



Contract # 11274 Budget # 516

SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

This Software License and Maintenance Agreement is entered into between:

MONTANA OFFICE OF PUBLIC INSTRUCTION (“OPI”)
 1227 11th Avenue,
 Helena, Montana, 59601

and

INFINITE CAMPUS, INC. (“CONTRACTOR”).
 4321 109TH Avenue NE
 Blaine, MN 55449-6794

I. SERVICES

The OPI and Contractor enter into this Agreement (or “Contract”) for the ongoing use of the Infinite Campus Products. During the term of the Agreement, and subject to payment of the fees for the Infinite Campus Products and the fees for the Infinite Campus Services, Contractor shall provide the following services (the “Services”).

A. **Definitions**

1. **“Achievement in Montana”** (AIM) means Contractor’s proprietary student information system.
2. **“Campus Analytics”** means Contractor’s proprietary analytics tool for use with the District Edition of AIM which enables district staff to predict and identify at-risk students.
3. **“Campus Workflow”** means Contractor’s proprietary workflow tool for use with the District Edition of AIM which enables various functions and tasks within the district edition to be automated.
4. **“Products”** means the combined Campus Analytics and Campus Workflow products.
5. **“District Edition”** means the district edition of AIM purchased by school districts directly with Contractor.
6. **“Montana Edition”** means a modified State Edition, including the Special Education Module, used by school districts that have not independently purchased the District Edition.
7. **“State Edition”** means the state edition of AIM, including the Special Education Module.

B. General Requirements

The Contractor agrees to:

- provide, maintain, and support Campus Analytics.
- provide, maintain, and support Campus Workflow.
- assume costs associated with any development, customization, data conversion, patches, or bug fixes, that arise solely from an error or fault of the Contractor.

C. License Agreement

Subject to the terms of this Agreement, Contractor grants the OPI a non-exclusive, non-transferrable, non-sublicensable, non-perpetual right and license to the Products.

1. During the term of this Agreement, Contractor agrees the OPI may access data through the Contractor's customer portal to view, print, and use information contained on the web site.
2. The OPI and Districts shall have the right to print, distribute, and archive as necessary all data and reports produced for the Districts and the OPI through means of the software system. The OPI reserves the right to distribute, transfer, and/or reproduce such information, in whole or part, to any other entity designated by the OPI insofar as such distribution is not in conflict with any portion of this Agreement.
3. Training materials created solely for use with the Products shall be made available for all users of these systems. The OPI reserves the right to distribute, transfer, and/or reproduce such information, in whole or part. The OPI will not post training materials that contain proprietary information on a public webpage.

D. Maintenance and Hosting Services

1. Maintenance Patches. The Contractor agrees to provide maintenance patches that will be delivered through the normally scheduled patch bundle process. When necessary, Infinite Campus will also deliver emergency maintenance patches in between the scheduled deliveries. Issues that constitute an emergency patch are defined as: In a production environment, a major issue where a large piece of core functionality or major system component is broken, causing data corruption or preventing the user from performing core business function with no reasonable workaround, or an issue causing a district to be out of compliance with a State regulation for which there is no reasonable workaround and the reporting deadline is within 20 business days.

2. Application Upgrades. The Contractor will install application upgrades, including new releases and patches, to the Products and any optional District Edition, and all testing and training environments through the term of this Contract.
3. Maintain Products. The Contractor will maintain the Products including, but not limited to application enhancements and/or updates including regular releases, patches, bug fixes and minor server maintenance activities performed by Infinite Campus staff.
4. Manage Upgrades. The Contractor will manage upgrades to the Products jointly with the State and Infinite Campus District Edition users. However, the OPI retains final authority to set adoption and implementation dates of patches and upgrades to the AIM State Edition and Montana Edition sites.
5. Notice of Application Changes. The Contractor will provide written notice of application changes and modifications to screens or code including alterations to the specific database table structure or fields indicated by the OPI.
6. Test Product Changes. The Contractor will test changes to the Products, including any modification to screens or code, in Contractor's development environment or state or district non-production environments prior to releasing change event to the OPI. Testing will include specific scenarios defined by the OPI that must meet functional requirements prior to progression of change event.
7. Cloud Hosting Services. Contractor shall provide the following Cloud Hosting Services for OPI. Such Services shall be provided for the Product's users:
 - a) System Access. Contractor shall provide remote access to a digital information processing, transmission, and storage system (the "System Hardware") enabling each user entity, OPI or Districts as required, to perform operations using a single, Production instance of the Infinite Campus Products. Computing hardware, system software, database software and database storage shall be located at Contractor's facilities or at Contractor's subcontractor facilities.
 - b) Additional Software and Middleware. Contractor will provide all additional required middleware and software necessary for the Product ("Middleware"), including installation and licensing of Window OS, Windows SQL Server, Apache Tomcat, Sun Microsystems' Java, drivers, and SSL certificate(s).

In accessing Middleware, OPI may use software and related documentation developed and owned by Microsoft Corporation or its licensors (collectively, the "Microsoft Software"). If OPI chooses to use the Microsoft

Software, Microsoft and its licensors require that OPI agree to these additional terms and conditions:

- The Microsoft Software is neither sold nor distributed to OPI and OPI may use it solely in conjunction with the Infinite Campus Services.
- OPI may not transfer or use the Microsoft Software outside the Infinite Campus Services.
- OPI may not remove, modify, or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Microsoft Software.
- OPI may not reverse engineer, decompile, or disassemble the Microsoft Software, except to the extent expressly permitted by applicable law.
- Microsoft disclaims, to the extent permitted by applicable law, all warranties by Microsoft and any liability by Microsoft or its suppliers for any damages, whether direct, indirect, or consequential, arising from the Services.
- Microsoft is not responsible for providing any support in connection with the Infinite Campus Services. OPI cannot contact Microsoft for support.

c) Back-up Plan. Contractor shall create and maintain a backup plan whereby OPI Content is backed up and backups are tested by Contractor at least annually. Contractor shall retrieve each business day an electronic backup of the OPI Content, as defined below, for the purpose of archival storage in the case of Disaster Recovery. Contractor shall maintain a minimum of ten (10) of the most recent consecutive daily backups on a rolling basis (as the most recent is added, the least recent is discarded). Contractor shall also maintain a minimum of four (4) monthly backups and three (3) quarterly backups on a rolling basis.

d) Maintenance of Back-up Servers. Contractor shall maintain backup servers and data communications connections to such servers and maintain backups of OPI Content on such backup servers such that Contractor shall be capable of providing Cloud Hosting Services on and from such backup servers within twenty-four (24) hours of any disruption of Cloud Hosting Services (“Disaster Recovery”). Contractor shall enhance the Disaster Recovery plan so that in the event the backup servers and backup data communications connection are also impacted by the disruption from a catastrophic event, Contractor shall be capable of providing Cloud Hosting Services from a remote Disaster Recovery site. In such a catastrophic event, the Recovery Time Objective (RTO) shall be no more than five (5) days.

e) System Hardware. Contractor shall operate and maintain the System Hardware in good working order with access restricted to authorized employees of Contractor, its subcontractors, and persons specifically designated by OPI. Contractor shall maintain systems consistent with security system controls intended to meet the criteria for the security principle set forth in TSP section 100, Trust Services Principles, Criteria, and Illustrations for Security, Availability, Processing Integrity, Confidentiality and Privacy (AICPA, Technical Practice Aids), or similar industry standard. Contractor shall undertake to perform reasonable measures to ensure the security, confidentiality, and integrity of all OPI Content and other proprietary information transmitted through or stored on the System including:

- firewall protection of the Remote Data Center;
- maintenance of independent archival and backup copies of the Infinite Campus Products and OPI Content; and
- protection from network attack or other malicious harmful or disabling data, work, code, or program.

f) OPI Content. OPI or Districts shall be solely responsible for providing, updating, uploading, and maintaining the site and any and all files, pages, data, works, information and/or materials on, within, displayed, linked or transmitted to, from or through the site, including without limitation, trade or service marks, images, photographs, illustrations, graphics, audio clips, video clips, e-mail or other messages, metatags, domain names, software and text (the “OPI Content”). The OPI Content shall also include any registered domain names provided by OPI or registered on behalf of OPI in connection with the Cloud Hosting Services.

g) Test and Training Environment. In addition to the single “Production” system environment, Contractor shall provide additional Test and Training Environments (“Staging”) for the purpose of testing upcoming updates or code changes, training end users in a non-production environment and other non-production uses upon the request of the OPI. Contractor shall provide Test and/or Training Environments to include up to twenty (20) database and application server instances.

h) Emergency Support. Contractor shall provide a “on call” resources who will respond to after hour request for emergency services related to the availability Application Hosting Services.

8. Availability of Service, Service Levels and Adjustment of Hosting Fees

a) Availability. Subject to the terms and conditions of this Agreement, Contractor shall use reasonable commercial efforts to provide the Application Hosting Services for twenty- four (24) hours a day, seven (7) days a week throughout the term of this Agreement.

b) Response Time. Contractor shall provide the Application Hosting Services configured to deliver Static Pages with a time to interact of no more than 2 seconds. Static Pages exclude those pages that include the results of complex user input, such as reports, filters, and other reasonably complex components of the system.

c) Batch File Upload Processing Time. When used in compliance with relevant user documentation, Contractor shall provide the Application Hosting Services configured to process Montana Data Batch Uploads and subsequent synchronization with processing times of no more than 5 (five) hours per 15,000 records.

d) Downtime. OPI agrees that from time to time the Application Hosting Services may be inaccessible or inoperable for various reasons, including (i) periodic maintenance procedures or repairs which Contractor may undertake from time to time; or (ii) causes beyond the control of Contractor or which are not reasonably foreseeable by Contractor, including interruption or failure of telecommunications or digital transmission links, hostile network attacks, network congestion or other failures (collectively "Downtime").

e) Measurement of Service Levels. OPI and Contractor will meet upon the request of OPI, but not more frequently than quarterly, beginning with the first calendar quarter end after the use of the hosting services has begun, to review metrics relative to the Availability of Services. The metric shall be the number of hours of production time lost between the hours of 7:30 am and 4:30 pm, Mountain Standard Time, Monday through Friday due to inaccessible or inoperable systems excluding (i) any loss or interruption of Hosting Services due to causes beyond the control of Contractor or which are not reasonably foreseeable by Contractor, including, but not limited to, performance failures of telephone companies or other common carriers, interruption or failure of telecommunication or digital transmission links, Internet slow-downs or failures, government regulations or controls, natural disasters, and wars, acts of terrorism, riots or insurrections or (ii) interruptions to service scheduled in advance.

f) Adjustment of Application Hosting Fees. If the system is unavailable for longer than two (2) hours but less than four (4) consecutive hours in any quarterly period, the OPI shall be entitled to a five (5) percent reduction in the annual Application Hosting Services fee. If the system is unavailable for longer than four (4) consecutive hours but less eight (8) consecutive hours in any quarterly period, the OPI shall be entitled to a ten (10) percent reduction in the annual Application Hosting Services fee. If the system is unavailable for longer than eight (8) consecutive hours in any quarterly period, the OPI shall be entitled to a twenty-five (25) per-

cent reduction in the annual Application Hosting Services fee. Any reductions are issued as a credit memo. If service is not available outside of Contractor's regular hours of service, OPI shall notify Contractor by mutually agreed upon method and Contractor shall use reasonable commercial efforts to restore service before next business morning.

E. **Support**

1. **Computer System Support Services.** Contractor agrees to provide computer system support services to aid in the on-going operation of the Products. Technical support shall be provided to OPI Staff and all Districts using the Products.
2. **Support Services Defined.** Support services include, at a minimum, toll-free telephone support, an online support web site, and technical consulting. Online support services include documentation and solution searches, online tutorial, message boards, user guides, and quick reference materials to ensure timely responses to research inquiries.
 - a) Each district using the Montana Edition will specify a district support contact (up to two per District) that will be provided end user toll-free telephone access to Infinite Campus support staff from 7:30 am to 4:30 pm, Mountain Standard Time, Monday through Friday; and
 - b) District end users will be provided access via Internet to the Infinite Campus Customer Portal.
3. Contractor will provide a lead support person specific to Montana.
4. Contractor will provide notice to the OPI of enhancement requests from District Edition and Montana Edition users that affect state reporting functionality which will be provided to the OPI for review and approval prior to performing any development work.
5. Support services during Critical Process Periods will be provided by Contractor as follows:
 - a) When notified by the OPI of occasions when the OPI is engaged in using production application systems for critical business processes ("Critical Process Periods"), the Contractor will accelerate the response to an escalation of issues arising during that Critical Process Period.
 - b) Critical Process Periods are defined as:

Aug. 12 th – Oct. 31 st	Beginning of year, fall EL assessment verification, previous year graduates, cohorts and dropouts, fall enrollment, program participation and Special Ed. child count
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Nov. 1 st – Jan. 31 st	Fall CTE post graduate status and assessment registration
Feb. 1 st – Feb. 15 th	Spring enrollment
April 1 st – May 15 th	Test window enrollment and program participation
May 1 st – June 30 th	End of year enrollment, program participation, attendance totals, CTE, Special Ed. exiting and annual behavior reporting

c) A P1 Critical Case is defined as broadly as a “Server Down” occurrence, where all users are unable to login, or significant majorities are unable to use the system as designed and documented to function. It is characterized by a complete failure of the Contractor software system that results in the inability by the OPI to use the Contractor software for most functions.

- P1 Response - Contractor shall provide initial Response to a P1 Case within one hour from the time of the Follow Up call as required in sub-section E. below. Once a support case has been documented, updates will be provided to the OPI a minimum of once a day, or according to an alternate agreed plan of action, until a P1 Case has been resolved or the urgency level associated with the case has been downgraded;
- Target Resolve Time for P1 Cases - In the event Contractor cannot resolve the problem within two hours, a plan for resolution of the problem shall be agreed to by Contractor and the OPI within four business hours of when the issue ticket is submitted, which may include temporary workarounds or permanent fixes; and
- P1 Permanent Resolution - when software development is required to permanently fix a P1 Case, Product Development, after acceptance of the user submitted case as a high priority development issue, will deliver the fix as an “emergency patch” or “patch bundle” no more than five business days from case submission.

d) A P2 High Case is defined as (i) the loss, corruption or unintended migration of Contractor SIS data, (ii) the loss of a Contractor function that supports an urgent business process (e.g., report card issuance), (iii) an Contractor failure that results in the inability by the OPI to use the Contractor software for a period longer than five consecutive minutes during an urgent business process, or (iv) a negligent action on the part of Contractor which results in an inability to meet a regulatory or statutory deadline.

- P2 Response - Contractor shall provide response to a P2 Case within two hours from the time of the Follow Up call as required in sub-section F below. Once a support case has been documented, updates will be provided to the OPI a minimum of once a day, or according to an alternate agreed plan of action, until a P2 Case has been resolved or the urgency level associated with the case has been downgraded;
- Target Resolve Time for P2 Cases - In the event Contractor cannot resolve the problem within five hours, a plan for resolution of the problem shall be agreed to by Contractor and the OPI within eight business hours of when the issue ticket is submitted, which may include temporary workarounds or permanent fixes; and
- P2 Permanent Resolution - when software development is required to permanently fix a P2 Case, Product Development, after acceptance of the user submitted case as a high priority development issue, will deliver the fix as an “emergency patch” or “patch bundle” five business days from case submission.

e) In the event of a P1 or P2 issue failing to be resolved within 10 business days during one of the Critical Process Periods, Contractor will credit a daily prorated amount of the annual maintenance fee of the Montana Edition as a service level credit. The “Service Level Event” will begin on the next business day after notice is sent to Contractor in accordance with sub-section E. Total service level credit amount will not exceed \$20,000 per Service Level Event, or \$50,000 during the fiscal year. However, in the last year of the contract, the Contractor will issue a refund to the OPI for the amount of the Total Service Credit.

- Service Level Event, Level 1 – 10 business days to 20 business days – the service level credit amount will be half the daily rate of the Montana Edition or \$500, whichever is less, for each business day (excluding holidays), beginning on the 10th business day the issue is not resolved and until core functionality is restored.
- Service Level Event, Level 2 – 20 business days or more, the service level credit will be equal to the daily rate of the Montana Edition or \$1000 per business day (excluding holidays), whichever is less, for each day, beginning on the 20th business day the issue is not resolved.

Example: Critical issue is reported to Contractor on April 17, 2022, and not resolved until June 2, 2022. Beginning on May 2, 2022 a fee would be imposed of \$500 per day for the period of

May 2 to May 15 or a total of \$5000. Beginning on May 16 through June 2, \$1000 per day would be imposed for a total of \$12,000. Total service level credit amount would be \$17,000.

f) The OPI shall provide complete replications steps in Contractor designated format and available details regarding the issue utilizing Contractor's customer support software: error message(s), log files, symptoms before and during outage and any available information requested by vendor. Customer shall enter the information through the Customer Support portal and will follow up with a phone call to Technical Support when reporting P1 or P2 Cases.

g) The OPI and Contractor will meet semi-annually for a Service Level Review to review metrics as they pertain to the service levels. The topics to be discussed will include, at a minimum, number of Critical and High support cases submitted, Contractor response time to cases, elapsed time to resolution of cases, types of problems (i.e., software, database, etc.), close-out of tickets without mutual agreement, and problems that were reported as errors that were not errors.

h) The OPI and Contractor will meet annually or as needed to review the prior fiscal year's metrics against the service level metrics and shall establish the basis for service level credit or refund given.

II. OPI RESPONSIBILITIES

A. Authentication and Authorization.

The user-security module within Contractor's products allows system administrators to control individual user security settings related to the protection of confidential data. It is the responsibility of all licensees to maintain user security setting in compliance with Contractor documentation which is available from the Contractor's support channels. Any security failures, incidents, and concerns should be immediately reported to Contractor personnel. Failure to properly configure and manage user security rights can result in the disclosure of confidential data.

III. TERM

The above-described services shall be provided between July 26, 2021 and June 30, 2026 (the "Term"). This date may be extended by mutual agreement up to June 30, 2031.

IV. COMPENSATION

A. Consideration.

The OPI agrees to pay Contractor an amount not to exceed \$519,596.00 unless this Agreement is amended by mutual agreement. The breakout of the maintenance and support costs are as follows:

Projected Amount	Description
	Campus Analytics is based on 298,980 public school enrollments from 2024 through 2026. Infinite Campus is offering Campus Analytics at no cost to the OPI from 2021 through the 2023-2024 school year. This amount is based on per student annual fees of \$0.50 per student. The number of students over the next 5 school years is projected below:
\$0.00	145,632: 2021-2022
\$0.00	147,380: 2022-2023
\$0.00	148,220: 2023-2024
\$74,532.50	149,065: 2024-2025
\$74,957.50	149,915: 2025-2026
	Campus Workflow is based on 740,212 public school enrollments from 2021 through 2026. This amount is based on per student annual fees of \$0.50 per student. The number of students over the next 5 school years is projected below:
\$72,816.00	145,632: 2021-2022
\$73,690.00	147,380: 2022-2023
\$74,110.00	148,220: 2023-2024
\$74,532.50	149,065: 2024-2025
\$74,957.50	149,915: 2025-2026

Actual annual student count will be calculated as described below and based upon the annual fees shown below. These fees are valid through June 30, 2031.

Item	Annual Fees
Campus Analytics	.50/student
Campus Workflow	.50/student

Per student licensing fees shall be based on the number of enrolled students counted during the prior school year's fall public school enrollment snapshot as published on GEMS (<https://gems.opi.mt.gov/>). This figure is typically published by January each year.

For example, 2021-2022's per-pupil number will be based on the 2020-2021 fall enrollment snapshot as published in January 2021, which is 145,632.

B. Statement of Work

The parties will enter into a separate statement of work to implement Campus Analytics and Campus Workflow. The statement of work will include the dates of implementation and a pro-rated annual payment schedule based on the implementation date.

C. Payment Schedule

- **Campus Analytics:**
If the OPI decides to implement Campus Analytics and the parties execute a separate statement of work, the payment schedule will be specifically determined in the separate statement of work.
- **Campus Workflow**
If the OPI decides to implement Campus Workflow and the parties execute a separate statement of work, the payment schedule will be specifically determined in the separate statement of work.

D. Reference to Contract Number

Contractor must conspicuously place the Contract number on all invoices, packing lists, packages, and correspondence relating to this Contract. If the Contractor fails to place the Contract number on an invoice, OPI will notify the Contractor and give the Contractor a chance to correct the invoice. If Contractor does not correct the invoice, then OPI is not obligated to pay the invoice until it is corrected.

E. Electronic Payment

To facilitate State payment by electronic funds, Contractor must complete a form W-9 and provide a voided check, or a direct deposit form (not a deposit slip) completed by Contractor's bank at the time of Contract execution. Contractor will receive a payment advice through e-mail. If an e-mail address is not provided on form W-9, Contractor will not receive a payment advice.

F. Payment Terms.

OPI has 30 days to pay invoices, as allowed by Mont. Code Ann. § 17-8-242.

G. Non-Reimbursable Expenses

Contractor shall be responsible for arranging and paying for any travel, lodging, meals, and supplies associated with the services provided.

V. OWNERSHIP

A. Ownership of Products.

The OPI acknowledges that the Infinite Campus products; including all source code, object code, class libraries, user designs, system logic flow, and processing techniques and procedures related thereto; any system user documentation, or other documentation related thereto; any training related thereto, any copies and derivatives of any of the foregoing, in whole or in part; as well as all copyright, patent, trademark, trade secret and other proprietary rights in any of the foregoing; are and shall remain the sole and exclusive confidential property of Contractor. The OPI further acknowledges that any reports or other data generated by the Infinite Campus Products regarding traffic flow, system loads and/or product installation are the exclusive property of Contractor and may be used, and the OPI hereby specifically authorizes the use of such reports and/or other data, by Contractor in any manner that it deems to be appropriate. OPI shall not allow, and shall not allow any third party to: a) adapt, modify, change, maintain, translate, decompile, disassemble, reconstruct, or reverse engineer the Infinite Campus Products, or any portion thereof; b) identify or discover any source code of the Infinite Campus Products; c) distribute, sell or sublicense copies of the Infinite Campus Products or any portion thereof; d) create copies of the Infinite Campus Products except to make a copy of any program which is required as an essential step in its utilization or to make an archival or back-up copy of the Infinite Campus Products; or e) incorporate any portion of Infinite Campus Products into or with any other Infinite Campus Products or other products, or create any derivative works of the Infinite Campus Products.

B. Ownership of Licensee Content.

Contractor acknowledges that the OPI Content is owned solely by the OPI. Following termination of this Agreement, the OPI shall remove or request that the Contractor remove on a fee for service basis, all of the OPI's Content from Contractor's Products and thereafter expunge all copies of the Contractors Products from the computer(s) and server(s) and provide a certificate of an officer of the OPI confirming compliance with the same. Failure to comply with this Section shall constitute continued use of Contractor Products. Contractor shall also have such other legal and equitable rights and remedies to which it may be entitled with respect to OPI's failure to comply with the provisions of this Agreement. Contractor further warrants that it shall not lease, sell, rent, or otherwise disclose the OPI's Content to any third party without prior consent of the Superintendent of Public Instruction. To improve the products and services it provides, Contractor may use anonymized or de-identified, non-PII data, as well as seek input from OPI and its employees regarding use of Contractor products and Contractor services. The permitted use of anonymized or de-identified, non-PII data will survive expiration or termination of this Contract.

C. Confidentiality.

The OPI agrees that the Products contain proprietary information, including trade secrets, know-how and confidential information that are the exclusive property of Contractor. During the period this Agreement is in effect and at all times after its termination, the OPI and its employees and agents shall maintain the

confidentiality of this information and not sell, license, publish, display, distribute, disclose or otherwise make available this information to any third party nor use such information other than to inform permitted users of the conditions and restrictions on the use of the Products or the documentation set, and to the extent permitted by law, the OPI will not disclose the terms and conditions of this Agreement without the prior written consent of Contractor.

D. Source Code Escrow.

1. Deposit in Escrow. The Contractor will store with a third-party escrow agent certain computer source code for the program(s) licensed as part of this Agreement, including all Contractor-owned source code necessary to continue operations, and other information regarding any additional third-party software used in conjunction with the Products and any available configuration and maintenance instructions available. The Contractor will designate OPI as a beneficiary in its Software Source Code Escrow Agreement. OPI will have the right to receive materials placed into escrow upon all conditions having been met.
2. Conditions for Release. OPI will have the right to obtain the source code in accordance with and subject to the terms and conditions of the Escrow Agreement provided that all of the following three (3) conditions are met (collectively a "Release Event"):
 - The Contractor winds down its business or liquidates its business under a Chapter 7 Bankruptcy proceeding;
 - No entity has succeeded the Contractor's obligations to provide maintenance and support on the Products in accordance with this Agreement; and
 - OPI is not in breach of its obligations under this Agreement.
3. Source Code. Unless a Release Event occurs, in no event shall OPI have the right to use the source code for any purpose, and OPI is specifically prohibited from using the source code to reverse engineer, develop derivative works or to sublicense the right to use the source code to any other person or entity for any purpose. OPI will also be obligated to treat the source code as Confidential Information of the Contractor under this Agreement.
4. Source Code License. Upon occurrence of a Release Event, OPI shall be deemed to have, automatically, a non-exclusive, worldwide, license to use, modify, copy, produce derivative works from, display, disclose to persons who have entered into a written agreement containing substantially the same confidentiality provisions as in this Agreement for the sole purpose of maintaining the Products for Licensee, and otherwise to utilize the Products and the source code and other materials necessary to maintain and improve the Software for use by the State, subject always to the limitations in this Agreement on reproduction and use of the Software for production purposes.

VI. COMPLIANCE WITH LAWS

A. Compliance

Contractor shall at all times conduct their efforts under this Contract in strict accordance with all applicable federal, state, and local laws, rules, and regulations, and with the highest commercial standards. These laws include:

- The Montana Human Rights Act
- The Equal Pay Act of 1963
- The Civil Rights Act of 1964
- The Age Discrimination Act of 1975
- The Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973.

B. Patient Protection and Affordable Care Act

Contractor is the employer for Contractor employees for the purpose of providing healthcare benefits and paying any applicable penalties, fees, and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

C. Hiring Practices

In accordance with Mont. Code Ann. § 49-3-207, Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, sex, pregnancy, childbirth, medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

D. Drug Free Workplace and Federal Lobbying, Debarment, and Suspension

Individuals and entities involved in the performance of this Contract shall:

- Comply with all requirements of the Drug-Free Workplace Act; and
- Comply with all federal requirements concerning federal lobbying, debarment, and suspension.

VII. REGISTRATION WITH THE SECRETARY OF STATE

A. Business Required to Register

Any business intending to transact business in Montana must register with the Montana Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with Mont. Code Ann. §§ 35-1-1026 and 35-8-1001.

Note: Contractor may want to obtain the guidance of their attorney or accountant to determine whether they need to register with the Montana Secretary of State.

To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

B. Certificate of Authority

For any business required to register with the Montana Secretary of State, the business must submit to OPI a certificate of authority to demonstrate that they are in good standing in Montana.

VIII. ACCESS, RETENTION, AND OWNERSHIP OF RECORDS

A. Access to Records

Contractor shall provide OPI, the Montana Legislative Auditor, Montana Legislative Analyst, or their authorized representative access to all records, financial data, and supporting documentation regarding Contractor's performance of this Agreement solely to determine if the parties have complied with the terms of this Agreement. *See* Mont. Code Ann. §18-1-118.

B. Retention Period

Contractor shall create and retain all records supporting services rendered for a period of eight years after either the completion or termination of this Contract.

IX. PARTY RELATIONSHIP

A. No Business Entity

This Contract does not create an agency, joint venture, or partnership between OPI and the Contractor. Neither party may impose or create any obligation or responsibility, express or implied, or make any promise, representation, or warranty on behalf of the other party, other than is expressly provided in this Contract. Nothing in this Contract may be construed to make Contractor, its employees, or its agents, employees of OPI. Contractor is not eligible for any employee benefits from payments made under this Contract. This includes, but is not limited to, Social Security, Medicare, unemployment insurance, workers' compensation, or public retirement.

B. Independent Contractor Relationship

Contractor, if an individual, is self-employed and engaged in an independent trade or business and is not an employee of OPI. Contractor is not eligible for any employee benefits from payments made under this Contract. This includes, but is not limited to, Social Security, Medicare, unemployment insurance, workers' compensation, or public retirement. Contractor is an independent contractor for purposes of federal and state income taxes, which will not be withheld from OPI's payment to Contractor.

C. Supplies, Materials, Equipment

Contractor controls all aspects of the services necessary to meet Contractor's duties under this Contract. Contractor is solely responsible for providing, at Contractor's expense, all the supplies, materials, and equipment necessary to complete this Contract.

X. INDEMNIFICATION, WARRANTY, AND LIMITATION OF LIABILITY.

A. Indemnification

The Contractor shall protect, defend, and save the OPI and the state, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by third parties on account of damage to property, personal injury, or death which injury, death, or damage, arises out of services performed or omissions of services or in any way results from the negligent acts or omissions of the Contractor, its agents, or subcontractors, except the sole negligence of the state.

B. Warranty

Upon initial installation of the software Contractor warrants that: (i) the unmodified software will provide the features and functions and will otherwise conform to all published documentation including on Contractor's website; and (ii) the media upon which the software is furnished will be free from defects in materials and workmanship under normal use and service.

C. Limitation on Warranty

The parties agree that the warranty set forth above do not require uninterrupted or error-free operation of services unless otherwise stated in the specifications. This warranty is the State's exclusive warranties and replace all other warranties or conditions, express or implied, including but not limited to, the implied warranties or conditions of merchantability and fitness for a particular purpose.

D. Limitation of Liability

CONTRACTOR'S LIABILITY FOR CONTRACT DAMAGES IS LIMITED TO DIRECT DAMAGES AND FURTHER TO NO MORE THAN TWICE THE CONTRACT AMOUNT. CONTRACTOR SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES. DAMAGES CAUSED BY INJURY TO PERSONS OR TANGIBLE PROPERTY, ARE NOT SUBJECT TO A CAP ON THE AMOUNT OR TYPE OF DAMAGES.

XI. REQUIRED INSURANCE

A. Required Insurance

1. General Liability Insurance

Contractor shall purchase and maintain commercial general liability insurance with limits of at least \$1,000,000 per occurrence / \$2,000,000 aggregate protecting Contractor and OPI, including elected and appointed officials, agents, and employees, against all claims for bodily injury, death, personal injury, property damage, contractual liability, and financial or other loss of any kind that

in any way, directly or indirectly, arise or allegedly arise out of or in connection with this Contract. This provision is intended to require Contractor to purchase and maintain general liability insurance that includes protection for 1) Contractor's and subcontractor's own acts or omissions, alleged acts or omissions, negligent conduct, and alleged negligent conduct, and 2) OPI's own acts or omissions, alleged acts or omissions, negligent conduct, and alleged negligent conduct.

2. **Cyber/Data Information Security Insurance**

The Contractor shall purchase and maintain cyber/information security insurance coverage with combined single limits for each wrongful act of \$2,000,000 per occurrence to cover the unauthorized acquisition of personal information such as social security numbers, credit card numbers, financial account information, or other information that uniquely identifies an individual and may be of a sensitive nature in accordance with §2-6-1501, MCA through §2-6-1503, MCA. If the Contractor maintains higher limits than the minimums shown above, the State requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the State. Such insurance must cover, at a minimum, privacy notification costs, credit monitoring, forensics investigations, legal fees/costs, regulatory fines and penalties, and third-party liability settlements or judgements as may be caused by any act, omission, or negligence of the Contractor's officers, agents, representatives, assigns or subcontractors.

Note: If occurrence coverage is unavailable or cost-prohibitive, the State will accept 'claims made' coverage provided the following conditions are met: 1) the retroactive date must be shown, and must be before the date of the Contract or the beginning of Contract work; 2) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the Contract of work; and 3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.

3. **Automobile Liability Insurance**

If fulfillment of this Contract requires the use of an automobile, then for the duration of this Contract, Contractor shall purchase and maintain project specific business automobile liability insurance covering any automobile—including all owned, hired and non-owned automobiles—used in connection with Contractor's business. Business automobile liability insurance shall have limits of not less than \$1,000,000 per person, \$2,000,000 per accident, and \$100,000 for property damage. Contractor shall require each of its sub-contractors to purchase and maintain business automobile liability insurance with the same limits.

4. **Workers' Compensation Insurance**

Contractor shall comply with the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with Mont. Code Ann. §§ 39-71-401, 39-71-405, and 39-71-417. Contractor, its employees and agents, its subcontractors, and its subcontractors' employees and agents are not employees of OPI. For the duration of this Contract, Contractor shall either obtain and maintain an independent contractor exemption or shall purchase and maintain workers' compensation and employer's liability insurance covering Contractor and its employees and agents while performing the work contemplated in this Contract. Contractor shall also require each of its subcontractors, for the duration of this Contract, to either obtain or maintain an independent contractor's exemption or to purchase and maintain workers' compensation and employer's liability insurance covering each sub-contractor and its employees and agents while performing the work contemplated in this Contract. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. This insurance/exemption must be valid for the entire Contract term and any renewal.

5. **General Terms Applicable to Insurance Required by This Contract.**

- a) Each insurance policy required by this Contract shall:
 - (1) Be written for the limits of liability specified in this Contract or required by law, whichever is greater.
 - (2) Be written on an "occurrence" basis (not "claims made" basis), unless otherwise agreed to by a subsequent written agreement between Contractor and OPI. Under no circumstances will asbestos abatement/environmental impairment liability insurance be accepted on a "claims made" basis.
 - (3) Be maintained without interruption for the time periods required by this Contract and shall contain a provision that coverage will not be canceled, allowed to expire, changed, reduced, or restricted for any reason unless and until the insurance carrier that issued the policy has given OPI at least 30 days' prior written notice of cancellation, expiration, change, reduction, or restriction of coverage.
 - (4) Be primary coverage. Any insurance or self-insurance maintained separately by the State, its officers, officials, employees, or volunteers shall be excess of the Contractor's or subcontractor's insurance and shall not contribute with it.
 - (5) Be from an insurer carrier currently authorized to do business in the State of Montana with an A.M. Best's rating of no less than A-.
- b) Contractor must notify OPI immediately of any material change in insurance coverage, including changes in limits, coverages, change in status of policy, etc. OPI reserves the right to require complete copies of insurance policies at any time.

- c) Any deductible or self-insured retention must be declared to and approved by OPI. At the request of OPI either:
 - (1) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects OPI, its officers, officials, employees, or volunteers; or
 - (2) At the expense of the Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.
- d) Contractor is responsible for paying all premiums and deductibles applicable to each insurance policy required by this Contract.
- e) Contractor must submit a certificate of insurance and any additional insured endorsements required by Contractor's insurance policies to OPI prior to the effective date of this Contract.
- f) The certificate of insurance must name the State of Montana as certificate holder.
- g) Both Contractor and OPI shall be identified on the declaration pages of the general liability and business automobile liability policies required by this Contract as named insureds (Contractor being identified as the primary named insured). These insurance policies shall provide OPI no less coverage than is provided to Contractor and shall contain no provision limiting OPI's coverage to claims of vicarious or general supervisory liability.
- h) Alternatively (Named Insured Status Unavailable for OPI):
 - (1) OPI shall be identified on the declaration pages of the general liability and business automobile liability policies required by this Contract as an additional insured. These insurance policies shall provide OPI no less coverage than is provided to Contractor and shall contain no provision limiting OPI's coverage to claims of vicarious or general supervisory liability.
 - (2) Contractor, its sub-contractors, or the insurance carrier issuing all insurance policies required by this Contract must provide complete certified copies of all such policies to OPI prior to Contractor or its sub-contractors commencing the work contemplated in this Contract and as a necessary condition precedent to the formation, and enforceability of any provision, of this Contract.
- i) Contractor and its sub-contractors shall not commence any work contemplated by this Contract until a complete certified copy of each insurance policy required by this Contract has been provided to OPI.

XII. NOTICES

A. Notice Process

Written notices, requests, or complaints must first be directed to the Contract Liaison. Any notice required or permitted under this Contract shall be in writing and delivered by personal service, facsimile, or mailed, postage fully prepaid, and properly addressed to the Contract Liaison.

B. Effective Date of Notice

If notice is given by personal service or facsimile, the notice is effective upon receipt; if notice is given by mail, the notice is effective on the third business day after mailing.

XIII. GENERAL

A. Incorporations

All attachments are incorporated into this Contract.

B. Entire Agreement

Contractor acknowledges that it has read and understood the terms and conditions of this Contract and will be bound by them. Contractor further acknowledges that this Contract, including any attachments incorporated by reference, is the complete and exclusive statement of the Contract between the parties. It supersedes all previous proposals, oral or written, and all other communications between the parties relating to this Contract's subject matter.

C. Modification of Contract

Additions, deletions, amendments, or changes are collectively called "modifications." This Contract can only be modified in writing, contain an explicit statement that it constitutes a modification of this Contract, and be signed by an authorized individual with the authority to enter in contracts from OPI and Contractor.

D. Authority

This Contract is issued under the authority of Mont. Code Ann. Title 18, and the Administrative Rules of Montana, Title 2, Chapter 5.

E. Severability

A declaration by any court or any other binding legal source holding any part of this Contract to be unenforceable, the rest of it remains fully enforceable, unless the provisions are mutually and materially dependent.

F. Headings

Headings are for convenience only and do not affect the interpretation of this Contract.

G. Choice of Law and Venue

Montana law applies to this Contract without regard to any choice-of-law rules that might direct the application of the laws of any other jurisdiction. The parties agree the venue for any litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana. Each party shall pay its own costs and attorney fees, except as provided in **Section Error! Reference source not found.** Error! Reference source not found..

XIV. Force Majeure

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including, without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a *force majeure* condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a *force majeure* event. A *force majeure* condition suspends a party's obligations under this Contract unless the parties mutually agree that the obligation need not be performed because of the condition.

XV. CONTRACT TERMINATION

A. Termination by Either Party

This Contract may be terminated by either party at any time, without cause and for the party's convenience, upon 30 days' written notice to the other party's Contract Liaison. OPI shall pay Contractor only that amount, or prorated portion, owed to Contractor up to the date OPI's termination takes effect. This is Contractor's sole remedy. OPI shall not be liable to Contractor for any other payments or damages arising from termination under this section, including general, special, or consequential damages such as lost profits or revenues.

B. Reduction in Funding

OPI must terminate this Contract at any time if OPI's funding is eliminated or diminished such that continued support of this Agreement is unworkable. Mont. Code Ann. § 18-4-313(4). Such termination does not constitute a breach of this Contract. OPI shall provide Contractor the Contract termination effective date. OPI shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, OPI shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date OPI's termination takes effect. This is Contractor's sole remedy. OPI shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

XVI. Event of Breach – Remedies

A. Event of Breach by Contractor

Any one or more of the following Contractor acts or omissions constitute an event of material breach under this Contract:

- Products or services furnished fail to conform to any requirement;
- Failure to function as a going concern, declaring bankruptcy, having a receiver appointed for you, or otherwise taking advantage of insolvency laws;
- Failure to perform any of the other terms and conditions of this Contract;

- Violation of any of the terms of applicable law;
- Failure to obtain and maintain all required insurance is a material breach of this Contract.
- Failure to perform the services or to fulfill the obligations of this Contract in a timely and proper manner.

B. Event of Breach by OPI

OPI's failure to perform any material terms or conditions of the Contract constitutes an event of breach.

C. Actions in Event of Breach by Contractor

Upon Contractor's material breach, OPI may:

- Terminate this Contract and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.

D. Action in Event of Breach by OPI

Upon OPI's material breach, Contractor may:

- Terminate this Contract and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law or in equity.

E. Notice of Termination or Material Breach

Each party must notify the other of a material breach or termination in writing to the other party's Contract Liaison.

F. Waiver of Breach

Either party's failure to enforce any contract provision in a specific situation is not a waiver in a future similar situation or of any other obligation or responsibility under this Contract. Neither party may assert the defense of waiver in these situations.

XVII. Contract Liaison

All contract management on OPI's behalf must be through a single point of contact designated as OPI's liaison. A party may change the Contract Liaison by written notice to the other party. Contractor designates the individual listed below as the Contractor's liaison who will provide the single point of contact for management and coordination of Contractor's work.

OPI Contract Liaison

Michael Sweeney
P.O. Box 202501
Helena MT 59620-2501
(406) 444-4411
msweeney@mt.gov

Contractor Contract Liaison

Stephanie Sondrol
4321 109th Avenue NE
Blaine, MN 55409
(763) 795-4090
stephanie.sondrol@infinitecampus.com

[(The remainder of this page left intentionally blank

The parties, through their authorized agents, have executed this Contract on the dates set out below.

By: **INFINITE CAMPUS**

DocuSigned by:

Brian Page

853928164737430...

Signature

Date: 7/19/2021

Brian Page, Chief Financial Officer

brian.page@infinitecampus.com

By: **OFFICE OF PUBLIC INSTRUCTION**

DocuSigned by:

Michael Sweeney

744A821001848497

Michael Sweeney, Chief Data Officer

Date: 7/19/2021

By:

DocuSigned by:

Sarah Swanson

21A57229D9497

Sarah Swanson

OPI Chief of Staff

Date: 8/5/2021

By:

DocuSigned by:

Elsie Arntzen

29C40D282A4D43E

Superintendent Elsie Arntzen

Montana Office of Public Instruction

Date: 8/5/2021

APPROVED AS TO FORM ON BEHALF OF OPI

DocuSigned by:

Carol Monroe

BB4A7D4E11AD4A8...

Carol Monroe

OPI Contract and Procurement Manager

Date: 7/16/2021

APPROVED AS TO LEGAL CONTENT

DocuSigned by:

Michelle Snowberger

1A2C64B730B0723

Michelle Snowberger

Assistant Attorney General

Montana Department of Justice

on behalf of OPI

Date: 7/18/2021

Addendum 1

FERPA Compliance and Student Data Privacy Addendum

Infinite Campus, in its role as a vendor to educational agencies and institutions (EAs), receives disclosures from EAs of personally identifiable information (PII) contained in student records. Only information that is needed for Infinite Campus to perform services outsourced to it by the EA is disclosed to Infinite Campus. These disclosures are authorized under the Family Educational Rights and Privacy Act (FERPA), a federal statute that regulates the privacy of student records by EAs that receive financial assistance from the U.S. Department of Education. Infinite Campus, as a contractor to the EA, receives the disclosures on the same basis as school officials employed by the EA, consistent with FERPA regulations, 34 CFR §99.31(a)(1)(i)(B). Consistent with those regulations, Infinite Campus has a legitimate educational interest in the information to which it is given access because the information is needed to perform the outsourced service, and Infinite Campus is under the direct control of the EA in using and maintaining the disclosed education records, consistent with the terms of its agreement.

Infinite Campus is subject to the same conditions on use and redisclosure of education records that govern all school officials, as provided in 34 CFR §99.33. In particular, Infinite Campus must ensure that only individuals that it employs or that are employed by its contractor, with legitimate educational interests – consistent with the purposes for which Infinite Campus obtained the information -- obtain access to PII from education records it maintains on behalf of the district or institution. Further, in accordance with 34 CFR §99.33(a) and (b), Infinite Campus may not redisclose PII without consent of a parent or an eligible student (meaning a student who is 18 years old or above or is enrolled in postsecondary education) unless the agency or institution has authorized the redisclosure under a FERPA exception and the agency or institution records the subsequent disclosure. An example of such a disclosure is when Infinite Campus is requested by a school district to assist the district in the transfer of the student records from our system to another system.

Infinite Campus will not sell or otherwise use or redisclose education records for targeted advertising or marketing purposes. Infinite Campus does not allow advertising within its products, and therefore there is no behavioral or targeted advertising. Infinite Campus uses data within its products only to deliver the services contracted by the educational institution. Infinite Campus may use anonymized, non-PII data internally to improve the products and services it delivers to EAs.

Infinite Campus employs extensive technological and operational measures to ensure data security and privacy, including advanced security systems technology, security audits including external SOC 2 Type II audits, physical access controls, annual privacy training for employees and partners, criminal background checks of all employees, and employs a dedicated, full-time Security Program Manager to implement and improve the Infinite Campus security posture and practice. Details about the audits and company policies which support the Infinite Campus security programs are available to EAs under a non-disclosure agreement.

All employees of Infinite Campus are required to sign an Acknowledgement and Agreement of Policies that commits the employees to comply with Infinite Campus's data privacy and security

policies and receive required annual security and privacy training, including commitments and training regarding the prohibition on disclosure of student data.

Infinite Campus does not own any of the student data or district-created data within its products. The collection, input, use, retention, disposal, and disclosure of any information in its software applications are controlled solely by the EAs which license its products. Infinite Campus cannot delete, change, or disclose any information from its software applications controlled by the EA. In the event any party seeks to access education records beyond the scope that is afforded to Infinite Campus and Infinite Campus affiliated individuals for purposes of providing the services for which we are under contract, Infinite Campus will immediately inform the EA of such request in writing. Infinite Campus shall not provide access to such data or information or respond to such requests, unless compelled to do so by court order or lawfully issued subpoena from any court of competent jurisdiction or directed to do so by the EA. Should Infinite Campus receive a court order or lawfully issued subpoena seeking the release of such data or information, Infinite Campus shall provide immediate notification, along with a copy thereof, to EA prior to releasing the requested data or information, if such notification is not prohibited by law or judicial and/or administrative order or subpoena.

In the event Infinite Campus becomes aware of a data breach or inadvertent disclosure of PII, as defined in §30-14-1704 MCA, Infinite Campus shall take immediate steps to limit and mitigate such security breach to the extent possible. A senior executive of Infinite Campus will notify a senior member of the affected EAs leadership team, ideally the Superintendent or similar chief executive. This typically will occur within 24 hours of confirmation of the event and would include the known relevant details. The EA and Infinite Campus will work cooperatively in determining an action plan, including any required notification in accordance with §2-6-504 MCA. In the event that Infinite Campus is at fault for the breach or disclosure, Infinite Campus carries a \$1,000,000 cyber-liability insurance policy that provides for a number of potential remedies, such as credit monitoring for affected parties, fraud coverage, crisis management communications coverage, business interruption coverage, and data restoration coverage, among others.

In the event of termination of a license to use its products, Infinite Campus works with the EA, in accordance with the terms of the EAs contract, to destroy all student records contained in its systems and then will permanently delete all archival or backup copies of the agency's or institution's data. Infinite Campus shall not knowingly retain copies of any data or information received from EA once EA has directed Infinite Campus as to how such information shall be returned and/or destroyed. Furthermore, Infinite Campus shall ensure that it disposes of any and all data or information received from EA in a commercially reasonable manner that maintains the confidentiality of the contents of such records (e.g., shredding paper records, erasing and reformatting hard drives, erasing and/or physically destroying any portable electronic devices).

To the extent parents, guardians or students have questions regarding the content of, or privacy associated with, the applications used by the educational institution, please contact that agency or institution.

COPPA Compliance

The Children's Online Privacy Protection Act (COPPA) does not apply to Infinite Campus. The Infinite Campus Products do not collect PII from children under the age of 13. PII collected and

maintained within the Infinite Campus products is entered by adults; either the child's parent or guardian during an enrollment process or by the school officials that use Infinite Campus products to operate the school. Access to the system is granted to all users by the EAs which license Infinite Campus products.

Please note that the collection, input, use, retention, disposal, and disclosure of any private information in software applications are controlled solely by the EAs which license its products. Infinite Campus cannot delete, change, or disclose any information from its software applications controlled by the EA.

To the extent parents, guardians or students have questions regarding the privacy associated with the applications provided by the EA, please contact that agency or institution.

HIPAA Compliance

Student records that are disclosed to Infinite Campus by EAs and maintained within Infinite Campus products are by definition "education records" under FERPA and not "protected health information" under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Because student health information in education records is protected by FERPA, the HIPAA Privacy Rule excludes such information from its coverage. See the exception at paragraph (2)(i) to the definition of "protected health information" in the HIPAA Privacy Rule at 45 CFR § 160.103. See, also, Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records, USED and U.S. Department of Health and Human Services (November 2008).

AMENDMENTS

SOLE SOURCE



**MONTANA
DEPARTMENT OF
ADMINISTRATION**

State Financial Services Division

Greg Gianforte, Governor
Misty Ann Giles, Director

MEMORANDUM

TO: Carol Monroe
Office of Public instruction

FROM: Meghan Holmlund, Chief
State Procurement Bureau

DATE: June 17, 2021

SUBJECT: Sole Source Approval - with Infinite Campus for Campus Workflow Suite

The Sole Source Review Committee has approved your request for a Sole Source contract with Infinite Campus for Campus Workflow Suite. This action is allowable per §18-4-306, MCA and justified by your written request of June 15, 2021, (form #3966662).

Please work directly with Lauren Spatzierath with the State Procurement Bureau as necessary to complete the contract process.

I can be reached at 406-444-1459 if you have any questions.

Thank you.

MH

**Statewide Accounting
Bureau**

Mitchell Bldg, Rm 255
P.O. Box 200102
Helena, MT 59620
406-444-3092

**Financial Services
Technology Bureau**

Mitchell Bldg, Rm 295
P.O. Box 200102
Helena, MT 59620
406-444-3092

**Local Government
Services**

Mitchell Bldg, Rm 255
P.O. Box 200547
Helena, MT 59620
406-444-9101

**State Procurement
Bureau**

Mitchell Bldg, Rm 165
P.O. Box 200135
Helena, MT 59620
406-444-2575

"SOLE SOURCE" PROCUREMENT JUSTIFICATION-OPI

Please complete this form in its entirety to request a sole source contract. Section 18-4-308, MCA, allows a contract to be awarded for a supply or service item without competition under certain circumstances. The required item must be available only from a single supplier. "Sole Source" is distinguishable from "Sole Brand" in that only one supplier is available to provide the supply or service. If you are requesting a sole brand item available from multiple suppliers, a sole brand justification must be completed and submitted through the eRequisition form in eMACS, not this form. This form is for Sole Source requests only.

Circumstances which could necessitate a sole source procurement are:

- (1) the compatibility of current services or equipment, accessories, or replacement parts;
- (2) there is no existent equivalent product; or
- (3) only one source is acceptable or suitable for the supply or service item.

The determination as to whether a procurement shall be made as a sole source shall be made by the State Procurement Bureau (SPB), unless specifically authorized in the agency delegation agreement (ARM 2.5.604). A request by a state agency to the SPB must be submitted through this form and must include a signed and dated quote from the vendor.

Sole source procedures do not apply if the item is under \$5,000. Additionally, the following items do not require sole source justification (ARM 2.5.604):

- (1) professional licenses;
- (2) dues to associations;
- (3) renewal of software license agreements;
- (4) purchase or renewal of maintenance agreements for software or hardware; and
- (5) publications available only from a single supplier

Department name: Data & Technology Requested by: Michael Sweeney

1. Name of product or service: Campus Analytics Suite

2. Name of product manufacturer: Infinite Campus

3. Name of "sole" product supplier or service provider: Infinite Campus

4. Estimated total cost of purchase: \$149,490.000

5. Expected length of contract (if applicable): 5 years with option to extend to 10 years
Estimate Start Date: July 1, 2021 End Date: June 30, 2026

6. What evaluation of other product suppliers or service providers was made? (Please furnish names, addresses, and other documentation.)

The OPI has reviewed and/or demoed products from more than a dozen data visualization and analytics vendors and has participated in various meetings with many of these vendors over the past 2 ½ years. Products and vendors looked at and met with include Whonuit, Qualtrics, Microsoft, Google, Tableau, Snowflake.

7. What makes this particular product or service unique and unavailable from other sources?

Infinite Campus is the vendor for the OPI's statewide Student Information System (SIS), which is branded by the OPI as AIM. The OPI is seeking the OPTION to have an analytics tool that is fully integrated within

the Statewide SIS platform that will have real-time native access to all of the SIS data.

8. How did you determine that there was only one source for the product or service?

Infinite Campus's SIS is a proprietary software system and no other vendor makes an analytics solution that is fully integrated with Infinite Campus's SIS. Every other solution (including OPI's current in-house solution) must download or otherwise transfer data from the SIS into the analytics tool. The OPI is seeking to eliminate this step and the efforts associated with it and offer a fully integrated, real-time analytics solution from within the statewide SIS platform.

9. What product supplier or service provider has your Department/Division used until now to satisfy similar requirements?

The OPI has used an in-house developed system called "Early Warning System". The OPI expects to continue to use EWS for districts not fully integrated with the OPI's Infinite Campus platform. The OPI may still consider using another "stand-alone" analytics tool in the future.

10. Is the sole source based on the vendor being named in a grant? **NO** If so:

1. Attach a copy of the grant where the name is noted.
2. Attach a copy of the grant award
3. Note the section in the grant where the contractor's name is noted.

11. Federal Funds? **NO**

12. Attach dated quote. **See page 10 of the attached license and maintenance agreement. The OPI has negotiated to have the analytics available to the OPI at no cost for the first 3 years of the term of the contract. The final 2 years the cost .50 per student based on statewide enrollment counts, which would equate to \$149,490.00**



OPI - Infinite
Campus License anc

Signature of Agency Procurement Official

Date

☐ Approved ☐ Disapproved--See attached memo for additional information.

Rule: 2.5.604

Rule Title: SOLE SOURCE PROCUREMENT

Department: [ADMINISTRATION](#)
Chapter: [STATE PROCUREMENT](#)
Subchapter: [Types of Bids](#)

Latest version of the adopted rule presented in Administrative Rules of Montana (ARM):

[Printer Friendly Version](#)**2.5.604 SOLE SOURCE PROCUREMENT**

- (1) The provisions of this rule apply to all sole source procurements of \$5,000 or greater unless exigency procurements described in ARM [2.5.605](#) are necessary.
- (2) Sole source procurement is permissible under the following circumstances:
 - (a) the compatibility of current services or equipment, accessories, or replacement parts is the paramount consideration.
 - (b) there is no existent equivalent product; or
 - (c) only one source is acceptable or suitable for the supply or service item.
- (3) For purchases with a total contract value greater than \$5,000, the determination as to whether a procurement shall be made as a sole source shall be made by the division, unless specifically authorized in a written agency delegation agreement. In cases of reasonable doubt, competition should be solicited. A request by a state agency to the division that a procurement be restricted to one vendor must be accompanied by a written justification.
- (4) The procurement officer may conduct negotiations, as appropriate, as to price, delivery, and terms.
- (5) For the purpose of complying with [18-4-306](#), MCA, a record of sole source procurements greater than \$5,000 shall be maintained by the procuring agency using the "Sole Source Procurement Justification" form provided by the department.
- (6) The following items do not require sole source justification and shall be purchased directly by the agency regardless of delegated authority:
 - (a) professional licenses;
 - (b) dues to associations;
 - (c) renewal of software license agreements;
 - (d) purchase or renewal of maintenance agreements for software or hardware; and
 - (e) publications available only from a single supplier.

18-4-306. Sole source procurement -- records. (1) A contract may be awarded for a supply or service item without competition when, under rules adopted by the

department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that:

- (a) there is only one source for the supply or service item;
 - (b) only one source is acceptable or suitable for the supply or service item; or
 - (c) the supply or service item **must be compatible with current supplies or services.**
- (2) The department may require the submission of cost or pricing data in connection with an **award under this section.**
- (3) The department shall maintain or shall require the head of a purchasing agency to maintain a record listing all contracts made under this section for a minimum of 4 years. The record must contain:
- (a) each contractor's name;
 - (b) the amount and type of each contract; and
 - (c) a listing of the supplies or services procured under each contract.
- (4) The record must be available for public inspection.

"SOLE SOURCE" PROCUREMENT JUSTIFICATION-OPI

Please complete this form in its entirety to request a sole source contract. Section 18-4-308, MCA, allows a contract to be awarded for a supply or service item without competition under certain circumstances. The required item must be available only from a single supplier. "Sole Source" is distinguishable from "Sole Brand" in that only one supplier is available to provide the supply or service. If you are requesting a sole brand item available from multiple suppliers, a sole brand justification must be completed and submitted through the eRequisition form in eMACS, not this form. This form is for Sole Source requests only.

Circumstances which could necessitate a sole source procurement are:

- (1) the compatibility of current services or equipment, accessories, or replacement parts;
- (2) there is no existent equivalent product; or
- (3) only one source is acceptable or suitable for the supply or service item.

The determination as to whether a procurement shall be made as a sole source shall be made by the State Procurement Bureau (SPB), unless specifically authorized in the agency delegation agreement (ARM 2.5.604). A request by a state agency to the SPB must be submitted through this form and must include a signed and dated quote from the vendor.

Sole source procedures do not apply if the item is under \$5,000. Additionally, the following items do not require sole source justification (ARM 2.5.604):

- (1) professional licenses;
- (2) dues to associations;
- (3) renewal of software license agreements;
- (4) purchase or renewal of maintenance agreements for software or hardware; and
- (5) publications available only from a single supplier

Department name: Data & Technology Requested by: Michael Sweeney

1. Name of product or service: Campus Workflow Suite

2. Name of product manufacturer: Infinite Campus

3. Name of "sole" product supplier or service provider: Infinite Campus

4. Estimated total cost of purchase: \$370,106.00

5. Expected length of contract (if applicable): 5 years with option to extend to 10 years
Estimate Start Date: July 1, 2021 End Date: June 30, 2026

6. What evaluation of other product suppliers or service providers was made? (Please furnish names, addresses, and other documentation.)

The workflow suite is an enhancement to the Infinite Campus (the vendor of the OPI's statewide student information system (SIS) platform, branded by the OPI as AIM) platform. The workflow suite enables automation of events and actions within AIM from the statewide level down to the district level. This will enable the OPI to standardize and automate statewide process and procedure and also let districts automate local tasks and actions according to their local business rules and processes. Examples include the automation of new student enrollment, change of student status, scheduling and grading automation, notification and generally allowing the automation of currently manual or repetitive tasks. There are no 3rd parties or other vendors that could do this within the platform that we are aware of. There are some "overlay" IT process automation software that potentially could be used for automating some tasks, however they would not be fully integrated as part of the SIS.

7. What makes this particular product or service unique and unavailable from other sources?

The OPI is seeking the OPTION to have the automation of manual and repetitive tasks within AIM, without needing to implement an additional system or technology infrastructure outside of the current platform.

8. How did you determine that there was only one source for the product or service?

Infinite Campus's SIS is a proprietary software system and no other vendor makes a workflow solution that is fully integrated within Infinite Campus's SIS. IT process automation software would require the OPI and districts to implement and support an additional and separate technology environment, increasing complexity and likely at more cost too.

9. What product supplier or service provider has your Department/Division used until now to satisfy similar requirements?

None.

10. Is the sole source based on the vendor being named in a grant? **NO** If so:

1. Attach a copy of the grant where the name is noted.
2. Attach a copy of the grant award
3. Note the section in the grant where the contractor's name is noted.

11. Federal Funds? **NO**

12. Attach dated quote. **See page 10 of the attached license and maintenance agreement. The cost is .50 per student based on statewide enrollment counts, which would equate to \$295,680.50.**



OPI - Infinite
Campus License anc

Signature of Agency Procurement Official

Date

Signature of State Procurement Bureau Procurement Official

Date

☐ Approved ☐ Disapproved-See attached memo for additional information.

Rule: 2.5.604

Rule Title: SOLE SOURCE PROCUREMENT

Department:
Chapter:

ADMINISTRATION
STATE PROCUREMENT

2.5.604 SOLE SOURCE PROCUREMENT

- (1) The provisions of this rule apply to all sole source procurements of \$5,000 or greater unless exigency procurements described in ARM 2.5.605 are necessary.
- (2) Sole source procurement is permissible under the following circumstances:
 - (a) the compatibility of current services or equipment, accessories, or replacement parts is the paramount consideration.
 - (b) there is no existent equivalent product; or
 - (c) only one source is acceptable or suitable for the supply or service item.
- (3) For purchases with a total contract value greater than \$5,000, the determination as to whether a procurement shall be made as a sole source shall be made by the division, unless specifically authorized in a written agency delegation agreement. In cases of reasonable doubt, competition should be solicited. A request by a state agency to the division that a procurement be restricted to one vendor must be accompanied by a written justification.
- (4) The procurement officer may conduct negotiations, as appropriate, as to price, delivery, and terms.
- (5) For the purpose of complying with 18-4-306, MCA, a record of sole source procurements greater than \$5,000 shall be maintained by the procuring agency using the "Sole Source Procurement Justification" form provided by the department.
- (6) The following items do not require sole source justification and shall be purchased directly by the agency regardless of delegated authority:
 - (a) professional licenses;
 - (b) dues to associations;
 - (c) renewal of software license agreements;
 - (d) purchase or renewal of maintenance agreements for software or hardware; and
 - (e) publications available only from a single supplier.

18-4-306. Sole source procurement -- records. (1) A contract may be awarded for a supply or service item without competition when, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that:

- (a) there is only one source for the supply or service item;
- (b) only one source is acceptable or suitable for the supply or service item; or
- (c) the supply or service item **must be compatible with current supplies or services.**

(2) The department may require the submission of cost or pricing data in connection with an **award under this section.**

(3) The department shall maintain or shall require the head of a purchasing agency to maintain a record listing all contracts made under this section for a minimum of 4 years. The record must contain:

- (a) each contractor's name;
 - (b) the amount and type of each contract; and
 - (c) a listing of the supplies or services procured under each contract.
- (4) The record must be available for public inspection.

RFP

BID RESPONSE

REQUESTS

SUPPORTING DOCUMENTS

ITPR Details

Submitted Date	ITPR Number	ITPR Name	Product Name	ITPR Expiration Date	Agency	Agency Contact and Phone Number	Procurement Type	Procurement Method	Business Need or Justification
February 3, 2021	ITPR_5298_20201217826...	Infinite Campus Statewide SIS	Infinite Campus Statewide SIS		OPI	Michael Sweeney, 444-4411	Professional Services	Other	Infinite Campus is the vendor that provides Montana's statewide Student Information System (SIS), which OPI has branded as AIM (Achievement Montana). The AIM system is used to collect the majority of the student level data that is required to fulfill the various state and federal reporting requirements districts and the OPI have. Districts in Montana may use SIS of their choice at their district to manage student data but are required to use AIM when reporting/uploading data to the state. The OPI's contractual relationship with Infinite Campus to be the statewide SIS student data warehouse began in 2006 as the result of an RFP for both
							Software	Other	Infinite Campus is the vendor that provides Montana's statewide Student Information System (SIS), which OPI has branded as AIM (Achievement Montana). The AIM system is used to collect the majority of the student level data that is required to fulfill the various state and federal reporting requirements districts and the OPI have. Districts in Montana may use SIS of their choice at their district to manage student data but are required to use AIM when reporting/uploading data to the state. The OPI's contractual relationship with Infinite Campus to be the statewide SIS student data warehouse began in 2006 as the result of an RFP for both

Status

- Approved
- Approved

Cost Explanation

The OPI is renewing its software maintenance and support contract with Infinite Campus. Infinite Campus is the vendor of the OPI's statewide Student Information System (SIS), and the current maintenance and support contract is coming to the end of a 10-year term.

The total possible value of the contract including the maintenance and support for five years is **\$4,559,261.40**.

The breakout of the maintenance and support costs are as follows:

\$4,404,261.40 for licensing: Based on 740,212 public school enrollments from 2021 through 2026.

This amount is based on per student annual fees of \$5.95 per student. The number of students over the next 5 school years is projected below:

145,632: 2021-2022

147,380: 2022-2023

148,220: 2023-2024

149,065: 2024-2025

149,915: 2025-2026

\$5,000.00 for support: Annual Campus Passport for OPI Staff at \$1,000 per year.

\$150,000.00 for support: Optional consulting, training, or technical services per section E.

In addition to renewing the maintenance and support, the OPI has negotiated the option to add 2 additional functions to the SIS, analytics and workflow.

The OPI is requesting sole source approval as a separate contract alongside of the maintenance and support contract.

\$149,490.00 for new functionality: Campus Analytics Suite based on 298,980 public school enrollments from 2024 through 2026 at .50 per student. Infinite Campus is offering Campus Analytics Suite at no cost to the OPI from 2021 through the 2023-2024 school year.

\$370,106.00 for new functionality: Campus Workflow Suite based on 740,212 public school enrollments from 2021 through 2026 at .50 per student.

The sole source request total of the two suites **\$519,596.00**

Actual annual student count will be calculated and billed as described below and based upon the annual

license and maintenance fees shown below. These fees are valid through June 30th, 2031:

Item	ANNUAL FEES
License Fee	\$4.00/student
Support Fee	\$0.95/student
Hosting Fee	\$1.00/student

Licensing, hosting and support fees (“Annual Maintenance Fees”) for AIM State Edition and AIM Montana Edition and optional Suites are billed on a per student per year basis.

Per student licensing, hosting and support fees (annual maintenance fees) shall be based on the number of enrolled students counted during the prior school year's fall public school enrollment snapshot as published on GEMS (<https://gems.opi.mt.gov/>). This figure is typically published by January each year. For example, 2021-2022's per-pupil number will be based on the 2020-2021 fall enrollment snapshot as published in January 2021, which is 145,632.

Note: the contract for the additional functionalities will run alongside of the maintenance and support contract. The initial term for both contracts will be five years which this cost explanation breaks down. However, there will be the option to renew each contract for another five years at which time may include new negotiations on student count cost. The total contract value for ten years in the sole source request is based only on an estimate at this time.

From: Holmlund, Meghan
Sent: Wed Jun 23 16:50:14 2021
To: Spatzierath, Lauren
Cc: Monroe, Carol; Thomas, John; Snyder, Tia
Subject: RE: Infinite Campus Cost Explanation (2) (1)
Importance: Normal
Attachments: image001.png

Carol-

Given that OPI already has a maintenance agreement with this vendor, manages that contract within your authority, and given the close timing to FYE, I approve a one-time delegation for OPI to complete this sole source contract outside of SPB. The contract may only include the scope of services as described within the approved sole source justification.

If you would like us to review or provide any feedback prior to execution, please work with Lauren. Additionally, please maintain this authorization in your contract file for audit purposes.

Thank you,



MEGHAN HOLMLUND, CPPO | Chief Procurement Officer
State Procurement Bureau
State Financial Services Division
Department of Administration
DESK 406.444.1459
[website](#) | [map](#) | [email](#) | [Facebook](#)

From: Spatzierath, Lauren <Lauren.Spatzierath@mt.gov>
Sent: Tuesday, June 22, 2021 12:10 PM
To: Holmlund, Meghan <mholmlund@mt.gov>
Cc: Monroe, Carol <cmunroe@mt.gov>; Spatzierath, Lauren <Lauren.Spatzierath@mt.gov>
Subject: Infinite Campus Cost Explanation (2) (1)

Hi-

Recently, the S/S committee approved a request from OPI for Infinite Campus. This contract will be running alongside a maintenance agreement Carol discusses in the attached Cost Explanation, and OPI is currently developing internally. OPI is requesting approval to process this contract internally to manage both contracts better.

Let me know your thoughts.

Thanks,
Lauren

Invoices

All payment information is housed in Perceptive under AP Invoices. All payments can be searched by contract number. The payments are tracked in the RCT system.

Agency Resources

Debarred & Suspended Vendors

eMACS Resources

Procurement Training

Sheltered Workshops

Statewide Term Contracts

Vehicle Purchasing

Debarred & Suspended Vendors

The following vendors are debarred from doing business with the State of Montana. State agencies may not enter into contracts with these vendors until the debarment period has expired; see 18-4-241, MCA, and ARM 2.5.402. Vendors are responsible for re-registering as a vendor for the State of Montana upon completion of their removal/suspension period.

Any questions may be directed to the State Procurement Bureau at (406) 444-2575 or spb@mt.gov.

BUSINESS NAME	ADDRESS	DEBARRED THROUGH
All Seasons Maintenance, Inc.	201 East Lyndale Helena, MT 59601	Indefinite
Tim Kapphan	915 Park Avenue Helena, MT 59601	Indefinite
Jerry Kelly Kelly Logging, Inc.	PO Box 16067 Missoula, MT 59808	Indefinite
Nathan Zito as a person and/or any company owned (wholly or partially) by Nathan Zito	Billings, MT 59106	Indefinite

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INFINITE CAMPUS INC 

Unique Entity ID	CAGE Code	Physical Address
PKUY77L8WLH5	4BX77	4321 105TH AVE NE, MINNEAPOLIS, MN 55449 USA

Sort by

Date Modified/Updated 

Entity 

Expiration Date
Feb 29, 2024

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Contract # 11274
Budget # 5161

WORK ORDER—CAMPUS ANALYTICS

This Work Order is entered into between:

MONTANA OFFICE OF PUBLIC INSTRUCTION (“OPI”)
1227 11th Avenue,
Helena, Montana, 59601

and

INFINITE CAMPUS, INC. (“CONTRACTOR”).
4321 109TH Avenue NE
Blaine, MN 55449-6794

I. SERVICES

The OPI and Contractor agree to implement Campus Analytics as follows:

- A. Implementation Date**
The OPI agrees to implement Campus Analytics between September 1, 2021 and June 30, 2024.
- B. Payment Amount**
The Contractor is providing this service at no cost.
- C. Payment Schedule**
Contractor is providing Campus Analytics at no charge for the duration of this statement of work.
- D. Incorporations**
This statement of work is incorporated into Contract 11274

(The remainder of this page is left intentionally blank)

The parties, through their authorized agents, have executed this Work Order on the dates set out below.

By: **INFINITE CAMPUS**

Brian Page

853928164737430...

Signature

Date: 9/16/2021

Brian Page, Chief Financial Officer

brian.page@infinitecampus.com

By: **OFFICE OF PUBLIC INSTRUCTION**

Michael Sweeney

74A821C01348497...

Michael Sweeney, Chief Data Officer

Date: 9/16/2021

Invoices

All payment information is housed in Perceptive under AP Invoices. All payments can be searched by contract number. The payments are tracked in the RCT system.

Agency Resources

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Nathan Zito as a person and/or any company owned (wholly or partially) by Nathan Zito	Billings, MT 59106	Indefinite

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INFINITE CAMPUS INC  Active Registration

Unique Entity ID	CAGE Code	Physical Address
PKUY77L8WLH5	4BX77	4321 105TH AVE NE, MINNEAPOLIS, MN 55449 USA

Sort by

Date Modified/Updated 

Entity

Expiration Date
Feb 29, 2024

Purpose of Registration
All Awards



1

of 1



Results per page

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

03/17/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER WA Group 174 Center Street P. O. Box 919 Winona MN 55987-0919	CONTACT NAME: Chris Petersen PHONE (A/C, No, Ext): (507) 452-3366 E-MAIL ADDRESS: cpetersen@waivebig.com FAX (A/C, No): (507) 452-2597
INSURED Infinite Campus, Inc. 4321 109th Avenue NE Blaine MN 55449	INSURER(S) AFFORDING COVERAGE INSURER A: Continental Insurance Co INSURER B: Transportation Insurance Company INSURER C: INSURER D: INSURER E: INSURER F:
	NAIC # 35289 20494

COVERAGES**CERTIFICATE NUMBER:** 22-23 Master**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			7015191001	07/30/2022	07/30/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			7015191015	07/30/2022	07/30/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			7015191029	07/30/2022	07/30/2023	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	7015190995	07/30/2022	07/30/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Workers Comp - CA Exposure			7015190981	07/30/2022	07/30/2023	E.L. Each Accident 1,000,000 E.L. Disease - EA Employ 1,000,000 E.L. Disease - Policy Limit 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder is recognized as additional insured as it relates to general liability regarding operations of the named insured and in accordance with the terms and conditions of the policy CNA74872XX (1-15).

CERTIFICATE HOLDER**CANCELLATION**State of Montana
125 N. Roberts St.

Helena

MT 59601

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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**Technology General Liability Extension Endorsement**

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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20020000170151910011433

Technology General Liability Extension Endorsement**1. ADDITIONAL INSURED**

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs **A. through K.** below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph **A. through K.** below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Grantor of Franchise

Any person or organization that has granted a franchise to a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** as grantor of a franchise to the **Named Insured**.

D. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

Technology General Liability Extension Endorsement

E. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury, property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

H. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.



Technology General Liability Extension Endorsement**I. Trade Show Event Lessor**

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:
 - a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
2. The coverage granted by this paragraph does not apply to **bodily injury or property damage** included within the **products-completed operations hazard**.

J. Vendor

Any person or organization but only with respect to such person or organization's liability for **bodily injury or property damage** arising out of **your products** which are distributed or sold in the regular course of such person or organization's business, provided that:

1. The coverage granted by this paragraph does not apply to:
 - a. **bodily injury or property damage** for which such person or organization is obligated to pay **damages** by reason of the assumption of liability in a contract or agreement unless such liability exists in the absence of the contract or agreement;
 - b. any express warranty unauthorized by the **Named Insured**;
 - c. any physical or chemical change in any product made intentionally by such person or organization;
 - d. repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - e. any failure to make any inspections, adjustments, tests or servicing that such person or organization has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - f. demonstration, installation, servicing or repair operations, except such operations performed at such person or organization's premises in connection with the sale of a product;
 - g. products which, after distribution or sale by the **Named Insured**, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for such person or organization; or
 - h. **bodily injury or property damage** arising out of the sole negligence of such person or organization for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (1) the exceptions contained in Subparagraphs **d.** or **f.** above; or
 - (2) such inspections, adjustments, tests or servicing as such person or organization has agreed with the **Named Insured** to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
2. This Paragraph **J.** does not apply to any insured person or organization, from whom the **Named Insured** has acquired such products, nor to any ingredient, part or container, entering into, accompanying or containing such products.

Technology General Liability Extension Endorsement

3. This Paragraph J. also does not apply:

- a. to any vendor specifically scheduled as an additional insured by endorsement to this **Coverage Part**;
- b. to any of **your products** for which coverage is excluded by endorsement to this **Coverage Part**; nor
- c. if **bodily injury** or **property damage** included within the **products-completed operations hazard** is excluded by endorsement to this **Coverage Part**.

K. Other Person Or Organization / Your Work

Any person or organization who is not an additional insured under Paragraphs A. through J. above. Such additional insured is an **Insured** solely for **bodily injury, property damage or personal and advertising injury** for which such additional insured is liable because of the **Named Insured's** acts or omissions.

The coverage granted by this paragraph does not apply to any person or organization:

1. who is specifically scheduled as an additional insured on another endorsement to this **Coverage Part**; nor
2. for **bodily injury** or **property damage** included within the **products-completed operations hazard** except to the extent all of the following apply:
 - a. this **Coverage Part** provides such coverage;
 - b. the written contract or agreement described in the opening paragraph of this **ADDITIONAL INSUREDS** Provision requires the **Named Insured** to provide the additional insured such coverage; and
 - c. the **bodily injury** or **property damage** results from **your work** that is the subject of the written contract or agreement, and such work has not been excluded by endorsement to this **Coverage Part**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

A. The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured.

B. With respect to persons or organizations that qualify as additional insureds pursuant to paragraph 1.K. of this endorsement, the following sentence is added to the paragraph above:

Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** Condition is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE



Technology General Liability Extension Endorsement

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or to an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:

- a. on the effective date of this **Coverage Part**; or
- b. by reason of a **Named Insured** creating or acquiring the organization during the **policy period**,

qualifies as a **Named Insured**, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.

But this **BROAD NAMED INSURED** provision does not apply to:

- (a) any partnership or joint venture; or
- (b) any organization for which coverage is excluded by another endorsement attached to this **Coverage Part**.

For the purpose of this provision, and of this endorsement's **JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES** provision, management control means:

- A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation, or the members of the management board of a limited liability company; or
 - B. having the right, pursuant to a written trust agreement, to protect, control the use of, encumber or transfer or sell property held by a trust.
4. With respect to organizations which qualify as **Named Insureds** by virtue of Paragraph 3. above, this insurance does not apply to:
- a. **bodily injury** or **property damage** that first occurred prior to the date of management control, or that first occurs after management control ceases; nor
 - b. **personal or advertising injury** caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.
5. The insurance provided by this **Coverage Part** applies to **Named Insureds** when trading under their own names or under such other trading names or doing-business-as names (dba) as any **Named Insured** should choose to employ.



Technology General Liability Extension Endorsement

6. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives and **spouses** of any natural person **Insured** shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and **spouses** only for **claims** arising solely out of their capacity or status as such and, in the case of a **spouse**, where such **claim** seeks **damages** from marital community property, jointly held property or property transferred from such natural person **Insured** to such **spouse**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or **spouse** outside the scope of such person's capacity or status as such, provided however that the **spouse** of a natural person **Named Insured** and the **spouses** of members or partners of joint venture or partnership **Named Insureds** are **Insureds** with respect to such **spouses'** acts, errors or omissions in the conduct of the **Named Insured's** business.

7. EXPECTED OR INTENDED INJURY – EXCEPTION FOR REASONABLE FORCE

Under **COVERAGES, Coverage A – Bodily Injury And Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Expected or Intended Injury** and replace it with the following:

This insurance does not apply to:

Expected or Intended Injury

Bodily injury or **property damage** expected or intended from the standpoint of the **Insured**. This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or property.

8. IN REM ACTIONS

A quasi in rem action against any vessel owned or operated by or for the **Named Insured**, or chartered by or for the **Named Insured**, will be treated in the same manner as though the action were in personam against the **Named Insured**.

9. INCIDENTAL HEALTH CARE MALPRACTICE COVERAGE

Solely with respect to **bodily injury** that arises out of a **health care incident**:

A. Under **COVERAGES, Coverage A – Bodily Injury And Property Damage Liability**, the **Insuring Agreement** is amended to replace Paragraphs 1.b.(1) and 1.b.(2) with the following:

b. This insurance applies to **bodily injury** provided that the professional health care services are incidental to the **Named Insured's** primary business purpose, and only if:

(1) such **bodily injury** is caused by an **occurrence** that takes place in the **coverage territory**.

(2) the **bodily injury** first occurs during the **policy period**. All **bodily injury** arising from an **occurrence** will be deemed to have occurred at the time of the first act, error, or omission that is part of the **occurrence**; and

B. Under **COVERAGES, Coverage A – Bodily Injury And Property Damage Liability**, the paragraph entitled **Exclusions** is amended to:

i. add the following to the **Employers Liability** exclusion:

This exclusion applies only if the **bodily injury** arising from a **health care incident** is covered by other liability insurance available to the **Insured** (or which would have been available but for exhaustion of its limits).

ii. delete the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:



Technology General Liability Extension Endorsement**Contractual Liability**

the **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees.

- iii. add the following additional exclusions.

This insurance does not apply to:

Discrimination

any actual or alleged discrimination, humiliation or harassment, that includes but shall not be limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation.

Dishonesty or Crime

Any actual or alleged dishonest, criminal or malicious act, error or omission.

Medicare/Medicaid Fraud

any actual or alleged violation of law with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

Services Excluded by Endorsement

Any **health care incident** for which coverage is excluded by endorsement.

C. DEFINITIONS is amended to:

- i. add the following definitions:

Health care incident means an act, error or omission by the **Named Insured's employees or volunteer workers** in the rendering of:

- a. **professional health care services** on behalf of the **Named Insured** or
- b. Good Samaritan services rendered in an emergency and for which no payment is demanded or received.

Professional health care services means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

- a. Physician;
- b. Nurse;
- c. Nurse practitioner;
- d. Emergency medical technician;
- e. Paramedic;
- f. Dentist;
- g. Physical therapist;
- h. Psychologist;
- i. Speech therapist;
- j. Other allied health professional; or

Professional health care services does not include any services rendered in connection with human clinical trials or product testing.

Technology General Liability Extension Endorsement

- ii. delete the definition of **occurrence** and replace it with the following:

Occurrence means a **health care incident**. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single **occurrence**;

- iii. amend the definition of **Insured** to:

- a. add the following:

- the **Named Insured's employees** are **Insureds** with respect to:

(1) **bodily injury** to a co-**employee** while in the course of the co-**employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business; and

(2) **bodily injury** to a **volunteer worker** while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

- the **Named Insured's volunteer workers** are **Insureds** with respect to:

(1) **bodily injury** to a co-**volunteer worker** while performing duties related to the conduct of the **Named Insured's** business; and

(2) **bodily injury** to an **employee** while in the course of the **employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

- b. delete Subparagraphs (a), (b), (c) and (d) of Paragraph 2.a.(1) of **WHO IS AN INSURED**.

- c. add the following:

Insured does not include any physician while acting in his or her capacity as such.

- D. The **Other Insurance** condition is amended to delete Paragraph b.(1) in its entirety and replace it with the following:

Other Insurance

b. Excess Insurance

- (1) To the extent this insurance applies, it is excess over any other insurance, self insurance or risk transfer instrument, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by the **Named Insured** to be excess of this coverage.

10. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES

WHO IS AN INSURED is amended to delete its last paragraph and replace it with the following:

No person or organization is an **Insured** with respect to:

- the conduct of any current or past partnership or joint venture that is not shown as a **Named Insured** in the Declarations; nor
- the conduct of a current or past limited liability company in which a **Named Insured's** interest does/did not rise to the level of management control;

except that if the **Named Insured** was a joint venturer, partner, or member of such a limited liability company, and such joint venture, partnership or limited liability company terminated prior to or during the **policy period**, then such



Technology General Liability Extension Endorsement

Named Insured is an **Insured** with respect to its interest in such joint venture, partnership or limited liability company but only to the extent that:

- a. any offense giving rise to **personal and advertising injury** occurred prior to such termination date, and the **personal and advertising injury** arising out of such offense, first occurred after such termination date;
- b. the **bodily injury** or **property damage** first occurred after such termination date; and
- c. there is no other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company.

11. LEGAL LIABILITY – DAMAGE TO PREMISES

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the first paragraph immediately following subparagraph (6) of the **Damage to Property** exclusion and replace it with the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to **property damage** (other than damage by fire, lightning, explosion, smoke or leakage from automatic fire protective systems) to premises rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, nor to the contents of premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **LIMITS OF INSURANCE**.

- B. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete its last paragraph and replace it with the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protective systems to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner, nor to damage to the contents of premises rented to a **Named Insured** for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in the **LIMITS OF INSURANCE** Section.

- C. **LIMITS OF INSURANCE** is amended to delete Paragraph 6. (the Damage To Premises Rented To You Limit) and replace it with the following:

6. Subject to Paragraph 5. above, (the Each Occurrence Limit), the Damage To Premises Rented To You Limit is the most the Insurer will pay under **COVERAGE A** for **damages** because of **property damage** to:

- a. any one premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with the permission of the owner; and
- b. contents of such premises if the premises is rented to the **Named Insured** for a period of 7 or fewer consecutive days.

The Damage To Premises Rented To You Limit is \$500,000. unless a higher Damage to Premises Rented to You Limit is shown in the Declarations.

- D. The **Other Insurance** Condition is amended to delete Paragraph b.(1)(a)(ii), and replace it with the following:

- (ii) That is property insurance for premises rented to a **Named Insured**, for premises temporarily occupied by the **Named Insured** with the permission of the owner; or for personal property of others in the **Named Insured's** care, custody or control;

- E. This Provision 11. does not apply if liability for damage to premises rented to a **Named Insured** is excluded by another endorsement attached to this **Coverage Part**.

Technology General Liability Extension Endorsement

12. MEDICAL PAYMENTS

A. **LIMITS OF INSURANCE** is amended to delete Paragraph 7. (the Medical Expense Limit) and replace it with the following:

7. Subject to Paragraph 5. above (the Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under **Coverage C – Medical Payments** for all medical expenses because of **bodily injury** sustained by any one person. The Medical Expense Limit is the greater of:

- (1) \$15,000 unless a different amount is shown here: ; or
- (2) the amount shown in the Declarations for Medical Expense Limit.

B. Under **COVERAGES**, the **Insuring Agreement of Coverage C – Medical Payments** is amended to replace Paragraph 1.a.(3)(b) with the following:

(b) The expenses are incurred and reported to the Insurer within three years of the date of the accident; and

13. NON-OWNED AIRCRAFT

Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended as follows:

The exclusion entitled **Aircraft, Auto or Watercraft** is amended to add the following:

This exclusion does not apply to an aircraft not owned by any **Named Insured**, provided that:

1. the pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
2. the aircraft is rented with a trained, paid crew to the **Named Insured**; and
3. the aircraft is not being used to carry persons or property for a charge.

14. NON-OWNED WATERCRAFT

Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraph (2) of the exclusion entitled **Aircraft, Auto or Watercraft**, and replace it with the following.

This exclusion does not apply to:

- (2) a watercraft that is not owned by any **Named Insured**, provided the watercraft is:
 - (a) less than 75 feet long; and
 - (b) not being used to carry persons or property for a charge.

15. PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION

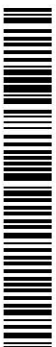
A. Under **DEFINITIONS**, the definition of **personal and advertising injury** is amended to add the following tort:

- Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

B. Under **COVERAGES**, **Coverage B – Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to:

1. delete the Exclusion entitled **Knowing Violation Of Rights Of Another** and replace it with the following:

This insurance does not apply to:



Technology General Liability Extension Endorsement**Knowing Violation of Rights of Another**

Personal and advertising injury caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**. This exclusion shall not apply to discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is not done intentionally by or at the direction of:

- (a) the **Named Insured**; or
- (b) any **executive officer**, director, stockholder, partner, member or manager (if the **Named Insured** is a limited liability company) of the **Named Insured**.

2. add the following exclusions:

This insurance does not apply to:

Employment Related Discrimination

Discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any **Insured**.

Premises Related Discrimination

discrimination or humiliation arising out of the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any **Insured**.

Notwithstanding the above, there is no coverage for fines or penalties levied or imposed by a governmental entity because of discrimination.

The coverage provided by this **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization whose status as an **Insured** derives solely from

- Provision 1. **ADDITIONAL INSURED** of this endorsement; or
- attachment of an additional insured endorsement to this **Coverage Part**.

16. PERSONAL AND ADVERTISING INJURY - LIMITED CONTRACTUAL LIABILITY

- A. Under **COVERAGES, Coverage B –Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

Contractual Liability

Personal and advertising injury for which the **Insured** has assumed liability in a contract or agreement.

This exclusion does not apply to liability for **damages**:

- (1) that the **Insured** would have in the absence of the contract or agreement; or
- (2) assumed in a contract or agreement that is an **insured contract** provided the offense that caused such **personal or advertising injury** first occurred subsequent to the execution of such **insured contract**. Solely for the purpose of liability assumed in an **insured contract**, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an **Insured** are deemed to be **damages** because of **personal and advertising injury** provided:
 - (a) liability to such party for, or for the cost of, that party's defense has also been assumed in such **insured contract**; and
 - (b) such attorney fees and litigation expenses are for defense of such party against a civil or alternative dispute resolution proceeding in which covered **damages** are alleged.



Technology General Liability Extension Endorsement

- B. Solely for the purpose of the coverage provided by this paragraph, **DEFINITIONS** is amended to delete the definition of **insured contract** in its entirety, and replace it with the following:

Insured contract means that part of a written contract or written agreement pertaining to the **Named Insured's** business under which the **Named Insured** assumes the tort liability of another party to pay for **personal or advertising injury** arising out of the offense of false arrest, detention or imprisonment. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

- C. Solely for the purpose of the coverage provided by this paragraph, the following changes are made to the Section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**:

1. Paragraph 2.d. is replaced by the following:

- d. The allegations in the **suit** and the information the Insurer knows about the offense alleged in such **suit** are such that no conflict appears to exist between the interests of the **Insured** and the interests of the indemnitee;

2. The first unnumbered paragraph beneath Paragraph 2.f.(2)(b) is deleted and replaced by the following:

So long as the above conditions are met, attorneys fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as **defense costs**. Notwithstanding the provisions of Paragraph e.(2) of the Contractual Liability exclusion (as amended by this Endorsement), such payments will not be deemed to be **damages** for **personal and advertising injury** and will not reduce the limits of insurance.

- D. This **PERSONAL AND ADVERTISING INJURY - LIMITED CONTRACTUAL LIABILITY** Provision does not apply if **Coverage B –Personal and Advertising Injury Liability** is excluded by another endorsement attached to this **Coverage Part**.

17. PROPERTY DAMAGE – ELEVATORS

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended such that the **Damage to Your Product** Exclusion and subparagraphs (3), (4) and (6) of the **Damage to Property** Exclusion do not apply to **property damage** that results from the use of elevators.

- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

18. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph 1.b. is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph 1.d. is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

19. PROPERTY DAMAGE - PATTERNS MOLDS AND DIES

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraphs (3) and (4) of the Exclusion entitled **Damage to Property**, but only with respect to patterns, molds or dies that are in the care, custody or control of the **Insured**, and only if such patterns, molds or dies are not being used to perform operations at the time of loss. A limit of insurance of \$25,000 per **policy period** applies to this **PROPERTY DAMAGE - PATTERNS MOLDS AND DIES** coverage, and this limit:





Technology General Liability Extension Endorsement

- A. is included within the General Aggregate Limit as described in **LIMITS OF INSURANCE**; and
- B. applies excess over any valid and collectible property insurance available to the **Insured**, including any deductible applicable to such insurance; the **Other Insurance** condition is changed accordingly.

20. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

21. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

- 1. the **Named Insured's** ongoing operations; or
- 2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

- 1. is in effect or becomes effective during the term of this **Coverage Part**; and
- 2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the **claim**.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.