

SACRAMENTO COUNTY OFFICE OF EDUCATION

SCHOOL CONNECT SYSTEM

LICENSE AGREEMENT

This License Agreement (“Agreement”) is entered into this 1st day of July, 2018, by and between the Sacramento County Office of Education, a county office of education of the state of California, (hereinafter “Provider”) and County of Fresno (hereinafter “Customer”). Provider and Customer shall be identified collectively as the “Parties”.

INTRODUCTION

WHEREAS, the Provider is the creator and owner of a web-based system, known as School Connect.

WHEREAS, the Customer is interested in contracting with Provider in order to use School Connect in Customer’s county.

NOW, THEREFORE, the Parties hereto agree as follows:

ARTICLE I DEFINITIONS

1.1 “Administrative Contact” means the individual authorized by the Customer to receive and provide information required to administer this Agreement. The Administrative Contact is the local registration administrator authorized to approve an entity’s Authorized Users of School Connect.

1.2 “Agreement” means this License Agreement.

1.3 “Authorized User” means the individual(s) authorized to access School Connect on behalf of the Customer according to the terms of this Agreement.

1.4 “Customer Data” means documents, information and data submitted to Provider by Customer for processing through School Connect and/or documents, information and data input maintained in School Connect by Customer. Customer Data does not include pupil records.

1.5 “Effective Date” means the latter of the date set forth above or the date that this Agreement is fully executed by both the Provider and the Customer.

1.6 “Password” means the License code provided to Customer’s Authorized Users to enable access to School Connect.

1.7 “Personal User Name” means the user name given to Customer’s Authorized Users.

ARTICLE II SCHOOL CONNECT SERVICES

2.1 School Connect is a multi-leveled system for locating foster homes near a child's school of origin.

2.2 Hosting Enhancement and Maintenance.

(a) School Connect will be hosted for the Customer for the Term of this Agreement (Article V).

(b) It is anticipated that enhancements to School Connect will be ongoing. Enhancements that become available during the Term of this Agreement will be made available to the Customer. The Provider will install all available enhancements.

(c) It is understood and agreed that maintenance may be required from time to time. Provider will endeavor to provide Customer with reasonable notice of such maintenance by posting such notice on the home page of School Connect. It is also understood that emergency maintenance may be required and, in such cases, prior notice of such maintenance may not be provided to Customers.

ARTICLE III LICENSE

3.1 **Grant of License by Customer to Provider.** Customer hereby grants to Provider for the Term of this Agreement a revocable, nonexclusive, royalty-free license to include the Customer Data in Provider's School Connect system for use by Customer's Authorized Users and Authorized Users from other entities to the extent authorized by Customer. The license includes, but is not limited to, copying, displaying, and modifying Customer Data in accordance with the provisions of this Agreement.

3.2 **Grant of License by Provider to Customer.** Provider hereby grants to Customer for the Term of this Agreement a revocable, nonexclusive term license, for the purposes and subject to the terms and conditions stated in this Agreement, for Customer's Authorized Users to obtain access to and use School Connect.

ARTICLE IV FEE AND PAYMENT TERMS

4.1 **License Fee:** In consideration for the License to use School Connect as provided herein, Customer agrees to pay Provider an annual license fee for the Term of this Agreement (Annual License Fee) as follows:

(a) The Annual License Fee is four thousand three hundred dollars (\$4,300).

4.2 **Payment Terms:** Provider shall invoice Customer after receipt of the signed Agreement for the entire Annual License Fee. Customer shall remit payment in full to Provider within thirty (30) calendar days of Customer's receipt of the invoice.

ARTICLE V TERM, TERMINATION, AND POST-TERM OBLIGATIONS

5.1 **Term.** This Agreement shall be in effect between the Provider and the Customer beginning with the Effective Date and terminating on June 30, 2019.

5.2 **Termination.** Either party can terminate this agreement at any time by providing 30 days written notice of intent to terminate to the other party. In the event of early termination, no portion of the annual license fee shall be refunded.

5.3 The Provisions under which this Agreement may be terminated shall be in addition to any and all other legal remedies which either party may have for the enforcement of any and all terms hereof, and do not in any way limit any other legal remedy such party may have.

5.4 **Post-Term Obligations.** Upon termination or expiration of this Agreement, Customer shall cease usage of School Connect unless the Customer and Provider enter into a new License Agreement. Absent a new agreement, any subsequent use, storage and access to information received pursuant to this Agreement will continue to be subject to the surviving terms and conditions of this Agreement (see Paragraph 11.3).

ARTICLE VI PROVIDER'S PROPRIETARY RIGHTS IN SCHOOL CONNECT/NONDISCLOSURE

6.1 Customer acknowledges that School Connect is the property of the Provider and that the value of School Connect is, in part, determined by the Provider's ability to limit access to and use of School Connect.

6.2 The Customer shall not disclose or make available to any third party any of Provider's proprietary information, trade secrets, and intellectual property to which Customer is granted access pursuant to this Agreement, including, without limitation, manuals and instructions for operation of School Connect, knowledge of operating methods, Passwords, Personal User Name, and the names and designations of any equipment comprising the system. Customer agrees to keep all such information strictly confidential and to refrain from discussing this information with anyone else without proper authority.

6.3 To further protect the Provider's Proprietary Rights in School Connect, Customer agrees to restrict access to School Connect to Customer's Authorized Users. In addition, Customer agrees to advise each Authorized User before he or she receives access to School Connect, of the obligations of Customer under this Agreement and require each Authorized User to maintain those obligations.

6.4 School Connect and all supporting documentation shall remain the property of the Provider.

ARTICLE VII PROTECTION OF PRIVATE CUSTOMER DATA

7.1 Customer and Provider recognize that Customer Data may contain confidential information related to families. Customer is required to preserve the confidentiality of any such information.

7.2 Customer is responsible for ensuring that Customer Data does not violate any privacy rights of third parties and assumes responsibility for its Authorized User's compliance with privacy laws regarding Customer Data. Customer shall inform each Authorized User of the need to protect Customer Data containing confidential information. Customer shall not disclose or make available to any third party any confidential information to which Customer's Authorized users are granted access pursuant to this Agreement.

7.3 Customer shall restrict access solely to School Connect to Customer's Authorized Users. In addition, Customer shall advise each Authorized User before he or she receives access to School Connect, of the obligations of Customer under this Agreement. Customer shall require each Authorized User to maintain those obligations and to sign confidentiality agreements as appropriate.

7.4 Customer Data shall remain the property of Customer.

7.5 Provider will use its best effort to protect Customer Data from changes or physical loss or destruction through the operation of its computer system or by its personnel. "Best efforts" shall include weekly backup of all input provided by Customer and offsite storage of backup material for a 30-day period.

7.6 Provider will apply physical, network, and application security measures to safeguard the confidentiality of the records. All Provider employees with access to School Connect will sign a Confidentiality Agreement indicating that they understand the confidentiality of Customer Data and measures to be taken to maintain that confidentiality. In addition, Provider will designate School Connect administrators who will regularly consider, among other things, the system's confidentiality measures and data sharing best practices. All Provider employees will receive training on password protections and other confidentiality measures used to safeguard Customer Data.

ARTICLE VIII PERSONAL USER NAME AND PASSWORD PROVISION AND SECURITY

8.1 Customer's Authorized Users shall gain access to School Connect via the Internet through the Authorized User's Personal User Name and Password.

8.2 Immediately following the initial data loading of Authorized Users, Customer shall assume sole responsibility for the management of Personal User Names and Passwords for all of Customer's Authorized Users. The Customer's Administrative Contact, or designee at the county office of education or child welfare services, shall be responsible for ensuring that Personal User

Names and Passwords are provided only to Authorized Users and for managing, disabling or authorizing new Authorized Users' Personal User Names and Passwords.

8.3 Customer shall be solely responsible for the security of the Passwords and Personal User Names issued to it. Customer is solely responsible for disabling lost, stolen, or inactive Passwords OR Personal User Names.

ARTICLE IX DELAYS; FORCE MAJEURE

9.1 **Delays.** Except as otherwise required in this Agreement, Customer agrees that Provider shall not be liable to Customer or any entity user associated with Customer for any delays due to any interruption of Provider's service.

9.2 **Force Majeure.** Neither Party shall be liable for delays or failures in performance under this Agreement from events beyond their reasonable control, including acts of God, war (declared or undeclared), government regulation, terrorism, disaster, strikes, civil disorder, curtailment of transportation facilities, or similar occurrence beyond the Party's control, making it impossible, illegal, or commercially impracticable for one or both Parties to perform its obligation under this Agreement, in whole or in part. Either Party may terminate this Agreement without liability for any one or more of such reasons upon written notice to the other party within ten (10) days of such occurrence or receipt of notice of any of the above occurrences.

ARTICLE X NO WARRANTIES, DATA ACCURACY, INTELLECTUAL PROPERTY

10.1 **No Warranties.** Except as otherwise specifically provided for in this Agreement, Provider makes no representations or warranties of any kind with respect to services or data made available by School Connect, including but not limited to the warranties of fitness for a particular purpose or merchantability.

10.2 **Data Accuracy.** Provider will make a reasonable effort to verify the validity of data. However, Provider assumes no responsibility for the accuracy or completeness of Customer Data made available through School Connect or for Customer's use of such data or use of the tools made available to manipulate such data in the School Connect system.

10.3 **Intellectual Property.** Customer is responsible for ensuring that Customer Data does not violate any intellectual property rights of third parties. Customer further assumes sole responsibility for compliance with all intellectual property laws regarding Customer Data by any Authorized Users of the Customer.

ARTICLE XI DEFAULT & SURVIVAL

11.1 **Events of Default.** This Agreement may be terminated by the non-defaulting party if any of the following events occur: (1) if a party materially fails to perform or comply with this Agreement or any provision hereof; (2) if a party becomes insolvent or admits in writing its

inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (3) if a petition under any foreign, state or United States Bankruptcy Act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by a party; or (4) if such a petition is filed by any third party, or an application for a receiver is made by anyone and such petition or application is not resolved favorably within ninety (90) days. If a party materially fails to perform or comply with this Agreement, the non-defaulting party can terminate the Agreement after first giving written notice of an opportunity to cure within 15 days. If the failure is not cured, the non-defaulting party may then terminate the Agreement effective upon receipt of written notice.

11.2 Obligations on Termination by Default. Within ten (10) days after receiving notice of termination of this Agreement, Customer shall cease and desist use of School Connect. Provider reserves the right to disable any and all Passwords issued to Customer upon Customer's default herein.

11.3 Survival. The following provisions shall survive the termination or expiration of this Agreement:

Section 5.4	Post-Term Obligations	Section 11.3	Survival
Article VI	Provider's Proprietary Rights in School Connect/Nondisclosure	Section 13.1	Nonwaiver of Rights
Article VII	Protection of Private Customer Data	Section 14.1	Governing Law; Jurisdiction & Venue
Article X	No Warranties, Data Accuracy, Intellectual Property	Section 17.1	Entire Agreement
		Section 20.1	Indemnification; Limitation of Damages

ARTICLE XIII NOTICES

12.1 All invoices, authorizations, and requests in connection with this Agreement shall be deemed given five (5) days after being deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or one (1) day after being sent by overnight courier, charges prepaid, with confirming fax; and addressed as first set forth below or to such other addresses as the Party to receive the notice so designates by written notice to the other Party.

Provider	Customer
Name: Sacramento County Office of Education	Name: County of Fresno
Attn: Trish Kennedy, Director Foster Youth Services Coordinating Program	Attn: Director, Department of Social Services
Address: PO Box 269003 Sacramento, CA 95826-9003	Address: PO Box 1912 Fresno, CA 93718-1912
Phone: (916) 228-2730	Phone: (559) 600-2302

ARTICLE XIV ADDITIONAL LEGAL TERMS

13.1 **Nonwaiver of Rights.** Customer and Provider agree that failure to exercise or delay in exercising any right, power, or privilege on the part of either party shall not operate as a waiver of any right, power or privilege under this Agreement. Customer and Provider further agree that no single or partial exercise of any right, power, or privilege under this Agreement shall preclude further exercise thereof.

14.1 **Governing Law, Jurisdiction, and Venue.** The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the state of California. Any legal proceeding arising out of or relating to this Agreement shall be brought in Sacramento County, California. Customer hereby consents to the jurisdiction of such courts.

15.1 **Severability.** If any provisions of this Agreement shall be held to be invalid, legality and enforceability of the remaining provisions shall not be in any way affected or impaired thereby.

16.1 **Nonassignability.** This Agreement and the rights and benefits conferred upon Customer hereunder may not be assigned or otherwise transferred by Customer without prior written consent of the Provider.

17.1 **Entire Agreement.** This Agreement embodies the entire understanding of the Parties and supersedes all previous communications, representations, or understandings, either oral or written, between the parties relating to the subject matter herein.

18.1 **Modifications.** This Agreement may not be supplemented, modified, amended, released or discharged except by an instrument in writing signed by each party's duly authorized representatives.

19.1 **Insurance.** Without in any way limiting the Parties' liability pursuant to Section 20.1 ("Indemnification; Limitation of Damages"), each party shall keep in full force and effect during the Term of this Agreement, at each party's respective expense, comprehensive general liability insurance (including coverage under a Joint Powers Agreement or self-insurance) with coverages not less than \$1,000,000 per occurrence, cyber liability insurance with coverage of \$500,000 per occurrence and \$1,000,000 aggregate, and workers compensation as required by law. Either party may request proof of insurance from the other party, who will provide a Certificate of Insurance to the requesting party within 30-days of receiving the request.

20.1 **Indemnification; Limitation of Damages.**

20.1.1 Each party hereto shall indemnify, defend and hold harmless the other party, and its respective Board, employees and agents, from and against any and all third-party claims, liability, loss, expense, including reasonable attorneys' fees, or claims for injury or other damages (collectively "Claims") arising out of the performance of this Agreement but only in proportion to and to the extent such Claims are caused by or result from the negligent acts or omissions or intentional misconduct of the indemnifying party and/or its Board, employees and/or agents.

20.1.2 In the event of concurrent negligence of the parties, the parties' respective Board, employees and/or agents, the liability for any and all Claims shall be apportioned under the California theory of comparative negligence. Nothing in this Agreement shall constitute a waiver or limitation of any rights that the indemnifying party may have against third-parties.

20.1.3 The parties intend and agree to cooperate with each other in the investigation and disposition of third-party Claims arising out of the performance of this Agreement. Such cooperation may include joint investigation, defense and disposition of claims of third parties arising from services performed under this Agreement. The parties agree to promptly inform one another whenever any incident report, claim or complaint is filed or when an investigation is initiated concerning the performance of this Agreement. In the event of a conflict in interest, each party may obtain its own counsel at its own expense.

20.1.4 CUSTOMER AGREES THAT PROVIDER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFIT, REVENUE OR DATA ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT, EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF POTENTIAL LOSS OR DAMAGE.

21.1 **Non-Discrimination.** Each party hereto represents and affirms that it will not discriminate in employment or in services provided pursuant to this Agreement based on the actual or perceived race, religious creed, color, national origin, nationality, immigration status, ethnicity, ethnic group identification, ancestry, age, marital status, pregnancy, physical or mental disability, medical condition, genetic information, gender, gender identity, gender expression, sex, or sexual orientation, in accordance with all applicable Federal and State laws and regulations.

22.1 **Independent Contractors.** Provider and Customer shall at all times be deemed to be independent contractors in each party's performance of this Agreement. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship, or a joint venture relationship, between the Customer, or its agents and employees, and Provider, or its agents and employees. Each party shall be responsible for the manner in which it performs the services under this Agreement.

23.1 **Execution in Counterparts.** This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same document. Photographic copies of such signed counterparts may be used in lieu of the originals.

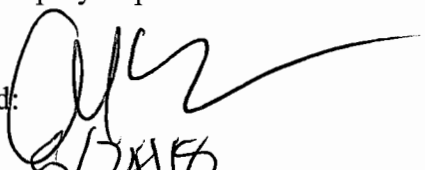
IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this agreement as of the date first set forth above.

Provider

Sacramento County Office of Education

By: Al Rogers

Title: Deputy Superintendent

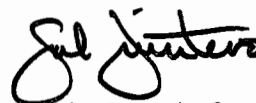
Signed: 

Date: 9/24/18

Customer

County of Fresno

By: Sal Quintero



Title: Chairperson of the Board of Supervisors of the County of Fresno

Signed:

Date: July 10, 2018

ATTEST:

Bernice E. Seidel

Clerk of the Board of Supervisors

County of Fresno, State of California

By: 

Deputy

FOR ACCOUNTING USE ONLY:

ORG No.: 56107001

Account No.: 7295

Requisition No.: