

**JEFFERSON COUNTY PUBLIC SCHOOLS
CONTRACT FOR THE PROCUREMENT OF PROFESSIONAL SERVICES**

THIS CONTRACT FOR PROCUREMENT OF PROFESSIONAL SERVICES (hereinafter "Contract") is entered into between the JEFFERSON COUNTY BOARD OF EDUCATION (hereinafter "Board"), a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 and SchoolMint, Inc. (hereinafter "Contractor"), with its principal place of business at 1100 Bertrand Dr., Suite B, Lafayette, LA 70506.

WITNESSETH:

WHEREAS, the Board desires to procure the particular services of Contractor, which are more fully defined below; and

WHEREAS, Contractor has held itself out to be competent and capable of performing the services contracted for herein;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the Board and Contractor (hereinafter "Parties") agree as follows:

ARTICLE I

Entire Agreement; Amendments

This Contract is the entire agreement between the Parties and supersedes any and all agreements, representations and negotiations, either oral or written, between the Parties before the effective date of this Contract. This Contract may not be amended or modified except in writing as provided in Article VIII. This Contract is supplemented by the Board's Procurement Regulations currently in effect (hereinafter "Regulations") that are incorporated by reference into and made a part of this Contract. In the event of a conflict between any provision of this Contract and any provisions of the Regulations, the Regulations shall prevail.

ARTICLE II

Services

Contractor agrees to perform the following services (hereinafter "Services") of a quality and in a manner that is within the highest standards of Contractor's profession or business. The Services are as follows:

Contractor shall provide software licenses to various schools for the Hero software as a service (SaaS) platform to support positive behavior reinforcement as outlined in the scope of work which is attached hereto and incorporated herein. This contract may be renewed for subsequent one-year periods upon signed written agreement of both parties.

A copy of the SchoolMint Master Services Agreement is attached and incorporated by reference. In the event of a conflict between the Master Services Agreement and any provision of this Contract, this Contract and its provisions shall prevail.

Contractor agrees that they will not operate a motor vehicle in the performance of this Contract. The Contract Administrator hereby waives the insurance requirement for automobile liability insurance. If during the terms of this Contract, Contractor is not required by Kentucky law to maintain workers compensation insurance, then the

Contract Administrator hereby waives the requirement for workers compensation insurance contained in Article V. All other provisions of Article V shall remain the same.

Contractor agrees that they will not operate a motor vehicle in the performance of this Contract. The Contract Administrator hereby waives the insurance requirement for automobile liability insurance. If during the terms of this Contract, Contractor is not required by Kentucky law to maintain workers compensation insurance, then the Contract Administrator hereby waives the requirement for workers compensation insurance contained in Article V. All other provisions of Article V shall remain the same.

ARTICLE III
Compensation

The Board shall pay Contractor the total amount stated below (hereinafter "Contract Amount"). The Contract Amount shall be paid in a lump sum upon completion of the Services, unless a schedule of progress payments is stated below. The Contract Amount shall be for total performance of this Contract and includes all fees, costs and expenses incurred by Contractor including but not limited to labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs and other costs, unless otherwise stated below. To receive payment, Contractor must submit an itemized invoice or invoices. If progress payments are authorized, each invoice must specify the actual work performed. If payment of costs or expenses is authorized, receipts must be attached to the invoice.

Contract Amount:	<u>Contract amount shall not exceed \$14,445.60</u>
Progress Payments (if not applicable insert N/A):	<u>N/A</u>
Costs/Expenses (if not applicable insert N/A):	<u>N/A</u>
Fund Source:	Safe Schools Grant 168G or 168I

ARTICLE IV
Term of Contract

Contractor shall begin performance of the Services on October 27, 2021 , and shall complete the Services no later than October 27, 2022, unless this Contract is modified as provided in Article VIII.

ARTICLE V
Performance of Services by Contractor

The Services shall be performed by Contractor, and in no event shall Contractor subcontract with any other person to aid in the completion of the Services without the prior written approval of the Contract Administrator defined below.



Contractor shall appoint one person who shall be responsible for reporting to the Board on all Services performed under the terms of this Contract and who shall be available for consultation with the Contract Administrator.

Contractor is an independent contractor, not an employee. Contractor is responsible for the payment of all federal, state and local payroll taxes and providing unemployment insurance and workers compensation coverage to Contractor's employees. Contractor shall provide all equipment, materials and supplies necessary for the performance of the Services.

Contractor shall at all times during the term of this Contract comply with all applicable laws, regulations, rules and policies. Contractor shall obtain and keep in force all licenses, permits and certificates necessary for the performance of the Services.

Contractor agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation, including the Contractor himself, in connection with the performance of this Contract. Contractor also agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to Contractor in connection with the performance of this Contract. This provision survives termination of this Contract.

Unless waived in writing by the Contract Administrator, Contractor shall maintain during the term of this Contract policies of primary insurance covering the following risks and in at least the following amounts: commercial general liability, including bodily injury, property damage, personal injury, products and completed operations, and contractual, \$1,000,000; and automobile liability, \$1,000,000. Contractor shall furnish to the Contract Administrator certificates of insurance evidencing this coverage and naming the Board as an additional insured. Additionally, Contractor shall maintain workers compensation coverage with limits required by law; and professional errors and omissions coverage with minimum limits of \$1,000,000. Contractor shall furnish certificates of insurance evidencing this coverage to the Contract Administrator.

ARTICLE VI Equal Opportunity

During the performance of this Contract, Contractor agrees that Contractor shall not discriminate against any employee, applicant or subcontractor because of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions. If the Contract Amount is paid from federal funds, this Contract is subject to Executive Order 11246 of September 24, 1965 and in such event the Equal Opportunity Clause set forth in 41 Code of Federal Regulations 60-1.4 is hereby incorporated by reference into this Contract as if set forth in full herein.

ARTICLE VII Prohibition of Conflicts of Interest

It shall be a breach of this Contract for Contractor to commit any act which is a violation of the provisions of Article XI of the Regulations entitled "Ethics and Standards of Conduct," or to assist or participate in or knowingly benefit from any act by any employee of the Board which is a violation of such provisions.

ARTICLE VIII

Changes

The Board and Contractor may at any time, by mutual agreement set forth in a written addendum, make changes in the definition of the Services; the scope of the Services; and the Contract Amount. The Contract Administrator and Contractor may, at any time, by mutual agreement set forth in a written addendum, make changes in the time within which the Services are to be performed; the schedule of Progress Payments; and mutual Termination of the Contract.

ARTICLE IX

Termination for Convenience of the Board

The Board may terminate this Contract in whole or in part at any time by giving written notice to Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the specified effective date. The Board shall compensate Contractor for Services satisfactorily performed through the effective date of termination.

ARTICLE X

Termination for Default

The Board may, by written notice of default to Contractor, terminate the whole or any part of this Contract, if Contractor breaches any provision of this Contract, or so fails to make progress as to endanger performance of this Contract, and in either of these circumstances, does not cure the breach or failure within a period of five (5) days after receipt of notice specifying the breach or failure. In the event of termination for default, the Board may secure the required services from another contractor. If the cost to the Board exceeds the cost of obtaining the Services under this Contract, Contractor shall pay the additional cost. The rights and remedies of the Board provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE XI

Disputes

Any differences or disagreements arising between the Parties concerning the rights or liabilities under this Contract, or any modifying instrument entered into under Article VIII of this Contract, shall be resolved through the procedures set out in the Regulations.

ARTICLE XII

Contractor's Work Product

Unless waived in writing by the Contract Administrator, the Board shall retain ownership in and the rights to any reports, research data, creative works, designs, recordings, graphical representations or other works of a similar nature (hereinafter "Works") produced or delivered by Contractor under this Contract. Contractor agrees that the Works are "works for hire" and Contractor assigns all right, title and interest in the Works to the Board.

Any reports, information, data, etc. given to or prepared or assembled by Contractor under this Contract shall not be made available to any individual or organization by Contractor without the prior written approval of the Board. Provided, nothing in this Article may be used to violate the provisions of any Kentucky or Federal statute or regulation which requires reporting of information.

ARTICLE XIII
Contract Administrator

The Board shall appoint a Contract Administrator for the purposes of daily administrative decision-making pertaining to the Contract. If Contractor and the Contract Administrator disagree on any circumstance or set of facts pertaining to the administration or execution of this Contract, the Board shall resolve the matter after notification by either the Contract Administrator or the Contractor in the manner prescribed by the Regulations. If the Board fails to give notice to Contractor of the appointment of a Contract Administrator, the Contract Administrator shall be the Board's Chief Financial Officer.

ARTICLE XIV
Right to Audit

The Board shall have the right to inspect and audit all accounting reports, books or records which concern the performance of the Services. Inspection shall take place during normal business hours at Contractor's place of business. Contractor shall retain all records relating to the performance of this Contract for five (5) years after the end of the term of this Contract.

ARTICLE XV
Miscellaneous

- A. All Articles shall be construed as read, and no limitation shall be placed on any Article by virtue of its descriptive heading.
- B. Any notices or reports by one Party to the other Party under this Contract shall be made in writing, to the address shown in the first paragraph of this Contract, or to such other address as may be designated in writing by one Party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.
- C. If any part of this Contract is held to be void, against public policy or illegal, the balance of this Contract shall continue to be valid and binding.
- D. This Contract shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky.
- E. No delay or omission by either Party in exercising any right under this Contract shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Contract.
- F. At all times during the term of this Contract, Contractor shall comply with the Family Educational Rights and Privacy Act of 1974. If Contractor has access to student records, Contractor shall limit its employees' access to those records to persons for whom access is essential to perform this Contract.
- G. If this Contract requires Contractor and/or any employees of Contractor access to school grounds on a regularly scheduled and continuing basis for the purpose of providing services directly to a student or students, all individuals performing such services under this Contract are required to submit per KRS 160.380 to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating no administrative findings of child abuse or neglect found

through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.

- H. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of this Contract and shall reveal any final determination of a violation by the Contractor or subcontractor of the preceding KRS Chapters.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract to be effective as of October 27, 2021.

Contractor's Social Security Number or Federal Tax ID Number: XXXXXXXXXX

JEFFERSON COUNTY BOARD OF EDUCATION

SchoolMint, Inc.
CONTRACTOR

By: _____

By: Spencer Kerrigan

Martin A. Pollio, Ed.D.
Title: Superintendent

Spencer Kerrigan
Title: Chief Revenue Officer

Cabinet Member: Dr. Carmen Coleman _____ (Initials)
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Jefferson County Public Schools
**NONCOMPETITIVE NEGOTIATION
DETERMINATION AND FINDING**

1. An emergency exists which will cause public harm as a result of the delay in competitive procedures (Only the Superintendent shall declare an emergency.)
State the date the emergency was declared by the superintendent:
2. There is a single source for the items within a reasonable geographic area
Explain why the vendor is a single source:
3. The contract is for the services of a licensed professional, education specialist, technician, or an artist
State the type of service: Education Specialist: Software License
4. The contract is for the purchase of perishable items purchased on a weekly or more frequent basis —
State the item(s):
5. The contract is for proprietary item(s) for resale: This can include the buying or selling of item(s) by students when it is part of the educational experience —
State the type(s) of item(s):
6. The contract is for replacement parts when the need cannot be reasonably anticipated and stockpiling is not feasible —
State the item(s):
7. The contract or purchase is for expenditures made on authorized trips outside the boundaries of Jefferson County Public Schools—
State the location:
8. The contract is for a sale of supplies at reduced prices that will afford Jefferson County Public Schools a savings (Purchase must be approved by Director of Purchasing) —
Explain the logic:
9. The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids —
State the items:

I have determined that, pursuant to K.R.S. 45A. 380, the above item(s) should be obtained by the Noncompetitive Negotiation Methods since competition is not feasible.

Matthew Anderson _____
Print name of person making Determination

Climate and Culture _____
School or Department

Signature of person making Determination Date

_SchoolMint, Inc. _____
Name of Contractor (**Contractor Signature Not Required**)

Requisition Number

Explanation of Noncompetitive Negotiation Methods can be found under K.R.S. 45A.380 and on page 15 in the Procurement Regulations



Master Services Agreement

This Master Services Agreement ("Agreement") is entered into as of October 27, 2021 (the "Effective Date") between Jefferson Co Board of Education ("Client") and SchoolMint, Inc., a Delaware corporation having its principal place of business at 251 Post Street, #200, San Francisco, CA. 94108 ("SchoolMint") (Client and SchoolMint are referenced herein as each a "Party" and collectively the "Parties").

1. Definitions.

(a). **"Services"** means the services and Software described in the applicable Order Form that references this Agreement ("Order Form") and any Documentation related thereto.

(b). **"Documentation"** means technical materials provided by SchoolMint to Client in hard copy or electronic form describing the use and operation of the Software, which does not include any sales and/or marketing materials that SchoolMint may provide Client to describe functionality intended for sales and/or marketing purposes.

(c). **"Software"** means the SchoolMint software products and solutions described in the Order Form.

(d). **"Subscription Period"** means the subscription period for the Software as set forth in the Order Form unless terminated earlier in accordance with Section 14 ("Termination").

2. Subscribing to the Software and Access to the Services. Client will subscribe to the Software and gain access to the Services by executing an Order Form with SchoolMint. In the event of any conflict between this Agreement and the terms set forth in the Order Form, the Order Form shall control, except this Agreement shall govern all terms relating to intellectual property rights, confidential information, warranty, indemnity and liability. Additional Order Forms may be entered into by the Parties to subscribe to additional or different features of the Services.

3. License.

(a). **License Grant.** Subject to the terms and conditions of this Agreement and SchoolMint's Privacy Policy, available upon request, and fully incorporated by reference herein, SchoolMint grants to Client a non-exclusive, non-transferable license during the Subscription Period, to access the Software through the User IDs and to operate the features of the Software according to the Documentation under normal circumstances.

(b). **User IDs.** SchoolMint will issue unique User IDs to each of the Client Personnel (as defined below) specified by Client from time to time to access and use the Software. Client Personnel will access and use the Software only through the User IDs issued by SchoolMint for such Client

Personnel. Each User ID may be used only to access the Software during one (1) concurrent login session. Client will not allow Client Personnel to share User IDs with any third parties, which require prior written approval for access by SchoolMint. **"Client Personnel"** means those personnel of Client who have been provided with authorized administrative access to the Software. Client is responsible for all activity occurring under its User IDs. Client is responsible for all use of the Services by Client Personnel and for maintaining the confidentiality of all User IDs and will promptly notify SchoolMint of any actual or suspected unauthorized use of the Services. SchoolMint reserves the right to suspend or terminate any User ID which it determines may have been used for an unauthorized purpose.

(c). **Limitations.** Client agrees that it will not and will not permit any Client Personnel or other party to: (i) to access or use the Services other than Client Personnel explicitly authorized by SchoolMint; (ii) modify, adapt, alter or translate the Software or Documentation, except as expressly allowed hereunder; (iii) sublicense, lease, rent, loan, distribute, or otherwise transfer the Services to any third party; (iv) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or algorithms, structure or organization) of the Software; (v) use or copy the Software or Documentation except as expressly allowed hereunder; (vi) disclose or transmit any data contained in the Software to any individual other than Client Personnel. Client shall hold SchoolMint harmless from any and all claims relating to Client's misuse of Software and/or Services rendered by SchoolMint to Client, including SchoolMint's intellectual property.

(d). **Harmful Content.** In using the Software, Client agrees to the following: (i) Client shall not incorporate into or otherwise transmit through the Software any content that violates or infringes the rights of others, including without limitation any material that: (A) may be abusive, indecent, threatening, obscene, harassing, violent, defamatory, libelous, fraudulent, or otherwise objectionable; (B) encourages or otherwise promotes conduct that would constitute a criminal offense or give rise to civil liability; (C) impersonates any person or entity or that otherwise misrepresents Client's affiliation with a person or entity; (D) contains malicious code; (E) is in violation of the CAN-

SPAM Act or any other applicable laws pertaining to unsolicited email, SMS, text messaging or other electronic communications, or the transmission of emails to an individual or entity with which Client has no preexisting relationship; (F) includes the private information of another without express permission, including but not limited to contact information, social security numbers, credit card numbers or other information which a reasonable would consider private in nature, (G) violates any privacy, intellectual property or proprietary right of another; (H) is pornographic or sexual in nature; (I) expressly targets children under the age of 13; or (J) is unlawful or otherwise objectionable in SchoolMint's sole opinion; and (ii) Client shall ensure that Client's use of the Services is at all times compliant with all applicable local, state, federal and international law, regulations and conventions, including without limitation, those related to data privacy, international communications, and the exportation of data of any kind, regulations of the U.S. Securities and Exchange Commission and/or any rules of a securities exchange in the U.S. or elsewhere.

(e). **Client Responsibility.** Client shall perform the responsibilities necessary to establish Client's use of the Services, including (a) providing Client Personnel lists to setup User IDs, (b) properly maintaining all associated equipment, software and environmental conditions in accordance with applicable industry standards and/or specifications SchoolMint provides Client, and (c) designating Client Personnel to participate in training.

(f). **Client Authorization; Enforceability.** Client represents and warrants that (i) it has obtained all necessary authorizations to enter into this Agreement and the Order Form, (ii) the person signing and/or consenting on behalf of Client is a duly authorized representative of the Client, and (iii) this Agreement is a duly authorized binding and enforceable obligation of Client.

(g) **Hosting Services.** SchoolMint will provide the hosting services ("**Hosting Services**") for the Software through a third party hosting facility (such as AWS) and may update the content, functionality and user interface of the Hosting Services from time to time in its sole discretion and in accordance with this Agreement. In order to use the Software, Client must have or obtain access to the internet. Client agrees that SchoolMint is not providing Client with access to the internet in order to use the Software and that Client is solely responsible for obtaining and maintaining such internet access and for providing all equipment necessary to obtain and maintain such internet access. SchoolMint does not and cannot control the flow of data to or from SchoolMint's network, designated hosting facility and/or other portions of the internet. Such flow depends in large part on the performance of internet services provided or controlled by

third parties. At times, actions or inactions of such third parties can impair or disrupt Client's connections to the internet (or portions thereof). SchoolMint agrees to use commercially reasonable efforts to take any actions it deems appropriate to remedy and avoid such events. However, SchoolMint cannot guarantee that such events will not occur. Accordingly, SchoolMint disclaims any and all liability resulting from or related to such event.

(g) **Equipment.** If Client has purchased any equipment from SchoolMint as set forth in the Order Form, then such equipment is provided "AS-IS" from the manufacturer and SchoolMint makes no warranties, express or implied, with respect to such equipment. To the extent permitted by the manufacturer, all manufacturer's warranties will be passed through to Client.

4. Reservation of Rights.

(a). **SchoolMint.** SchoolMint expressly reserves all rights in the Services, Software, Documentation, and all other materials provided by SchoolMint hereunder not specifically granted to Client. It is acknowledged that all right, title and interest in the Services, Software, Documentation, and all other materials provided by SchoolMint hereunder, any update, adaptation, translation, customization or derivative work thereof, and all intellectual property rights therein will remain with SchoolMint (or third party suppliers, if applicable) and that the Services, Software, Documentation, and all other materials provided by SchoolMint hereunder are licensed on a subscription basis and not transferred to Client apart from the temporary license discussed herein.

(b). **Client.** Client expressly reserves all rights in any data that Client (or Client Personnel) uploads through the Services and all results from processing such data, including compilations, and derivative works thereof (the "**Client Data**"), except that Client grants SchoolMint a non-exclusive, royalty-free, license to use, reproduce, and create derivative works of the Client Data in operating the Service features for Client's benefit. Notwithstanding the foregoing, SchoolMint may use and distribute aggregated and/or de-identified data that is derived from the Client Data for any lawful purpose and such aggregated and/or de-identified data shall be owned by SchoolMint. Client represents and warrants that Client has all rights under applicable law to provide the Client Data, including any personal information of any of the students and or other persons included therein.

5. Term. Unless earlier terminated pursuant to this Agreement, this Agreement shall be in effect pursuant to the dates set forth in the Order Form ("**Initial Term**"), and thereafter may be renewed for additional one (1) year periods upon each anniversary of the commencement of the Initial Term (each subsequent period will be known as a "**Renewal Term**" and together with the Initial Term, the "**Term**"). The

Renewal Terms will be invoiced at then-current rates. Expiration or termination of an Order Form shall not affect any other Order Form, unless the Agreement Term expires or the Agreement as a whole is terminated under Section 14 ("Termination").

6. User Documentation. The Services may contain online Documentation describing the operation of the Services under normal circumstances. No source code or technical-level documentation to the Services is licensed under this Agreement.

7. Client Support. During the Subscription Period for the applicable Services, SchoolMint will provide the following standard customer support:

(a). **Web Support.** Client's designated representative shall have access to SchoolMint's technical support web site and may use the website to submit service requests. SchoolMint will use reasonable efforts to respond in a timely manner under the given circumstances.

(b). **Client's Responsibilities.** To receive support, Client shall: (i) report errors or suspected errors for which support is needed, and supply SchoolMint with sufficient information and data to reproduce the error; (ii) procure, install, operate and maintain hardware, operating systems and other software that are compatible with the most current supported version of Software and otherwise in conformity with SchoolMint's minimum requirements as made available to Client; and (iii) maintain an operating environment free of any modifications or other programming that might interfere with the functioning of Software. Client acknowledges that fixes and new versions may be made available electronically, and that, in some cases, SchoolMint may maintain e-mail distribution lists that are used to notify customers of the availability of fixes and new versions and to provide other information to customers that are eligible for support. Client shall be responsible for including the appropriate Client Personnel on any such e-mail distribution lists of SchoolMint so that Client receives such notifications and other information.

(c). **Service Upgrades and Scheduled Downtime.** Client shall receive access to upgraded versions of the Services as made available by SchoolMint from time to time, and at no additional charge. SchoolMint may from time to time schedule downtime for maintenance and upgrades. SchoolMint may provide Client notice of any scheduled downtime, including any scheduled user disruption, if the circumstances permit such notice. SchoolMint will strive to perform updates during non-peak hours.

8. Professional Services. In consideration of Client's payment of the applicable fees and expenses set forth in the Order Form for professional services, SchoolMint will provide Client the professional services set forth therein, which may include attendance at designated training sessions

provided by SchoolMint as set forth herein ("**Professional Services**"). Training may be conducted at SchoolMint's training facility, at Client's location, or by teleconference, as agreed by the Parties. In the event that Professional Services are provided beyond standard service offerings provided in connection with the licensing of the Software (such as custom design or custom implementations), then such additional Professional Services shall be described in a separate statement of work to be entered into between the Parties.

9. Fees and Payment.

(a). **Subscription Fees.** Subscription Fees (set forth in each Order Form) are payable in advance pursuant to subsection 9(b) below. SchoolMint will issue an invoice for each payment annually.

(b). **Fees.** The Subscription Fees and all other fees and expenses set forth in each Order Form (all such fees are collectively "**Fees**") will be invoiced and are payable net thirty (30) days after the invoice date.

(c). **Late Payment.** Client may not withhold or "setoff" any amounts due hereunder. SchoolMint reserves the right to suspend access to the Services until all undisputed past due amounts are paid in full after giving Client advance written notice and an opportunity to cure as specified in this Agreement.

(d). **Certain Taxes.** Fees quoted do not include and Client shall pay, indemnify and hold SchoolMint harmless from all gross receipts, value-added, GST, personal property or other taxes, and all applicable duties, tariffs, assessments, export and import fees or similar charges (including interest and penalties imposed thereon) on the transaction contemplated herein, other than taxes based on the net income or profits of SchoolMint. If Client is exempt from federal, state, sales, and use taxes the Client will not be charged the same upon providing SchoolMint with sufficient evidence of said exemption.

10. Confidential Information.

(a). **Definitions.** For purposes of this section, a Party receiving Confidential Information (as defined below) shall be the "**Recipient**" and the Party disclosing such information shall be the "**Discloser**" and "**Confidential Information**" means all information disclosed by Discloser to Recipient during the Term and marked as "confidential" or "proprietary". Client hereby acknowledges that the Services (including any Documentation, Software, and any translations, compilations, partial copies and derivative works thereof) will be considered Confidential Information belonging exclusively to SchoolMint (or its designated third party supplier), and SchoolMint hereby acknowledges that Client Data will be considered Confidential Information belonging to Client, in each case regardless of whether or not

marked as "confidential" or "proprietary".

(b). **Covenant.** To the extent permitted by law, the Recipient hereby agrees that during the Term and at all times thereafter it shall not (i) disclose such Confidential Information of the Discloser to any person or entity, except to its own personnel having a "need to know" (and who themselves are bound by similar nondisclosure restrictions), and to such other recipients as the Discloser may approve in writing; provided that all such recipients shall have first executed a confidentiality agreement in a form acceptable to Discloser; (ii) use Confidential Information of the Discloser except to exercise its license rights or perform its obligations under this Agreement; or (iii) alter or remove from any Confidential Information of the Discloser any proprietary legend. Recipient shall use at least the same degree of care in safeguarding the Confidential Information of the Discloser as it uses in safeguarding its own confidential information of a similar nature, but in no event shall less than due diligence and reasonable care be exercised. Upon the earlier of Discloser's written request or termination or expiration of this Agreement, and regardless of whether a dispute may exist, Recipient shall return or destroy (as instructed by Discloser) all Confidential Information of Discloser in its possession or control and cease all further use thereof. Notwithstanding the foregoing, Recipient may disclose Discloser's Confidential Information to the extent that such disclosure is necessary for the Recipient to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that the Recipient promptly notifies the Discloser in writing of such required disclosure and cooperates with the Discloser to seek an appropriate protective order.

(c). **Injunctive Relief.** Recipient acknowledges that violation of the provisions of this section would cause irreparable harm to Discloser not adequately compensable by monetary damages. In addition to other relief, it is agreed that injunctive relief shall be available without necessity of posting bond to prevent any actual or threatened violation of such provisions.

11. Disclaimers.

(a). **DISCLAIMER OF OTHER WARRANTIES. SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND (UNLESS EXPLICITLY PROVIDED FOR HEREIN), AND SCHOOLMINT AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND POTENTIAL IMPLEMENTATION DELAYS. SCHOOLMINT DOES NOT WARRANT THAT THE FUNCTIONALITY CONTAINED IN THE SOFTWARE WILL MEET CLIENT'S REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE OR HOSTING**

SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE LICENSED PRODUCT WILL BE CORRECTED. FURTHERMORE, SCHOOLMINT DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE OR SERVICES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, SECURITY OR OTHERWISE. CLIENT AGREES THAT THE USE OF SOFTWARE AND SERVICES IS AT CLIENT'S OWN RISK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SCHOOLMINT OR AN SCHOOLMINT REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT FULLY APPLY TO CLIENT.

(b). **Limited Non-Infringement Warranty.** SchoolMint warrants that it has the right to license to Client the Software and provide the Services as contemplated by this Agreement. SchoolMint represents and warrants that as of the date the Software and Services, when properly used in accordance with the Documentation and this Agreement, will not misappropriate or infringe any third party's intellectual property rights recognized under any trade secret law, any U.S. copyright, or U.S. patent issued as of the Effective Date.

(c). **Limited Privacy Warranty.** SchoolMint hereby recognizes that the Client Data which Client provides to SchoolMint may include personal information of students. In order for SchoolMint to carry out its obligations under this Agreement, it is necessary for SchoolMint to use the Client Data. SchoolMint agrees to use the Client Data, some of which may contain personal information of students, only for the purpose of fulfilling its obligations under this Agreement. SchoolMint agrees all usage of Client Data shall be in compliance with the requirements of applicable privacy laws. SchoolMint warrants that it has put in place reasonable and appropriate security, technical and organizational measures to protect its usage of the Client Data against accidental or unlawful destruction or accidental loss, alterations, and unauthorized use, disclosure or access. SchoolMint also warrants that it shall not disclose to, permit the disclosure to, or provide access to the Client Data to any third parties, except as is necessary for SchoolMint to fulfill its obligations under this Agreement and under the law. In the event the Client or any third party believes there has been a material breach of this provision, SchoolMint shall have a reasonable amount of time, which will be a minimum of thirty (30) days from the date of receiving written notice to cure any such alleged breach.

12. Limitation of Liabilities. The Parties acknowledge that the following provisions have been negotiated by them and

reflect a fair allocation of risk and form an essential basis of the bargain and shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy:

SCHOOLMINT SHALL NOT BE LIABLE TO CLIENT FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR LOST PROFITS, LOST FUNDING, LOST SAVINGS, OR LOST OR DAMAGED DATA; OR FOR CLAIMS OF A THIRD PARTY; ARISING OUT OF THIS AGREEMENT, SOFTWARE, THIRD PARTY SOFTWARE, SUPPORT, HOSTING, SERVICES, OR OTHER ITEMS PROVIDED, OR THE USE OR INABILITY TO USE ANY OF THE FOREGOING, EVEN IF SCHOOLMINT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE. IN ANY EVENT, IN RESPECT OF ANY CLAIM, DEMAND OR ACTION ARISING OUT OF THIS AGREEMENT, CLIENT SHALL BE LIMITED TO RECEIVING ACTUAL AND DIRECT DAMAGES IN A MAXIMUM AGGREGATE AMOUNT EQUAL TO THE CHARGES PAID BY CLIENT TO SCHOOLMINT HEREUNDER FOR THE APPLICABLE LICENSED PRODUCT, ITEM OR SERVICE ON WHICH THE CLAIM IS BASED IN THE PREVIOUS TWELVE (12) MONTHS.

13. Notices. Any notice or communication required or permitted under this Agreement shall be in writing to the parties at their respective addresses of record or at such other address as may be given in writing by either party to the other in accordance with this section and shall be deemed to have been received by the addressee (i) if given by hand, immediately upon receipt; (ii) if given by overnight courier service, the first business day following dispatch or (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail.

14. Termination.

(a). **Termination for Breach.** SchoolMint shall have the right to immediately suspend performance under this Agreement in the event that Client is in breach of any of its obligations under this Agreement. In addition, either party shall have the right to terminate this Agreement in whole or in part upon thirty (30) days written notice to the other party, in the event the other party materially breaches this Agreement and fails to correct such breach within such thirty (30) day period; provided that SchoolMint shall have the right to terminate this Agreement immediately upon written notice in the event that Client breaches any of its obligations under Section 10. The Parties further acknowledge that, as breach of the provisions of Section 10 could result in irreparable injury to the

Discloser, that each Party shall have the right to seek equitable relief against any actual or threatened breach thereof, without proving actual damages.

(b). **Liquidated Damages.** In the event that Client enters into a multi-year contract with SchoolMint, and Client terminates the contract or any portion thereof, Client agrees to pay SchoolMint the remaining sum due to SchoolMint through the stated term of the Order Form as liquidated damages, as actual damages being impossible to calculate. This clause shall not apply in the event Client terminates this Agreement as a result of SchoolMint's breach in accordance with Subsection 14(a) herein. Notwithstanding the foregoing, Client shall not be liable for such liquidated damages in the event that: (i) Client provides SchoolMint at least thirty (30) days' advance notice of termination prior to the effective date anniversary; and (ii) such termination is a result of the non-appropriation of funds for Client's contract. Client shall not utilize this clause as a right to terminate the contract for convenience. SchoolMint reserves the right to seek documentation evidencing the non-appropriation of funds.

(c). **Survival.** Upon termination or expiration of this Agreement for any reason: (i) all rights and obligations of both Parties (except for Client's payment of all Fees then owing), including all licenses granted hereunder, shall immediately terminate except as provided below; (ii) within thirty (30) days after the effective date of termination, each Party shall comply with the obligations to return or destroy, at a Discloser's determination, all Confidential Information of the other Party, as set forth in Section 10 ("**Confidential Information**"). The following Sections and Subsections will survive expiration or termination of this Agreement for any reason: Section 4 ("**Reservation of Rights**"), Section 10 ("**Confidential Information**"), Section 11 ("**Warranties and Disclaimer**"), Section 12 ("**Limitation of Liabilities**"), Section 14(c) ("**Survival**"), and Section 15 ("**General Provisions**"). Upon termination, as long as Client is not in breach, if requested, SchoolMint shall make a final backup of Client Data and provide the backup media to Client at SchoolMint's then-current rates.

15. General Provisions.

(a). **Assignment.** Client may not assign this Agreement to any third party without SchoolMint's prior written consent. SchoolMint may assign this Agreement to any purchaser of all or substantially all of its assets or capital stock. Any assignment in violation of this section shall be void. The terms of this Agreement shall be binding upon permitted assignees.

(b). **Choice of Law; Attorney's Fees.** This Agreement and any action related thereto shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of law principles. Each of the Parties hereto

agrees to be subject to the exclusive jurisdiction, and venue shall reside, in the state and federal courts located in San Francisco, California for the purpose of adjudicating any dispute relating to or arising out of this Agreement. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any claim against SchoolMint must be brought within one (1) year after it arose, or be barred. The prevailing Party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

(c). **Compliance with Export Regulations.** Client has or shall obtain in a timely manner all necessary or appropriate licenses, permits or other governmental authorizations or approvals; shall indemnify and hold SchoolMint harmless from, and bear all expense of, complying with all foreign or domestic laws, regulations or requirements pertaining to the importation, exportation, or use of the technology to be developed or provided herein. Client shall not directly or indirectly export or re-export (including by transmission) any regulated technology to any country to which such activity is restricted by regulation or statute, without the prior written consent, if required, of the administrator of export laws (e.g., in the U.S., the Bureau of Export Administration of the U.S. Department of Commerce).

(d). **Construction.** Except as otherwise provided herein, the Parties rights and remedies under this Agreement are cumulative. The term "including" means "including without limitation."

(e). **Force Majeure.** Neither Party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which occur after the signing of this Agreement and which are beyond the reasonable control of such Party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or

diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.

(f). **Severable.** Any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect. Without limiting the generality of the foregoing, Client agrees that the section titled Limitation of Liabilities will remain in effect notwithstanding the enforceability of any other provision herein.

(g). **Waiver.** Waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions.

(h). **Counterparts; Facsimile Signature.** This Agreement, and may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument

(i). **Independent Contractors.** Client's relationship to SchoolMint is that of an independent contractor, and neither Party is an agent or partner of the other. Client will not have, and will not represent to any third party that it has, any authority to act on behalf of SchoolMint.

(j). **Entire Agreement.** This Agreement, the Order Form, and Client's Purchase Order (if any) incorporated by reference constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all other communications, whether written or oral. This Agreement may be amended only by a written document signed by both Parties. In the event of any conflicts between this Agreement and the Order Form, the terms of the Order Form shall prevail. The headings of sections of this Agreement are for reference purposes only and have no substantive effect.

Accepted and agreed by the authorized representative of each Party:

[Name of Client]

SchoolMint, Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____