

# Master License and Service Agreement

This Master License and Service Agreement (“Agreement” or “MLSA”) is made and entered into by and between Follett School Solutions Inc. (“Vendor”), having its principal offices at 1340 Ridgeview Drive, McHenry, Illinois 60050-7041, and the Albany-Schoharie-Schenectady-Saratoga BOCES (“Customer”), having its principal offices at 900 Watervliet-Shaker Road, Albany NY 12205. Vendor and Customer sometimes referred to here, individually, as “Party,” and collectively, as the “Parties.”

Boards of Cooperative Educational SERVICES (“BOCES”), including Customer, are municipal corporations organized and existing under Section 1950 of the New York Education Law, and are authorized to provide cooperative educational services to school districts in New York State pursuant to cooperative educational service agreements (“CoSers”) approved by the New York State Education Department.

Customer is authorized to issue requests for proposals, award and enter into contracts for the purchase of instructional software applications that can be made available to school districts as part of applicable approved CoSers, on behalf of itself and other BOCES across New York State that participate in the DREAM Consortium. Through Customer’s procurement process, Follett School Solutions Inc., has been identified and accepted by Customer as a provider of databases, research tools, e-books, automation and media, as more fully described herein (the “Product(s)).

As Customer and several other BOCES throughout New York State have expressed an interest in offering the Product(s) to school districts as part of the applicable CoSers, Customer wishes to make the Product(s) available through the DREAM Consortium. Accordingly, the Parties have entered into this Agreement to set forth the terms upon which the Product(s) will be made available by Customer to itself and to other BOCES and school districts through the DREAM Consortium.

## **1. Term and Termination:**

The Effective Date of this Agreement shall be July 1, 2021. The initial term of this Agreement shall commence on the effective date and continue until June 30, 2022. At the end of the initial one year contract term upon mutual agreement of the Parties, the agreement may be renewed for two (2) additional years, in two (2) consecutive one-year intervals. Customer may terminate the contract for cause upon thirty (30) days written notice, should the Vendor be in default of the contract. Customer reserves the right to terminate the contract immediately if the Vendor fails to meet and complete schedules, and/or otherwise perform in accordance with the scope of services. Breach of contract or default authorized Customer to award to the next lowest respondent or purchase service elsewhere and charge the full increase in cost to the defaulting respondent.

## **2. Scope of Services:**

Acting as an independent contract, Vendor will provide the Product(s) as more fully described and at the prices stated in **Exhibit A**, attached to this Agreement and incorporated by reference. Any services related to the Product(s) to be provided by Vendor, including but not limited to consulting, educational, hosting, system

administration, training or maintenance and support service (“Services”), shall be as more fully described within this Agreement and at the prices stated in **Exhibit A**, attached to this Agreement and incorporated by reference.

**3. Grant of License:**

**3.1** The Product(s) are provided under license. Vendor grants to Customer, as a participating BOCES in the DREAM Consortium on behalf of Customer, and to each other BOCES that is a participant in the DREAM Consortium, a non-assignable, non-transferable and non-exclusive license to utilize the Product(s) pursuant to the terms and conditions set forth herein. Vendor further grants to each individual school district that contracts for the Product(s) with BOCES through the DREAM Consortium by a non-assignable, non-transferable and non-exclusive license to utilize the Product(s) pursuant to the terms and conditions set forth herein. For purpose of the licenses granted by Vendor pursuant to this Agreement, Customer, each other BOCES, and each individual school district as described herein may also be referred to individually as a “Licensee” and collectively as “Licensees.” Licensees shall not assign, sublicense or otherwise encumber or transfer the Product(s) without the prior written consent of the Vendor. Nothing herein shall act to transfer any interest in the Product(s) to any Licensee, and title to and ownership of the Product(s) shall at all times remain with the Vendor.

**3.2** Vendor may terminate the license granted to a Licensee under this Agreement if the Licensee fails to comply with any terms and conditions of this Agreement that are specifically applicable to that entity as a Licensee. Within five (5) days of receipt of such termination, the Licensee shall return all materials related to the Product(s) and, to the extent applicable, arrange with Vendor to remove the Product(s) from the computers located at the Licensee’s sites or under the direct control of Licensee.

**3.3** Vendor warrants that it has full power and authority to grant the rights herein described. Vendor’s obligation and liability under this Section 3 shall be to obtain any authorization necessary to make effective the grant of license to Licensees to use the Product(s), in such a manner or method as determined by the Vendor, at the Vendor’s own cost and expense.

**4. Use of Products, Protection of Application and Confidential Information:**

**4.1** Product(s) shall be utilized only at such licensed sites as shall be designated by Licensees (or utilized in a cloud environment as designated by Licensees) and shall be used solely for the benefit of Licensees. Licensees shall not permit or provide for transfer or reproduction of the Product(s), or any portion thereof, to be placed on a computer not at the Licensee’s designated sites or under the direct control of the Licensee, by physical or electronic means, unless specifically authorized by Vendor and/or as otherwise provided in this Agreement.

**4.2** The Product(s) are protected by copyright law. Vendor hereby confirms that Vendor is the owner of the copyright in the Product(s) described in **Exhibit A**, as well as an authorized source or reseller for the Product(s) in the state of New York. Licensees shall not make or allow others to make copies or reproduction of the Product(s), or any portion thereof in any form without the prior written consent of Vendor and/or as otherwise provided in this Agreement. The unauthorized copying,

distribution or disclosure of the Product(s) is prohibited and shall be considered a material breach of this Agreement.

**4.3** Except as expressly stated herein, no Licensee may alter, modify, or adapt the Product(s), including but not limited to translating, reverse engineering, decompiling, disassembling, or creating derivative works, and may not take any other steps intended to produce a source language state of the Product(s) or any part thereof, without the prior written consent of Vendor.

**4.4** Licensees shall be the sole owner and custodian of any information or data transmitted to, received, or manipulated by the Product(s), except as otherwise specifically set forth in this Agreement.

**4.5 Confidential Information.** Each Party will use the same degree of care to protect the other Party's Confidential Information as it uses to protect its own confidential information of like nature, but in no circumstances less than reasonable care. "Confidential Information" for the purposes of this subparagraph means any information that is marked or otherwise indicated as confidential or proprietary, in the case of written materials, or, in the case of information that is disclosed orally or written materials that are not marked, by notifying the other Party of the proprietary and confidential nature of the information, such notification to be done orally, by email or written correspondence, or via other means of communication as might be appropriate. Notwithstanding the foregoing, (a) Confidential Information of Vendor shall include the Software and (b) the Confidential Information of Customer shall include personally identifiable information regarding its and other Licensees' end users provided in connection with the Product(s). Confidential Information does not include information which (a) was known to the receiving Party or in the public domain before disclosure; (b) becomes part of the public domain after disclosure by a publication or other means except by a breach of this Agreement by the receiving Party; (c) was received from a third party under no duty or obligation of confidentiality to the disclosing Party; or (d) was independently developed by the receiving Party without reference to Confidential Information. Disclosures of Confidential Information that are required to be disclosed by law or legal process shall not be considered a breach of this Agreement as long as the recipient notifies the disclosing Party, provides it with an opportunity to object and uses reasonable efforts (at the expense of the disclosing Party) to cooperate with the disclosing Party in limiting disclosure to the extent allowed by law.

Library records, which contain names or other personally identifying details regarding the users of public, free association, school, college and university libraries and library systems of this state, including but not limited to records related to the circulation of library materials, computer database searches, interlibrary loan transactions, reference queries, requests for photocopies of library materials, title reserve requests, or the use of audio-visual materials, films or records, shall be confidential and shall not be disclosed except that such records may be disclosed to the extent necessary for the proper operation of such library and shall be disclosed upon request or consent of the user or pursuant to subpoena, court order or where otherwise required by law.

**4.6 Vendor Obligations Under NYS Education Law 2-d.** For Student Data or Teacher and Principal Data, as such terms are defined in New York Education Law Section 2-d, Vendor shall comply with all terms, conditions and obligations as set forth in the Data Sharing and Confidentiality Agreement incorporated into this Agreement by reference as **Exhibit D**. In the event that Vendor receives, stores or maintains Student Data, or Teacher and Principal Data provided to it by a Licensee, whether as a cloud provider or otherwise, the Vendor assumes all risks and obligations in the event of a breach of security of such data. Vendor shall not subcontract or assign its obligation to store or maintain Student State or Teacher and Principal Data provided to it pursuant to this Agreement to a third-party cloud provider unless granted specific prior written permission from Customer

**5. Representations, Warranties and Disclaimers:**

**5.1 Mutual.** Each Party represents and warrants that it has the power and authority to enter into this Agreement and that the Party's execution, delivery, and performance of this Agreement (a) have been authorized by all necessary action of the governing body of the Party; (b) do not violate the terms of any law, regulation, or court order to which such party is subject or the terms of any agreement to which the Party or any of its assets may be subject; and (c) are not subject to the consent or approval of any third party, except as otherwise provided herein.

**5.2 Intellectual Property.** Vendor warrants that use of the Product(s) does not infringe any United States patent, copyright, or trade secret. Vendor will indemnify Customer and any other applicable Licensee and hold it or them harmless from and against any and all claims, actions, damages, liabilities and expenses in connection with any allegation that the use of the Product(s) provided hereunder infringed upon any United States patent or pending application for letters patent or constituted an infringement of any trademark or copyright. Customer or the other Licensee, as applicable, will notify Vendor in writing of such suit, claim, action, proceeding or allegation(s). Vendor shall have sole control of the defense. Customer or the other Licensee, as applicable, shall provide reasonable information and assistance to the Vendor at the Vendor's expense.

**5.2.1** Vendor shall have the right to make such defense by counsel of its choosing and Customer or the other Licensee, as applicable, shall cooperate with said counsel and Vendor therein.

**5.2.2** If the Product(s) are held to infringe, or in Vendor's opinion is likely to be held to infringe, any United States Patent or pending applications for Letters Patent, or any Trademark or Copyright, Vendor shall, in addition to its obligations as set forth in paragraph 5.2 and 5.2.1 above, at its expense., (a) secure the right for Customer or the other Licensee, as applicable, to continue use of the Product(s) or (b) replace or modify the Product(s) to make it non-infringing. If commercially reasonable efforts to perform the foregoing are unsuccessful, Customer or the other Licensee, as applicable, shall be entitled to a pro-rata refund of fees paid by the Customer or the Licensee to Vendor pursuant to this Agreement, calculated as of the date Customer or the Licensee, as applicable, was prohibited from using the Product(s).

**5.2.3** Vendor shall have no obligation with respect to any such claim of infringement based upon modifications of machines or programming made by Customer or any other Licensee without Vendor approval, or upon their combination, operation, or use with apparatus, data, or programs not furnished by Vendor by Customer or any other Licensee, without Vendor's approval.

**5.3 Warranties.** Vendor represents and warrants that (a) the Product(s) will perform substantially in accordance with the specifications set forth in the then-current Documentation, if any, for such Product(s), and that (b) the Services will be performed in a professional and workmanlike manner. In the event of a non-conformance of the Product(s) or Services, reported to Vendor by Customer or any other Licensee, Vendor shall make commercially reasonable efforts to correct such non-conformance. In the event that Vendor is unable to correct such non-conformance, Vendor will provide Customer or the other Licensee, as applicable, with replacement or repair of defective Product(s), re-performance of Services, or a pro-rata refund of fees paid pursuant to this Agreement, calculated as of the date of commencement of any period of non-conformance.

**5.4** Remedies available to Customer or any other Licensee for damage or loss to the Product(s) shall be the repair or replacement of the Product(s) or a pro-rata refund of fees paid pursuant to this Agreement, calculated as of the date of commencement of the damage or loss. Vendor shall have no liability or responsibility for damage or loss to the Product(s) caused by any alteration or modification by a Licensee not authorized by Vendor, or for damage or loss arising out of the malfunction of Licensee's equipment or other software not supplied by Vendor.

**5.5 Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, VENDOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY WITH RESPECT TO THE PRODUCT(S) AND SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. VENDOR DOES NOT WARRANT THAT THE PRODUCT(S) WILL PERFORM OR OPERATE UNINTERRUPTED OR ERROR-FREE, OR THAT THE FUNCTIONS CONTAINED IN THE PRODUCT(S) WILL MEET ANY LICENSEE'S PARTICULAR REQUIREMENTS OR PURPOSE.

**5.6 Customer Representations and Warranties.** Customer hereby represents and warrants to Vendor:

**5.6.1** That all BOCES that are participating in the DREAM Consortium, including Customer, have agreed to be bound by the terms of this Agreement and perform their specific obligations as participating BOCES herein.

**5.6.2.** That all BOCES that are participating in the DREAM Consortium, including Customer, will take reasonable measures to ensure that all of the sites used by BOCES and school district Licensees within their jurisdiction will meet the systems and network minimum requirements set forth on **Exhibit C**, attached to this Agreement and made a part hereof.

**5.6.3** That all BOCES that are participating in the DREAM Consortium, including Customer, will take steps to ensure that BOCES and school district Licensees

within their jurisdiction use their best efforts to make staff available for training in how to utilize the Product(s) as requested by Vendor.

**6. Indemnification:**

To the fullest extent permitted by law, the Contractor agrees to hold harmless, indemnify and defend the Albany-Schoharie-Schenectady-Saratoga Board of Cooperative Educational Services, all its employees/representatives, and all participating school districts, from and against all claims, damages, losses and expenses (including, without limitations, legal expenses on a solicitor and client basis) arising out of, or in consequence of, any and all acts, omissions, or negligence of the Contractor. Further, the Contractor agrees to hold harmless, indemnify and defend the BOCES, all its employees/representatives, and all participating school districts from and against all suits, actions and proceedings by whomsoever made, brought, or prosecuted, and in any manner based upon arising out of, related to, occasioned by, or attributable to the infringement or contribution to the infringement of any intellectual or industrial property right, by the articles, methods, processes, or act employed by, or plans, drawings, specifications or other written data provided by the Contractor or its employees in concert with providing services.

**7. Fees and Payment:**

**7.1 License Fees.** In consideration of the licenses granted to all Licensees as described herein, and the Services to be performed by Vendor, Customer agrees that each participating BOCES (including Customer) shall pay Vendor the applicable fees set forth in **Exhibit A** on behalf of each Licensee within its jurisdiction that participates in the applicable CoSers during any fiscal year within the Initial Term of this Agreement or any Renewal Term.

**7.2 Pricing.** The fees set forth in **Exhibit A** shall be applicable during the period July 1, 2021 through June 30, 2022 (the first fiscal year within the Initial Term of this Agreement). Vendor will provide to Customer proposed new pricing for each succeeding fiscal year within the Initial Term of this Agreement (or each succeeding fiscal year within any Renewal Term) by November 1 of each fiscal year by notification to [Annie Gersztoff](#), or by certified letter addressed to 900 Watervliet-Shaker Rd., Albany NY 12205. Annie Gersztoff will work with the Vendor to evaluate and accept pricing to be applicable during each succeeding fiscal year. The Parties shall revise **Exhibit A** as needed to reflect any new prices as mutually agreed. If no notification is received by November 1 of any fiscal year, the fees established for the then current fiscal year will remain in effect for the subsequent fiscal year.

**7.3 Quotes.** Quotes applicable to any BOCES or school district Licensees based in the fees set forth in **Exhibit A** shall be provided to each BOCES Contact (including Customer's) or his/her designee. The Vendor will not provide quotes directly to any school district Licensees. Each participating BOCES (including Customer) will issue a purchase order to Vendor on behalf of each Licensee within its jurisdiction that wishes to participate in the applicable CoSers.

**7.4 Invoices.** When invoicing Albany-Schoharie-Schenectady-Saratoga BOCES Customer, Vendor shall send invoices addressed to 900 Watervliet-Shaker Road,

Albany NY 12205 (Attention: Annie Gersztoff); any other invoices shall be sent by Vendor to the other participating BOCES initiating the request. Vendor shall contact the BOCES contact at each other participating BOCES to receive the proper invoicing address. Payment shall be made by each participating BOCES (including Customer) within forty-five (45) days of either completion of the activation of the Product(s) at the site of a Licensee, or the implementation meeting for service.

**7.5. Withdrawal.** Vendor acknowledges that due to the nature of BOCES services, individual Licensees may from time to time, during the Initial Term of this Agreement or any Renewal Term, withdraw from or choose not to renew their participation in the applicable BOCES service for a subsequent fiscal year. Each participating BOCES (including Customer) shall provide written notification to Vendor of any such withdrawal or non-renewal by any Licensee within its jurisdiction no later than thirty (30) days prior to its effective date (typically July 1<sup>st</sup>), without penalty. Upon receipt of notification, Vendor shall securely delete or otherwise destroy any and all Protected Data received from that Licensee remaining in the possession of Vendor or any of its subcontractors or other authorized persons or entities to whom it has disclosed the Protected Data; if requested by the Licensee, Vendor will assist in exporting all Protected Data previously received back to the Licensee prior to deletion. Vendor will provide Customer and the Licensee with written certification from an appropriate officer that these requirements have been satisfied in full. For purposes of this subsection 7.5, “Protected Data” shall have the same meaning as set forth in the Data Sharing and Confidentiality Agreement incorporated into this Agreement by reference as **Exhibit D**. Notwithstanding the non-renewal or withdrawal of any Licensee, the terms of this Agreement shall continue in full force and effect with respect to Customer and any other remaining BOCES or school district Licensees.

**8. Implementation Assistance Services and Training Support:**

**8.1 Training.** Upon request, Vendor will provide initial training, at no cost, to Customer’s staff and the staff of each participating BOCES so that they are able to turn key and train school district Licensees using BOCES accounts or Product(s) provided to the BOCES at no cost. The Vendor will provide training and installation to the BOCES staff as outlined in **Exhibit B**, attached and incorporated herein by reference. Training for new features, product and software updates, and strategic initiatives will be available upon release of the functionality for BOCES system level staff. Training is to be held in a central location in NY or via a virtual platform. The Follett Community is also available to the BOCES. The Follett Community website is a convenient, one-stop online home for learning everything you need to know about using digital Follett products and software. By visiting <https://www.follettcommunity.com/s/>, you can find “how-to’s,” training tools and videos that will help guide you to getting the most out of Follett products.

**8.2 Use of Training Materials.** Customer, all other participating BOCES, and all school district Licensees may use the entire Vendor provided training materials, on an ongoing basis, at no cost. Customer, all other participating BOCES, and all

Licensee school districts may modify the Documentation for use solely within the Licensee school districts that have purchased the Product(s) pursuant to this Agreement.

**8.3 Training Logins & Sites.** The Vendor will provide Customer and all other participating BOCES the Product(s) or application logins and demo sites, at no cost, for utilizing the Product(s) while training Licensee school districts. The Vendor will provide administrative logins to Customer and all other participating BOCES for each Licensee school district in order for Customer and all other participating BOCES, as owners of the equipment/licenses, to manage and maintain accounts as required by the State Department of Education.

## **9. Technical Support Services:**

**9.1** Technical support and updates provided by Vendor shall include assistance and consultation by phone to assist Customer, any other participating BOCES, or any school district Licensee in resolving problems with the use of the Product(s), at no charge.

**9.2** Vendor shall provide support for the Product(s) for at least (1) year before requiring an upgrade, following any notification by Vendor to Customer with a current support agreement, any other participating BOCES, or any school district Licensee that the Product(S) has been discontinued.

**9.3** All requests for assistance, made by phone, to Vendor by Customer, any other participating BOCES, and/or any school district Licensee to resolve problems which cause the software to become “inoperative” will be acknowledged by Vendor by phone or email within twenty-four (24) hours during Vendor’s normal support hours. For less severe problems, Vendor must acknowledge the request for assistance by phone within forty-eight (48) hours.

**9.4** Vendor also agrees to provide the following technical support services to Customer, any other participating BOCES, and any school district Licensee:

**9.4.1** Toll Free Number support [888.244.1366, option 2] 24 hours a day 7 days a week or [techsupport@follett.com](mailto:techsupport@follett.com)

**9.4.2** Bug Correction – Vendor shall use its best efforts to correct any software bugs in the Product(s). Customer, any other participating BOCES, and any school district Licensee shall allow Vendor in each instance the opportunity to make repeated efforts within a reasonable time to correct any such bugs.

**9.4.3** Training, free of charge, for technical staff of new BOCES Customer to install or upgrade any equipment. This training can be provided via webinar.

## **10. Applicable Law:**

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York without regard to that State’s choice-of-law provisions. In the event a dispute arises between the Parties in connection with this Agreement, the Parties shall use good faith efforts to resolve such dispute by negotiation. In the event the Parties are unable to resolve such dispute by negotiation, the matter shall be reviewed in any court of competent jurisdiction located in the County of Albany, State of New York and the Parties hereby agree to submit to personal jurisdiction in any such court.



**11. Force Majeure:**

Notwithstanding anything to the contrary contained herein, neither Party shall have any liability to the other Party for any default or delay in performance of its obligations hereunder to the extent attributable to unforeseen events beyond the reasonable control of the Party. Such events shall include but not be limited to, natural disasters or “acts of God;” war; acts of public enemies; terrorism; flood; government action; orders of regulations; fire; civil disturbance or unrest; work stoppage or strike; unusually severe weather conditions; disease, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restriction (each, a “Force Majeure” event). Vendor’s performance of some or all of its obligations hereunder may also cease at any time upon mutual written agreement between the Parties. Any warranty period affected by a Force Majeure event shall be extended for a period equal to the duration of such Force Majeure event.

**12. Consent to Breach Not Waiver:**

No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent to breach shall be in writing and signed by the Party granting the waiver or consent. If either Party grants a waiver or consent to a breach of a term or provision of this Agreement, such waiver or consent shall not constitute or be construed as a waiver of or consent to any other or further breach of that term or provision or any other different or subsequent breach of any other term or provision.

**13. Severability:**

If any term, clause or provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed severed from the Agreement.

**14. Risk of Loss or Damage:**

Vendor and its insurers agree at a minimum to assume all risks of loss and damage to the Product(s) during transportation expect for loss or damage caused by the gross negligence of Customer, any other participating BOCES, and/or any school district Licensee.

Vendor assumes all risks for injuries to or death of its employees and for damage to its tangible property, excluding damage to data, while on the premises of, or traveling to or from, facilities of Customer, any other participating BOCES, and/or any school district Licensee. Vendor shall provide assistance to recover or resolve any damaged data to the reasonable satisfaction of Customer, any other participating BOCES, and/or any school district Licensee. Vendor will be required to procure and maintain at its own expense, the following insurance coverage:

(a) **General Liability Insurance:** A policy or policies or comprehensive all-risk insurance with limits of not less than:

Liability For:	Limit Per Occurrence/Aggregate
Property Damage	\$1,000,000/ \$2,000,000

Bodily Injury	\$1,000,000/ \$2,000,000
Personal Injury	\$1,000,000/ \$2,000,000

Customer shall be named as an additional insured on all liability.

**15. Amendment:**

This Agreement may be amended by Customer and Vendor provided that any such changes or modifications shall be in writing signed by the parties hereto.

**16. Headings:**

The Headings of the paragraphs and sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

**17. Notices:**

Except as otherwise provided in this Agreement, all notices required hereunder shall be in writing and sent by certified mail, return receipt requested to the Party at the address written above, or such other address as noticed to the other Party.

**18. Conflict of Interest:**

Vendor represents and warrants that Vendor presently has no interest and shall not acquire any interest, direct or indirect that would conflict in any manner or degree with the performance of Vendor's obligations under this Agreement. Vendor further represents and warrants that it has not employed nor retained any person or company, other than a bona fide employee working solely for Vendor or the Vendor's bona fide agent, to solicit or secure any agreement with any other participating BOCES or any school district Licensee. Further, Vendor represents that Vendor has not paid, given, or agreed to pay or give any company or person, other than a bona fide employee working solely for Vendor or the Vendor's bona fide agent, any fee, commission, percentage, brokerage fee, gift, contribution, or any other consideration contingent upon or resulting from the award or making of any agreement with any other participating BOCES or any school district Licensee. Upon discovery of a breach or violation of the provisions of this paragraph, Customer shall have the right to terminate this Agreement in accordance with subsection 1.3, however, it may do so immediately and without providing Vendor the opportunity to cure such breach or violation.

**19. Employment Practices:**

Vendor warrants that there shall be no discrimination against any employee who is employed in the work covered by the Agreement, or against any applicant for such employment, because of race, religion, color, sex, age or national origin. This shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, lay-off, termination, rates of pay or other tools of compensation, and selection for training, including apprenticeship. Vendor shall insert similar provisions in any authorized subcontracts for the performance of Services covered by this Agreement.

**20. Executory Clause:**

This Agreement shall be deemed executory only to the extent of monies appropriated and available to Customer or any other BOCES or school district Licensee for the purpose of this Agreement, and no liability on account thereof shall be incurred by

Customer or any other BOCES or school district Licensee beyond the amount of such monies. The Agreement is not a general obligation of Customer or any other BOCES or school district Licensee. Neither the full faith and credit nor the taxing power of any school district Licensee is pledged to the payment of any amount due or to become due under this Agreement. It is understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or to make monies available from the purpose of this Agreement.

**21. Non-Assignment:**

This Agreement shall be binding on the Parties and on their successors and assigns. Vendor is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement or any amendment thereto, or its power to perform the obligations required by this Agreement to any other person or corporation without the previous consent, in writing, of Customer; and any attempts to assign the Agreement without Customer's prior written consent are null and void.

**22. Entire Understanding:**

This Agreement and all Exhibits attached hereto constitute the entire understanding between Customer and Vendor.

**In Witness Whereof**, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the dates set forth below.

05/24/2021  
Date \_\_\_\_\_

BOCES *Nancy delPrado*  
By \_\_\_\_\_  
6B6701D5E00676768BD2580761FD7594 contractworks.

Board Authorized Signature

07/02/2021  
Date \_\_\_\_\_

Vendor *Patrick Sullivan*  
By \_\_\_\_\_  
71FA162620579213C95390199AA2004E contractworks.

**EXHIBIT A**

See attached Price Sheet.

**EXHIBIT B**

Vendor will provide initial training to new BOCES Customers, at no cost, to Customer's staff and the staff of each participating BOCES so that they are able to turnkey and train school district Licensees using RIC/BOCES accounts or Product(s) provided to the RIC/BOCES at no cost, at four (4) sites during each year of this Agreement. These accounts will be fully active within the system and not simply a training site.

**EXHIBIT C**

Reliable, proven technology includes centralized, browser-based functionality and an industry-standard database (SQL Server), with secure (HTTPS) access provided within a wide area network or via the internet. Please see specific information listed in the Product List.