



**AMENDMENT TO THE INFINITE CAMPUS MASTER AGREEMENT**

This Amendment to the Infinite Campus Master Agreement (the "Agreement") is made between Custom Computer Specialists, Inc. (the "Company") and Kenmore Tonawanda Union Free School District and amends the agreement between the same parties dated August 13, 2011.

**NOW, THEREFORE**, effective February 1, 2017, the parties hereto hereby agree as follows:

**Modification 1**

The Hosting Location: specified under Key Project Information will be changed from "In District" to "Cloud Choice."

IT IS FURTHER AGREED, all terms of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year written below.

**Monroe #1 BOCES**

**Custom Computer Specialists**

\_\_\_\_\_

Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# Amendment to the Infinite Campus END USER LICENSE AGREEMENT

This Amendment to the Infinite Campus End User License Agreement (the "Amendment"), is made between Infinite Campus, Inc. a Minnesota corporation located at 4321 109<sup>th</sup> Avenue NE, Blaine, MN 55449 (the "Company") and Kenmore Tonawanda Union Free School District, **with offices located at 1500 Colvin Blvd., Buffalo, NY 14223, ("Licensee")** and amends the agreement between the same parties titled End User License Agreement with an effective date of August 13,2011.

**NOW, THEREFORE**, the parties hereto hereby agree as follows:

**Amendment to Section 1.0.** Section 1.0 to the Agreement is hereby deleted. Section 1.0, below, becomes Section 1.0 to the Agreement, as here amended.

## **1.0 Grant of License**

- 1.1 **Type of License.** Subject to the terms and conditions hereof, Company agrees to grant Licensee a non-exclusive, non-transferable, non-sublicensable, non-perpetual, right and license to the Infinite Campus Products and the related documentation ("Documentation") identified on the Order and Pricing Schedule(s) attached hereto. Licensee shall install and use the Infinite Campus Products and the Documentation solely for its own internal use and for the purposes for which such Infinite Campus Products and Documentation were designed.
- 1.2 **Initial Term and Fees.** Upon the Term Start Date indicated on the duly executed Order and Pricing Schedule(s) attached hereto, Company shall provide Licensee with the Infinite Campus Products and Infinite Campus Services and any associated Documentation (defined as users' manuals, reference guides, programmers' guides and/or system guides, as applicable) as indicated on the Order and Pricing Schedule(s). The fees for the licenses shall be valid from the Term Start Date until five months thereafter (the "Initial Term").
- 1.3 **Reoccurring Annual Fees.** Following the Initial Term, for each 12 month period thereafter (the "Subsequent Term"), Licensee shall pay annual fees according to the then current license fees for the licensed Infinite Campus Products (the "Reoccurring Annual Fees"). Company shall review the number of students enrolled as certified by the state in which the Licensee resides, and, in the event that the total number of enrolled students has increased or decreased, Company may increase or decrease the Reoccurring Annual Fees according to the then current fees for the licensed Infinite Campus Products and Services.

**Amendment to Section 3.1.** Section 3.1 to the Agreement is hereby deleted. Section 3.1, attached hereto and incorporated herein by reference, becomes Section 3.1 to the Agreement, as here amended.

- 3.1 **Payment Terms.** Licensee shall pay Company or Company's Authorized Channel Partner the Fees as provided in the Order and Pricing Schedule(s) attached hereto.

**Amendment to Section 6.3.** Section 6.3 to the Agreement is hereby deleted. Section 6.3, attached hereto and incorporated herein by reference, becomes Section 6.3 to the Agreement, as here amended.

### 6.3 Responsibilities in the Event of Termination.

- 6.3.a Upon any termination of this Agreement and/or the license to use any Infinite Campus Products, Licensee shall cease to use the Infinite Campus Products and shall return to Company the Infinite Campus Products and all copies thereof and all proprietary and confidential property of Company. Licensee shall expunge all copies of the Infinite Campus Products from its computer(s) and server(s). Failure to comply with this Section shall constitute continued use of the Infinite Campus Products. Licensee shall provide a certificate from an officer of Licensee stating compliance with this Section. Company shall also have such other legal and equitable rights and remedies to which it may be entitled with respect to Licensee's failure to comply with the provisions of this Agreement.
- 6.3.b Upon 90 business days following the termination of this Agreement, or sooner at the request of the District, Company warrants that the original and all copies of District information, educational records and pupil records as such terms are defined by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99, "FERPA"), and any other State or Federal law relating to the protection of confidential student information, will be returned to the District or destroyed in such a manner that such information cannot be read, executed, viewed or in any way accessed when destroyed.

**Amendment to Section 9.9.** Section 9.9 to the Agreement is hereby deleted. Section 9.9, attached hereto and incorporated herein by reference, becomes Section 9.9 to the Agreement, as here amended.

9.9 Applicable Law. Company complies and shall comply with applicable laws governing online privacy and student data privacy, including the Child Privacy Protection and Parental Empowerment Act, FERPA, the Children's Online Privacy Protection Act, and state laws. Licensee may review these laws and their related regulations by logging on to the U.S. Federal Trade Commission's website at <http://www.ftc.gov>.

- 9.9.a. In the course of providing services during the term of this Agreement, Company may have access to student education records that are subject to FERPA. Such information is considered confidential and is protected. To the extent that Company has access to "education records" under this Agreement, it is deemed a "school official," as each of these terms are defined under FERPA. Company agrees that it shall not use education records for any purpose other than in the performance of this Agreement. Except as required by law or court order, Company shall not disclose or share education records with any third party unless: a) permitted by the terms of this Agreement, b) directed to do so, in writing, by Licensee, or c) to subcontractors who have agreed to maintain the confidentiality of the education records to the same extent required of Company under this Agreement.
- 9.9.b. In the event any third party seeks to access education records that are subject to FERPA beyond the access that is provided to Company affiliated individuals for purpose of providing the services under the Agreement, whether said third party request is in accordance with FERPA or other Federal or relevant State law or regulations, Company shall immediately inform Licensee of such request in writing. Company shall not provide direct access to such data or information or respond to said third party requests, unless compelled to do so by court order or lawfully issued subpoena from any court of competent jurisdiction. Should Company receive a court order or lawfully issued subpoena seeking the release of such data or information, Company shall provide immediate notification, along with a copy thereof, to Licensee prior to releasing the requested data or information, if allowed by law or judicial and/or administrative order/subpoena.

- 9.9.c. If Company experiences a security breach concerning any education record covered by this Agreement, Company shall immediately notify Licensee and take immediate steps to limit and mitigate such security breach to the extent possible. The Parties agree that any material breach by Company of the confidentiality obligation set forth in this Agreement may, at Licensee's discretion, result in cancellation of this Agreement and the eligibility for Company to receive any information from Licensee for a period of not less than five (5) years. The Parties further agree to indemnify and hold each other harmless for any loss, cost, damage or expense suffered by the non-breaching Party, including but not limited to the cost of notification of affected persons, as a direct result of the breaching Party's unauthorized disclosure of education records that are subject to FERPA, or any other confidentiality/privacy provision, whether federal, state or administrative in nature.
- 9.9.d. Upon termination of this Agreement, Company shall return and/or destroy all data or information that it received from Licensee hereunder as, and in accordance with, Section 6.3.b of this Agreement. Company shall not knowingly retain copies of any data or information received from Licensee once Licensee has directed Company as to how such information shall be returned and/or destroyed. Furthermore, Company shall ensure that it disposes of any and all data or information received from Licensee 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).

**Amendment to Section 9.10 - Export Rules.** Section 9.10 to the Agreement is hereby deleted. Section 9.10, attached hereto and incorporated herein by reference, becomes Section 9.10 to the Agreement, as here amended.

- 9.10 **Export Rules.** Licensee agrees that the Infinite Campus Products will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Infinite Campus Products are identified as export controlled items under the Export Laws, Licensee represents and warrants that Licensee is not a citizen, or otherwise located within, an embargoed nation (including without limitation Iran, Iraq, Syria, Sudan, Libya, Cuba, North Korea, and Serbia) and that Licensee is not otherwise prohibited under the Export Laws from receiving the Infinite Campus Products. All rights to use the Infinite Campus Products under this Agreement are granted on the condition that such rights are forfeited if Licensee fails to comply with the terms of this Section 9.10.

**Addition of Section 9.11 – US Government End Users.** Section 9.11 is hereby added to the agreement.

- 9.11 **U.S. Government End-Users.** Each component licensed under this agreement that constitute the Infinite Campus Products and Services is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all end users acquire the Infinite Campus Products and Services with only those rights set forth herein.

**Addition of Section 9.12 – Electronic Signatures; Counterparts.** Section 9.12 is hereby added to the agreement.

9.12 Electronic Signatures; Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document shall be deemed (a) to be "written" or "in writing," (b) to have been signed and (c) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means a manually signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

**Amendment to Exhibit A.** Exhibit A to the Agreement is hereby deleted. Exhibit A, attached hereto and incorporated herein by reference, becomes Exhibit A to the Agreement, as here amended.

**Amendment to Exhibit B.** Exhibit B to the Agreement is hereby deleted.

**IN WITNESS WHEREOF**, this Amendment to the Infinite Campus End User License Agreement has been executed by the duly authorized representative of Company and Licensee.

Infinite Campus, Inc.

Kenmore Tonawanda Union Free School District

By:

By:

Name: Eric Creighton

Name:

Its: Chief Operating Officer

Its: Board President

# EXHIBIT A

## CLOUD HOSTING SERVICES AGREEMENT

### 1.0 Reference to Agreement

This Cloud Hosting Services Agreement is subject to and incorporates all of the provisions stated in the End User License Agreement between **Infinite Campus, Inc.**, ("**Company**") and **Kenmore Tonawanda Union Free School District**, ("**Licensee**") as of the Effective Date.

### 2.0 Initial Term and Fees

Upon the Term Start Date indicated on the Order and Pricing Schedule attached hereto Company shall provide Licensee with the Infinite Campus Cloud Hosting Services according to the quantity indicated on the Order and Pricing Schedule. The quantity of shall be valid from the Term Start Date until five months thereafter (the "Initial Term").

### 3.0 Reoccurring Annual Fees

Following the Initial Term, for each 12 month period thereafter (the "Subsequent Term"), Licensee shall pay annual fees according to the then current license fees for the licensed Infinite Campus Products (the "Reoccurring Annual Fees"). Company shall review the number of students enrolled as certified by the state in which the Licensee resides, and, in the event that the total number of enrolled students has increased or decreased, Company may increase or decrease the Reoccurring Annual Fees according to the then current fees for the licensed Infinite Campus Products and Services.

### 4.0 Services

During each term of the License, and subject to payment of the fees for the Infinite Campus Products and the fees for the Infinite Campus Services, Company shall provide the following services (the "Cloud Hosting Services" or the "Cloud Choice Hosting Services") to Licensee:

#### 4.1 Included Services

4.1.a System Access. Company shall provide remote access to a digital information processing, transmission and storage system (the "System Hardware") enabling Licensee 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 Company's facilities.

4.1.b Additional Software and Middleware. Company 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, Licensee may use software and related documentation developed and owned by Microsoft Corporation or its licensors (collectively, the "Microsoft Software"). If Licensee chooses to use the Microsoft Software, Microsoft and its licensors require that Licensee agree to these additional terms and conditions:

- The Microsoft Software is neither sold nor distributed to Licensee and Licensee may use it solely in conjunction with the Infinite Campus Services.
- Licensee may not transfer or use the Microsoft Software outside the Infinite

Campus Services.

- Licensee may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Microsoft Software.
- Licensee 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. Do not contact Microsoft for support.

4.1.c Application Updates. Company will support the Infinite Campus Products through implementation of vendor-provided modifications including remedial "Patches" addressing reported performance or functionality problems, and "Updates" or "Upgrades" consisting of a new releases or versions of the Infinite Campus Products or supporting Middleware issued by the vendor. Company will implement Patches, Updates and Upgrades in accordance with the Change Management Section set forth herein. Company is responsible for procuring and administering vendor-provided maintenance for any Middleware or Product supplied by Infinite Campus.

4.1.d Backup. Company shall create and maintain a backup plan whereby Licensee Content is backed up. Company shall retrieve each business day an electronic backup of the Licensee Content, as defined below, for the purpose of archival storage in the case of Disaster Recovery.

4.1.e Disaster Recovery. Company shall maintain backup servers and data communications connections to such servers and maintain backups of Licensee Content on such backup servers such that Company shall be capable of providing Cloud Hosting Services on and from such backup servers within twenty-four (24) hours of any catastrophic disruption of Cloud Hosting Services ("Disaster Recovery").

4.1.f ODBC Access. Company will provide ODBC access to a designated employee of the Licensee, upon completion of the ODBC Access Request Form.

4.1.g Test and Training Environment. For Licensee selecting Cloud Choice Hosting Services, in addition to the single "Production" system environment, Company will provide an additional Test and Training Environment ("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 Licensee.

4.2 Excluded Services

- (a) Support of Client Desktops
- (b) Support or diagnosis of Local Area Network connectivity
- (c) Local Area Network device configuration such as proxy servers

## 5.0 Availability of Services

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

### 5.1 Downtime

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

### 5.2 Advance Notice

Company shall provide twenty-four (24) hour advance notice to Licensee in the event of any scheduled Downtime.

## 6.0 Security

Company shall operate and maintain the System Hardware in good working order with access restricted to authorized employees of Company and persons specifically designated by Licensee. Company shall maintain systems consistent with security controls as described in the National Institute of Standards and Technology (NIST) Standards Publication (SP) 800-26, Security Self-Assessment Guide for Information Technology Systems. Company shall undertake to perform reasonable measures to ensure the security, confidentiality and integrity of all Licensee Content and other proprietary information transmitted through or stored on the System including:

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

## 7.0 Change Management

7.1 For all Production Environments, Company will follow "Change Management Procedures" in completing changes in the Products or product release levels used in the Service and in implementing Patches and Upgrades (collectively "Change Events").

- 7.1.a Change Management Procedures will in all cases provide for the following:
  - (a) advance notification to the Licensee of the Change Event, its nature and expected timetable;
  - (b) pre-testing of changes in Company or Licensee non-Production testing environments; and
  - (c) coordination of the implementation of the Change Event with the Licensee.
- 7.1.b Product Version. For the Initial Term, and annually thereafter, Licensee selecting Standard Cloud Hosting Services will chose a release line (currently Maintenance or Enhancement). Each Update made available by Company for the applicable release line shall be applied with 30 days of its General Availability at such a date determined solely by the Company. Licensee selecting Cloud Choice Hosting Services will additionally choose the release



version for the applicable release line, and may coordinate the Update Change Event date with Company.

## 8.0 Licensee Proprietary Rights

- 8.1 Licensee Content. Licensee 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 "Licensee Content"). The Licensee Content shall also include any registered domain names provided by Licensee or registered on behalf of Licensee in connection with the Cloud Hosting Services.
- 8.2 Grant of Use. In consideration of Company's satisfactory performance of all obligations of this Agreement, for the term of this Agreement, Licensee grants to Company a nonexclusive, worldwide and royalty-free "Grant of Use" to copy, display, use and transmit on and via the Internet the Licensee Content, **solely for the benefit of Licensee** and in accordance with Company's performance or enforcement of this Agreement.
- 8.3 Alterations. Except as provided herein or by law, Company may not alter, modify, change, remove or disable access to all or any portion of the Site or Licensee Content stored on the Server.
- 8.4 Ownership of Licensee Content. Company acknowledges that the Licensee Content is owned solely by the Licensee. Within five (5) days of any termination of this Agreement Licensee shall remove or request that the Company remove on a fee for service basis all Licensee Content from Infinite Campus Products.
- 8.5 Warranty of Licensee. Licensee warrants that the Site and Licensee Content do not and shall not contain any content, materials, data, work, trade or service mark, trade name, link, advertising or services that violate any applicable law or regulation or infringe or misappropriate any proprietary, intellectual property, contract or tort right of any person; and Licensee owns the Licensee Content and all proprietary or intellectual property rights therein, or has express written authorization from the owner to copy, use and display the Licensee Content on and within the Site.
- 8.6 Hold Harmless. Licensee will defend and hold harmless Company against any claim or threat of claim brought by a third party against Company to the extent based on an allegation that Licensee Content infringes any U.S. patent, copyright, trademark, trade secret or other proprietary right of a third party.

### Order and Pricing Schedule

Reference to Agreement. This Order and Pricing Schedule is subject to and incorporates all of the provisions stated in the End User License Agreement between Infinite Campus, Inc., ("Company") and Kenmore Tonawanda Union Free School District, ("Licensee").

Description	Term Start Date	Quantity	Fee Type	Unit Price	Total
Infinite Campus DE Annual Subscription (Cloud Choice Hosting renews 7/1 each year )	8/13/2011	6,923	Annual		\$89,791.31
Infinite Campus Messenger with Voice Annual Subscription	7/1/2013	6,923	Annual		\$15,576.75
Infinite Campus Data Warehouse Cloud Storage (renews 7/1 each year)	2/1/2017	6,923	Annual		\$1,000.00
<b>Annual Reoccurring Total</b>					<b>\$106,368.06</b>

One Time Charge					
Infinite Campus DE Annual Subscription Cloud Choice ProRated 2/1/17-6/30/17	2/1/2017	6,923	One Time		\$37,413.05
Infinite Campus Data Warehouse Cloud Storage ProRated 2/1/17-6/30/17	2/1/2017	6,923	One Time		\$416.67
<b>Total One Time Charge</b>					<b>\$37,829.72</b>

### Kenmore Tonawanda Union Free School District

By:

Name:

Its: Board President