide. This includes, without limitation, privacy and data security laws. Licensee warrants and represents that Licensee does not intend to, and will not, directly or indirectly, export or transmit the Plug-In to any country in violation of United States export restrictions.

13. **INDEMNITY** [This paragraph applies only if, and to the extent, Licensee is permitted by applicable law to undertake indemnification obligations.] Licensee agrees fully to defend and indemnify Licensor from any and all claims, liabilities, settlements, judgments, awards, costs and expenses (including reasonable attorney fees) arising from Licensee’s use of POWERSCHOOL® and/or Licensee’s violation or alleged violation of any POWERSCHOOL® terms or conditions.

14. **ACCEPTANCE OF ELECTRONIC CONTRACT** Licensee agrees that this Agreement has the same legal force and effect as a written contract with the written signature of an authorized representative and that it satisfies any laws that require a writing

or signature, including any applicable statute of frauds. Licensee further agrees that it shall not challenge the validity, enforceability or admissibility of this Agreement on the grounds that it was electronically transmitted or authorized. A printed version of this Agreement shall be admissible in judicial or administrative proceedings based upon or relating to the Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. Licensee acknowledges that it has had the opportunity to print this Agreement.

15. MISCELLANEOUS TERMS

- a. Licensee agrees to execute any and all documents reasonably necessary in order to effectuate the purposes and intent of this Agreement, including but not limited to documents affirming the authority to bind Licensor of the individual who executed this Agreement.
- b. No amendment to this Agreement shall be binding or enforceable unless reduced to a writing executed by the Parties. If any portion of this Agreement is found to be void or unenforceable, the remaining portion shall be enforceable with the invalid portion removed, giving all reasonable construction to permit the essential purposes of the Agreement to be achieved. The Parties' various rights and remedies hereunder shall be construed to be cumulative.
- c. Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law. Captions and headings used in this Agreement are for purposes of convenience only and shall not be deemed to limit, affect the scope, meaning or intent of this Agreement, nor shall they otherwise be given any legal effect.
- d. All sections of this Agreement, which by their nature should survive termination, shall survive termination, including, but not limited to, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

LICENSEE HEREBY ACKNOWLEDGES THAT LICENSEE HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

THE INDIVIDUAL EXECUTING THIS AGREEMENT PERSONALLY AFFIRMS, WARRANTS AND REPRESENTS THAT THEY HAVE AUTHORITY TO BIND LICENSEE TO THIS AGREEMENT, AND UNDERSTANDS THAT LICENSOR IS RELYING UPON SUCH AFFIRMATION, WARRANTY AND REPRESENTATION.