

NEW MEXICO
ASSOCIATION OF CHARTER SCHOOLS EDUCATION SERVICES



**AGENCY AGREEMENT AND
INCORPORATING CONTRACT**

ACES Contract Number: RFP 23-05

Commodity: Software: SIS, LMS, ERP Systems and Related Services

Established by: ☒ **Cooperative Procurement** ☐ **Price Agreement**

CONTRACT TERM (subject to annual renewal):

July 1, 2023 to June 30, 2027

Number of contracts: 2

Contractors:

PowerSchool Group LLC
schoolAbility LLC

ACES approved by:

A handwritten signature in blue ink, appearing to read "Christy Takacs".

Christy Takacs
Executive Director, Chief Procurement Officer

Date: 12/06/2024

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FOR AGENCIES

To become established as an ACES Participating Agency, or for questions regarding ACES in general, membership, contracts, etc.:

Christy Takacs, Executive Director
575-468-ACES (2237) ext. 100;
Email: ed@nmaces.org

For questions regarding purchase orders, invoices or payments:

Katherine Moore, Business Manager
575-468-ACES (2237) ext. 101
Email: businessoffice@nmaces.org

For questions regarding procurement, use of contracts, vendor performance, etc.:

Tammy West, Procurement Manager
575-468-ACES (2237) ext. 102
Email: procurement1@nmaces.org

PURCHASE ORDER AND PAYMENT INSTRUCTIONS:

- ✓ A PURCHASE ORDER WITH ALL REQUIRED INFORMATION **MUST** BE RECEIVED BY ACES **PRIOR TO** THE DELIVERY OF ITEMS AND/OR COMMENCEMENT OF SERVICES BY THE CONTRACTOR.
- ✓ ALL PURCHASE ORDERS ISSUED UNDER THIS AGREEMENT MUST REFERENCE THE **CONTRACTOR'S NAME, CORRESPONDING ACES CONTRACT NUMBER AND COMMODITY TITLE** FOUND ON THE FIRST PAGE OF THIS AGREEMENT DOCUMENT.
- ✓ PURCHASE ORDERS SHALL BE SENT TO ACES BY EMAIL AT:
businessoffice@nmaces.org.
- ✓ PAYMENT SHALL BE MADE TO ACES ***WITHIN 15 DAYS*** AFTER RECEIPT OF ACES INVOICE, SUBJECT TO LATE FEES.

FAILURE TO DO ANY OF THE ABOVE PURCHASE ORDER INSTRUCTIONS MAY RESULT IN THE PARTICIPATING AGENCY BEING RESPONSIBLE FOR DIRECT PAYMENT TO THE CONTRACTOR AND/OR MAY CONSTITUTE A FAILURE TO COMPLY WITH NEW MEXICO PROCUREMENT CODE AND/OR BE CAUSE FOR AUDIT FINDING.

FOR CONTRACTORS

For general questions, information regarding this contract, questions or issues regarding provision of products and/or services or to refer a school or public agency for membership:

Christy Takacs, Executive Director
575-468-ACES (2237) ext. 100;
Email: ed@nmaces.org

For procurement related assistance, questions regarding this contract, or for assistance related to the provision of product and/or services and anything related:

Tammy West, Procurement Manager
575-468-ACES (2237) ext. 102
Email: procurement1@nmaces.org

For questions regarding purchase orders, invoices or payments:

Katherine Moore, Business Manager
575-468-ACES (2237) ext. 101
Email: businessoffice@nmaces.org

PURCHASE ORDER/INVOICING/PAYMENT INSTRUCTIONS:

PAYMENT TERMS: NET 30 *after certification* that goods/services have been received and meet specifications.
(PER NM LAW, ALL PUBLIC AGENCIES HAVE 15 DAYS TO CERTIFY AFTER RECEIPT OF INVOICE)

- ✓ A PURCHASE ORDER WITH ALL REQUIRED INFORMATION **MUST** BE SENT FROM THE USING AGENCY TO ACES* **PRIOR TO** THE DELIVERY OF ITEMS AND/OR COMMENCEMENT OF SERVICES BY THE CONTRACTOR.

*UNLESS A WAIVER HAS BEEN GRANTED FOR DIRECT INVOICING/PAYMENT

- ✓ ONCE A VALID PURCHASE ORDER IS RECEIVED FROM THE USING AGENCY, ACES WILL ISSUE A PURCHASE ORDER TO THE CONTRACTOR. UPON RECEIPT OF AN ACES PURCHASE ORDER, THE CONTRACTOR MAY PROCEED TO DELIVER ITEMS AND/OR PERFORM SERVICES.

- ✓ ALL INVOICES SHALL CONTAIN THE FOLLOWING INFORMATION:
 - **ACES** PURCHASE ORDER NUMBER
 - NAME OF USING AGENCY

- ✓ INVOICES SHALL BE SENT TO ACES BY EMAIL TO: businessoffice@nmaces.org.

AWARDED CONTRACTORS

COMPANY INFORMATION

SERVICE AREA

POWERSCHOOL GROUP

NM STATEWIDE

150 PARKSHORE DRIVE

FOLSOM, CA 95630

CONTACT: Ashley Perez

PHONE: 916-220-9361

EMAIL: ashley.perez@powerschool.com

WEB ADDRESS: www.powerschool.com

PRIMARY SERVICES OFFERED: Student Information Systems; Learning Management Systems; Enterprise Resource Planning Solutions and Consulting

SCHOOLABILITY

NM STATEWIDE

PO BOX 21565

ALBUQUERQUE, NM 87154

CONTACT: ALFREDO DIAZ

PHONE: 520-780-1375

EMAIL: alfredo@schoolAbility.com

WEB ADDRESS: www.schoolAbility.com

PRIMARY SERVICES OFFERED: Enterprise Resource Planning (ERP) Systems

<END>

AGREEMENT

This AGREEMENT is made and entered into as of the last date signed by both parties, by and between the New Mexico Charter School Education Services Association (“ACES”), a public entity, existing under the laws of the State of New Mexico with a mailing address of P.O. Box 16326, Albuquerque, NM, 87191 and the CONTRACTOR, as identified and signed under paragraph 26 of this Agreement. Further, any ACES Participating Agency may become party to this agreement by issuing a valid purchase order based on the CONTRACTOR’S quote, referencing this ACES contract number and the Contractor name.

RECITALS

WHEREAS, the Joint Powers Agreement (JPA) that created ACES, indicates one of its lawful purposes is, “Purchase of professional services, construction services, and tangible personal property for local public bodies and state agencies when so requested and in accordance with the requirements of the Procurement Code”, and

WHEREAS ACES Members are charter schools party to the JPA as approved by Secretary of the New Mexico Department of Finance and Administration or an ACES Participating Agency, and

WHEREAS the CONTRACTOR was awarded a contract in response to ACES RFP 23-05, and

WHEREAS the parties agree that it is desirable to participate in the cooperative procurement of, or use of an established price agreement for Student Information (SIS), Learning Management (LMS) and Enterprise Resource Planning (ERP) systems and related services, to avoid duplicate procurement efforts and obtain the benefits of volume purchasing; and

WHEREAS, ACES, pursuant to the powers vested in it through the JPA, has awarded an Acceptance of Offer and Contract Award to CONTRACTOR to provide Special Education Support Services and Case Management to schools that are parties to the JPA and to Participating Entities that have an Agreement with ACES and represents to its members that said services are for a price that provides economic and other advantages for its members, and

WHEREAS, ACES has initiated a contract for Student Information (SIS), Learning Management (LMS) and Enterprise Resource Planning (ERP) systems and related services and provides it to Participating Agencies in accordance with the Procurement Code NMSA 1978, §§ 13-1-21 to 199 and the New Mexico School Personnel Act NMSA 1978, §§ 22-10A-1, *et seq.*, and such other laws and regulations applicable to this contract, and

WHEREAS, ACES Participating Agencies participate in the solicitation, evaluation and/or use of cooperative contracts managed by ACES, or utilize established price agreements formally solicited by ACES, and become parties to this contract by issuing a valid purchase order referencing this contract, and

WHEREAS, the following documents are hereby incorporated into this contract by reference and made part of this contract:

- RFP 23-05 document with all addenda
- CONTRACTOR'S response to RFP 23-05 as amended and/or otherwise negotiated and awarded by ACES, and as summarized in Attachment A.

NOW, THEREFORE, the parties hereto, in consideration of mutual covenants and promises contained herein,

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. PURPOSE

The purpose of the Agreement is to authorize the parties' mutual participation in RFP 23-05 with the CONTRACTOR.

2. TERM OF THE AGREEMENT

A. *Effective Date.*

- 1) This Agreement shall be deemed effective between ACES and the CONTRACTOR as of July 1, 2023, and shall remain in effect through June 30, 2027, unless ACES exercises the right of non-renewal during any subsequent term, or unless termination otherwise occurs by either party. The Contractor may terminate this Agreement with written notice delivered to ACES at least sixty (60) days prior to the intended date of termination. In terminating, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.
- 2) This Agreement shall be deemed effective between the CONTRACTOR and the ACES Participating Agency upon issuance of a valid purchase order referencing this contract. The date of the agreement commencement between the ACES Participating Agency shall be the date of the purchase order. The purchase order must be dated prior to the final termination date of the total contract term. The term of the agreement between the CONTRACTOR and the ACES Participating Agency is subject to §13-1-150 NMSA 1978.

B. *Termination Notice.* This Agreement may be terminated immediately with written notice to ACES Participating Agency if ACES or CONTRACTOR determines that immediate termination is in the best interest of ACES and CONTRACTOR or written note to CONTRACTOR if it determines that immediate termination is in the best interest of ACES and/or ACES Participating Agency. This provision is not exclusive and does not waive each party's other legal rights and remedies caused by the ACES Participating Agency or ACES default/breach of this agreement.

C. *Termination Management.* Immediately upon receipt by either ACES Participating Agency, CONTRACTOR or ACES of Notice of Termination of this Agreement, none of the parties shall: 1) incur any further obligations for salaries, services, or any other expenditure of funds, 2) shall enter any additional requests for services,

3) parties shall comply with all directives issued by the other parties in the notice of termination as included in this Agreement, and 3) all parties shall take such action as ACES Participating Agency, CONTRACTOR or ACES shall direct for protection, preservation, retention or transfer of all property and all records generated under this Agreement. Within ten (10) days of Notice of Termination is received, CONTRACTOR shall furnish ACES with final Invoice, and within an additional five (5), ACES shall furnish the ACES Participating Agency with final Invoice. Within thirty (30) days of receipt of Notice of Termination the ACES Participating Agency shall pay ACES according to the terms of Section 5, below.

3. RELATIONSHIP OF THE PARTIES

- A. This Agreement is between ACES and the CONTRACTOR. Whenever an ACES Participating Agency issues a purchase order in response to CONTRACTOR'S written or verbal quote, based on and referencing ACES RFP 23-05 and the Contractor's name, the ACES Participating Agency then becomes party to this agreement.
- B. CONTRACTOR acknowledges and agrees that ACES' purpose and function is to act as a cooperative procurement agent on behalf of its Participating Agencies so that they may take advantage of these procurement efforts. ACES does not have any subsequent responsibility relating to the quality and fitness of any Products, or the performance of any Services and Construction Services by Contract Holder. Any purchase orders placed by an ACES Participating Agency with Contract Holder directly or through ACES and any resulting contract between the CONTRACTOR and an ACES Participating Agency do not create any additional obligations on the part of ACES.
- C. For transactions which involve ACES transmitting purchase orders on behalf of an ACES Participating Agency to CONTRACTOR, ACES volunteers to act as a payment facilitator to make payments to CONTRACTOR with funds transferred to ACES by the ACES Participating Agency in accordance with the Participating Agency's written instructions and to provide an accounting of all monies paid or received by ACES pursuant to this Agreement. ACES also volunteers to provide informal mediation services between CONTRACTOR and ACES Participating Agency in the event any dispute arises between them.
- D. CONTRACTOR understands and agrees that upon ACES' receipt of funds from the ACES Participating Agency, ACES has no right or authority to thereafter apply those funds to any purpose other than as instructed by the ACES Participating Agency. ACES shall incur no liability to the CONTRACTOR except for liability arising from ACES' own gross negligence or willful misconduct to the extent allowed by New Mexico law. Through this procurement process and subsequent contract, CONTRACTOR is authorized to provide the described products or services. ACES has no obligation or right to involve itself with the manner or method by which CONTRACTOR provides the products or services.

- E. It is not the intent of the parties to this Agreement, nor shall this Agreement be interpreted to create a new or separate legal entity for the performance of this Agreement.
- F. Each party shall maintain its own respective records and documents associated with the Agreement in accordance with the records retention requirement applicable to public records or as otherwise specified in the contract documents.
- G. CONTRACTOR is responsible for the quality and delivery of the goods and services provided under the Agreement.

4. SCOPE OF WORK

- A. Services Provided. Services and/or items shall be provided as stated in the contract documents, including Attachment A.
- B. Under the terms and conditions of this Agreement an ACES Participating Agency as allowed by law may issue orders for items and/or services described herein. The terms and conditions of this contract shall form a part of each order issued hereunder. The items and/or services to be ordered shall be as listed herein and as otherwise quoted to the ACES Participating Agency by the CONTRACTOR in reference to this contract. All orders issued hereunder will bear both an order number and this ACES contract number. It is understood that no guarantee or warranty is made or implied by ACES or the user that any order for any definite quantity will be issued under this contract. The Vendor is required to accept the order and furnish the items and/or services in accordance with the articles contained hereunder for the quantity of each order.
- C. ACES Participating Agencies may negotiate with the CONTRACTOR certain additional terms and conditions relating to the scope of services and other performance details. However, the terms and conditions of this contract may not be altered or amended except with the approval of ACES and in accordance with the State Procurement Code.
- D. Compliance with Law/Policies. ACES and ACES Participating Agency shall adhere to all applicable state and federal laws, policies and regulations applicable to ACES or the ACES Participating Agency, including privacy, confidentiality, and security requirements. CONTRACTOR shall comply with applicable state and federal laws, policies and regulations relevant to the services provided.

5. COMPENSATION

- A. *Prices.* Prices as listed in this contract cannot be exceeded. CONTRACTOR and using agency may negotiate lower prices where in agreement to do so.
- B. *Rate of Pay.* The ACES Participating Agency shall pay CONTRACTOR in full for services satisfactorily performed pursuant to this agreement. If the ACES Participating Agency finds that the services are not acceptable, it shall, within ten (10) days after receipt of CONTRACTOR's invoice, provide to CONTRACTOR

and ACES a letter of exception explaining the objection to the services along with details of how ACES may provide remediation action.

- C. *Payment Procedure.* The ACES Participating Agency using this ACES contract shall provide a Purchase Order to ACES* referencing the ACES Contract Number and a specific dollar amount or a “not to exceed amount” for the products and/or services to be ordered. It is recommended that the amount be based on written quote provided by the CONTRACTOR. The Purchase Order shall include the shipping address(s) of the ACES Participating Agency receiving the order. CONTRACTOR shall invoice ACES* and ACES will invoice the ACES Participating Agency. ***Invoiced amounts shall include the ACES fee embedded in the cost of items/services and not listed separately on the invoice.*** Payments not received within 30 days of receipt of invoice shall be delinquent. Payments 15 days delinquent shall be assessed an administrative fee at the greater of 1.5% per month or the maximum amount permissible under law (*Procurement Code 13-1-158 (c) NMSA 1978*). *The ACES Participating Agency agrees to these specific terms of payment. ACES will render payment to the CONTRACTOR* after receipt of payment by the ACES Participating Agency, less the 1.5% ACES fee based on total invoice amount.*

*Unless a waiver has been granted by ACES authorizing direct invoicing/payment between Contractor and the Participating Agency.

6. ORDERING AGENCY RESPONSIBILITY

Receipt, inspection, acceptance and payment for materials and services ordered under this Agreement shall be the exclusive obligation of the ACES Participating Agency.

A complete copy of the ACES contract relied upon for purchase shall be downloaded and kept by the ACES Participating Agency at the time of purchase for audit purposes.

ACES shall not be held liable for payments not made or late payments made by ACES Participating Agencies.

7. INSPECTION

Final inspection and acceptance will be made by the ACES Participating Agency at the destination. Supplies/items rejected at the destination for nonconformance with the terms and conditions of this contract shall be removed at the CONTRACTOR'S risk and expense, promptly after notice of rejection by the ACES Participating Agency. Services rejected for nonconformance with the terms and conditions of the contract and/or requirements of the order shall be corrected by the CONTRACTOR promptly after notice of rejection. Items or services not corrected after notice shall not be paid for pursuant to NM state law.

8. RESPONSIBILITY

CONTRACTOR shall pay the assigned staff wages and benefits in accordance with

its policies and all applicable state and federal laws. The CONTRACTOR shall withhold and transmit payroll taxes, provide unemployment insurance and workers' compensation benefits for the assigned staff. The CONTRACTOR represents that it has informed all assigned staff that they are not entitled to be paid by the ACES Participating Agency for holidays, vacations, disability benefits, insurance, pensions, or retirement plans, or any other benefits offered by the ACES Participating Agency to its employees.

ACES, the CONTRACTOR, and the ACES Participating Agency shall adhere to all applicable state and federal laws, policies, and regulations applicable to privacy, confidentiality, and security requirements and of all data during the term of this Agreement.

9. AGENCY FURNISHED PROPERTY

Any agency furnished property owned by the ACES Participating Agency shall be returned to the agency upon request or otherwise at the end of the contract term, in the same condition as received except for ordinary wear, tear and modifications order through this contract.

10. NON-SOLICITATION

During the term of this Agreement and for a period of one (1) year immediately following the expiration or termination of this Agreement, the ACES Participating Agency shall not hire, solicit for employment, or engage any employee of the CONTRACTOR that has provided services to the ACES Participating Agency under this Agreement.

11. AMENDMENT

This Agreement may be amended, changed, or altered only in writing by an instrument executed by ACES and the CONTRACTOR. All fully executed amendments are effective as of the last date signed.

12. MERGER

This Agreement incorporates all such covenants, agreements and understandings, including ACES RFP 23-05 and the CONTRACTOR'S responding Proposal as awarded or as otherwise amended, hereto concerning the subject matter hereof have been merged into this written Agreement. No prior agreements or understandings, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement, with the exception of any properly authorized purchase order for services that pre-date the execution of this Agreement.

13. APPROPRIATIONS AND CONTINUATION OF CHARTER

A. *Funding.* Pursuant to 13-1-152, NMSA, 1978, this Agreement is contingent upon sufficient appropriations and authorizations being made to or by the ACES Participating Agency for the performance of this Agreement under a multi-term agreement with the Contractor. If sufficient appropriations and authorizations are

not made in any subsequent fiscal period following the initial term of a multi-term agreement with the Contractor, the Participating Agency shall provide written notice that funds have not been appropriated and that the Participating Agency wants to terminate the Agreement: (a) immediately after the Participating Agency receives notice of such non-appropriation; and (b) at least thirty (30) days prior to the end of the applicable fiscal period or subscription term. The Agreement shall terminate at the end of the next fiscal period, or subscription term for which funds were appropriated.

- B. *Charter Continuation.* When applicable, this Agreement is contingent upon the continuation of the ACES Member Charter. If the charter is revoked during the term of this Agreement, the Agreement shall terminate immediately upon written notice of such by the ACES Participating Agency to ACES and CONTRACTOR.

14.INSURANCE

CONTRACTOR shall provide proof of Insurance as set forth in RFP 23-05. A certificate of insurance shall be provided, if required, to ACES on or before the effective date of this Agreement and annually at renewal when applicable.

15.SEVERABILITY

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

16.APPLICABLE LAW

The laws of the State of New Mexico shall govern this Agreement.

17.ASSIGNMENT and SUBSTITUTION

ACES shall not assign or transfer any interest in the Agreement or assign any claims for money due or to become due under this Agreement without prior written approval of the CONTRACTOR. CONTRACTOR shall not assign or transfer any interest in the Agreement or assign any claims for money due or to become due under this Agreement without prior written approval of the ACES Participating Agency; provided, however, that CONTRACTOR may assign its rights and obligations under this Agreement without the consent of the ACES in the event CONTRACTOR hereafter effects a corporate reorganization, consolidates with, or merges into, any entity or transfers all or substantially all of its properties or assets to any entity. CONTRACTOR may subcontract any of its obligations without giving written notice to the ACES.

18.PURCHASE OF GOODS AND SERVICES

The ACES Participating Agency may issue an order for goods and/or services as set forth in this contract. The procurement of goods and services subject to this Agreement shall be conducted in accordance with and subject to the relevant statutes, ordinances,

rules, and regulations that govern each party's procurement practices.

19. CONFIDENTIALITY

Any confidential information provided to or developed by CONTRACTOR for ACES or an ACES Participating Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization without the prior approval of the ACES Participating Agency, except as provided in the New Mexico Inspection of Public Records Act. ACES and ACES Participating Agencies agree to comply with all federal and state privacy laws relating to records and information maintained by the ACES Participating Agency, including, but not limited to Family Educational Records Privacy Act. ACES or any ACES Participating Agency shall be responsible for the accuracy and legality of any content it provides to the CONTRACTOR and for ensuring that its data complies with this Agreement and with applicable laws and regulations. The ACES Participating Agency shall be responsible for establishing a basis for the processing of Personal Data, including obtaining the relevant informed and voluntary consent from any applicable data subject (or verified consent from the relevant parent or guardian when the data subject is a minor child), and shall ensure that CONTRACTOR is able to process the data subject's information in the form of the ACES Participating Agency's Data. ACES grants CONTRACTOR a non-exclusive, worldwide, royalty-free right to include ACES's Trademark and other related transactional information in any customer listing appearing on or in any CONTRACTOR's websites, brochures, fliers, presentations, press releases, annual reports and any other marketing materials. INTELLECTUAL PROPERTY RIGHTS CONTRACTOR retains sole and exclusive rights, title, and interest in and to all of its own data, Services, and Software. Nothing in this Agreement shall be construed as granting ACES or an ACES Participating Agency any ownership of, or rights or permissions to use, the CONTRACTOR's data or Trademarks. CONTRACTOR has the right to collect and use Transaction Data and De-Identified Data. No work performed under this Agreement shall be considered a "work for hire" or "work made for hire."

20. CONFLICT OF INTEREST

CONTRACTOR, ACES and the ACES Participating Agency warrants respectfully that they do not have an interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The CONTRACTOR, ACES, and the ACES Participating Agency, certifies that it and its employees have complied with and will continue to comply with the requirements of the Governmental Conduct Act, NMSA, 1978 §§10-16-1 *et seq.* or any other applicable conflict of interest provisions.

21. PENALTIES

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199 imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks. All parties agree to not participate in unlawful use of this Agreement.

22. EQUAL OPPORTUNITY COMPLIANCE

The CONTRACTOR, ACES and the ACES Participating Agency, agree to abide by all federal and state laws and rules and regulations, and the executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, CONTRACTOR, ACES and the ACES Participating Agency agree to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to, discrimination under any program or activity performed under this Agreement. If the CONTRACTOR, ACES or the ACES Participating Agency is found not to be in compliance with these requirements during the life of this Agreement, they agree to take appropriate steps to correct these deficiencies.

23. RECORDS and FINANCIAL AUDIT

The CONTRACTOR shall maintain detailed time and expenditure records that indicate the date, time, nature, and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by ACES, ACES Participating Agency, the State Department of Finance and Administration and the State Auditor. The ACES Participating Agency and ACES shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the ACES Participating Agency and ACES to recover excessive or illegal payments.

24. INDEMNIFICATION

Any liability incurred in connection with this Agreement shall be subject to the immunities and limitations of the New Mexico Tort Claims Act, §§ 41-4-1 et seq, NMSA 1978, as amended. To the extent permitted by law, ACES and the ACES Participating Agency shall defend, indemnify and hold harmless the others from all actions, proceedings, claims, demands, costs, damages, unpaid taxes and associated penalties and interest, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the party's negligent act or failure to act, or if caused by the actions of the party's employees, subcontractors, or agents resulting in injury or damage to persons, property of the other party's financial interests during the time when the CONTRACTOR or any employee, agent, or subcontractor thereof has or is performing services pursuant to this Agreement. Notwithstanding the foregoing, ACES shall indemnify and hold CONTRACTOR harmless from and against any claim, demand, suit or proceeding brought by a third party against a CONTRACTOR Indemnitee (a "Claim Against CONTRACTOR") to the extent arising out of: (a) any ACES or ACES Participating Agency Data or use of ACES or ACES Participating Agency Data with the Services; (b) any information or content (other than CONTRACTOR-provided content) transmitted or submitted by ACES or an ACES Participating Agency through the Services or shared with any third party; or (c) ACES's or an ACES Participating Agency's use of the Services or content therein in an unlawful manner or in violation

of the Agreement. ACES and ACES Participating Agencies shall indemnify and hold CONTRACTOR harmless from any damages, attorney fees, and costs finally awarded against CONTRACTOR as a result of, or for amounts paid by CONTRACTOR under a settlement approved by ACES or an ACES Participating Agency in writing of, a Claim Against CONTRACTOR. CONTRACTOR shall only be obligated to indemnify ACES and any ACES Participating Agency for claims: (i) alleging any Service, when used as authorized under this Agreement, infringes or misappropriates a third party's Intellectual Property Rights; (ii) to the extent arising from the Services being provided in an unlawful manner or in violation of the Agreement or regulations; (iii) alleging a confirmed data breach (as defined by the applicable state law) to the extent attributable to PowerSchool resulting from PowerSchool's violation of the data security provisions expressly set forth in this Agreement or the DPA executed between the Parties; or (iv) to the extent arising out of death, personal injury or damage to tangible property to the extent caused by PowerSchool personnel or subcontractors in their performance of the Services. CONTRACTOR will indemnify and hold ACES and its Participating Agencies harmless from any damages, attorney fees, and costs finally awarded against ACES or an ACES Participating Agency as a result of, or for amounts paid by ACES or an ACES Participating Agency under a settlement approved by CONTRACTOR in writing of, a Claim Against ACES or any ACES Participating Agency. The above defense and indemnification obligations do not apply to the extent the Claim Against Customer arises from: (i) modifications to the Services by any party other than PowerSchool or its subcontractor; (ii) the combination of the Services with software, hardware, data, products or processes not provided by PowerSchool, if the Services or use thereof would not infringe without such combination; (iii) Customer's breach of this Agreement or violation of applicable law; or (iv) Customer Data, or any deliverables or components not provided by PowerSchool or its subcontractor. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL CONTRACTOR, ITS AFFILIATES, SUPPLIERS OR ITS LICENSORS BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR FUNDING, REVENUES, GOODWILL, OR INDIRECT, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, AND EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW. WARRANTY DISCLAIMER EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES, CONTRACTOR SOFTWARE AND THIRD-PARTY SOFTWARE ARE PROVIDED "AS IS", AND CONTRACTOR AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ALSO ANY WARRANTIES THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. ACES MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW. THE ABOVE DISCLAIMER APPLY TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW. In the event that any action, suit or proceeding related to the services performed by the CONTRACTOR or any CONTRACTOR employee, agent or subcontractor of ACES under this Agreement is brought against ACES, CONTRACTOR or the ACES Participating Agency, the

notified party shall, as soon as practical, but no later than two (2) days after he/she/it receives notice thereof, notify the other Parties and their legal counsel by email and certified mail.

25. NOTICES.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, or by certified, return receipt requested U.S.P.S. either by first class or certified mail as follows (unless delivery by email is agreed to):

ACES

Christy Takacs, Executive Director
P.O. Box 16326
Albuquerque, NM 87191

CONTRACTOR

*Specified under paragraph 26 of this agreement

The ACES Participating Agency shall be given notice to the individual who signed the ACES Member JPA and/or Participating Agency Agreement.

26.AUTHORITY

Each party signing below represents that they have all required authority to execute this Agreement.

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officers. This Agreement may be executed in several counterparts and each executed counterpart shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

ACES

By: Christy Takacs

Signature: Christy Takacs

Title: Executive Director

Date: 05/05/2025

CONTRACTOR

By: Cindy Dutra

Signature: Cindy Dutra
Cindy Dutra (May 5, 2025 16:56 PDT)

Title: VP, Financial Operations

Date: 05/05/2025

Mailing Address:

PowerSchool

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Folsom, CA 95630

ACES prefers to send all communications under this contract via designated email. Please indicate below if you agree to communicate using this method (optional).

CKD
CKD I hereby agree to receive communications and notices by email at the following email address instead of through USPS mail:

Orders@powerschool.com

ATTACHMENT A

CONTRACTOR: POWERSCHOOL GROUP LLC

1.1. Scope of Services and Products:

PowerSchool offers the following products and services:

PowerSchool Student Information System (SIS) - a flexible, configurable, and scalable student information system at the heart of the school, district, or board's educational technology. Schools can depend on a modern, easy-to-use, always-available SIS to improve daily operations, boost administration productivity, identify problem areas, enhance communication, and ensure funding with easy reporting. Core features include attendance, grading, gradebook, health, demographics, scheduling, and more. In addition, the following "add-on" services are available:

PowerSchool Enrollment for Charter

Digital Document Cloud

Enrollment Express (available only for use with PowerSchool SIS)

PowerSchool Ecollect Forms (available only for use with PowerSchool SIS)

PowerSchool Unified Classroom Special Programs

PowerSchool Unified Insights

PowerSchool Performance Matters Assessment and Advanced Reporting

PowerSchool Unified Classroom Curriculum and Instruction

Schoology Learning - PowerSchool's integrated Learning Management System (LMS) delivers personalized instruction to students. Schoology Learning is the leader in K-12 teaching and learning technology—designed to help schools and districts improve student performance while enabling equity and access for every student, at home, school, or anywhere in between.

Digital Readiness Review: Strategic Recommendations on People, Process and Systems
In what ways is your organization using various systems across its digital ecosystem? Many districts recognize that there may be integration issues, gaps in skills, or redundant systems but may not have the toolset or structures to help guide them through a systemic review. Our Digital Readiness Review can be tailored for different needs

(A more comprehensive services overview is included at the end of this attachment.)

1.2. Business Hours

Monday through Friday 8am to 5pm

1.3. Contract Timeframe.

July 1, 2023, through June 30, 2027 (subject to annual renewals)

1.4. Pricing.

Contact Contractor for pricing specific to desired scope.

The services pricing is based on the scoping and level of services as best understood by PowerSchool at the time of this response for standard implementation services. The pricing in the definitive agreement may be modified based on any scoping adjustments as agreed to by the parties during final negotiations. In addition, services hours are reviewed annually for appropriateness based on the client's requirements and desired initiatives. On-Going PowerSchool Subscription/Maintenance and Support fees are invoiced at then current rates and enrollment per terms of the Main Services Agreement, which may be subject to an annual increase after the first year for non-multi-year contracts and/or enrollment increases.

1.5. Payment.

1.5.1. Payment Terms: Net 30 (ACES to Contractor); Net 15 (Participating Agency to ACES)

1.5.2. Payment Requests.

(This section does not apply to Contractors who have been granted an ACES waiver allowing direct invoicing/payment.)

1.5.2.1. Payment requests/invoices shall be sent to ACES Business Office by email at businessoffice@nmaces.org (preferred) or by mail to P.O. Box 16326, Albuquerque, NM 87191.

1.5.2.2. The Contractor shall furnish an original invoice with the ACES Purchase Order Number clearly indicated on each invoice.

1.5.2.3. ACES will bill the Participating Agency and will remit payment to Contractor after receipt of payment from Participating Agency, less 1.5% ACES fee.

1.5.3. Payment Dispute. An invoice may not be processed if there is a dispute between ACES or the ACES Participating Agency and the Contractor as to the services or items provided and included on the invoice. Payment will be made after, and according to, dispute resolution achieved between the parties.

Services Overview

As the leader in K-12 edtech for over 25 years, you can trust PowerSchool to deliver seamless implementations, unsurpassed data protection, and results you can count on. Our dedicated experts guide you through product implementation and get your staff up to speed quickly on PowerSchool so they can focus on improving student outcomes. Expert-led product training and dedicated project managers help to keep your implementation on track and resolve barriers along the way.

With PowerSchool, you will get:

- Trained and certified experts in PowerSchool solutions, many with 10+ years of experience.
- Deep knowledge of interoperability to help you optimize your solution.
- A wealth of insights and best practices gained from hundreds of implementations.
- Access to hands-on advanced solution training through PowerSchool University.

Implementation Support. Our team helps set up your PowerSchool solutions to meet your needs by tracking milestones, configuring your product(s), and seamlessly importing your data. We assist you in building a comprehensive plan that gives you the right levels of support to launch and successfully use your new solution(s). With the implementation-process calendar, you can keep up with your status anytime.

Dedicated Project Manager. Our experienced project managers are committed to your success. With standardized tools, we help you plan, execute, and track your PowerSchool implementation across all products.

Product-Based Training. With guided product training, your users will quickly get up to speed on PowerSchool solutions. Choose between onsite or remote training that follows our proven methodology, designed to maximize learning retention using practical application, demonstrations, and hands-on practice.

Ongoing Technical Support. A robust support portal puts tips, tricks, support articles, and best practices at your fingertips while our large team of support agents can walk you through issues via phone or online.

The PowerSchool Services and PowerSchool Support teams have been recognized as 2023 award winners of 12 Stevie® Awards for Sales and Customer Services and 11 Globee® Awards. Other awards and recognitions include the 2022 Khoros Kudos Awards, Best-in-Class for PowerSchool Community, CX Innovator Award from Talkdesk, Inc., the Excellence in Customer Service Award 2021 from the Business Intelligence Group, and The Association of Support Professionals, Best Support Websites 2021.

