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To: Board of Education

From: Barbara Slingerland, EC Director
Kathy Johnson, Chief Financial Officer

Date: November 9, 2011

Re: Consent Agenda Item for your consideration

Attached please find a contract with Public Consulting Group for Medicaid reimbursement services. This contract will replace contracts that were previously held by Infohandler and Fairbanks, LLC. Medicaid reimbursement activities provide the general fund with financial reimbursement through Medicaid Administrative Claiming and Fee for Service activities conducted within the school system. Working with one company on these activities, rather than with two independent companies, will maximize the amount of money that the school system is reimbursed.

This contract is an action item and will require a vote. We are available to answer any questions that you may have about this contract.

**CONTRACT FOR CONSULTING SERVICES
LICENSE AGREEMENT AND MEDICAID BILLING SERVICES
Montgomery County Schools**

This Agreement (“the Agreement”) entered into as of December 6, 2011 (the “Effective Date”) by and between MONTGOMERY COUNTY SCHOOLS (“SCHOOL SYSTEM”) and Public Consulting Group, Inc. (“PCG”), to provide Medicaid Billing Services and license to access EasyIEP, an Internet-based special education tool.

WHEREAS, SCHOOL SYSTEM provides school-based health-related services to students including special-needs students; and

WHEREAS, SCHOOL SYSTEM requires assistance in billing Medicaid for covered services that are provided to eligible students, and in collecting amounts billed; and

WHEREAS, PCG desires to provide to SCHOOL SYSTEM an Internet-based special education tool (“EasyIEP”) to assist SCHOOL SYSTEM with the reporting requirements of the Individuals with Disabilities in Education Act (“IDEA”), preparing Individualized Education Plans (“IEP”), and to grant a license to access PCG’s related proprietary systems and documentation; and

WHEREAS, SCHOOL SYSTEM may wish to engage PCG to provide other goods and services;

WHEREAS, PCG has demonstrated its ability and expertise in these areas; and

WHEREAS, PCG is able and willing to perform such services;

NOW THEREFORE, the parties hereto mutually agree as follows:

I. SCOPE OF SERVICES

PCG shall perform the services described in the attached EXHIBITS in accordance with and subject to the terms and conditions also described in the attached EXHIBITS:

- EXHIBIT A BILLING SERVICES: Fee-for-Service, Medicaid Administrative Claiming (MAC) and Cost Reporting
- EXHIBIT B LICENSE AGREEMENT: EasyIEP

II. TERM

- A. Initial Term. The initial term of this Agreement (the “Initial Term”) shall commence on the Effective Date and shall end on June 30, 2013.
- B. Renewal Term. Following the Initial Term, SCHOOL SYSTEM and PCG reserve the right to extend this Agreement for a one-year term (a “**Renewal Term**”) based on the

mutual agreement of both parties to the terms associated with the proposed renewal term. Otherwise this Agreement shall terminate on the last day of the Initial Term.

III. EXTENT OF AGREEMENT

- A. This Agreement represents the entire and integrated Agreement between SCHOOL SYSTEM and PCG and supersedes all prior negotiations, representations, or agreements, either written or oral.
- B. This Agreement may be amended or revised only by a written amendment signed by authorized representatives of both SCHOOL SYSTEM and PCG and referencing this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

PUBLIC CONSULTING GROUP, INC.

MONTGOMERY COUNTY SCHOOLS

By: _____
Signature

By: _____
Signature

Printed Name

Printed Name

Title

Title

Date

Date

Public Consulting Group, Inc.
440 South Church Street, Suite 850
Charlotte, North Carolina 28202

Montgomery County Schools
441 Page Street
Troy, North Carolina 27371

EXHIBIT A: BILLING SERVICES for FFS, MAC AND COST REPORTING

As used in this EXHIBIT A, the term “Agreement” means the agreement embodied in this EXHIBIT A only.

I. SCOPE OF SERVICES

- A. PCG shall perform the services described in EXHIBIT A1 in accordance with the terms and conditions of this Agreement.
- B. The parties to this Agreement may expand the scope of this Agreement to include other products or services offered by PCG, and to specify rates of payment for such products or services, by means of amendments to this Agreement.
- C. SCHOOL SYSTEM agrees to implement Fee-for-Services beginning on December 6, 2011.
- D. SCHOOL SYSTEM agrees to implement Cost Reporting and Medicaid Administrative Claiming (MAC) services beginning in July 2012.

II. COMPENSATION, PAYMENT, AND BILLING PROCEDURE

- A. SCHOOL SYSTEM shall compensate PCG for services rendered under this Agreement as set out in EXHIBIT A2 on the basis of invoices that are proper in form and execution.
- B. PCG shall invoice SCHOOL SYSTEM only after reimbursement has been received by SCHOOL SYSTEM. Each invoice shall state the nature of the reimbursement received, the date of reimbursement, and the time period of the services provided by PCG.
- C. SCHOOL SYSTEM shall pay PCG interest at the annual rate of 10% on all fee amounts that are not paid within thirty (30) days of the due date, calculated from the due date to the date that payment is received, unless state law prohibits the payment of interest or requires a lower percentage amount, in which case such lower percentage amount shall apply.
- D. If a reimbursement is disallowed after it was paid to SCHOOL SYSTEM, PCG shall return to SCHOOL SYSTEM any fees that were paid to PCG by SCHOOL SYSTEM with respect to the disallowed reimbursement.
- E. Upon termination of the Agreement at the end of the Term or pursuant to Section VI, PCG shall be entitled to payment for services provided prior to termination. The parties acknowledge that one or more invoices may be submitted by PCG after the termination date, following reimbursements received by SCHOOL SYSTEM on account of such services.

III. RECORDS

- A.** PCG shall allow SCHOOL SYSTEM and any of its duly authorized representatives or agents reasonable access to any records of PCG that are pertinent to this Agreement for the purposes of audits or examinations.
- B.** PCG shall maintain its records relating to this Agreement for a period of at least five (5) years from the date of service. If PCG carries out any of the duties of this Agreement through a subcontract, such subcontract shall provide that the subcontractor likewise shall maintain such records for a period of at least five (5) years from the date of service.

IV. CONFIDENTIALITY

- A.** The parties recognize that this Agreement concerns the use of information subject to federal and state laws including the Family Educational Rights and Privacy Act (“**FERPA**”) and the Individuals with Disabilities Education Act (“**IDEA**”).
- B.** The parties shall comply with the requirements of applicable federal and state laws relating to the confidentiality of information, and agree to amend this Agreement as may be necessary to reflect changes in the applicable law.
- C.** PCG shall request from SCHOOL SYSTEM, and SCHOOL SYSTEM shall provide to PCG, only such information as is reasonably necessary to effectuate the purposes of this Agreement. PCG shall take steps to safeguard all confidential information that it receives or creates pursuant to this Agreement. PCG shall make available to SCHOOL SYSTEM its written policies and procedures for the security of confidential information subject to this Agreement.
- D.** PCG shall not use confidential information received from SCHOOL SYSTEM identifying individual students for any purpose other than the purposes of this Agreement or other purposes expressly directed or allowed by the SCHOOL SYSTEM in a writing signed by SCHOOL SYSTEM, and shall immediately notify SCHOOL SYSTEM if such confidential information is subpoenaed or requested by a third-party, or is improperly used, copied, or removed.
- E.** If SCHOOL SYSTEM determines it necessary in order to comply with its obligations under law, SCHOOL SYSTEM may examine facilities, systems, procedures, and records of PCG to the extent necessary in order to confirm the adequacy of security measures.
- F.** Upon termination of this Agreement, PCG shall use reasonable and secure means to return or destroy (as directed in writing by SCHOOL SYSTEM) all documentary information protected by federal or state confidentiality laws that was received or created by PCG under this Agreement. To the extent that destruction or return is not feasible, PCG will continue to extend the protections of the Agreement to such information and limit its further use, until such time as destruction or return is feasible.

- G. Nothing in this Agreement is intended to confer any rights, remedies, obligations, or liabilities upon anyone other than SCHOOL SYSTEM, PCG, and their respective successors and assigns.

V. **TERMINATION**

This Agreement may be terminated before the end of the term specified in Section II, Page 2 of the Contract for Consulting Services, as follows:

- A. **Without Cause:** Either party may terminate this Agreement by giving written notice to the other party at least thirty (30) calendar days prior to the effective date of termination as stated in the notice, or such other period as is mutually agreed in advance by the parties.
- B. **For Cause:** Either party may terminate this Agreement if the other party materially breaches its terms. This provision applies only if the non-breaching party provides written notice to the breaching party, and allows at least seven (7) calendar days to cure the breach before the effective date of termination stated in the notice.
- C. **Emergency:** If SCHOOL SYSTEM reasonably determines that immediate action is necessary to protect state and/or federal funds or property or to protect persons from injury, SCHOOL SYSTEM may terminate or suspend this Agreement by providing written notice to PCG stating the grounds for the SCHOOL SYSTEM's action. Such termination or suspension action shall be effective upon receipt of the written notice by PCG.

VI. **OWNERSHIP INTERESTS AND LICENSE**

- A. Ownership of EasyTrac™ and all other software, trademarks, and intellectual property of PCG is not conveyed to SCHOOL SYSTEM unless specifically conveyed to SCHOOL SYSTEM by means of a written amendment to this Agreement or a separate written contract referencing this Agreement. EasyTrac™ is licensed to SCHOOL SYSTEM only during the term of this Agreement and only for use by SCHOOL SYSTEM for purposes of this Agreement.
- B. SCHOOL SYSTEM shall not use PCG software, trademarks, or other intellectual property except for purposes of this Agreement, and shall not copy or transfer such software, trademarks, or other intellectual property to any third party unless specifically authorized by PCG in a written amendment to this Agreement or a separate written contract referencing this Agreement.

VII. **LIABILITY AND INSURANCE**

- A. PCG shall indemnify and hold harmless SCHOOL SYSTEM, its officers, agents, employees, and assigns from and against all claims, losses, costs, damages, expenses, reasonable attorneys' fees, and liability that any of them may sustain, up to the total amount of fees paid to PCG:
- (i) Arising out of any failure by PCG to comply with any applicable law, ordinance, regulation, or industry standard; or

(ii) Arising out of any breach by PCG of a provision of this Agreement.

- B. PCG will maintain adequate insurance coverage for purposes of this Agreement, including commercial general liability, worker's compensation, and errors and omissions liability insurance. PCG will provide to SCHOOL SYSTEM a certificate of insurance upon request. Such certificate shall provide for thirty (30) days notice prior to modification of terms or termination.

VIII. SUCCESSORS AND ASSIGNEES

- A. SCHOOL SYSTEM and PCG each binds itself, its associates, partners, successors, assigns, and legal representatives to the other party to this Agreement with respect to all covenants of this Agreement.
- B. Neither SCHOOL SYSTEM nor PCG shall assign any interest in this Agreement or transfer any interest in the same (whether by assignment or notation) without prior written approval of the other party.

IX. EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION

During the performance of this Agreement, PCG agrees as follows:

- A. PCG will not discriminate against any employee or applicant for employment because of race, color, religious creed, gender, marital status, age, sexual orientation, national origin, veteran status, disabling condition, or any other protected status. Such equal-opportunity and non-discriminatory actions shall include, but not be limited to, the following: recruitment, hiring, training, promotion, compensation, benefits, transfers, layoffs, return from layoffs, and company-sponsored training, education, and social/recreational programs. PCG agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. PCG will, in all solicitations, or advertisements for employees placed by or on behalf of PCG, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, gender, marital status, age, sexual orientation, national origin, veteran status, disabling condition, or any other protected status.

X. CONFLICT OF INTEREST

PCG covenants that it has no direct or indirect interest that would conflict with its performance of the Agreement. PCG further covenants that in the performance of this Agreement, no person having such interest shall be employed by PCG.

XI. APPLICABLE LAW AND EXCLUSIVE FORUM

This Agreement shall be governed by the law of the State of North Carolina, and any civil action arising under this Agreement shall be brought in that state.

XII. COMPLIANCE WITH LAWS

- A.** The parties shall comply with all applicable federal and state laws and regulations.
- B.** This Agreement and the transactions contemplated hereby are intended to comply with all applicable federal and state laws and regulations including but not limited to fraud and abuse laws. In the event that this Agreement or any of the transactions contemplated hereby are determined not to be in compliance with such laws and regulations, PCG and SCHOOL SYSTEM shall negotiate in good faith to modify the terms and provisions of this Agreement to remedy any prior noncompliance. If compliance cannot reasonably be achieved, this Agreement shall terminate at the election of either party and neither party shall have any further rights or obligations hereunder, except as otherwise provided herein; provided, however, that PCG and SCHOOL SYSTEM shall take all practicable action to remedy any noncompliance, if possible, including but not limited to repayment or return of any money or value received.
- C.** This Agreement is intended to be interpreted as necessary to implement and comply with federal and state laws relating to confidentiality of health information and student information. The parties agree that any ambiguity in this Agreement is to be resolved in favor of a meaning that complies with and is consistent with such laws.

XIII. PROCUREMENT

- A.** SCHOOL SYSTEM is solely responsible for its compliance with applicable procurement laws and regulations.
- B.** To the extent specifically authorized by applicable procurement laws and regulations, this Agreement may be utilized by another SCHOOL SYSTEM or other entity for purposes of its own authority to contract with PCG. The terms of such resulting contract may differ from this Agreement, and SCHOOL SYSTEM assumes no authority, liability, or obligation to PCG or to any other SCHOOL SYSTEM or other entity with respect to any such resulting contract.

EXHIBIT A1: SERVICES

Subject to the terms and conditions of this Agreement, PCG will provide the following fee-for-service billing and Medicaid administrative claiming services:

I. FFS PROJECT STARTUP

A. PCG meets with the SCHOOL SYSTEM.

1. Meet with the Superintendent's project manager to:
 - a. Confirm procedures for managing, controlling, and coordinating all work and project results
 - b. Finalize the project scope and objectives
 - c. Identify key district personnel available to resolve technical and operational questions
2. Identify county and school contacts with state and federal agencies
3. Establish protocols for representing the District at any and all meetings related to this engagement

B. Facilitate District-wide Project Involvement

PCG will coordinate the actions of:

1. Superintendent's Office
2. District Financial Operations
3. Special Education Department

II. DATA COLLECTION

PCG will conduct data collection, and will request operational and financial information from the District on:

- A.** Schools
- B.** Students
- C.** Clinicians
- D.** Services
- E.** Time Periods of Service

- F. IEP Start and End Dates

III. START-UP OF AUTOMATED DOCUMENTATION SYSTEM

PCG will load support tables and determine the best approach (e.g., data migration, raw data entry) for loading all data support tables on the project billing management system, according to:

- A. Availability of Data in Electronic Format
- B. Quality of Data in Electronic Format
- C. Quantity of Data in Electronic Format
- D. Volume of Hardcopy Data
- E. Legibility of Hardcopy Data
- F. Accuracy of Hardcopy Data

IV. TRAINING

PCG will provide two days of training to SCHOOL SYSTEM related to the EasyTRAC™ system. The first training day will be offered to SCHOOL SYSTEM in January 2012 and will consist of one (1) Train the Trainer session, and one (1) Administrator training session. A second training day will be offered to SCHOOL SYSTEM in July 2012 and consist of one (1) Train the Trainer session, and one (1) Administrator training session. Individual training sessions are provided in sessions to accommodate no more than 30 trainees at one particular time.

Each training session will be divided into two parts:

- A. Lecture (approximately 1-2 hours)
- B. Hands-on practice (approximately 1 hour)

Training may be coordinated with other PCG training, if any, that also is being provided to SCHOOL SYSTEM.

V. OPERATIONS

PCG provides EasyTrac™ as a complete service. The District is not required to purchase or install any software on their computers with the exception of an Internet browser and the Adobe Acrobat Reader®.

- A. Server Hardware: PCG will provide an appropriate server(s) for SCHOOL SYSTEM.
- B. Server Software: PCG will provide all server and database software for SCHOOL SYSTEM.

- C. Server Administration: PCG will provide all server administration including database back up, system account management, system security, and system maintenance.
- D. Server Internet Connection: PCG will provide the connection of the server to the Internet at an appropriate speed to carry SCHOOL SYSTEM traffic at no additional cost.
- E. SCHOOL SYSTEM responsibilities:
 - 1. Connection to the Internet for its users
 - 2. Computer hardware for its users
 - 3. Browser software and browser software configuration
 - 4. Installation and configuration of the Adobe Acrobat Reader®
 - 5. Site for training with an appropriately configured computer for each trainee and one additional computer for the trainer
 - 6. System start up information as detailed in the system start up section of this document.

VI. EASYTRAC™ SYSTEM STARTUP

System Startup is the process by which a SCHOOL SYSTEM's EasyTrac™ service is established. The goal of System Startup is to import as much information as possible to the EasyTrac™ system so that SCHOOL SYSTEM need not perform excessive manual data entry.

PCG has developed a standard set of import stubs for the data elements required by EasyTrac™. The main categories of data imports include:

- A. Student Information
- B. User Information
- C. School Information
- D. Related Services

Often this data may be exported from existing database(s) or spreadsheets. PCG will assist SCHOOL SYSTEM in populating the spreadsheets by providing technical advice and consulting, but it is the responsibility of SCHOOL SYSTEM to populate the database(s) and spreadsheets.

VII. INTERFACE TO DISTRICT DATABASE(S)

PCG will provide an interface to the SCHOOL SYSTEM student information database at such time as a specification can be developed. Once the database interface specification is complete,

PCG will develop, test, and make the interface operational. The goal of this interface is to exchange information with the SCHOOL SYSTEM student information system to reduce the amount of data entry and to keep the systems (EasyTrac™ and the SCHOOL SYSTEM database) synchronized. Additional interfaces may be established as requested by the SCHOOL SYSTEM. There will be an incremental charge for each additional interface.

VIII. ONGOING USER SUPPORT

SCHOOL SYSTEM agrees to be the first tier resource for user support. First tier means that all initial calls and emails will initially be assigned to a SCHOOL SYSTEM representative and all business process related questions will be addressed. If the call cannot be answered by the SCHOOL SYSTEM's first level support staff, PCG provides toll free telephone and email support. PCG will make available qualified personnel to SCHOOL SYSTEM during the Term to provide technical support to SCHOOL SYSTEM. Such personnel will be skilled in the functioning and application of the EasyTRAC™ service sufficient to answer questions and provide support.

- A. Email support will be provided via the email links on EasyTRAC™'s Message Board page.
- B. Phone support will be provided via a toll free or local number. This number will connect the SCHOOL SYSTEM Contact with PCG EasyTRAC™'s help desk. Phone support will be available during the hours of 9:00 AM and 5:00 PM local time.

IX. COST REPORT

Upon receipt of a signed written request by SCHOOL SYSTEM, PCG will assist SCHOOL SYSTEM with data collection, analysis, and preparation of a Medicaid Cost Report to be submitted to the State Medicaid agency. PCG will comply with all relevant federal and state statutes and will complete the following functions:

- A. PCG will provide a cost accumulation to perform reconciliation to annual financial statements.
- B. PCG will provide Administrative Claiming Time Study Management to reconcile qualified providers to time study roster, in order to improve revenue (add unclaimed staff) and compliance (ensure roster matches claim).
- C. PCG will determine Medicaid Fee-for-Service Billing Review by procedure code to determine cost by service and to identify trends by staff category.
- D. PCG will calculate the Medicaid and SPED Eligibility Ratios with the most accurate count obtained through match of eligibility to official headcount.
- E. PCG will complete the Annual Cost Report for submittal to the State Medicaid agency.

X. NEW VERSIONS AND RELEASES

New core versions and releases of EasyTrac[™] issued during the term of the Agreement will be provided to SCHOOL SYSTEM, along any additional training required as a result of the new version or release at no additional charge.

XI. CLAIMS

- A. Based on the information entered on EasyTrac[™] by SCHOOL SYSTEM, PCG will develop, process, generate, and submit reimbursement claims to Medicaid as appropriate on behalf of SCHOOL SYSTEM.
- B. SCHOOL SYSTEM will complete a PCG Compliance Checklist to select options with respect to claims.
- C. If SCHOOL SYSTEM asks PCG to audit claims or to use additional information, SCHOOL SYSTEM and PCG first shall agree in writing as to the terms of such audit or use. If such audit or additional information indicates that a claim was not properly made, PCG will void the claim.
- D. PCG is not obligated to continue to submit claims in project areas that do not generate sufficient Incremental Revenue to SCHOOL SYSTEM, as defined in Exhibit B.

XII. MEDICAID ADMINISTRATIVE SERVICES

A. PROJECT STARTUP

- 1. PCG will send a Medicaid Administrative Claiming (“MAC”) Welcome Packet to SCHOOL DISTRICT including the following:
 - i. MAC Contact and Calendar
 - ii. MAC SCHOOL DISTRICT Contact
 - iii. MAC Participation Guide
 - iv. MAC Roster Update Guide
 - v. MAC Financial Guide
- 2. The SCHOOL DISTRICT will identify its MAC SCHOOL DISTRICT Contact and MAC Financial Contact who will work with PCG.
- 3. PCG will establish a protocol for representing the SCHOOL DISTRICT at any and all meetings related to this engagement.

B. QUARTERLY TASKS

- 1. Roster Development Tasks
PCG will open the new quarter in the random moment time study (“RMTS”) system so the SCHOOL DISTRICT can review their current roster and provide updates as necessary.

2. The SCHOOL DISTRICT will update the participant roster in the RMTS system and certify the list within the required time frame.

C. MAC Time Study Tasks

1. PCG will randomly select time study participants and notify the SCHOOL DISTRICT Contact.
2. Time study participants will complete MAC training and any sampled moments in the time required.
3. PCG will follow-up with MAC SCHOOL DISTRICT Contact regarding any missing/incomplete time studies.
4. PCG's trained coders will assign activity codes to completed time study sample moments.

D. MAC Financial Tasks

1. PCG will send MAC Financial Contact access to the financial data collection site to complete the quarterly financial data submission.
2. MAC Financial Contact will complete the financial reporting in the allowed time frame.
3. PCG will complete quality check of the submitted financial data and notify the contact of any questions or issues.
4. MAC Financial Contact will respond to the questions or issues regarding the submitted quarterly financial data.

E. MAC Claim Submission Tasks

1. PCG will prepare quarterly claims once the following components become available:
 - a. Time study results
 - b. The SCHOOL DISTRICT completed financial file
 - c. The SCHOOL DISTRICT's Indirect Cost Rate (ICR)
 - d. The SCHOOL DISTRICT's Medicaid Eligibility Rate (MER)
2. PCG will send District Contact a Claim Certification Statement and claim information.
3. District Contact will return signed original Claim Certification Statements to PCG.
4. PCG will send claims to NC Department of Public Instruction (DPI) for payment on behalf of the SCHOOL DISTRICT.
5. SCHOOL DISTRICT will receive claim amounts directly from DPI.

F. PCG will provide ongoing training for all SCHOOL DISTRICT RMTS participants.

EXHIBIT A2: COMPENSATION

Subject to the terms and conditions of this Agreement, SCHOOL SYSTEM shall pay PCG the following fees for services described in Exhibit A1.

Public Consulting Group, Inc., will be compensated using a performance based fee of 15% of Fee-for-Service and Cost Reporting incremental revenue collected by the SCHOOL DISTRICT, for medical and health-related services provided to school children which have been billed and reimbursed as is detailed in this Exhibit A1, Section I through Section XI. .

Subject to the terms and conditions of this agreement, SCHOOL DISTRICT shall pay PCG a fixed fee of \$22,500 annually for Medicaid Administrative Claiming (MAC) services described in Exhibit A1 Section XII. PCG shall invoice SCHOOL DISTRICT on a quarterly basis for fees and services due hereunder. Payment shall be due within 30 days of the date invoiced.

- A. The fee shall be applied to all Incremental Revenue collected by the SCHOOL SYSTEM. "Incremental Revenue" is defined as any revenue to SCHOOL SYSTEM, including all reimbursements and accrued interest attributable to revenues derived from claims that are submitted by PCG pursuant to Exhibit A. These reimbursements include any settlements from the cost reporting process irrespective of whether PCG participated in the development and submission of the cost report.
- B. PCG will not be obligated to continue work in project areas that do not generate significant Incremental Revenue to SCHOOL SYSTEM. Conversely, PCG is obligated to continue to work in project areas that do generate significant Incremental Revenue to SCHOOL SYSTEM.
- C. Upon agreement with SCHOOL SYSTEM, PCG will convert from a performance-based fee to a flat fee if federal law at any time prohibits or restricts contingency compensation or if PCG and SCHOOL SYSTEM agree that a flat fee would be more appropriate.
- D. Upon agreement with SCHOOL SYSTEM, PCG may establish a new performance-based percentage for revenue maximization activities related to services not provided under this Agreement.
- E. At its discretion, SCHOOL SYSTEM may withhold up to five percent (5%) of all payments to PCG, up to a maximum of one thousand dollars (\$1,000.00), until the final day of the Agreement in order to ensure satisfactory completion.

EXHIBIT B: LICENSE AGREEMENT for EasyIEP™

As used in this EXHIBIT B, the term “Agreement” embodies agreement used in this EXHIBIT B only.

I. SCOPE OF SERVICES

- A.** PCG shall perform the services described in the attached EXHIBIT B1 and B2, in accordance with the terms and conditions of this Agreement.
- B.** The parties to this Agreement may expand the scope of this Agreement to include other products or services offered by PCG, and to specify rates of payment for such products or services, by means of amendments to this Agreement.

II. DEFINITIONS

In addition to the terms defined elsewhere in this Agreement, terms appearing in initial capital letters shall have the following meanings:

- A.** **“Confidential Information”** means information designated or treated as confidential by either party, or which under the circumstances surrounding disclosure should in good faith be treated as confidential, including but not limited to: (a) computer programs, electronic codes, algorithms, know-how, formulas, processes, ideas, data, inventions (whether or not subject to patent or copyright), schematics, teaching and development techniques, trade secrets, improvements, research projects, and code; (b) information about costs, profits, markets, sales, customers, or clients; (c) technical, business, and financial plans; (d) employee personnel files and compensation information; (e) discoveries, developments, designs, improvements, regardless of the form of communication in each case, including extracts or summaries; and (f) any record (whether in print, electronic, or any other medium) maintained by SCHOOL SYSTEM, a SCHOOL SYSTEM employee or agent, or a party acting on SCHOOL SYSTEM’s behalf, which is directly related to an identified student. “Confidential Information” also specifically includes EasyIEP, any third-party information disclosed to either party under obligations of confidentiality, and the identity of or any medical, financial, or personal information pertaining to anyone within PCG or SCHOOL SYSTEM. Notwithstanding the foregoing, however, “Confidential Information” does not include information that: (i) was rightfully in possession of or known to the receiving party without any obligation of confidentiality prior to receiving it from the disclosing party; (ii) is, or subsequently becomes, legally and publicly available without breach of this Agreement; (iii) is rightfully obtained by the receiving party from a source other than the disclosing party without any obligation of confidentiality; or (iv) is disclosed by the receiving party under a valid order of a court or government agency, provided that the receiving party provides prior written notice to the disclosing party of such obligation and the opportunity to oppose such disclosure.
- B.** **“Documentation”** means all technical information, training materials, instructions, manuals, and diagrams (in printed, electronic, or other media) pertaining to the EasyIEP Service.

- C. **“EasyIEP Service”** means: (i) the Internet-based services identified in this Agreement; (ii) all products related to such services; (iii) all New Releases, Updates, and Upgrades applicable to the foregoing and offered to SCHOOL SYSTEM by PCG; and (iv) the Documentation developed by PCG for distribution and use in combination with the foregoing.
- D. **“Intellectual Property Rights”** means patent rights, copyrights, trade secret rights, trademark rights, and any other intellectual property rights recognized by the law of each applicable jurisdiction in which PCG may market or license the EasyIEP Service.
- E. **“New Releases”** means any new revision of EasyIEP Service that includes significant enhancements which add new features to the EasyIEP Service and which generally will be designated by a new version number either to the left of the decimal point (e.g., from v2.03 to v3.00) or one decimal place to the right of the decimal point (e.g., from v2.03 to v2.10).
- F. **“Permitted Use”** means use of the EasyIEP Service by employees, contractors, and others affiliated with or authorized by SCHOOL SYSTEM only for SCHOOL SYSTEM’s internal education-related purposes.
- G. **“SCHOOL SYSTEM User”** means any employee, contractor, and other authorized user of the “SCHOOL SYSTEM” who will be granted access to the EasyIEP Service.
- H. **“Term”** means collectively and individually the Initial Term and Renewal Terms as defined by Section 2.
- I. **“Trademarks”** means all trademarks, trade names, service marks, and logos now owned or hereinafter acquired by either party, and all other trademarks, trade names, service marks, and logos identifying or used in connection with their product or service offerings, whether or not registered under the laws of a particular jurisdiction or territory.
- J. **“Updates”** means any new revisions and/or modifications made to the EasyIEP Service and/or Documentation in order to correct operational errors.
- K. **“Upgrades”** means any new revision of the EasyIEP Service that includes corrections and minor modifications to existing features and which generally will be designated by a new version number which has changed from the prior number only two places to the right of the decimal point (e.g., from v2.02 to v2.03).

III. **EasyIEP SERVICE**

Subject to the terms and conditions of this Agreement, including SCHOOL SYSTEM’s performance of its obligations hereunder, PCG shall provide the EasyIEP Service to SCHOOL SYSTEM, as more fully described below and in **EXHIBIT B1**.

- A. **Grant of License for EasyIEP Service.** PCG grants to SCHOOL SYSTEM, and SCHOOL SYSTEM accepts, a non-exclusive, non-transferable right and license, during the Term only, to access via the Internet and use the EasyIEP Service to the extent reasonably necessary.

B. Grant of License for Documentation. PCG grants to SCHOOL SYSTEM, and SCHOOL SYSTEM accepts, a non-exclusive, royalty-free license under PCG's copyrights in PCG's Documentation, during the Term only:

- i. to incorporate PCG's Documentation, in whole or in part, into other written materials prepared by or for SCHOOL SYSTEM with respect to the EasyIEP Service; and
- ii. to reproduce and distribute modified and original versions of PCG's Documentation, in hard copy or in an on-line format, as part of SCHOOL SYSTEM's Documentation for the EasyIEP Service, and, if such SCHOOL SYSTEM's Documentation is in an on-line format, allow SCHOOL SYSTEM Users to make print copies of the same.

C. Restrictions on License Grant

- i. SCHOOL SYSTEM shall not use or grant to any person or entity other than authorized SCHOOL SYSTEM Users the right to use the EasyIEP Service. SCHOOL SYSTEM shall not distribute, market, or sublicense the EasyIEP Service, and shall not permit any SCHOOL SYSTEM User or third party to do so.
- ii. SCHOOL SYSTEM shall ensure that appropriate proprietary notices indicating PCG's Intellectual Property Rights in the EasyIEP Service and related Documentation are placed on all copies of written materials distributed by SCHOOL SYSTEM relating thereto. Examples of such documentation include training materials and manuals. SCHOOL SYSTEM shall not remove, modify, or suppress any confidentiality legends or proprietary notices placed on or contained within the EasyIEP Service, and shall not permit any SCHOOL SYSTEM User or third party to do so.
- iii. SCHOOL SYSTEM shall not distribute EasyIEP documentation or intellectual property to any individual or organization that is not part of the SCHOOL SYSTEM or an authorized SCHOOL SYSTEM User, and shall not permit any SCHOOL SYSTEM User or third party to do so.
- iv. SCHOOL SYSTEM shall not transfer, rent, or permit access to the EasyIEP Service to any third party, and shall not permit any SCHOOL SYSTEM User or third party to do so.
- v. SCHOOL SYSTEM shall not modify, decompile, disassemble, or otherwise attempt to reverse engineer the EasyIEP Service or any portion thereof, and shall not permit any SCHOOL SYSTEM User or third party to do so.
- vi. SCHOOL SYSTEM shall not circumvent any security protection within the EasyIEP Service, and shall not permit any SCHOOL SYSTEM User or third party to do so.

D. Reservation of Rights.

- i. Subject to the license rights granted to SCHOOL SYSTEM by this Section 3, all right, title, and interest in and to the EasyIEP Service, including the Intellectual Property Rights and technology inherent in EasyIEP Service, are and at all times will remain the sole and exclusive property of PCG. No right to use, print, copy, distribute, integrate, or display the EasyIEP Service, in whole or in part, is granted in this Agreement, except as is explicitly provided in this Agreement. Nothing contained in this Agreement will directly or indirectly be construed to assign or grant to SCHOOL SYSTEM any right, title, or interest in or to PCG's Intellectual Property Rights or other rights in and to the EasyIEP Service or PCG's Trademarks.
- ii. Except as expressly authorized by this Agreement, SCHOOL SYSTEM shall not use, display, copy, distribute, modify, or sublicense the EasyIEP Service. PCG reserves all rights not expressly granted to SCHOOL SYSTEM by this Agreement.

E. ACCESS TO EasyIEP SERVICE

- i. PCG will provide access to the EasyIEP Service to SCHOOL SYSTEM via a private account accessed through the Internet, from which SCHOOL SYSTEM will be capable of using the EasyIEP Service as permitted by this Agreement. PCG will not provide the Internet connectivity to SCHOOL SYSTEM, and obtaining and maintaining such connectivity will be the sole responsibility of SCHOOL SYSTEM.
- ii. PCG will, as soon as practicable, provide SCHOOL SYSTEM with advance notice of each New Release, Upgrade, or Update for EasyIEP, and advise SCHOOL SYSTEM whether and how such New Release, Upgrade, or Update will be provided to SCHOOL SYSTEM. A New Release, Upgrade, or Update that includes additional features may require an additional charge.

IV. SUPPORT

As set forth more specifically below and in Exhibit B1, PCG shall provide support to SCHOOL SYSTEM during the Term of the Agreement.

- A. General Technical Support.** PCG shall make available qualified personnel to provide technical support to SCHOOL SYSTEM.
- B. E-mail Support.** PCG shall provide e-mail support to SCHOOL SYSTEM via the designated links on the EasyIEP Message Board page.
- C. Telephone Support.** PCG shall provide telephone support via a toll-free telephone number. This number will connect the SCHOOL SYSTEM User with the EasyIEP help desk.

- D. Project Support.** PCG agrees to provide consulting services support to SCHOOL SYSTEM for unique projects on an as-available basis, upon SCHOOL SYSTEM's request and subject to agreed-upon additional compensation.

V. TRAINING

As set forth more specifically in Exhibit B1, PCG shall provide 2 days of training to SCHOOL SYSTEM during the initial Term of the Agreement.

VI. COMPENSATION

In consideration of the licenses and services granted by PCG to SCHOOL SYSTEM under this Agreement, SCHOOL SYSTEM shall pay PCG an Annual License Fee.

- A. Annual Fee.** The Annual Fee for the Initial Term and for each Renewal Term, if any, shall be due and payable to PCG according to the schedule set forth in Exhibit B2.
- B. Refund.** In the event that this Agreement is terminated prior to the expiration of the then-current Term, any prepaid fees shall be non-refundable.
- C. Interest.** SCHOOL SYSTEM shall pay PCG interest at the annual rate of 10% on all fee amounts that are not paid within thirty (30) days of the due date, calculated from the due date to the date that payment is received, unless state law prohibits the payment of interest or requires a lower percentage amount, in which case such lower percentage amount shall apply.

VII. WARRANTIES

- A. Limited Warranty.** PCG represents and warrants that it has the right to license the EasyIEP Service as specified by this Agreement, and that the use of the EasyIEP Service contemplated in this Agreement does not infringe upon, violate, or constitute a misappropriation of any copyright, trademark, trade secret, or any other proprietary right of any third party. Further, PCG represents and warrants that, during the ninety (90) day period following the initial installation of the EasyIEP Service hereunder, and during the ninety (90) day period following the installation of each Update, Upgrade, and New Release hereunder, the EasyIEP Service will operate in accordance with the applicable Documentation, provided that the EasyIEP Service is operated in compliance with such Documentation. Under no circumstances will PCG be responsible for SCHOOL SYSTEM's hardware, software, browsers, or Internet connections that provide access to the EasyIEP Service. PCG shall use reasonable efforts to maintain the EasyIEP Service and to correct any problems that may arise with the use of the EasyIEP Service. PCG's scheduled maintenance of the EasyIEP Service, or the scheduled maintenance of PCG's Internet provider, shall not be deemed a failure to provide the EasyIEP Service.
- B. DISCLAIMER.** PCG SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, WITH RESPECT TO THE EasyIEP PRODUCTS OR ANY OTHER GOODS OR SERVICES PROVIDED BY PCG,

INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

VIII. PROPRIETARY RIGHTS; PROTECTION OF CONFIDENTIAL INFORMATION

- A. Ownership.** SCHOOL SYSTEM acknowledges that PCG owns the EasyIEP Service, that the EasyIEP Service is not generally published, and that the EasyIEP Service embodies the Confidential Information of PCG. All right, title, and interest in and to the EasyIEP Service, including, without limitation, all copyrights, trade secret rights, and other intellectual property rights pertaining in and to the EasyIEP Service shall remain vested in PCG and its third-party licensors. PCG acknowledges that SCHOOL SYSTEM owns all of the data inputted by each SCHOOL SYSTEM User for purposes of creating an Individualized Education Plan and any and all reports produced as a result of using the EasyIEP Service. SCHOOL SYSTEM acknowledges that PCG shall have the right to aggregate any data input by SCHOOL SYSTEM or SCHOOL SYSTEM Users for PCG's own purposes, but shall not use or disclose personal or individual identifying information where the use or disclosure would constitute a breach of a known privacy policy adopted by either PCG or SCHOOL SYSTEM.
- B. Confidentiality Obligations.** Each party agrees that: (i) neither party will disclose to any third party any of the other party's Confidential Information except to the receiving party's employees and contractors with a need to know and who have agreed in writing to confidentiality obligations substantially the same as those set forth herein; (ii) each party will use the same degree of care it uses to maintain the confidentiality of its own information of similar importance in its possession or control, but in no event less than a reasonable degree of care; and (iii) neither party will use or authorize the use of Confidential Information for any purpose other than to fulfill such party's obligations hereunder. Each party agrees that neither party will disclose to any third party any of the terms of this Agreement, which will be treated as Confidential Information, except to the receiving party's employees, contractors, and advisors with a need to know and who have agreed in writing to confidentiality obligations substantially the same as those set forth herein, and neither party will use the terms of this Agreement for any purpose other than to fulfill such party's obligations under this Agreement, except as either party is otherwise required by law. The parties may modify these obligations through express written agreements.
- C. Injunctive Relief.** Each party acknowledges that the other party's Confidential Information contains trade secrets of such other party, the disclosure of which would cause substantial harm to such other party that could not be remedied by the payment of damages alone. Accordingly, such other party will be entitled to seek preliminary and permanent injunctive relief and other equitable relief for any breach of this Section 9.
- D. SCHOOL SYSTEM Duties.** SCHOOL SYSTEM will take reasonable steps to protect the EasyIEP Service from unauthorized access, copying, dissemination, and disclosure, and from other unauthorized use, and will report promptly to PCG any such use of which SCHOOL SYSTEM becomes aware. SCHOOL SYSTEM shall be responsible for the quality, integrity, and accuracy of all data entered and used in connection with the EasyIEP Service, including all deletions of such data by SCHOOL SYSTEM Users.

- E. **PCG Duties.** PCG will take reasonable steps to protect the data that SCHOOL SYSTEM enters as part of its use of the EasyIEP Service. PCG will use technical, administrative, and physical safeguards to protect against unintentional loss and against unauthorized access, destruction, misuse, modification, and disclosure. Although no computer system or information can ever be fully protected against every possible hazard, PCG is committed to providing reasonable and appropriate security controls to protect information against foreseeable hazards. PCG recognizes that SCHOOL SYSTEM data is the property of SCHOOL SYSTEM. Upon contract termination, or at SCHOOL SYSTEM's request, PCG will provide all data to SCHOOL SYSTEM, including all database tables and a description of the table structure. PCG may keep a backup copy of the data unless otherwise agreed by the parties, subject to applicable law.
- F. **Third Party Infringement.** PCG reserves the sole and exclusive right at its discretion to assert claims against third parties for infringement or misappropriation of its Intellectual Property Rights in the EasyIEP Service.

IX. PRODUCT MARKING

- A. **Ownership of PCG Trademarks.** SCHOOL SYSTEM acknowledges that PCG is and shall remain the owner of all right, title, and interest in and to each of PCG's Trademarks in any form or embodiment thereof, and is also the owner of all goodwill associated with PCG's Trademarks. All goodwill generated by SCHOOL SYSTEM use of the EasyIEP Service with respect to PCG's Trademarks shall inure exclusively to the benefit of PCG.
- B. **Infringements.** SCHOOL SYSTEM shall promptly notify PCG of any third-party infringements of any of the PCG Trademarks used in connection with the EasyIEP Service, or any act of unfair competition by third parties relating to the PCG Trademarks, within a reasonable time of SCHOOL SYSTEM's knowledge of such infringements or acts.

X. INDEMNIFICATION

- A. **PCG Indemnification Obligations.** PCG shall defend, indemnify, and hold harmless SCHOOL SYSTEM from and against any suit, proceeding, assertion, damage, cost, liability, and expense (including court costs and reasonable attorneys' fees) incurred as a result of claims by a third party against SCHOOL SYSTEM or its affiliates, employees, or agents arising from or connected with a claim, related to this Agreement, that any EasyIEP Service infringes any valid patent, copyright, trade secret, or other intellectual property right under the laws of the United States, provided that SCHOOL SYSTEM promptly notifies PCG, in writing, of the suit, claim, or proceeding, or threat of suit, claim, or proceeding, and provides PCG with reasonable assistance for the defense of the suit, claim, or proceeding. PCG will have sole control of the defense of any claim and all negotiations for settlement or compromise.
- B. **SCHOOL SYSTEM Indemnification Obligations.** SCHOOL SYSTEM shall defend, indemnify, and hold harmless PCG from and against any suit, proceeding, assertion, damage, cost, liability, and expense (including court costs and reasonable attorneys' fees)

incurred as a result of claims of SCHOOL SYSTEM or third parties against PCG or its affiliates, licensors, suppliers, officers, directors, employees, or agents arising from or connected with SCHOOL SYSTEM's misuse of the EasyIEP Service, unauthorized modification of EasyIEP Service, or unauthorized combination of the EasyIEP Service with any hardware, software, products, data, or other materials not specified or provided by PCG, provided that PCG promptly notifies SCHOOL SYSTEM, in writing, of the suit, claim, or proceeding, or threat of suit, claim, or proceeding, and provides SCHOOL SYSTEM with reasonable assistance for the defense of the suit, claim, or proceeding. SCHOOL SYSTEM will have sole control of the defense of any claim and all negotiations for settlement or compromise.

XI. TERMINATION

- A. Termination.** Notwithstanding the provisions of Section 2, either party may terminate this Agreement for cause on or after the thirtieth (30th) day after such party gives the other party written notice of a material breach by such other party of any obligation hereunder, unless such breach is cured within thirty (30) days following the breaching party's receipt of such written notice.
- B. Effect of Termination.** Upon termination or expiration of this Agreement: (i) all licenses granted to SCHOOL SYSTEM by PCG will terminate; and (ii) all SCHOOL SYSTEM User access to the EasyIEP Service will terminate. PCG will destroy or return to SCHOOL SYSTEM, at the option of SCHOOL SYSTEM, all copies of SCHOOL SYSTEM data entered into the EasyIEP Service.
- C. No Damages for Termination.** NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR DAMAGES OF ANY KIND, INCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS, ON ACCOUNT OF THE TERMINATION OR EXPIRATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS. EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO RECEIVE ANY COMPENSATION OR REPARATIONS ON TERMINATION OR EXPIRATION OF THIS AGREEMENT, OTHER THAN AS EXPRESSLY PROVIDED IN THIS AGREEMENT. Neither party will be liable to the other on account of termination or expiration of this Agreement for reimbursement or damages for the loss of goodwill, prospective profits, or anticipated income, or on account of any expenditures, investments, leases, or commitments made by either party or for any other reason whatsoever based upon or growing out of such termination or expiration.

XII. ADDITIONAL SERVICES

The parties to this Agreement may expand the scope of this Agreement to include other products or services offered by PCG, and to specify rates of payment for such products or services, by means of amendments to this Agreement signed by an authorized representative of each party and referencing this Agreement.

XIII. PROCUREMENT

SCHOOL SYSTEM is solely responsible for its compliance with applicable procurement laws and regulations. To the extent specifically authorized by applicable procurement laws and regulations, this Agreement may be utilized by another SCHOOL SYSTEM or other entity for purposes of its own authority to contract with PCG. The terms of such resulting contract may differ from this Agreement, and SCHOOL SYSTEM assumes no authority, liability, or obligation to PCG or to any other SCHOOL SYSTEM or other entity with respect to any such resulting contract.

XIV. WAIVER AND NONEXCLUSIVE REMEDY

No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights. Except as otherwise specified in this Agreement, the exercise by either party of any remedy under this Agreement is without prejudice to its other remedies under this Agreement or otherwise.

XV. COMPLIANCE WITH LAWS

Each party agrees to comply with all applicable laws, rules, and regulations in connection with its activities under this Agreement.

XVI. ADDITIONAL TERMS

- A. Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns, provided, however, that neither party may assign this Agreement, in whole or in part, without the other party's written consent. Any attempt to assign this Agreement without such consent will be null and void. A change of control of a party will not be deemed an assignment.
- B. Governing Law.** This Agreement is governed by the laws of North Carolina without regard to its conflict of law provisions, and the parties hereby consent to jurisdiction and venue therein.
- C. Severability.** If any provision of this Agreement is found invalid or unenforceable by a court or other tribunal of competent jurisdiction, that provision will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.
- D. Force Majeure.** Neither party will be responsible for any failure to perform due to causes beyond its reasonable control (each a "***Force Majeure***"), including, but not limited to, acts of God, war, terrorism, riot, embargoes, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, or fuel crises, provided that such party gives prompt written notice thereof to the other party. The time for performance will be extended for a period equal to the duration of the Force Majeure, but in no event longer than thirty (30) days.
- E. Notices.** All notices under this Agreement will be deemed given when delivered personally, or when sent by certified or registered U.S. mail, return receipt requested, or by nationally recognized express courier, to the address shown below the signature blocks of

this Agreement or as may otherwise be specified by either party to the other in accordance with this section.

- F. Independent Contractors.** The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.
- G. Entire Agreement.** This Agreement and its exhibits are the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. Provisions of this Agreement may be modified or waived only by a written document executed by authorized representatives of both parties.
- H. Survival.** The provisions of this Agreement which by their nature would continue beyond the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.
- I. Headings.** The various headings and subheadings in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.
- J. Authority.** Each party represents and warrants that it has sufficient rights and authority to enter into this Agreement and that this Agreement violates no previous agreement between each party and any third parties.

EXHIBIT B1: SERVICES

Subject to the terms and conditions of the Agreement, PCG will provide the EasyIEP Service as follows:

I. SYSTEM OVERVIEW

PCG will work with SCHOOL SYSTEM to implement an Internet-based, special education tool (“EasyIEP”) to assist administrators and instructional personnel who manage and develop Individual Education Plans. SCHOOL SYSTEM agrees to accept EasyIEP as is, without further customization or technical development beyond what is required by the State of North Carolina as agreed to by PCG and SCHOOL SYSTEM beforehand.

PCG will establish Advanced Reporting functionality into the comprehensive system provided to SCHOOL SYSTEM beginning in the 2013-2014 School Year. Advanced Reporting is a special feature which allows users to run existing reports and to create and modify reports in order to address specific data collection needs. The technology can be used to support the gathering of data necessary for the state required Child Count as well as other reporting needs.

II. DOCUMENTS

SCHOOL SYSTEM agrees to use the uniform set of IEP-related documents, if any, that is recommended by the State. Subsequent changes to the State uniform documents, after the Effective Date, require the approval of PCG for use with EasyIEP.

EasyIEP documents utilize information in the designated School System database. School System information such as logo, name, address, and phone number will automatically be placed into the documents for greater efficiency.

III. REPORTS

SCHOOL SYSTEM agrees to use the following set of standard reports to facilitate information gathering and support pricing economies of scale. There reports shall include, but are not limited to:

- Service Log
- Active Student List (PDF)
- Projected/Missed IEP Meetings
- Projected/Missed Eligibility Meetings
- Recent Logins
- User List
- Hours Logged per User
- Usage Report
- Compliance Summary
- IEP History Report
- Finalized IEP Count
- Accommodation Report
- State Test Participation Report

- Duplicate Student Report
- Contact Log Report

As part of the service under the Agreement, PCG will set up the Advanced Reporting service. Advanced Reporting, as detailed in the System Overview, above, is an ad hoc reporting application that allows users to run existing reports, and to create and modify other reports in order to address specific special education student data needs. PCG agrees to set up the Advanced Reporting service for the 2013-2014 school year. The following reporting options shall be available:

- Management and Compliance Reports
- Child Count Reporting
- Accommodations Reporting
- State Exit Report

IV. TRAINING

In the initial term of the contract (January 1, 2012 through June 30, 2013), PCG will provide two days of training sessions. Each training session will last up to three hours and be divided into two parts:

- Lecture (EasyIEP demo for relevant users)
- Hands-on practice

The Lecture portion will require two hours of time to complete, and the hands-on practice session will require approximately one hour or until all trainees have finished. Administrative Training times will be shorter in length.

PCG shall provide any additional training required as a result of a New Release, Upgrade, or Update offered to and accepted by School System, at no additional charge.

Additional training of School System staff may be provided to School System at a mutually agreed upon cost.

V. OPERATIONS

PCG provides EasyIEP and its individual modules as a complete service. The District is not required to purchase or install any software on their computers with the exception of an Internet browser and the Adobe Acrobat Reader®.

- A. Server Hardware: PCG will provide an appropriate server(s) for SCHOOL SYSTEM.
- B. Server Software: PCG will provide all server and database software for SCHOOL SYSTEM.
- C. Server Administration: PCG will provide all server administration including database back up, system account management, system security, and system maintenance.

- D. Server Internet Connection: PCG will provide the connection of the server to the Internet at an appropriate speed to carry SCHOOL SYSTEM traffic at no additional cost.
- E. SCHOOL SYSTEM responsibilities:
 - (i) Connection to the Internet for its users
 - (ii) Computer hardware for its users
 - (iii) Browser software and browser software configuration
 - (iv) Installation and configuration of the Adobe Acrobat Reader®
 - (v) Site for training with an appropriately configured computer for each trainee and one additional computer for the trainer
 - (vi) System start up information as detailed in the system start up section of this document.

VI. SYSTEM STARTUP

System Startup is the process by which a SCHOOL SYSTEM's service is established. The goal of System Startup is to import as much information as possible to EasyIEP™ so that SCHOOL SYSTEM need not perform excessive manual data entry.

PCG has developed a standard set of import stubs for the data elements required by EasyIEP™. The main categories of data imports include:

- A. Student Information
- B. User Information
- C. School Information
- D. Assessments
- E. Accommodations (if formalized)
- F. Annual Goals (if available)
- G. Objectives/Benchmarks (if available)
- H. Special Education Services
- I. Related Services
- J. Transition Services (if available)

Often this data may be exported from existing database(s) or spreadsheets. PCG will assist SCHOOL SYSTEM in populating the spreadsheets by providing technical advice and consulting, but it is the responsibility of SCHOOL SYSTEM to populate the database(s) and spreadsheets.

SCHOOL SYSTEM shall designate project manager(s) to coordinate internal SCHOOL SYSTEM activities of the project implementation and ongoing project maintenance and support. This project manager(s) will also serve as the primary contact person for PCG for greater efficiency across EasyIEP services.

VII. ONGOING USER SUPPORT

SCHOOL SYSTEM agrees to be the first tier resource for user support. First tier means that all initial calls and emails will initially be assigned to a SCHOOL SYSTEM representative and all business process related questions will be addressed. If the call cannot be answered by the SCHOOL SYSTEM's first level support staff, PCG provides toll free telephone and email support. PCG will make available qualified personnel to SCHOOL SYSTEM during the Term to provide technical support to SCHOOL SYSTEM. Such personnel will be skilled in the functioning and application of the EasyIEP service sufficient to answer questions and provide support.

- A. Email support will be provided via the email links on EasyIEP's Message Board page.
- B. Phone support will be provided via a toll free or local number. This number will connect the SCHOOL SYSTEM Contact with PCG's help desk. Phone support will be available during the hours of 9:00 AM and 5:00 PM local time.

VIII. NEW VERSIONS AND RELEASES

New core versions and releases of EasyIEP issued during the term of the Agreement will be provided to SCHOOL SYSTEM, along any additional training required as a result of the new version or release at no additional charge.

EXHIBIT B2: COMPENSATION

Subject to EXHIBIT B1 and the other terms and conditions of this Agreement, SCHOOL SYSTEM shall compensate PCG in the following amounts:

I. Annual Fee

EasyIEP™ is a fixed pricing fee as shown in the table below.

| Pricing | Feb 2012 – June 2013 (17 months) | July 2013 – June 2014 | July 2014 – June 2015* |
|--------------------|--|-------------------------|--------------------------|
| EasyIEP | \$15,583 | \$11,000 | \$11,000* |
| Advanced Reporting | N/A | \$3.50 per SPED Student | \$3.50 per SPED Student* |
| Invoice Submission | Mar 1, 2012 – \$4,583 (5 months) Oct 1, 2012 – \$11,000 (12 months) | October 1, 2013 | October 1, 2014 |

* For each Renewal Term beginning in 2014-15, the EasyIEP and Advanced Reporting fees shall be 105% of the fee charged in the previous Renewal Term. The Advanced Reporting student count shall be based on the December 1 Headcount taken during the previous Term. PCG shall submit to SCHOOL SYSTEM an invoice on October 1 of each such term (except during the first term, in which SCHOOL SYSTEM will receive invoices on March 1 and October 1). Payments shall be due 30 days upon receipt of invoice.

C. Additional Fees

Fees for additional training, features, or work performed under this Agreement may be agreed to through amendments to this Agreement.

**CONTRACT FOR CONSULTING SERVICES
LICENSE AGREEMENT AND MEDICAID BILLING SERVICES
Montgomery County Schools**

This Agreement (“the Agreement”) entered into as of December 6, 2011 (the “Effective Date”) by and between MONTGOMERY COUNTY SCHOOLS (“SCHOOL SYSTEM”) and Public Consulting Group, Inc. (“PCG”), to provide Medicaid Billing Services and license to access EasyIEP, an Internet-based special education tool.

WHEREAS, SCHOOL SYSTEM provides school-based health-related services to students including special-needs students; and

WHEREAS, SCHOOL SYSTEM requires assistance in billing Medicaid for covered services that are provided to eligible students, and in collecting amounts billed; and

WHEREAS, PCG desires to provide to SCHOOL SYSTEM an Internet-based special education tool (“EasyIEP”) to assist SCHOOL SYSTEM with the reporting requirements of the Individuals with Disabilities in Education Act (“IDEA”), preparing Individualized Education Plans (“IEP”), and to grant a license to access PCG’s related proprietary systems and documentation; and

WHEREAS, SCHOOL SYSTEM may wish to engage PCG to provide other goods and services;

WHEREAS, PCG has demonstrated its ability and expertise in these areas; and

WHEREAS, PCG is able and willing to perform such services;

NOW THEREFORE, the parties hereto mutually agree as follows:

I. SCOPE OF SERVICES

PCG shall perform the services described in the attached EXHIBITS in accordance with and subject to the terms and conditions also described in the attached EXHIBITS:

- EXHIBIT A BILLING SERVICES: Fee-for-Service, Medicaid Administrative Claiming (MAC) and Cost Reporting
- EXHIBIT B LICENSE AGREEMENT: EasyIEP

II. TERM

- A. Initial Term. The initial term of this Agreement (the “Initial Term”) shall commence on the Effective Date and shall end on June 30, 2013.
- B. Renewal Term. Following the Initial Term, SCHOOL SYSTEM and PCG reserve the right to extend this Agreement for a one-year term (a “**Renewal Term**”) based on the

mutual agreement of both parties to the terms associated with the proposed renewal term. Otherwise this Agreement shall terminate on the last day of the Initial Term.

III. EXTENT OF AGREEMENT

- A. This Agreement represents the entire and integrated Agreement between SCHOOL SYSTEM and PCG and supersedes all prior negotiations, representations, or agreements, either written or oral.
- B. This Agreement may be amended or revised only by a written amendment signed by authorized representatives of both SCHOOL SYSTEM and PCG and referencing this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

PUBLIC CONSULTING GROUP, INC.

MONTGOMERY COUNTY SCHOOLS

By: _____
Signature

By: _____
Signature

Printed Name

Printed Name

Title

Title

Date

Date

Public Consulting Group, Inc.
440 South Church Street, Suite 850
Charlotte, North Carolina 28202

Montgomery County Schools
441 Page Street
Troy, North Carolina 27371

EXHIBIT A: BILLING SERVICES for FFS, MAC AND COST REPORTING

As used in this EXHIBIT A, the term “Agreement” means the agreement embodied in this EXHIBIT A only.

I. SCOPE OF SERVICES

- A. PCG shall perform the services described in EXHIBIT A1 in accordance with the terms and conditions of this Agreement.
- B. The parties to this Agreement may expand the scope of this Agreement to include other products or services offered by PCG, and to specify rates of payment for such products or services, by means of amendments to this Agreement.
- C. SCHOOL SYSTEM agrees to implement Fee-for-Services beginning on December 6, 2011.
- D. SCHOOL SYSTEM agrees to implement Cost Reporting and Medicaid Administrative Claiming (MAC) services beginning in July 2012.

II. COMPENSATION, PAYMENT, AND BILLING PROCEDURE

- A. SCHOOL SYSTEM shall compensate PCG for services rendered under this Agreement as set out in EXHIBIT A2 on the basis of invoices that are proper in form and execution.
- B. PCG shall invoice SCHOOL SYSTEM only after reimbursement has been received by SCHOOL SYSTEM. Each invoice shall state the nature of the reimbursement received, the date of reimbursement, and the time period of the services provided by PCG.
- C. SCHOOL SYSTEM shall pay PCG interest at the annual rate of 10% on all fee amounts that are not paid within thirty (30) days of the due date, calculated from the due date to the date that payment is received, unless state law prohibits the payment of interest or requires a lower percentage amount, in which case such lower percentage amount shall apply.
- D. If a reimbursement is disallowed after it was paid to SCHOOL SYSTEM, PCG shall return to SCHOOL SYSTEM any fees that were paid to PCG by SCHOOL SYSTEM with respect to the disallowed reimbursement.
- E. Upon termination of the Agreement at the end of the Term or pursuant to Section VI, PCG shall be entitled to payment for services provided prior to termination. The parties acknowledge that one or more invoices may be submitted by PCG after the termination date, following reimbursements received by SCHOOL SYSTEM on account of such services.

III. RECORDS

- A.** PCG shall allow SCHOOL SYSTEM and any of its duly authorized representatives or agents reasonable access to any records of PCG that are pertinent to this Agreement for the purposes of audits or examinations.
- B.** PCG shall maintain its records relating to this Agreement for a period of at least five (5) years from the date of service. If PCG carries out any of the duties of this Agreement through a subcontract, such subcontract shall provide that the subcontractor likewise shall maintain such records for a period of at least five (5) years from the date of service.

IV. CONFIDENTIALITY

- A.** The parties recognize that this Agreement concerns the use of information subject to federal and state laws including the Family Educational Rights and Privacy Act (“**FERPA**”) and the Individuals with Disabilities Education Act (“**IDEA**”).
- B.** The parties shall comply with the requirements of applicable federal and state laws relating to the confidentiality of information, and agree to amend this Agreement as may be necessary to reflect changes in the applicable law.
- C.** PCG shall request from SCHOOL SYSTEM, and SCHOOL SYSTEM shall provide to PCG, only such information as is reasonably necessary to effectuate the purposes of this Agreement. PCG shall take steps to safeguard all confidential information that it receives or creates pursuant to this Agreement. PCG shall make available to SCHOOL SYSTEM its written policies and procedures for the security of confidential information subject to this Agreement.
- D.** PCG shall not use confidential information received from SCHOOL SYSTEM identifying individual students for any purpose other than the purposes of this Agreement or other purposes expressly directed or allowed by the SCHOOL SYSTEM in a writing signed by SCHOOL SYSTEM, and shall immediately notify SCHOOL SYSTEM if such confidential information is subpoenaed or requested by a third-party, or is improperly used, copied, or removed.
- E.** If SCHOOL SYSTEM determines it necessary in order to comply with its obligations under law, SCHOOL SYSTEM may examine facilities, systems, procedures, and records of PCG to the extent necessary in order to confirm the adequacy of security measures.
- F.** Upon termination of this Agreement, PCG shall use reasonable and secure means to return or destroy (as directed in writing by SCHOOL SYSTEM) all documentary information protected by federal or state confidentiality laws that was received or created by PCG under this Agreement. To the extent that destruction or return is not feasible, PCG will continue to extend the protections of the Agreement to such information and limit its further use, until such time as destruction or return is feasible.

- G. Nothing in this Agreement is intended to confer any rights, remedies, obligations, or liabilities upon anyone other than SCHOOL SYSTEM, PCG, and their respective successors and assigns.

V. **TERMINATION**

This Agreement may be terminated before the end of the term specified in Section II, Page 2 of the Contract for Consulting Services, as follows:

- A. **Without Cause:** Either party may terminate this Agreement by giving written notice to the other party at least thirty (30) calendar days prior to the effective date of termination as stated in the notice, or such other period as is mutually agreed in advance by the parties.
- B. **For Cause:** Either party may terminate this Agreement if the other party materially breaches its terms. This provision applies only if the non-breaching party provides written notice to the breaching party, and allows at least seven (7) calendar days to cure the breach before the effective date of termination stated in the notice.
- C. **Emergency:** If SCHOOL SYSTEM reasonably determines that immediate action is necessary to protect state and/or federal funds or property or to protect persons from injury, SCHOOL SYSTEM may terminate or suspend this Agreement by providing written notice to PCG stating the grounds for the SCHOOL SYSTEM's action. Such termination or suspension action shall be effective upon receipt of the written notice by PCG.

VI. **OWNERSHIP INTERESTS AND LICENSE**

- A. Ownership of EasyTrac™ and all other software, trademarks, and intellectual property of PCG is not conveyed to SCHOOL SYSTEM unless specifically conveyed to SCHOOL SYSTEM by means of a written amendment to this Agreement or a separate written contract referencing this Agreement. EasyTrac™ is licensed to SCHOOL SYSTEM only during the term of this Agreement and only for use by SCHOOL SYSTEM for purposes of this Agreement.
- B. SCHOOL SYSTEM shall not use PCG software, trademarks, or other intellectual property except for purposes of this Agreement, and shall not copy or transfer such software, trademarks, or other intellectual property to any third party unless specifically authorized by PCG in a written amendment to this Agreement or a separate written contract referencing this Agreement.

VII. **LIABILITY AND INSURANCE**

- A. PCG shall indemnify and hold harmless SCHOOL SYSTEM, its officers, agents, employees, and assigns from and against all claims, losses, costs, damages, expenses, reasonable attorneys' fees, and liability that any of them may sustain, up to the total amount of fees paid to PCG:
- (i) Arising out of any failure by PCG to comply with any applicable law, ordinance, regulation, or industry standard; or

(ii) Arising out of any breach by PCG of a provision of this Agreement.

- B. PCG will maintain adequate insurance coverage for purposes of this Agreement, including commercial general liability, worker's compensation, and errors and omissions liability insurance. PCG will provide to SCHOOL SYSTEM a certificate of insurance upon request. Such certificate shall provide for thirty (30) days notice prior to modification of terms or termination.

VIII. SUCCESSORS AND ASSIGNEES

- A. SCHOOL SYSTEM and PCG each binds itself, its associates, partners, successors, assigns, and legal representatives to the other party to this Agreement with respect to all covenants of this Agreement.
- B. Neither SCHOOL SYSTEM nor PCG shall assign any interest in this Agreement or transfer any interest in the same (whether by assignment or notation) without prior written approval of the other party.

IX. EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION

During the performance of this Agreement, PCG agrees as follows:

- A. PCG will not discriminate against any employee or applicant for employment because of race, color, religious creed, gender, marital status, age, sexual orientation, national origin, veteran status, disabling condition, or any other protected status. Such equal-opportunity and non-discriminatory actions shall include, but not be limited to, the following: recruitment, hiring, training, promotion, compensation, benefits, transfers, layoffs, return from layoffs, and company-sponsored training, education, and social/recreational programs. PCG agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. PCG will, in all solicitations, or advertisements for employees placed by or on behalf of PCG, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, gender, marital status, age, sexual orientation, national origin, veteran status, disabling condition, or any other protected status.

X. CONFLICT OF INTEREST

PCG covenants that it has no direct or indirect interest that would conflict with its performance of the Agreement. PCG further covenants that in the performance of this Agreement, no person having such interest shall be employed by PCG.

XI. APPLICABLE LAW AND EXCLUSIVE FORUM

This Agreement shall be governed by the law of the State of North Carolina, and any civil action arising under this Agreement shall be brought in that state.

XII. COMPLIANCE WITH LAWS

- A.** The parties shall comply with all applicable federal and state laws and regulations.
- B.** This Agreement and the transactions contemplated hereby are intended to comply with all applicable federal and state laws and regulations including but not limited to fraud and abuse laws. In the event that this Agreement or any of the transactions contemplated hereby are determined not to be in compliance with such laws and regulations, PCG and SCHOOL SYSTEM shall negotiate in good faith to modify the terms and provisions of this Agreement to remedy any prior noncompliance. If compliance cannot reasonably be achieved, this Agreement shall terminate at the election of either party and neither party shall have any further rights or obligations hereunder, except as otherwise provided herein; provided, however, that PCG and SCHOOL SYSTEM shall take all practicable action to remedy any noncompliance, if possible, including but not limited to repayment or return of any money or value received.
- C.** This Agreement is intended to be interpreted as necessary to implement and comply with federal and state laws relating to confidentiality of health information and student information. The parties agree that any ambiguity in this Agreement is to be resolved in favor of a meaning that complies with and is consistent with such laws.

XIII. PROCUREMENT

- A.** SCHOOL SYSTEM is solely responsible for its compliance with applicable procurement laws and regulations.
- B.** To the extent specifically authorized by applicable procurement laws and regulations, this Agreement may be utilized by another SCHOOL SYSTEM or other entity for purposes of its own authority to contract with PCG. The terms of such resulting contract may differ from this Agreement, and SCHOOL SYSTEM assumes no authority, liability, or obligation to PCG or to any other SCHOOL SYSTEM or other entity with respect to any such resulting contract.

EXHIBIT A1: SERVICES

Subject to the terms and conditions of this Agreement, PCG will provide the following fee-for-service billing and Medicaid administrative claiming services:

I. FFS PROJECT STARTUP

A. PCG meets with the SCHOOL SYSTEM.

1. Meet with the Superintendent's project manager to:
 - a. Confirm procedures for managing, controlling, and coordinating all work and project results
 - b. Finalize the project scope and objectives
 - c. Identify key district personnel available to resolve technical and operational questions
2. Identify county and school contacts with state and federal agencies
3. Establish protocols for representing the District at any and all meetings related to this engagement

B. Facilitate District-wide Project Involvement

PCG will coordinate the actions of:

1. Superintendent's Office
2. District Financial Operations
3. Special Education Department

II. DATA COLLECTION

PCG will conduct data collection, and will request operational and financial information from the District on:

- A.** Schools
- B.** Students
- C.** Clinicians
- D.** Services
- E.** Time Periods of Service

- F. IEP Start and End Dates

III. START-UP OF AUTOMATED DOCUMENTATION SYSTEM

PCG will load support tables and determine the best approach (e.g., data migration, raw data entry) for loading all data support tables on the project billing management system, according to:

- A. Availability of Data in Electronic Format
- B. Quality of Data in Electronic Format
- C. Quantity of Data in Electronic Format
- D. Volume of Hardcopy Data
- E. Legibility of Hardcopy Data
- F. Accuracy of Hardcopy Data

IV. TRAINING

PCG will provide two days of training to SCHOOL SYSTEM related to the EasyTRAC™ system. The first training day will be offered to SCHOOL SYSTEM in January 2012 and will consist of one (1) Train the Trainer session, and one (1) Administrator training session. A second training day will be offered to SCHOOL SYSTEM in July 2012 and consist of one (1) Train the Trainer session, and one (1) Administrator training session. Individual training sessions are provided in sessions to accommodate no more than 30 trainees at one particular time.

Each training session will be divided into two parts:

- A. Lecture (approximately 1-2 hours)
- B. Hands-on practice (approximately 1 hour)

Training may be coordinated with other PCG training, if any, that also is being provided to SCHOOL SYSTEM.

V. OPERATIONS

PCG provides EasyTrac™ as a complete service. The District is not required to purchase or install any software on their computers with the exception of an Internet browser and the Adobe Acrobat Reader®.

- A. Server Hardware: PCG will provide an appropriate server(s) for SCHOOL SYSTEM.
- B. Server Software: PCG will provide all server and database software for SCHOOL SYSTEM.

- C. Server Administration: PCG will provide all server administration including database back up, system account management, system security, and system maintenance.
- D. Server Internet Connection: PCG will provide the connection of the server to the Internet at an appropriate speed to carry SCHOOL SYSTEM traffic at no additional cost.
- E. SCHOOL SYSTEM responsibilities:
 - 1. Connection to the Internet for its users
 - 2. Computer hardware for its users
 - 3. Browser software and browser software configuration
 - 4. Installation and configuration of the Adobe Acrobat Reader®
 - 5. Site for training with an appropriately configured computer for each trainee and one additional computer for the trainer
 - 6. System start up information as detailed in the system start up section of this document.

VI. EASYTRAC™ SYSTEM STARTUP

System Startup is the process by which a SCHOOL SYSTEM's EasyTrac™ service is established. The goal of System Startup is to import as much information as possible to the EasyTrac™ system so that SCHOOL SYSTEM need not perform excessive manual data entry.

PCG has developed a standard set of import stubs for the data elements required by EasyTrac™. The main categories of data imports include:

- A. Student Information
- B. User Information
- C. School Information
- D. Related Services

Often this data may be exported from existing database(s) or spreadsheets. PCG will assist SCHOOL SYSTEM in populating the spreadsheets by providing technical advice and consulting, but it is the responsibility of SCHOOL SYSTEM to populate the database(s) and spreadsheets.

VII. INTERFACE TO DISTRICT DATABASE(S)

PCG will provide an interface to the SCHOOL SYSTEM student information database at such time as a specification can be developed. Once the database interface specification is complete,

PCG will develop, test, and make the interface operational. The goal of this interface is to exchange information with the SCHOOL SYSTEM student information system to reduce the amount of data entry and to keep the systems (EasyTracTM and the SCHOOL SYSTEM database) synchronized. Additional interfaces may be established as requested by the SCHOOL SYSTEM. There will be an incremental charge for each additional interface.

VIII. ONGOING USER SUPPORT

SCHOOL SYSTEM agrees to be the first tier resource for user support. First tier means that all initial calls and emails will initially be assigned to a SCHOOL SYSTEM representative and all business process related questions will be addressed. If the call cannot be answered by the SCHOOL SYSTEM's first level support staff, PCG provides toll free telephone and email support. PCG will make available qualified personnel to SCHOOL SYSTEM during the Term to provide technical support to SCHOOL SYSTEM. Such personnel will be skilled in the functioning and application of the EasyTRACTM service sufficient to answer questions and provide support.

- A. Email support will be provided via the email links on EasyTRACTM's Message Board page.
- B. Phone support will be provided via a toll free or local number. This number will connect the SCHOOL SYSTEM Contact with PCG EasyTRACTM's help desk. Phone support will be available during the hours of 9:00 AM and 5:00 PM local time.

IX. COST REPORT

Upon receipt of a signed written request by SCHOOL SYSTEM, PCG will assist SCHOOL SYSTEM with data collection, analysis, and preparation of a Medicaid Cost Report to be submitted to the State Medicaid agency. PCG will comply with all relevant federal and state statutes and will complete the following functions:

- A. PCG will provide a cost accumulation to perform reconciliation to annual financial statements.
- B. PCG will provide Administrative Claiming Time Study Management to reconcile qualified providers to time study roster, in order to improve revenue (add unclaimed staff) and compliance (ensure roster matches claim).
- C. PCG will determine Medicaid Fee-for-Service Billing Review by procedure code to determine cost by service and to identify trends by staff category.
- D. PCG will calculate the Medicaid and SPED Eligibility Ratios with the most accurate count obtained through match of eligibility to official headcount.
- E. PCG will complete the Annual Cost Report for submittal to the State Medicaid agency.

X. NEW VERSIONS AND RELEASES

New core versions and releases of EasyTrac[™] issued during the term of the Agreement will be provided to SCHOOL SYSTEM, along any additional training required as a result of the new version or release at no additional charge.

XI. CLAIMS

- A. Based on the information entered on EasyTrac[™] by SCHOOL SYSTEM, PCG will develop, process, generate, and submit reimbursement claims to Medicaid as appropriate on behalf of SCHOOL SYSTEM.
- B. SCHOOL SYSTEM will complete a PCG Compliance Checklist to select options with respect to claims.
- C. If SCHOOL SYSTEM asks PCG to audit claims or to use additional information, SCHOOL SYSTEM and PCG first shall agree in writing as to the terms of such audit or use. If such audit or additional information indicates that a claim was not properly made, PCG will void the claim.
- D. PCG is not obligated to continue to submit claims in project areas that do not generate sufficient Incremental Revenue to SCHOOL SYSTEM, as defined in Exhibit B.

XII. MEDICAID ADMINISTRATIVE SERVICES

A. PROJECT STARTUP

- 1. PCG will send a Medicaid Administrative Claiming (“MAC”) Welcome Packet to SCHOOL DISTRICT including the following:
 - i. MAC Contact and Calendar
 - ii. MAC SCHOOL DISTRICT Contact
 - iii. MAC Participation Guide
 - iv. MAC Roster Update Guide
 - v. MAC Financial Guide
- 2. The SCHOOL DISTRICT will identify its MAC SCHOOL DISTRICT Contact and MAC Financial Contact who will work with PCG.
- 3. PCG will establish a protocol for representing the SCHOOL DISTRICT at any and all meetings related to this engagement.

B. QUARTERLY TASKS

- 1. Roster Development Tasks
PCG will open the new quarter in the random moment time study (“RMTS”) system so the SCHOOL DISTRICT can review their current roster and provide updates as necessary.

2. The SCHOOL DISTRICT will update the participant roster in the RMTS system and certify the list within the required time frame.

C. MAC Time Study Tasks

1. PCG will randomly select time study participants and notify the SCHOOL DISTRICT Contact.
2. Time study participants will complete MAC training and any sampled moments in the time required.
3. PCG will follow-up with MAC SCHOOL DISTRICT Contact regarding any missing/incomplete time studies.
4. PCG's trained coders will assign activity codes to completed time study sample moments.

D. MAC Financial Tasks

1. PCG will send MAC Financial Contact access to the financial data collection site to complete the quarterly financial data submission.
2. MAC Financial Contact will complete the financial reporting in the allowed time frame.
3. PCG will complete quality check of the submitted financial data and notify the contact of any questions or issues.
4. MAC Financial Contact will respond to the questions or issues regarding the submitted quarterly financial data.

E. MAC Claim Submission Tasks

1. PCG will prepare quarterly claims once the following components become available:
 - a. Time study results
 - b. The SCHOOL DISTRICT completed financial file
 - c. The SCHOOL DISTRICT's Indirect Cost Rate (ICR)
 - d. The SCHOOL DISTRICT's Medicaid Eligibility Rate (MER)
2. PCG will send District Contact a Claim Certification Statement and claim information.
3. District Contact will return signed original Claim Certification Statements to PCG.
4. PCG will send claims to NC Department of Public Instruction (DPI) for payment on behalf of the SCHOOL DISTRICT.
5. SCHOOL DISTRICT will receive claim amounts directly from DPI.

F. PCG will provide ongoing training for all SCHOOL DISTRICT RMTS participants.

EXHIBIT A2: COMPENSATION

Subject to the terms and conditions of this Agreement, SCHOOL SYSTEM shall pay PCG the following fees for services described in Exhibit A1.

Public Consulting Group, Inc., will be compensated using a performance based fee of 15% of Fee-for-Service and Cost Reporting incremental revenue collected by the SCHOOL DISTRICT, for medical and health-related services provided to school children which have been billed and reimbursed as is detailed in this Exhibit A1, Section I through Section XI. .

Subject to the terms and conditions of this agreement, SCHOOL DISTRICT shall pay PCG a fixed fee of \$22,500 annually for Medicaid Administrative Claiming (MAC) services described in Exhibit A1 Section XII. PCG shall invoice SCHOOL DISTRICT on a quarterly basis for fees and services due hereunder. Payment shall be due within 30 days of the date invoiced.

- A. The fee shall be applied to all Incremental Revenue collected by the SCHOOL SYSTEM. "Incremental Revenue" is defined as any revenue to SCHOOL SYSTEM, including all reimbursements and accrued interest attributable to revenues derived from claims that are submitted by PCG pursuant to Exhibit A. These reimbursements include any settlements from the cost reporting process irrespective of whether PCG participated in the development and submission of the cost report.
- B. PCG will not be obligated to continue work in project areas that do not generate significant Incremental Revenue to SCHOOL SYSTEM. Conversely, PCG is obligated to continue to work in project areas that do generate significant Incremental Revenue to SCHOOL SYSTEM.
- C. Upon agreement with SCHOOL SYSTEM, PCG will convert from a performance-based fee to a flat fee if federal law at any time prohibits or restricts contingency compensation or if PCG and SCHOOL SYSTEM agree that a flat fee would be more appropriate.
- D. Upon agreement with SCHOOL SYSTEM, PCG may establish a new performance-based percentage for revenue maximization activities related to services not provided under this Agreement.
- E. At its discretion, SCHOOL SYSTEM may withhold up to five percent (5%) of all payments to PCG, up to a maximum of one thousand dollars (\$1,000.00), until the final day of the Agreement in order to ensure satisfactory completion.

EXHIBIT B: LICENSE AGREEMENT for EasyIEP™

As used in this EXHIBIT B, the term “Agreement” embodies agreement used in this EXHIBIT B only.

I. SCOPE OF SERVICES

- A. PCG shall perform the services described in the attached EXHIBIT B1 and B2, in accordance with the terms and conditions of this Agreement.
- B. The parties to this Agreement may expand the scope of this Agreement to include other products or services offered by PCG, and to specify rates of payment for such products or services, by means of amendments to this Agreement.

II. DEFINITIONS

In addition to the terms defined elsewhere in this Agreement, terms appearing in initial capital letters shall have the following meanings:

- A. **“Confidential Information”** means information designated or treated as confidential by either party, or which under the circumstances surrounding disclosure should in good faith be treated as confidential, including but not limited to: (a) computer programs, electronic codes, algorithms, know-how, formulas, processes, ideas, data, inventions (whether or not subject to patent or copyright), schematics, teaching and development techniques, trade secrets, improvements, research projects, and code; (b) information about costs, profits, markets, sales, customers, or clients; (c) technical, business, and financial plans; (d) employee personnel files and compensation information; (e) discoveries, developments, designs, improvements, regardless of the form of communication in each case, including extracts or summaries; and (f) any record (whether in print, electronic, or any other medium) maintained by SCHOOL SYSTEM, a SCHOOL SYSTEM employee or agent, or a party acting on SCHOOL SYSTEM’s behalf, which is directly related to an identified student. “Confidential Information” also specifically includes EasyIEP, any third-party information disclosed to either party under obligations of confidentiality, and the identity of or any medical, financial, or personal information pertaining to anyone within PCG or SCHOOL SYSTEM. Notwithstanding the foregoing, however, “Confidential Information” does not include information that: (i) was rightfully in possession of or known to the receiving party without any obligation of confidentiality prior to receiving it from the disclosing party; (ii) is, or subsequently becomes, legally and publicly available without breach of this Agreement; (iii) is rightfully obtained by the receiving party from a source other than the disclosing party without any obligation of confidentiality; or (iv) is disclosed by the receiving party under a valid order of a court or government agency, provided that the receiving party provides prior written notice to the disclosing party of such obligation and the opportunity to oppose such disclosure.
- B. **“Documentation”** means all technical information, training materials, instructions, manuals, and diagrams (in printed, electronic, or other media) pertaining to the EasyIEP Service.

- C. **“EasyIEP Service”** means: (i) the Internet-based services identified in this Agreement; (ii) all products related to such services; (iii) all New Releases, Updates, and Upgrades applicable to the foregoing and offered to SCHOOL SYSTEM by PCG; and (iv) the Documentation developed by PCG for distribution and use in combination with the foregoing.
- D. **“Intellectual Property Rights”** means patent rights, copyrights, trade secret rights, trademark rights, and any other intellectual property rights recognized by the law of each applicable jurisdiction in which PCG may market or license the EasyIEP Service.
- E. **“New Releases”** means any new revision of EasyIEP Service that includes significant enhancements which add new features to the EasyIEP Service and which generally will be designated by a new version number either to the left of the decimal point (e.g., from v2.03 to v3.00) or one decimal place to the right of the decimal point (e.g., from v2.03 to v2.10).
- F. **“Permitted Use”** means use of the EasyIEP Service by employees, contractors, and others affiliated with or authorized by SCHOOL SYSTEM only for SCHOOL SYSTEM’s internal education-related purposes.
- G. **“SCHOOL SYSTEM User”** means any employee, contractor, and other authorized user of the “SCHOOL SYSTEM” who will be granted access to the EasyIEP Service.
- H. **“Term”** means collectively and individually the Initial Term and Renewal Terms as defined by Section 2.
- I. **“Trademarks”** means all trademarks, trade names, service marks, and logos now owned or hereinafter acquired by either party, and all other trademarks, trade names, service marks, and logos identifying or used in connection with their product or service offerings, whether or not registered under the laws of a particular jurisdiction or territory.
- J. **“Updates”** means any new revisions and/or modifications made to the EasyIEP Service and/or Documentation in order to correct operational errors.
- K. **“Upgrades”** means any new revision of the EasyIEP Service that includes corrections and minor modifications to existing features and which generally will be designated by a new version number which has changed from the prior number only two places to the right of the decimal point (e.g., from v2.02 to v2.03).

III. **EasyIEP SERVICE**

Subject to the terms and conditions of this Agreement, including SCHOOL SYSTEM’s performance of its obligations hereunder, PCG shall provide the EasyIEP Service to SCHOOL SYSTEM, as more fully described below and in **EXHIBIT B1**.

- A. **Grant of License for EasyIEP Service.** PCG grants to SCHOOL SYSTEM, and SCHOOL SYSTEM accepts, a non-exclusive, non-transferable right and license, during the Term only, to access via the Internet and use the EasyIEP Service to the extent reasonably necessary.

B. Grant of License for Documentation. PCG grants to SCHOOL SYSTEM, and SCHOOL SYSTEM accepts, a non-exclusive, royalty-free license under PCG's copyrights in PCG's Documentation, during the Term only:

- i. to incorporate PCG's Documentation, in whole or in part, into other written materials prepared by or for SCHOOL SYSTEM with respect to the EasyIEP Service; and
- ii. to reproduce and distribute modified and original versions of PCG's Documentation, in hard copy or in an on-line format, as part of SCHOOL SYSTEM's Documentation for the EasyIEP Service, and, if such SCHOOL SYSTEM's Documentation is in an on-line format, allow SCHOOL SYSTEM Users to make print copies of the same.

C. Restrictions on License Grant

- i. SCHOOL SYSTEM shall not use or grant to any person or entity other than authorized SCHOOL SYSTEM Users the right to use the EasyIEP Service. SCHOOL SYSTEM shall not distribute, market, or sublicense the EasyIEP Service, and shall not permit any SCHOOL SYSTEM User or third party to do so.
- ii. SCHOOL SYSTEM shall ensure that appropriate proprietary notices indicating PCG's Intellectual Property Rights in the EasyIEP Service and related Documentation are placed on all copies of written materials distributed by SCHOOL SYSTEM relating thereto. Examples of such documentation include training materials and manuals. SCHOOL SYSTEM shall not remove, modify, or suppress any confidentiality legends or proprietary notices placed on or contained within the EasyIEP Service, and shall not permit any SCHOOL SYSTEM User or third party to do so.
- iii. SCHOOL SYSTEM shall not distribute EasyIEP documentation or intellectual property to any individual or organization that is not part of the SCHOOL SYSTEM or an authorized SCHOOL SYSTEM User, and shall not permit any SCHOOL SYSTEM User or third party to do so.
- iv. SCHOOL SYSTEM shall not transfer, rent, or permit access to the EasyIEP Service to any third party, and shall not permit any SCHOOL SYSTEM User or third party to do so.
- v. SCHOOL SYSTEM shall not modify, decompile, disassemble, or otherwise attempt to reverse engineer the EasyIEP Service or any portion thereof, and shall not permit any SCHOOL SYSTEM User or third party to do so.
- vi. SCHOOL SYSTEM shall not circumvent any security protection within the EasyIEP Service, and shall not permit any SCHOOL SYSTEM User or third party to do so.

D. Reservation of Rights.

- i. Subject to the license rights granted to SCHOOL SYSTEM by this Section 3, all right, title, and interest in and to the EasyIEP Service, including the Intellectual Property Rights and technology inherent in EasyIEP Service, are and at all times will remain the sole and exclusive property of PCG. No right to use, print, copy, distribute, integrate, or display the EasyIEP Service, in whole or in part, is granted in this Agreement, except as is explicitly provided in this Agreement. Nothing contained in this Agreement will directly or indirectly be construed to assign or grant to SCHOOL SYSTEM any right, title, or interest in or to PCG's Intellectual Property Rights or other rights in and to the EasyIEP Service or PCG's Trademarks.
- ii. Except as expressly authorized by this Agreement, SCHOOL SYSTEM shall not use, display, copy, distribute, modify, or sublicense the EasyIEP Service. PCG reserves all rights not expressly granted to SCHOOL SYSTEM by this Agreement.

E. ACCESS TO EasyIEP SERVICE

- i. PCG will provide access to the EasyIEP Service to SCHOOL SYSTEM via a private account accessed through the Internet, from which SCHOOL SYSTEM will be capable of using the EasyIEP Service as permitted by this Agreement. PCG will not provide the Internet connectivity to SCHOOL SYSTEM, and obtaining and maintaining such connectivity will be the sole responsibility of SCHOOL SYSTEM.
- ii. PCG will, as soon as practicable, provide SCHOOL SYSTEM with advance notice of each New Release, Upgrade, or Update for EasyIEP, and advise SCHOOL SYSTEM whether and how such New Release, Upgrade, or Update will be provided to SCHOOL SYSTEM. A New Release, Upgrade, or Update that includes additional features may require an additional charge.

IV. SUPPORT

As set forth more specifically below and in Exhibit B1, PCG shall provide support to SCHOOL SYSTEM during the Term of the Agreement.

- A. General Technical Support.** PCG shall make available qualified personnel to provide technical support to SCHOOL SYSTEM.
- B. E-mail Support.** PCG shall provide e-mail support to SCHOOL SYSTEM via the designated links on the EasyIEP Message Board page.
- C. Telephone Support.** PCG shall provide telephone support via a toll-free telephone number. This number will connect the SCHOOL SYSTEM User with the EasyIEP help desk.

- D. Project Support.** PCG agrees to provide consulting services support to SCHOOL SYSTEM for unique projects on an as-available basis, upon SCHOOL SYSTEM's request and subject to agreed-upon additional compensation.

V. TRAINING

As set forth more specifically in Exhibit B1, PCG shall provide 2 days of training to SCHOOL SYSTEM during the initial Term of the Agreement.

VI. COMPENSATION

In consideration of the licenses and services granted by PCG to SCHOOL SYSTEM under this Agreement, SCHOOL SYSTEM shall pay PCG an Annual License Fee.

- A. Annual Fee.** The Annual Fee for the Initial Term and for each Renewal Term, if any, shall be due and payable to PCG according to the schedule set forth in Exhibit B2.
- B. Refund.** In the event that this Agreement is terminated prior to the expiration of the then-current Term, any prepaid fees shall be non-refundable.
- C. Interest.** SCHOOL SYSTEM shall pay PCG interest at the annual rate of 10% on all fee amounts that are not paid within thirty (30) days of the due date, calculated from the due date to the date that payment is received, unless state law prohibits the payment of interest or requires a lower percentage amount, in which case such lower percentage amount shall apply.

VII. WARRANTIES

- A. Limited Warranty.** PCG represents and warrants that it has the right to license the EasyIEP Service as specified by this Agreement, and that the use of the EasyIEP Service contemplated in this Agreement does not infringe upon, violate, or constitute a misappropriation of any copyright, trademark, trade secret, or any other proprietary right of any third party. Further, PCG represents and warrants that, during the ninety (90) day period following the initial installation of the EasyIEP Service hereunder, and during the ninety (90) day period following the installation of each Update, Upgrade, and New Release hereunder, the EasyIEP Service will operate in accordance with the applicable Documentation, provided that the EasyIEP Service is operated in compliance with such Documentation. Under no circumstances will PCG be responsible for SCHOOL SYSTEM's hardware, software, browsers, or Internet connections that provide access to the EasyIEP Service. PCG shall use reasonable efforts to maintain the EasyIEP Service and to correct any problems that may arise with the use of the EasyIEP Service. PCG's scheduled maintenance of the EasyIEP Service, or the scheduled maintenance of PCG's Internet provider, shall not be deemed a failure to provide the EasyIEP Service.
- B. DISCLAIMER.** PCG SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, WITH RESPECT TO THE EasyIEP PRODUCTS OR ANY OTHER GOODS OR SERVICES PROVIDED BY PCG,

INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

VIII. PROPRIETARY RIGHTS; PROTECTION OF CONFIDENTIAL INFORMATION

- A. Ownership.** SCHOOL SYSTEM acknowledges that PCG owns the EasyIEP Service, that the EasyIEP Service is not generally published, and that the EasyIEP Service embodies the Confidential Information of PCG. All right, title, and interest in and to the EasyIEP Service, including, without limitation, all copyrights, trade secret rights, and other intellectual property rights pertaining in and to the EasyIEP Service shall remain vested in PCG and its third-party licensors. PCG acknowledges that SCHOOL SYSTEM owns all of the data inputted by each SCHOOL SYSTEM User for purposes of creating an Individualized Education Plan and any and all reports produced as a result of using the EasyIEP Service. SCHOOL SYSTEM acknowledges that PCG shall have the right to aggregate any data input by SCHOOL SYSTEM or SCHOOL SYSTEM Users for PCG's own purposes, but shall not use or disclose personal or individual identifying information where the use or disclosure would constitute a breach of a known privacy policy adopted by either PCG or SCHOOL SYSTEM.
- B. Confidentiality Obligations.** Each party agrees that: (i) neither party will disclose to any third party any of the other party's Confidential Information except to the receiving party's employees and contractors with a need to know and who have agreed in writing to confidentiality obligations substantially the same as those set forth herein; (ii) each party will use the same degree of care it uses to maintain the confidentiality of its own information of similar importance in its possession or control, but in no event less than a reasonable degree of care; and (iii) neither party will use or authorize the use of Confidential Information for any purpose other than to fulfill such party's obligations hereunder. Each party agrees that neither party will disclose to any third party any of the terms of this Agreement, which will be treated as Confidential Information, except to the receiving party's employees, contractors, and advisors with a need to know and who have agreed in writing to confidentiality obligations substantially the same as those set forth herein, and neither party will use the terms of this Agreement for any purpose other than to fulfill such party's obligations under this Agreement, except as either party is otherwise required by law. The parties may modify these obligations through express written agreements.
- C. Injunctive Relief.** Each party acknowledges that the other party's Confidential Information contains trade secrets of such other party, the disclosure of which would cause substantial harm to such other party that could not be remedied by the payment of damages alone. Accordingly, such other party will be entitled to seek preliminary and permanent injunctive relief and other equitable relief for any breach of this Section 9.
- D. SCHOOL SYSTEM Duties.** SCHOOL SYSTEM will take reasonable steps to protect the EasyIEP Service from unauthorized access, copying, dissemination, and disclosure, and from other unauthorized use, and will report promptly to PCG any such use of which SCHOOL SYSTEM becomes aware. SCHOOL SYSTEM shall be responsible for the quality, integrity, and accuracy of all data entered and used in connection with the EasyIEP Service, including all deletions of such data by SCHOOL SYSTEM Users.

- E. **PCG Duties.** PCG will take reasonable steps to protect the data that SCHOOL SYSTEM enters as part of its use of the EasyIEP Service. PCG will use technical, administrative, and physical safeguards to protect against unintentional loss and against unauthorized access, destruction, misuse, modification, and disclosure. Although no computer system or information can ever be fully protected against every possible hazard, PCG is committed to providing reasonable and appropriate security controls to protect information against foreseeable hazards. PCG recognizes that SCHOOL SYSTEM data is the property of SCHOOL SYSTEM. Upon contract termination, or at SCHOOL SYSTEM's request, PCG will provide all data to SCHOOL SYSTEM, including all database tables and a description of the table structure. PCG may keep a backup copy of the data unless otherwise agreed by the parties, subject to applicable law.
- F. **Third Party Infringement.** PCG reserves the sole and exclusive right at its discretion to assert claims against third parties for infringement or misappropriation of its Intellectual Property Rights in the EasyIEP Service.

IX. PRODUCT MARKING

- A. **Ownership of PCG Trademarks.** SCHOOL SYSTEM acknowledges that PCG is and shall remain the owner of all right, title, and interest in and to each of PCG's Trademarks in any form or embodiment thereof, and is also the owner of all goodwill associated with PCG's Trademarks. All goodwill generated by SCHOOL SYSTEM use of the EasyIEP Service with respect to PCG's Trademarks shall inure exclusively to the benefit of PCG.
- B. **Infringements.** SCHOOL SYSTEM shall promptly notify PCG of any third-party infringements of any of the PCG Trademarks used in connection with the EasyIEP Service, or any act of unfair competition by third parties relating to the PCG Trademarks, within a reasonable time of SCHOOL SYSTEM's knowledge of such infringements or acts.

X. INDEMNIFICATION

- A. **PCG Indemnification Obligations.** PCG shall defend, indemnify, and hold harmless SCHOOL SYSTEM from and against any suit, proceeding, assertion, damage, cost, liability, and expense (including court costs and reasonable attorneys' fees) incurred as a result of claims by a third party against SCHOOL SYSTEM or its affiliates, employees, or agents arising from or connected with a claim, related to this Agreement, that any EasyIEP Service infringes any valid patent, copyright, trade secret, or other intellectual property right under the laws of the United States, provided that SCHOOL SYSTEM promptly notifies PCG, in writing, of the suit, claim, or proceeding, or threat of suit, claim, or proceeding, and provides PCG with reasonable assistance for the defense of the suit, claim, or proceeding. PCG will have sole control of the defense of any claim and all negotiations for settlement or compromise.
- B. **SCHOOL SYSTEM Indemnification Obligations.** SCHOOL SYSTEM shall defend, indemnify, and hold harmless PCG from and against any suit, proceeding, assertion, damage, cost, liability, and expense (including court costs and reasonable attorneys' fees)

incurred as a result of claims of SCHOOL SYSTEM or third parties against PCG or its affiliates, licensors, suppliers, officers, directors, employees, or agents arising from or connected with SCHOOL SYSTEM's misuse of the EasyIEP Service, unauthorized modification of EasyIEP Service, or unauthorized combination of the EasyIEP Service with any hardware, software, products, data, or other materials not specified or provided by PCG, provided that PCG promptly notifies SCHOOL SYSTEM, in writing, of the suit, claim, or proceeding, or threat of suit, claim, or proceeding, and provides SCHOOL SYSTEM with reasonable assistance for the defense of the suit, claim, or proceeding. SCHOOL SYSTEM will have sole control of the defense of any claim and all negotiations for settlement or compromise.

XI. TERMINATION

- A. Termination.** Notwithstanding the provisions of Section 2, either party may terminate this Agreement for cause on or after the thirtieth (30th) day after such party gives the other party written notice of a material breach by such other party of any obligation hereunder, unless such breach is cured within thirty (30) days following the breaching party's receipt of such written notice.
- B. Effect of Termination.** Upon termination or expiration of this Agreement: (i) all licenses granted to SCHOOL SYSTEM by PCG will terminate; and (ii) all SCHOOL SYSTEM User access to the EasyIEP Service will terminate. PCG will destroy or return to SCHOOL SYSTEM, at the option of SCHOOL SYSTEM, all copies of SCHOOL SYSTEM data entered into the EasyIEP Service.
- C. No Damages for Termination.** NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR DAMAGES OF ANY KIND, INCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS, ON ACCOUNT OF THE TERMINATION OR EXPIRATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS. EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO RECEIVE ANY COMPENSATION OR REPARATIONS ON TERMINATION OR EXPIRATION OF THIS AGREEMENT, OTHER THAN AS EXPRESSLY PROVIDED IN THIS AGREEMENT. Neither party will be liable to the other on account of termination or expiration of this Agreement for reimbursement or damages for the loss of goodwill, prospective profits, or anticipated income, or on account of any expenditures, investments, leases, or commitments made by either party or for any other reason whatsoever based upon or growing out of such termination or expiration.

XII. ADDITIONAL SERVICES

The parties to this Agreement may expand the scope of this Agreement to include other products or services offered by PCG, and to specify rates of payment for such products or services, by means of amendments to this Agreement signed by an authorized representative of each party and referencing this Agreement.

XIII. PROCUREMENT

SCHOOL SYSTEM is solely responsible for its compliance with applicable procurement laws and regulations. To the extent specifically authorized by applicable procurement laws and regulations, this Agreement may be utilized by another SCHOOL SYSTEM or other entity for purposes of its own authority to contract with PCG. The terms of such resulting contract may differ from this Agreement, and SCHOOL SYSTEM assumes no authority, liability, or obligation to PCG or to any other SCHOOL SYSTEM or other entity with respect to any such resulting contract.

XIV. WAIVER AND NONEXCLUSIVE REMEDY

No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights. Except as otherwise specified in this Agreement, the exercise by either party of any remedy under this Agreement is without prejudice to its other remedies under this Agreement or otherwise.

XV. COMPLIANCE WITH LAWS

Each party agrees to comply with all applicable laws, rules, and regulations in connection with its activities under this Agreement.

XVI. ADDITIONAL TERMS

- A. Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns, provided, however, that neither party may assign this Agreement, in whole or in part, without the other party's written consent. Any attempt to assign this Agreement without such consent will be null and void. A change of control of a party will not be deemed an assignment.
- B. Governing Law.** This Agreement is governed by the laws of North Carolina without regard to its conflict of law provisions, and the parties hereby consent to jurisdiction and venue therein.
- C. Severability.** If any provision of this Agreement is found invalid or unenforceable by a court or other tribunal of competent jurisdiction, that provision will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.
- D. Force Majeure.** Neither party will be responsible for any failure to perform due to causes beyond its reasonable control (each a "***Force Majeure***"), including, but not limited to, acts of God, war, terrorism, riot, embargoes, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, or fuel crises, provided that such party gives prompt written notice thereof to the other party. The time for performance will be extended for a period equal to the duration of the Force Majeure, but in no event longer than thirty (30) days.
- E. Notices.** All notices under this Agreement will be deemed given when delivered personally, or when sent by certified or registered U.S. mail, return receipt requested, or by nationally recognized express courier, to the address shown below the signature blocks of

this Agreement or as may otherwise be specified by either party to the other in accordance with this section.

- F. Independent Contractors.** The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.
- G. Entire Agreement.** This Agreement and its exhibits are the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. Provisions of this Agreement may be modified or waived only by a written document executed by authorized representatives of both parties.
- H. Survival.** The provisions of this Agreement which by their nature would continue beyond the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.
- I. Headings.** The various headings and subheadings in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.
- J. Authority.** Each party represents and warrants that it has sufficient rights and authority to enter into this Agreement and that this Agreement violates no previous agreement between each party and any third parties.

EXHIBIT B1: SERVICES

Subject to the terms and conditions of the Agreement, PCG will provide the EasyIEP Service as follows:

I. SYSTEM OVERVIEW

PCG will work with SCHOOL SYSTEM to implement an Internet-based, special education tool (“EasyIEP”) to assist administrators and instructional personnel who manage and develop Individual Education Plans. SCHOOL SYSTEM agrees to accept EasyIEP as is, without further customization or technical development beyond what is required by the State of North Carolina as agreed to by PCG and SCHOOL SYSTEM beforehand.

PCG will establish Advanced Reporting functionality into the comprehensive system provided to SCHOOL SYSTEM beginning in the 2013-2014 School Year. Advanced Reporting is a special feature which allows users to run existing reports and to create and modify reports in order to address specific data collection needs. The technology can be used to support the gathering of data necessary for the state required Child Count as well as other reporting needs.

II. DOCUMENTS

SCHOOL SYSTEM agrees to use the uniform set of IEP-related documents, if any, that is recommended by the State. Subsequent changes to the State uniform documents, after the Effective Date, require the approval of PCG for use with EasyIEP.

EasyIEP documents utilize information in the designated School System database. School System information such as logo, name, address, and phone number will automatically be placed into the documents for greater efficiency.

III. REPORTS

SCHOOL SYSTEM agrees to use the following set of standard reports to facilitate information gathering and support pricing economies of scale. There reports shall include, but are not limited to:

- Service Log
- Active Student List (PDF)
- Projected/Missed IEP Meetings
- Projected/Missed Eligibility Meetings
- Recent Logins
- User List
- Hours Logged per User
- Usage Report
- Compliance Summary
- IEP History Report
- Finalized IEP Count
- Accommodation Report
- State Test Participation Report

- Duplicate Student Report
- Contact Log Report

As part of the service under the Agreement, PCG will set up the Advanced Reporting service. Advanced Reporting, as detailed in the System Overview, above, is an ad hoc reporting application that allows users to run existing reports, and to create and modify other reports in order to address specific special education student data needs. PCG agrees to set up the Advanced Reporting service for the 2013-2014 school year. The following reporting options shall be available:

- Management and Compliance Reports
- Child Count Reporting
- Accommodations Reporting
- State Exit Report

IV. TRAINING

In the initial term of the contract (January 1, 2012 through June 30, 2013), PCG will provide two days of training sessions. Each training session will last up to three hours and be divided into two parts:

- Lecture (EasyIEP demo for relevant users)
- Hands-on practice

The Lecture portion will require two hours of time to complete, and the hands-on practice session will require approximately one hour or until all trainees have finished. Administrative Training times will be shorter in length.

PCG shall provide any additional training required as a result of a New Release, Upgrade, or Update offered to and accepted by School System, at no additional charge.

Additional training of School System staff may be provided to School System at a mutually agreed upon cost.

V. OPERATIONS

PCG provides EasyIEP and its individual modules as a complete service. The District is not required to purchase or install any software on their computers with the exception of an Internet browser and the Adobe Acrobat Reader®.

- A. Server Hardware: PCG will provide an appropriate server(s) for SCHOOL SYSTEM.
- B. Server Software: PCG will provide all server and database software for SCHOOL SYSTEM.
- C. Server Administration: PCG will provide all server administration including database back up, system account management, system security, and system maintenance.

- D. Server Internet Connection: PCG will provide the connection of the server to the Internet at an appropriate speed to carry SCHOOL SYSTEM traffic at no additional cost.
- E. SCHOOL SYSTEM responsibilities:
 - (i) Connection to the Internet for its users
 - (ii) Computer hardware for its users
 - (iii) Browser software and browser software configuration
 - (iv) Installation and configuration of the Adobe Acrobat Reader®
 - (v) Site for training with an appropriately configured computer for each trainee and one additional computer for the trainer
 - (vi) System start up information as detailed in the system start up section of this document.

VI. SYSTEM STARTUP

System Startup is the process by which a SCHOOL SYSTEM's service is established. The goal of System Startup is to import as much information as possible to EasyIEP™ so that SCHOOL SYSTEM need not perform excessive manual data entry.

PCG has developed a standard set of import stubs for the data elements required by EasyIEP™. The main categories of data imports include:

- A. Student Information
- B. User Information
- C. School Information
- D. Assessments
- E. Accommodations (if formalized)
- F. Annual Goals (if available)
- G. Objectives/Benchmarks (if available)
- H. Special Education Services
- I. Related Services
- J. Transition Services (if available)

Often this data may be exported from existing database(s) or spreadsheets. PCG will assist SCHOOL SYSTEM in populating the spreadsheets by providing technical advice and consulting, but it is the responsibility of SCHOOL SYSTEM to populate the database(s) and spreadsheets.

SCHOOL SYSTEM shall designate project manager(s) to coordinate internal SCHOOL SYSTEM activities of the project implementation and ongoing project maintenance and support. This project manager(s) will also serve as the primary contact person for PCG for greater efficiency across EasyIEP services.

VII. ONGOING USER SUPPORT

SCHOOL SYSTEM agrees to be the first tier resource for user support. First tier means that all initial calls and emails will initially be assigned to a SCHOOL SYSTEM representative and all business process related questions will be addressed. If the call cannot be answered by the SCHOOL SYSTEM's first level support staff, PCG provides toll free telephone and email support. PCG will make available qualified personnel to SCHOOL SYSTEM during the Term to provide technical support to SCHOOL SYSTEM. Such personnel will be skilled in the functioning and application of the EasyIEP service sufficient to answer questions and provide support.

- A. Email support will be provided via the email links on EasyIEP's Message Board page.
- B. Phone support will be provided via a toll free or local number. This number will connect the SCHOOL SYSTEM Contact with PCG's help desk. Phone support will be available during the hours of 9:00 AM and 5:00 PM local time.

VIII. NEW VERSIONS AND RELEASES

New core versions and releases of EasyIEP issued during the term of the Agreement will be provided to SCHOOL SYSTEM, along any additional training required as a result of the new version or release at no additional charge.

EXHIBIT B2: COMPENSATION

Subject to EXHIBIT B1 and the other terms and conditions of this Agreement, SCHOOL SYSTEM shall compensate PCG in the following amounts:

I. Annual Fee

EasyIEP™ is a fixed pricing fee as shown in the table below.

| Pricing | Feb 2012 – June 2013 (17 months) | July 2013 – June 2014 | July 2014 – June 2015* |
|--------------------|--|-------------------------|--------------------------|
| EasyIEP | \$15,583 | \$11,000 | \$11,000* |
| Advanced Reporting | N/A | \$3.50 per SPED Student | \$3.50 per SPED Student* |
| Invoice Submission | Mar 1, 2012 – \$4,583 (5 months) Oct 1, 2012 – \$11,000 (12 months) | October 1, 2013 | October 1, 2014 |

* For each Renewal Term beginning in 2014-15, the EasyIEP and Advanced Reporting fees shall be 105% of the fee charged in the previous Renewal Term. The Advanced Reporting student count shall be based on the December 1 Headcount taken during the previous Term. PCG shall submit to SCHOOL SYSTEM an invoice on October 1 of each such term (except during the first term, in which SCHOOL SYSTEM will receive invoices on March 1 and October 1). Payments shall be due 30 days upon receipt of invoice.

C. Additional Fees

Fees for additional training, features, or work performed under this Agreement may be agreed to through amendments to this Agreement.