[LEA NAME]
SERVICES AGREEMENT

Signature Page

This Services Agreement (this "**Services Agreement**") is entered into as of the _____ day of _____ 20_____ (the "**Effective Date**"), by **[LEA NAME]**, a Texas school district (together with its Affiliates, and **SKYWARD, INC.**, a Wisconsin corporation (together with its Affiliates, "**SKYWARD**," or "**Licensor**").

On [MONTH] __, 20__, **[LEA NAME]** issued Request for Service # [X-000] (as may have been amended, the "**RFS**"). On _____, 20___, **SKYWARD** filed its Response to the RFS (as may have been amended, the "**Response**"). On _____, 20__, **[LEA NAME]** accepted the Response. This Services Agreement sets forth the terms and conditions under which **SKYWARD** will provide the Deliverables (as defined herein). **SKYWARD** agrees that by filing its Response, and LEA agrees that by accepting said Response from Skyward, both parties have agreed to be bound by the terms and conditions of this Services Agreement, and the Master Services Agreement between the **SKYWARD** and TEA, and that any deviations from the terms and conditions of this Services Agreement were explicitly included in the Response and accepted in writing by **[LEA NAME]**.

This Services Agreement consists of this signature page and the following documents:

        Exhibits:

        Terms and Conditions
        Exhibit I: Professional Services Agreement
        Exhibit II: Baseline Plan (once approved by both parties)
        Exhibit III: Maintenance and Support Agreement

This Services Agreement may be supplemented through the execution and delivery by both parties of supplemental Exhibits for the addition, deletion, or modification of Deliverables covered by the Services Agreement, and all supplemental Exhibits shall also be part of this Services Agreement.

By executing this signature page, **[LEA NAME]** and **SKYWARD** acknowledge that they have reviewed this Services Agreement, including all Exhibits, and agree to be legally bound by its terms and conditions.

[LEA NAME]   **SKYWARD**

By: _____   By: _____
Name: Name: _____
Title: Superintendent   Title: _____

[LEA NAME]
Address
City, TX Zip
Attn: General Counsel

TERMS AND CONDITIONS

The following Terms and Conditions ("**Terms and Conditions**") are common to this Services Agreement, including all Exhibits, amendments, additional SOWs, Baseline Plans and POs that may be entered into between **[LEA NAME]** and **SKYWARD** in the future.

1.   Definitions.

"**Affiliate**" means a legal entity controlling, controlled by or under common control with another party. The term "control" shall mean the power to direct the actions and policies of the Affiliate or ownership of a controlling beneficial interest in the Affiliate.

"**Confidential Information**" means, subject to the provisions of Section 6(e), (i) with respect to **SKYWARD**, information of **SKYWARD** or its suppliers and licensors that is of value to its owner and is treated by its owner as confidential, including Intellectual Property Rights, information concerning any software, services or products, operating procedures, pricing, methods of doing business, mailing lists, customer lists, lists of prospective customers or accounts, financial data, plans, suppliers, and any other information marked in writing as "Confidential;" and (ii) with respect to **[LEA NAME]**, information of **[LEA NAME]** or its suppliers and licensors that is of value to its owner and is treated by its owner as confidential, including Intellectual Property Rights, operating procedures, information concerning any software, services, products, or contracts regarding **[LEA NAME]**'s legal, financial or accounting information, its staff, staff compensation, consultants, students (including demographic data, grades, credits, transcripts, scheduling, attendance, enrollment history, GPAs, class rankings, discipline data, free and reduced lunch data, transportation data and special education data), and all information protected by the Health Insurance Portability and Accountability Act ("**HIPAA**"), the Family Educational Rights and Privacy Act ("**FERPA**"), any other applicable privacy laws governing **[LEA NAME]**, and any other information marked in writing as "Confidential."

"**Deadlines**" means the dates by which **SKYWARD** must provide certain Deliverables.

"**Deliverables**" means all items that **SKYWARD** is required to deliver under this Services Agreement, as described in the Response, the SOW, the Baseline Plan, and the Purchase Orders or in any future related SOWs, Baseline Plans, Purchase Orders and PCRs (as defined herein) that the parties agree to in the future.

"**Exhibit**" means all exhibits attached to this Services Agreement and identified on the signature page as an exhibit, and all exhibits signed by both parties and attached to this Services Agreement in accordance with its terms following the Effective Date.

"**Fees**" means the fees and expenses to be paid to **SKYWARD** by **[LEA NAME]** as set forth in Skyward proposal as defined by the TEA master contract, including but not limited to the License Fees.

"**Intellectual Property Rights**" means all rights with respect to copyrights, trademarks, trade secrets, patents, and all other intellectual property rights of any nature whatsoever.

"**License Fees**" means any fees paid by **[LEA NAME]** to **SKYWARD** for the right to use the Licensed Software under the terms of this Services Agreement.

"**Licensed Software**" means certain application software owned by **SKYWARD** included in the Deliverables and licensed to **[LEA NAME]** pursuant to the terms of this Services Agreement.

"**Services Agreement**" means the Signature Page, these Terms and Conditions, each of the Exhibits and all exhibits agreed to by the parties following the Effective Date.

"**Initial Purchase Order**" means the purchase order attached to the Services Agreement at the Effective Date which sets out the pricing for the Service, any Third Party Software that **SKYWARD** is re-selling to **[LEA NAME]**, the services provided in connection with developing the Baseline Plan, and any required maintenance and support fees.

"**Services Purchase Order**" means the Purchase Order to be attached following the development of the Baseline Plan, which sets out the cost of the Implementation Services to be provided following the completion of the Baseline Plan.

"**Purchase Order**" or "**PO**" means the Initial Purchase Order and the Services Purchase Order, and any subsequent purchase orders issued by **[LEA NAME]**, each of which shall become an exhibit to this Services Agreement.

"**Products**" means all items provided or required to be provided to **[LEA NAME]** by **SKYWARD** under this Services Agreement.

"**Services**" means all work performed (or required to be performed) for **[LEA NAME]** by **SKYWARD** as set forth in this Services Agreement, including all Implementation Services, Training Services, and Maintenance and Support Services, and including any other services that **SKYWARD** agrees to provide to **[LEA NAME]** following the Effective Date.

"**Software**" means any computer programs, together with input and output for formats, program listings, narrative descriptions, operating instructions, and supporting documentation, including any enhancements, translations, modifications, updates, and new releases.

"**Third Party**" means any natural person or legal entity other than **SKYWARD** and **[LEA NAME]**.

2.   Deliverables. **SKYWARD** will provide the Deliverables to **[LEA NAME]** on or prior to the dates set forth in the SOW, the Baseline Plan, and any approved PCRs. **SKYWARD** will provide the Deliverables in accordance with the Deadlines.

3.   Fees and Expenses. As compensation for the Deliverables, **[LEA NAME]** shall pay **SKYWARD** the Fees set forth in the Skyward proposal, as well as the annual License Fees for so long as **[LEA NAME]** continues to use the License Software pursuant to the terms of this Services Agreement. **[LEA NAME]** shall also reimburse **SKYWARD** for reasonable expenses (including travel expenses) at as defined by the General Service Administration (GSA) rates approved by TEA, on submission by on submission by **SKYWARD** of expense reports on **SKYWARD**'s standard forms. **[LEA NAME]** shall not pay any fees for travel time except to the extent **[LEA NAME]** work is being performed during that time. Unless otherwise set forth in this Services Agreement, all fees and expenses shall be due within 45 days of receipt by **[LEA NAME]** of an invoice. Any amounts due that remain unpaid following 45 days following receipt of said invoice shall bear interest on the outstanding balance at the maximum rate permitted by law. **SKYWARDSKYWARDSKYWARDSKYWARD**

4.   Independent Contractor; No Authority. **SKYWARD** is an independent contractor. This Services Agreement is not intended in any manner to and does not create the relationship of principal and agent between the parties, nor shall this Services Agreement be deemed to establish a partnership or joint venture. Neither party shall have the power, express or implied, to obligate or bind the other in any manner whatsoever. Each party shall be solely responsible for compensating its own employees, including the payment of employment-related taxes, and shall maintain its own workers' compensation and general liability insurance.

5.   Change Control. If either party desires any changes to be made to an SOW or the Baseline Plan, the proposed changes shall be managed through the project managers of each party.

     (a)   If **[LEA NAME]** requests a change, then **[LEA NAME]** shall deliver to **SKYWARD**'s project manager a written request and a P.O. of $500 for evaluation by the Vendor to create the SOW, describing the requested change and the rationale for the change. **SKYWARD** will then develop and deliver to **[LEA NAME]**, within 10 business days of receiving the request, a proposed Project Change Request ("**PCR**") that sets forth in detail the scope of the proposed change, the proposed delivery date, the proposed **[LEA NAME]** testing period, the effect on other Deadlines, the costs to deliver the Products and Services described in the PCR, and any other anticipated effect on other parts of the overall project. Before sign-off by both parties, the finalized delivery date and the testing period will be added to the PCR.

     (b)   If **SKYWARD** proposes a change, then **SKYWARD** will develop and deliver to **[LEA NAME]** a proposed PCR with the same information and a detailed price quote for the PCR and an expected delivery date..

     (c)   Upon receipt of a PCR, the parties will work together to reach an agreement as to the scope and other terms of the PCR. However, **[LEA NAME]** may, in its sole discretion, decline to consider any PCR that requires payment of any additional money or significant time of **[LEA NAME]** staff.

(d)   A PCR shall be effective and shall be an amendment to this Services Agreement only when signed by an authorized representative of each party.

6.   Confidentiality.

(a)   Each party (as applicable, a "**Disclosing Party**") acknowledges that, except as otherwise provided by law, all Confidential Information disclosed to the other party (the "**Receiving Party**") pursuant to this Services Agreement is owned by the Disclosing Party. This Services Agreement shall not be deemed to vest in either party any rights to the Confidential Information of the other party. Each party shall keep the Confidential Information strictly confidential and prevent the unauthorized use, disclosure, or publication thereof, whether negligent, inadvertent or otherwise. Each party shall prevent unauthorized access to the Confidential Information and shall permit access only to those persons authorized to work on the matter to which the Confidential Information relates. The non-disclosure obligations shall continue after the termination of this Services Agreement.

(b)   Each party consents to the disclosure of the other party's Confidential Information to those employees, contractors and consultants who have a need to know such information in order to comply with the terms of this Services Agreement.

(c)   Certain Confidential Information, including Confidential Information protected by FERPA, may be provided to **SKYWARD** in an encrypted, password protected, electronic format as necessary to enable **SKYWARD** to provide the Deliverables. **SKYWARD** shall maintain such Confidential Information in the format described in this Section 6(c) and in a secure environment as may be verified through **[LEA NAME]**-required security audits. **SKYWARD** acknowledges its understanding that any unauthorized disclosure of confidential student information is a violation of HIPAA and FERPA, and it shall not permit such a disclosure to occur.

(d)   On termination of this Services Agreement, either party may make a written request for return of any Confidential Information, and within five days after such request, the other party shall deliver to the requesting party: (a) all materials furnished to the Receiving Party by the Disclosing Party; and (b) all tangible media of expression in the Receiving Party's possession or control which incorporate or include any Confidential Information of the requesting party. Electronic records shall be delivered in the format requested by the requesting party. In addition, the Receiving Party shall permanently delete any of the Disclosing Party's Confidential Information that is electronically stored on all equipment under its control. A Receiving Party shall, within five days of written request, provide the Disclosing Party with written certification of the Receiving Party's compliance with its obligations under this Section 6.

(e)   Except to the extent that confidentiality is required by law, the provisions of this Section do not apply to the extent that: (i) the information communicated was already known to the Receiving Party, without any obligation to keep it confidential, at the time of the Receiving Party's receipt of the information; (ii) the information communicated was received in good faith from a Third Party lawfully in possession of the information and having no obligation to keep it confidential; (iii) the information communicated was publicly known at the time of receipt or has become publicly known other than by a breach of this Services Agreement; (iv) the information was independently developed without reference to the Confidential Information; or (v) the Receiving Party is ordered by an administrative agency or other governmental body of competent jurisdiction (including a request under the Texas Open Records Act or similar law or regulation) to disclose the Confidential Information; provided, however, the Receiving Party will notify the Disclosing Party prior to disclosure in order to give the Disclosing Party a reasonable opportunity to seek an appropriate protective order, and the Receiving Party shall disclose only that portion of the Confidential Information that it is required to disclose under an administrative or other governmental order. **SKYWARD** acknowledges that all public contracts, including contract addenda, are a matter of public record and that all requests for **[LEA NAME]** information shall be left to the ruling of the office of the Attorney General for the State of Texas.

7.   Privacy. **SKYWARD** acknowledges that the Deliverables provided to **[LEA NAME]** under this Services Agreement may include the transfer of personally identifiable student information and confidential employee information and agrees to abide by all laws relating to confidentiality of student data. **[LEA NAME]** shall notify **SKYWARD** when student information is no longer needed for the purposes for which it was made available to **SKYWARD**, and **SKYWARD** shall destroy such information in compliance with Section 6(d), as if this Services Agreement had been terminated.

8.   Injunctive Relief. Breach of certain of the obligations in this Services Agreement, including Sections 4, 6, 7, 9, 13 and 14 of these Terms and Conditions, as well as breach of certain other provisions of this Services Agreement, would cause irreparable damage to **[LEA NAME]** or **SKYWARD** and therefore, in addition to all other

remedies available at law or in equity, each party shall have the right to seek equitable and injunctive relief for such breach. In addition, each party shall be liable to the other under this Services Agreement if there is any breach by a party or its Affiliates, or by their respective employees, contractors, consultants, auditors, agents or representatives.

9.   **Ownership of Licensed Software and Indemnification.**

(a)   Limited License. Subject to the terms and conditions of this Services Agreement, **SKYWARD** hereby grants to **[LEA NAME]** a nonexclusive and nontransferable limited license to use the Licensed Software exclusively through the host and application service provided by SKYWARD, or a third party licensed by **SKYWARD** to provide said host and application service. [LEA NAME] shall not permit the Licensed Software or any portion thereof to be downloaded, embedded, or otherwise transferred to a third party processor, host, or any other server or equipment not under the exclusive control of **[LEA NAME]** or **SKYWARD**. **SKYWARD** further grants to **[LEA NAME]** a nonexclusive and nontransferable limited license to use all instruction manuals and other materials related to the Licensed Software produced and owned by **SKYWARD** and provided to **[LEA NAME]** for its use in association with its purchase of the Licensed Software.

(b)   Reservation of Title. **[LEA NAME]** acknowledges and agrees that the Licensed Software, including the specific design and structure of individual programs, input formats, and source code and printed materials accompanying the Licensed Software, all constitute Intellectual Property Rights of **SKYWARD**. **[LEA NAME]** further acknowledges and agrees that this Services Agreement does not affect any transfer of title in the Licensed Software, any of the materials associated therewith, or any of **SKYWARD**'s Intellectual Property Rights and that **SKYWARD** is the sole owner of the Licensed Software, associated materials, and **SKYWARD**'s Intellectual Property Rights. **[LEA NAME]** shall implement reasonable security measures to protect **SKYWARD**'s Intellectual Property Rights. **[LEA NAME]** SHALL NOT: COPY, IN WHOLE OR IN PART, THE LICENSED SOFTWARE, MATERIALS ASSOCIATED THEREWITH, OR **SKYWARD**'S INTELLECTUAL PROPERTY RIGHTS; MODIFY, ENHANCE, REVERSE COMPILE OR REVERSE ASSEMBLE ALL OR ANY PORTION OF THE LICENSED SOFTWARE, MATERIALS ASSOCIATED THEREWITH, OR **SKYWARD**'S INTELLECTUAL PROPERTY RIGHTS; OR RENT, LEASE, DISTRIBUTE, SELL, OR CREATE DERIVATIVE WORKS OF THE LICENSED SOFTWARE, MATERIALS ASSOCIATED THEREWITH, OR **SKYWARD**'S INTELLECTUAL PROPERTY RIGHTS. Provided however, the **[LEAN NAME]** shall have the right to reproduce the materials associated with the License Software for authorized use by personnel of **[LEA NAME]** as required to operate the Licensed Software, provided that **[LEA NAME]** includes in those reproductions all **SKYWARD** notices of ownership and proprietary rights thereto. Said reproductions of said materials shall be subject to the same restrictions on use and disclosure as the original provided by **SKYWARD** hereunder.

(c)   Indemnification. **SKYWARD** shall protect and indemnify **[LEA NAME]** from and against all claims, damages, judgments and losses arising from infringement or alleged infringement of any Intellectual Property Rights arising by or out of: (i) the use of the Deliverables in accordance with the terms of this Services Agreement; (ii) the use by **SKYWARD** of any item; or (iii) the use by **[LEA NAME]**, at the direction or with the approval of **SKYWARD**, of any item. Upon becoming aware of a suit or threat of suit for infringement, **[LEA NAME]** shall promptly notify **SKYWARD**. However, **[LEA NAME]**'s failure to provide prompt notice will not excuse **SKYWARD** from its indemnification obligations except to the extent that **SKYWARD** was materially prejudiced by such failure. If litigation arises alleging infringement by **[LEA NAME]**, **[LEA NAME]** shall cooperate reasonably with **SKYWARD**, at **SKYWARD**'s expense, to defend the litigation. In addition, **[LEA NAME]** shall be entitled, in connection with any litigation, to be represented by its own counsel, at its own expense (unless a conflict of interest between **SKYWARD** and **[LEA NAME]** exists, in which case, **SKYWARD** will pay the cost of separate counsel for **[LEA NAME]**). **SKYWARD** shall have the right to enter into negotiations for and the right to effect settlement or compromise of any action, except that **[LEA NAME]** must consent in writing to any settlement that requires payment of money or other affirmative action by **[LEA NAME]**.

10.   **Limited Warranty and Limitation of Liability.**

(a)   Limited Warranty. **SKYWARD** warrants and represents that: (i) it will provide the Services in a good, workmanlike and professional manner, consistent with standards in the industry, and as described in this Services Agreement, including the SOW, the Baseline Plan, the POs, and any approved SCRs; and (ii) the Deliverables will conform to the descriptions in this Services Agreement, including the SOW, the Baseline Plan, the POs and any approved SCRs. Except for the foregoing, the Services Deliverables, and Licensed Software are provided AS IS. This limited warranty extends only to **[LEA NAME]** as the original purchaser and licensee. **[LEA NAME]**'s sole and exclusive remedy and the entire liability of **SKYWARD** under this limited warranty will be, at **SKYWARD**'s option, repair or replacement of the Services, Deliverables, or Licensed Software. In no event does **SKYWARD** warrant that the Services, Deliverables, or Licensed Software will be error free or without problems or

interruptions. This limited warranty does not apply if **[LEA NAME]** has (a) failed to pay the annual License Fees due under the terms of this Services Agreement; (b) has failed to pay any Fees or other amounts due **SKYWARD** under the terms of this Services Agreement; or (c) if the Deliverables or Licensed Software: (1) have been altered in any way, except by **SKYWARD**; (2) have not be installed, operated, repaired, or maintained in accordance with instructions and specifications supplied by **SKYWARD**; or (3) have been subjected to abnormal physical or electrical stress, misuse, negligence, or accident. EXCEPT AS SPECIFIED IN THIS LIMITED WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW.

(b)   Limitation of Liability. The liability of **SKYWARD** to **[LEA NAME]** for any claim whatsoever related to this Services Agreement, including any cause of action arising in contract, tort, or strict liability, shall not exceed the total amount of all Fees paid under this Services Agreement by **[LEA NAME]** to **SKYWARD**. IN NO EVENT WILL **SKYWARD** BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE A DELIVERABLE OR THE LICENSED SOFTWARE EVEN IF **SKYWARD** HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. **[LEA NAME]** further agrees that **SKYWARD** will not be liable for any claim or action whatsoever or damages, regardless of type, resulting from the **[LEA NAME]**'s failure to property save or back up all data and information inputted by **[LEA NAME]**.

11.   Term and Termination.

(a)   **Term**. Unless earlier terminated in accordance with its terms, this Services Agreement shall begin on the Effective Date and continue in force for so long as any Exhibit to this Services Agreement remains in effect or for so long as **[LEA NAME]** pays the annual Fee due **SKYWARD** for the use of the License Software, whichever is longer.

(b)   **Termination**.

(i)   Subject to its obligation to pay any Fees due pursuant to the terms of this Services Agreement, either party may terminate this Services Agreement or any Exhibit at any time, without cause, upon 60 days prior written notice to the other party.

(ii)   Either party may terminate this Services Agreement at any time by giving written notice to the other party if the defaulting party fails to remedy any default under this Services Agreement for a period continuing more than 30 days after the non-defaulting party gives the defaulting party written notice specifying the failure or default and the failure or default continues to exist as of the date upon which the non-defaulting party gives notice terminating this Services Agreement.

(iii)   In the event the TEA Master Services Agreement is terminated for any reason, **SKYWARD** shall have the option to terminate this Services Agreement by providing **[LEA NAME]** thirty (30) days prior written notice.

(iv)   In addition to its rights to terminate described above, upon the occurrence of a default or violation of Section 9(a) or 9(b) above by **[LEA NAME]**, **SKYWARD** will have the right to immediately terminate this Agreement. Upon **SKYWARD**'s termination of this Agreement: (A) all of **[LEA NAME]**'s rights and privileges under this Services Agreement and any other Services Agreement, including but not limited to **[LEA NAME]**'s rights to use the Licensed Software and materials associated therewith shall be immediately terminated; (B) **[LEA NAME]** shall pay to **SKYWARD** as liquidated damages, all amounts due **SKYWARD** under the terms of this Services Agreement; and (C) **SKYWARD** shall have the right to seek injunctive relief as provided in Section 8 above.

(c)   **Survival**. Sections 1, 3, 4, and 6 through 18 shall survive the termination of this Services Agreement.

12.   SKYWARD Use of [LEA NAME] Marks. Without **[LEA NAME]**'s prior written approval, **SKYWARD** may not use, reproduce, display or transmit **[LEA NAME]**'s name, logo, trademarks or service marks for any purpose. All permitted use of **[LEA NAME]**'s logos, marks and names shall be in accordance with **[LEA NAME]**'s standards and specifications, which standards and specifications shall be provided to **SKYWARD** upon request to **[LEA NAME]** by **SKYWARD**.

13. **Compliance With Laws**. Each party will strictly comply with all applicable laws and regulations, including without limitation, FERPA and HIPAA and all other applicable privacy laws and regulations governing educational institutions and agencies, relating in any way to its performance under this Services Agreement and the provision and use of the Deliverables. This obligation includes the obligation to obtain all necessary licenses or permits and any other governmental and non-governmental approvals necessary for the provision or use of the Deliverables. **SKYWARD** is knowledgeable about privacy laws and regulations governing educational institutions and agencies, including FERPA and HIPAA, and will maintain systems at an industry accepted standard of security to prevent unauthorized access to personally identifiable student information and confidential employee information.

14. **Non-Solicitation of Employees and Former Employees**. During the term of this Services Agreement and during the six-month period following the termination of this Services Agreement, **SKYWARD** shall not, directly or indirectly, solicit or induce, or attempt to solicit or induce, any employee of **[LEA NAME]** to leave the employ of **[LEA NAME]** for any reason whatsoever, or hire any employee of **[LEA NAME]** or person who was employed by **[LEA NAME]** at any time during the six-month period preceding the date **SKYWARD** hires the employee.

15. **Record Keeping**. **SKYWARD** shall maintain accurate records relevant to this Services Agreement for a period of four years after final payment under this Services Agreement. **SKYWARD** shall permit an authorized representative of **[LEA NAME]** or its designee or both at any reasonable time to inspect or audit all data, in whatever form or format. Provided however, **[LEA NAME]** or its designee or both shall execute any confidentiality and nondisclosure agreement reasonably required by **SKYWARD** as a condition precedent to being granted access.

16. **General Provisions.**

(a) **Amendment; Entire Agreement Waiver**. This Services Agreement may not be amended except by a writing signed by an authorized representative of both **[LEA NAME]** and **SKYWARD**. This Services Agreement supersedes all prior agreements, and is the only agreement between **[LEA NAME]** and **SKYWARD**, either oral or in writing (except to the extent this Services Agreement or a prior document specifically provides that some or all of that document survives a later agreement). Any waiver of any terms or conditions of this Services Agreement by **[LEA NAME]** shall not be construed as a continuing waiver but shall only apply to the particular matter involved.

(b) **Force Majeure**. Neither party shall be liable for any delay or failure in performance due to acts of nature, labor disputes, changes in law, riots, war, fire, epidemics, disruption of utility services or other similar occurrences that are beyond its reasonable control. However, in order to avail itself of such excuse, the party must act diligently to remedy the cause of and to mitigate the impact of the delay or failure.

(c) **Notices**. Any notice required or permitted by this Services Agreement shall be in writing and may be delivered personally, by facsimile, overnight delivery or mail, at the party's address set forth on the signature page. Any notice will be effective only upon actual receipt by the party, except that, in the case of notice by mail, notice shall be deemed received on the earlier of: (i) actual receipt; or (ii) five days following deposit in the United States mail, postage prepaid, and properly addressed.

(d) **Governing Law; Venue; Legal Fees**. This Services Agreement, and any dispute relating to this Services Agreement shall be governed by the laws of the State of Texas without giving effect to any choice or conflict of law provision that would cause the application of the laws of any other state. The courts within the State of Texas shall have exclusive jurisdiction over all disputes pertaining to this Services Agreement, and venue for all disputes shall be in Travis County, Texas. If litigation arises between the parties relating to this Services Agreement, the prevailing party shall be entitled to recover, in addition to any charges fixed by the court, its costs and expenses of suit, including reasonable attorneys' fees and expenses.

(e) **Assignment**. **[LEA NAME]** acknowledges and agrees that **SKYWARD** may delegate certain portions of the Services to one or more third party subcontractors. Provided however, **SKYWARD** may not assign this Services Agreement to any person or entity without the prior written notice to **[LEA NAME]**, and any purported assignment in contravention of this Section shall be void *ab initio*. This Services Agreement will be binding upon and inure to the benefit of the parties, their legal representatives, successors and permitted assigns.

(f) **Severability**. If any provision of this Services Agreement is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, the invalid, illegal or unenforceable provision shall be severed from the remainder of this Services Agreement, and the remainder of this Services Agreement shall be enforced, except as modified to the minimum extent necessary to render the provision valid and enforceable.

(g) **No Third Party Beneficiaries**. This Services Agreement is for the sole benefit of **[LEA NAME]** and **SKYWARD**, and no Third Parties, including students, parents, guardians, and **[LEA NAME]**'s teachers and other employees, shall be entitled to enforce the provisions of this Services Agreement or to receive damages or other relief under this Services Agreement.

(h) **Liquidated Damages.** Certain provisions in this Agreement provide for payment of a specific sum of money for failure to meet Deadlines. These required payments are liquidated damages and not penalties, and are provided because actual damages would be uncertain and difficult to ascertain.

(i) **Authority**. Each party represents to the other that: (i) the individuals executing this Services Agreement on its behalf have the power and authority to execute, deliver and perform this Services Agreement and to consummate the transactions contemplated by this Services Agreement; (ii) its execution, delivery and performance of this Services Agreement and the consummation by it of the transactions contemplated by this Services Agreement have been duly authorized by all necessary action on its part; (iii) this Services Agreement has been duly and validly executed and delivered and constitutes the valid and binding obligation of each party, enforceable against each party in accordance with its terms; and (iv) the execution, delivery and performance of this Services Agreement and the consummation of the transactions contemplated by this Services Agreement will not, with or without the giving of notice or the lapse of time, or both: (A) require the consent of any Third Party, conflict with or cause breach or default under any agreement, (B) violate any provision of any law, rule or regulation to which such party is subject, or (C) violate any order, judgment or decree applicable to such party; except, in each case, for violations which in the aggregate would not materially hinder or impair the consummation of the transactions contemplated by this Services Agreement. **SKYWARD** represents and warrants that: (a) the information contained in the Response is true and correct in all material respects; and (b) the Deliverables will fill **[LEA NAME]**'s needs as described in the RFP and will comply with the Response, the SOW, the Baseline Plan, any approved PCRs.

(j) **Construction**. Pronouns shall be construed to include the masculine, feminine, neuter, singular or plural as the identity of the antecedent shall require. This Services Agreement has been the subject of arm's-length negotiations and each party has had the opportunity to consult with its own attorney; therefore, it shall be construed as though drafted equally by both parties. If a conflict exists between any provisions of this Services Agreement, it shall be construed to give **[LEA NAME]** the maximum rights to receive the Deliverables and the maximum recourse if **SKYWARD** fails to comply with its obligations to **[LEA NAME]**. All remedies provided in this Services Agreement are cumulative. The headings in this Services Agreement are for convenience only and shall not be considered in its interpretation. References to Exhibits and Sections are to Exhibits and Sections of these Terms and Conditions unless otherwise indicated. All Exhibits are incorporated into this Services Agreement as if set forth herein in full.

17. Availability of Services

(a) **Customer Support Services. SKYWARD** will have support staff on-site in **SKYWARD** facilities during normal business support hours. **SKYWARD**. Immediate incident resolution may not be available at the time an incident is called in to Customer Support in which case **SKYWARD**'s support team will attempt to estimate the "time to resolution."

(b) **SKYWARD** will have adequate support staff on-site in **SKYWARD** facilities during normal business support hours from 7 a.m. to 6 p.m. CST Monday through Friday, to fulfill the SLAs as defined in the above referenced SSIS contract MSA and Governance Manual.

(c) **Severity Levels**

The following table provides the agreed upon severity levels with associated response and resolution timelines.

Severity Level	Description	Response	Resolution
Severity Level 1 – Critical Impact	An Incident causing a complete interruption or extreme degradation of Skyward Services to [LEA NAME], to [LEA NAME]'s environment, or business operation. Those affected cannot operate in an automated fashion until	Response within 1 business hour	Resolve within 4 business hours

Severity Level	Description	Response	Resolution
	service is restored.		
Severity Level 2 – Major Impact	An Incident causing a significant interruption or degradation of Skyward Service to [LEA NAME], to [LEA NAME] 's environment, or business operation, even if there is an automated means that mitigates the effect of the Incident.	Response within 2 business hours	Resolve within 8 business hours
Severity Level 3 – Moderate Impact	An Incident causing a moderate interruption or degradation of Skyward Service to [LEA NAME], to [LEA NAME]'s environment, or business operation. While immediate impact is moderate, the risk for increased impact may be apparent. The Incident is categorized as Severity 3 even if there is an automated or manual contingency plan that allows those affected to achieve a level approaching normal service delivery during the event.	Response within 12 hours	Resolve within 4 business days
Severity Level 4 – Minor Impact	An Incident causing a minimal interruption or degradation of a Skyward Service to [LEA NAME], to [LEA NAME]'s environment, or business operation. (includes single User issues). An automated or manual contingency plan may be available.	Response within 5 business days.	Resolve within 5 business days.
Severity Level 5 – No Current Impact	An Incident that does not affect normal Skyward Service to [LEA NAME], to [LEA NAME]'s environment, or business operation. Includes issues with the potential to cause impact if not proactively addressed, and those that began as a higher severity due to Potential Impact but were Resolved prior to causing actual impact.	No SLA required	No SLA required

    (d)   **Service Level Hours of Operation.**

Service	Hours of Operation	Comments
[LEA NAME]		

Customer Support	7:00 am to 6:00pm (CST) Monday through Friday	Customer can open ticket either by Phone <INSERT NUMBER>, Web portal <INSERT URL> and/or email <INSERT EMAIL ADDRESS>. Availability for resolution of Severity 1 and 2 incidents: 24 hours/daily, 7 days/week
Availability of Application Services	24 hours/daily, 7 days/week	Excludes: • Planned Maintenance windows • Scheduled outages • Unplanned maintenance

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EXHIBIT I

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this "**Services Agreement**") between **[LEA NAME]** and **SKYWARD** is attached as Exhibit I to the Services Agreement, and, except as otherwise explicitly provided in this Services Agreement, is subject to the Terms and Conditions of the Services Agreement.

1.   Defined Terms. The defined terms used in this Services Agreement, except as specifically defined otherwise in this Services Agreement, are set forth in the Services Agreement. The following additional terms shall have the meanings indicated for purposes of this Services Agreement:

SKYWARD [Moved to Services Agreement.]"**Baseline Plan**" consists of (i) the Baseline Scope (defining in detail the work included to produce the Deliverables and serving as the basis for the Baseline Schedule and the Baseline Budget); (ii) the Baseline Schedule (a detailed project schedule developed based on the Baseline Scope); and the Baseline Budget (corresponding to the Baseline Scope). The Baseline Plan will be jointly developed by **[LEA NAME]** and **SKYWARD** within eight weeks of the Project Start Date, will include the provisions currently described in the instructions to Exhibit II, and, on its completion, will become Exhibit II to the Services Agreement.

"**Implementation Services**" means the services described in the SOW, the Baseline Plan, and any approved PCRs relating to **SKYWARD**'s implementation of the Service, including business process analysis, data conversion, training, report writing, knowledge transfer and implementation project management.

"**Project Start Date**" means the date indicated in the SOW on which the **SKYWARD**'s project manager begins full-time, on-site work on the Services.

"**Training Services**" means on-site or on-line services to train **[LEA NAME]** staff on the use of the Service and system administration, and assist **[LEA NAME]** personnel in fully using the capabilities of the Service.

2.   Services.

(a)   **Baseline Plan**.

(i)   The project managers for **SKYWARD** and **[LEA NAME]** will jointly complete the Baseline Plan within eight weeks of the Project Start Date. If the Baseline Plan is not completed within that time, **[LEA NAME]** shall have the right to rescind the Services Agreement and receive a return of all Fees paid, unless the failure to complete the Baseline Plan is a result of a failure or delay by **[LEA NAME]**.   No further amounts will be due from **[LEA NAME]** until the Baseline Plan is completed. With the written consent of the project managers of the **SKYWARD** and **[LEA NAME]**, the Baseline Plan may be revised (re-baselined) to account for changes in the cost and timeline due to approved PCRs developed as a result of an **[LEA NAME]**-initiated or approved scope change. If the Baseline Plan is re-baselined, The re-baselined plan will replace all prior versions of the Baseline Plan and will become Exhibit II to the Services Agreement.

(ii)   The **[LEA NAME]** project manager will maintain a project schedule to define the detailed tasks necessary to complete the Baseline Plan. If **SKYWARD** agrees in writing, including by email exchange, to Deadlines that are set forth in the project schedule, for instance with respect to rejected Deliverables, then **SKYWARD** shall comply with those Deadlines.

(b)   **Implementation Services**. **SKYWARD** will provide the Implementation Services as described in the SOW, any approved PCRs, and the Baseline Plan. **SKYWARD**

(c)   **Training Services**. **SKYWARD** will provide Training Services as described in the Baseline Plan.

(d)   **Maintenance and Support Services**. **SKYWARD** will provide the Maintenance and Support Services as outlined in the Service Level Agreement.

3. **Term**.

  (a) This Services Agreement shall begin on the Effective Date and, unless earlier terminated pursuant to its terms, it shall remain in effect until all Services under the SOW, Baseline Scope Statement, and all approved PCRs have been provided. In addition, this Agreement shall govern all amendments to the attached SOW and Baseline Plan, as well as all additional SOWs, and Baseline Plans agreed to in writing by the parties.

  (b) Either party may terminate this Services Agreement or any SOW at any time, without cause, upon 60 days written notice to the other party **SKYWARD**.

  (c) Either party may terminate this Services Agreement at any time by giving written notice to the other party if the defaulting party fails to remedy any default under this Services Agreement for a period continuing more than 30 days after the non-defaulting party gives the defaulting party written notice specifying the failure or default and the failure or default continues to exist as of the date upon which the non-defaulting party gives notice terminating this Services Agreement.

  (d) In the event the Services Agreement is terminated for any reason, then this Services Agreement shall also terminate as of the effective date of the termination of the Services Agreement, without further notice being required of either party.

  (e) If so directed in the notice of termination for cause pursuant to Section 3(c) above, from **[LEA NAME]**, **SKYWARD** shall immediately cease work under this Services Agreement.

  (f) On termination of this Services Agreement or an SOW, **[LEA NAME]** shall pay **SKYWARD** for all Services provided up to the effective date of termination at the rates specified in the applicable PO.

  (g) Upon expiration or termination of this Services Agreement, **[LEA NAME]** may request that **SKYWARD** provide transition services to **[LEA NAME]** to ensure an orderly transfer of Services to **[LEA NAME]** or any other Third Party **[LEA NAME]** may designate as a successor to **SKYWARD**. Transition services, if any, will be undertaken at agreed upon rates in accordance with the terms of an SOW or PCR signed by both parties. During any transition period, **SKYWARD** agrees to maintain the same level of performance of Services and use its best efforts to cooperate with **[LEA NAME]** and the successor to effect an orderly and efficient transition.

4. **Fees and Payment**. **[LEA NAME]** shall pay **SKYWARD** the fees specified in the Skyward proposal and agreed upon in connection with any approved PCR. **[LEA NAME]** shall not pay any overtime or other premium rates unless expressly agreed in advance and in writing. **SKYWARD** is not authorized to begin any Services other than development of the Baseline Plan until the Baseline Plan is complete and has been signed by both parties except as otherwise agreed to in writing by **[LEA NAME]**'s project manager. **[LEA NAME]** shall not be liable to **SKYWARD** for any costs, charges, fees or expenses that are not expressly stated in a signed SOW the Initial PO, the Baseline Plan, or an approved PCR. All fees and expenses shall be due within 45 days of receipt by [LEA NAME] of an invoice for Services performed by SKYWARD. Any amounts due that remain unpaid following 45 days following receipt of said invoice shall bear interest at the maximum rate permitted by law.

5. **Acceptance or Rejection.**

  (a) Each Deliverable, including each item denoted as a Deliverable in the SOW and in the Baseline Project Schedule, must be tested and accepted by **[LEA NAME]** within 30 days of being deployed and available to the LEA.

  (b) The **[LEA NAME]** and **SKYWARD** project managers will establish a testing period for each Deliverable as part of the Baseline Project Schedule. The testing period for each Deliverable will depend on the complexity and nature of the Deliverable, but shall not exceed 30 days.

  (c) Deliverables will be considered accepted unless **[LEA NAME]**'s project manager provides the **SKYWARD**'s project manager with written notice of **[LEA NAME]**'s rejection of the Deliverable, describing the specific reasons for the rejection of the Deliverable along with suggested corrective actions, within 30 days of said Deliverable being deployed and available to the LEA. If no written objection is received by the **SKYWARD**'s project manager within the time provided, the Deliverable shall be deemed accepted by **[LEA NAME]**.

(d)   If **[LEA NAME]** does not accept a Deliverable, then the **[LEA NAME]** project manager and the **SKYWARD** project manager will work together to determine a new due date for the corrected Deliverable but, generally this period will not exceed 20% of the time taken to create the Deliverable, calculated from the date that **SKYWARD** receives the written notice that the Deliverable has not been accepted. The **[LEA NAME]** and **SKYWARD** project managers will work together to determine a reasonable period for **[LEA NAME]** to review and test the corrected Deliverable but, generally, this period will not exceed the length of time taken to correct the Deliverable. All revised due dates will be reflected in an approved PCR and in the then current project schedule. This process will be repeated until the Deliverable is accepted in writing by the **[LEA NAME]** project manager. If **[LEA NAME]** does not accept the Deliverable after three iterations, then unless the failure is the result of **[LEA NAME]**'s failure to provide reasonable support or its failure to meet the agreed upon Deadlines in the project schedule, then **[LEA NAME]** will receive refund for the full amount of the fees paid by **[LEA NAME]** to **SKYWARD** with respect to such failed Deliverable as **[LEA NAME]** sole and exclusive remedy.

6. Property Rights.

All right, title, and interest in the **[LEA NAME]** Interfaces created specifically for **[LEA NAME]**, as well as all modifications and enhancements to the **[LEA NAME]** Interfaces (including associated Intellectual Property Rights) are and shall remain the property of **SKYWARD.**

7. Security.

(a)   **Security Procedures**. **SKYWARD** shall maintain and enforce at all **SKYWARD** locations security procedures that are consistent with the security standards of the information technology industries for locations similar to the **SKYWARD** and **[LEA NAME]** locations. **SKYWARD** is responsible for any and all security breaches at all **SKYWARD** service locations.

(b)   **Network Security**. With respect to **SKYWARD**'s access to the **[LEA NAME]** information technology network and virtual private network ("VPN"), **SKYWARD** shall comply with the following access and security requirements:

(i)   **SKYWARD**'s use of the Internet or electronic mail through the **[LEA NAME]** network will be solely for business purposes and provision of the Services requested by **[LEA NAME]**.

(ii)   **SKYWARD** and its employees shall not knowingly access or distribute any gambling, pornography, hate or violence sites and shall not forward any chain letters, fraudulent virus alerts, executable ready to run files or other files or codes which may damage the **[LEA NAME]** network.

(iii)   Router filters and firewall rules will be applied to limit the networking protocols and number of network devices accessing **[LEA NAME]** network resources across the VPN connection to the minimum required to provide the needed business function. The implementation of the VPN connection will be in accordance with **[LEA NAME]** remote access policy pertaining to VPN access.

(iv)   **SKYWARD** must apply and maintain virus protection software on any machine accessing the **[LEA NAME]** network either directly or across the VPN connection and **SKYWARD** shall not introduce any software viruses or other malicious computer instructions, applications, devices, or techniques that can or were designed to threaten, infect, damage, disable or shut down the **[LEA NAME]** network, computer system, or any component of a computer system, including its security or user data.

(v)   To the extent **SKYWARD** accesses or downloads any Software applications from any **[LEA NAME]** internal Software distribution site, **SKYWARD** is solely responsible for obtaining a valid license prior to installing applications that require purchase of a license. In addition to other indemnities provided in the Services Agreement, **SKYWARD** agrees to defend, indemnify and hold **[LEA NAME]** and its employees, officers, directors, representatives, and affiliates harmless from and against any claims that may arise as a result of **SKYWARD** accessing, downloading, using or distributing any Software applications from any **[LEA NAME]** internal Software distribution site.

(vi)   **[LEA NAME]** reserves the right to monitor **SKYWARD**'s use of the **[LEA NAME]** network and VPN to assure compliance with these policies and standards. **[LEA NAME]** may disconnect or disable access to the **[LEA NAME]** network and VPN if **SKYWARD** fails to comply with any aspect of the access and security requirements set forth in this Services Agreement or in any applicable **[LEA NAME]** security policy.

8. **SKYWARD Access to [LEA NAME] Premises**.

(a) In its sole discretion, **[LEA NAME]** will provide access to its premises to **SKYWARD**'s personnel to enable **SKYWARD** to perform on-site Services if deemed necessary by the **SKYWARD**. **SKYWARD** shall at all times comply with the following requirements in connection with such access: (i) **SKYWARD**'s personnel shall observe all of **[LEA NAME]**'s security and safety policies at all times provided they have been communicated to **SKYWARD** in written form; (ii) **SKYWARD** shall perform background checks on its personnel, whether employees or authorized subcontractors, who actually perform the on-site Services. The background check shall comply with all applicable laws and shall include a criminal history check. **SKYWARD** personnel may not have any positive drug test or any felony convictions. If the background check shows a felony conviction or any other issue which may present a safety concern, **SKYWARD** may not have the worker perform Services under this Services Agreement without disclosing the safety concerns and obtaining **[LEA NAME]**'s advance written approval.

(b) All **SKYWARD** personnel will receive a security badge from **[LEA NAME]** prior to performing any portion of on-site Services and will be required to carry and display the badge at all times while on **[LEA NAME]**'s premises.

(c) **[LEA NAME]** may, in its discretion, request removal of any personnel of **SKYWARD** for any reason satisfactory to **[LEA NAME]**. If **[LEA NAME]** requests the removal of any **SKYWARD** personnel, **[LEA NAME]** must notify **SKYWARD** about the issue in writing (via email). **SKYWARD** will work with **[LEA NAME]** to understand and resolve the personnel issue. However, pending resolution of the issue, **SKYWARD** will have the personnel immediately cease any on-site and activities.

(d) If any employee or subcontractor of **SKYWARD** makes a claim that an employee or independent contractor of **[LEA NAME]** may be treating them in an improper manner, including subjecting them to discrimination or harassment, **SKYWARD** shall report this immediately and in writing to **[LEA NAME]**.

9. **[LEA NAME] Guidelines**. **SKYWARD** will not have any worker perform Services under this Services Agreement unless it has ensured that the worker understands and agrees to comply with **[LEA NAME]**'s Code of Business Conduct, Harassment Policy, and Travel Policy.

10. **Representations and Warranties**. **SKYWARD** represents and warrants that (i) it is capable of providing all services necessary for full implementation of the Service, including consulting, training, data conversion from the legacy application to the Service, (ii) the Services will be as described in the Response, the SOW, the Baseline Plan, and any approved PCRs; (iii) the pricing for the Services set forth in the Response and the SOW is a good faith estimate of the cost of providing the Services ; (iv) the Baseline Budget to be included in the Baseline Plan will be a good faith estimate of the cost of providing the Services described in the Baseline Plan; and (v) the Baseline Plan will be, in **SKYWARD**'s good faith judgment, a realistic plan, and if there are no unforeseeable occurrences that prevent successful execution of the plan, and if **[LEA NAME]** provides reasonable support, the Baseline Plan will be achievable.

11. **References**. References to Exhibits and Sections are to Exhibits and Sections of this Services Agreement unless otherwise indicated.

EXHIBIT II

BASELINE PLAN

Instructions:

The Baseline Plan will be jointly developed by the **[LEA NAME]** project manager and the **SKYWARD** project manager and attached as Exhibit II within weeks of the Project Start Date.

The Baseline Plan will include the following Deadlines.

1.

2.

EXHIBIT III

MAINTENANCE AND SUPPORT AGREEMENT

Instructions:

Licensor to attach its standard Maintenance and Support Agreement with the following revisions or additions if not included in the standard agreement:

1.   **SKYWARD** will provide a limit on annual price increases through term (until August 31, 2016) and **[LEA NAME]** must have the ability to change plans from year to year.

2.   **SKYWARD** will provide assurances an error correction will not be valid if it results in significant additional time for **[LEA NAME]** end users or technical staff to operate or maintain the Service.