

**Effective: February 1, 2020**

This Service Agreement ("Agreement") is entered into between Management Information Technology USA, Inc. d/b/a ChildPlus® Software ("ChildPlus") and the organization executing this Agreement and identified on the Order Form as "Customer" on behalf of itself and the agencies or partner organizations identified in the Order Form (each, for purposes of this Agreement, an "Agency"). Customer, together with all such Agencies shall be defined collectively as "Licensee". ChildPlus and Licensee are each referred to as a "Party" and are collectively referred to as the "Parties."

This Agreement will apply to Licensee's use of the Services (as defined below). By accepting this Agreement, either through executing an Order Form that references this Agreement, or by signing this Agreement directly, Customer agrees that Licensees' use of the Services is subject to and bound by these terms and conditions. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to this Agreement. You may not use the Services if you do not have such authority.

**1. Definitions.** Certain capitalized terms, if not otherwise defined on the Order Form, shall have the meanings set forth below in this Section 1.

"Active Participants" means the actual number of current, active program participants whose information is entered into the Licensed Application by Licensee. This definition excludes any participants that are not enrolled (i.e., non-participating family members or participants that are waitlisted, terminated or in a similar inactive status).

"Authorized Users" means administrators, employees and authorized representatives of Licensee who have logins to the Licensed Application.

"Confidential Information" means any material or information relating to a Party's research, development, products, product plans, services, software, developments, inventions, processes, formulas, technologies, designs, drawings, marketing, finances, or other business information or trade secrets that such disclosing Party treats as proprietary or confidential. All Licensee Data shall constitute the Confidential Information of Licensee. Without limiting the foregoing, the software and databases (including any data models, structures, non-Licensee specific data and aggregated statistical data contained therein) of ChildPlus shall constitute

Confidential Information of ChildPlus.

“Documentation” means ChildPlus’ standard user manuals, online help, forms and/or related documentation generally made available to customers of the Licensed Application, whether in print or electronic media, along with any help files available during use of the Licensed Application.

“Fees” means the applicable fees for the Services as set forth on the Order Form.

“Licensed Application” shall mean, collectively, the executable, object code version(s) of the ChildPlus proprietary application software product(s) ordered and paid for by Customer or Licensee pursuant to the Order Form, including any ChildPlus mobile applications downloaded and used by Authorized Users.

“Licensee Data” means any and all information, data, materials, works, expressions or other content that are provided to, uploaded to, stored or otherwise accessible by ChildPlus pursuant to or in connection with this Agreement. All output, copies, reproductions, improvements, modifications, adaptations, translations and other derivative works of, based on, derived from or otherwise using any Licensee Data are themselves also Licensee Data.

“Maintenance and Support Services” means the support services offered by ChildPlus to Licensee.

“Order Form” means the original Order Form attached to or referencing this Agreement and any subsequent Order Form that references this Agreement executed by both Parties to include additional Services or additional Active Participants.

“Personal Information” means any data relating to an identified or identifiable person that is submitted to, or collected by, ChildPlus in connection with the Services or in connection with the provision of the Services to or on behalf of Licensee, when such data is protected as “personal information” or “personally identifiable information” or a similar term under Privacy Laws.

“Privacy Laws” shall mean all applicable federal, state and foreign data protection, privacy and data security laws, as well as applicable regulations and formal directives intended by their nature to have the force of law, including, without limitation, the California Consumer Privacy Act (“CCPA”) but excluding, without limitation, consent decrees.

“Services” means, collectively, the online services provided by the Licensed Application and the Maintenance and Support Services.

“Service Term” means the time period commencing on the Service Commencement Date, as specified on the Order Form, and continuing until the Order Form expires or the Services are terminated as provided in Section 12.

## **2. License and Usage of Services.**

**2.1 Software-as-a-Service License.** Subject to the terms and conditions of this Agreement and the applicable Order Form, ChildPlus hereby grants to Licensee a limited, non-exclusive, non-transferable, non-sublicensable right and license to use the Licensed Application for the Service Term specified on the applicable Order Form for the total number of Active Participants set forth on the applicable Order Form solely for Licensee’s internal operations. For Services hosted at the ChildPlus Data Center, Licensee does not have any rights to physically possess a copy of the Licensed Application. For the avoidance of doubt, Customer shall be responsible for the compliance with the terms and conditions of this Agreement of all Agencies and Authorized Users who access the Licensed Application pursuant to this Agreement or otherwise receive logins to the Licensed Application from Customer, and any act or omission of an Agency or Authorized User that would be a breach of the Agreement if done by Customer will be deemed a breach of the Agreement by Customer. Unless otherwise agreed in writing, only Customer, and no other Agency or Authorized User may take any action to enforce rights and obligations arising from the Agreement.

**2.2 Documentation License.** Subject to the terms and conditions of this Agreement, ChildPlus hereby grants to Licensee a limited, non-exclusive, non-transferable, non-sublicensable right and license during the Service Term to make copies of the Documentation provided by ChildPlus, solely for Licensee’s internal use by Authorized Users. Licensee shall not modify, adapt, translate, publicly display, publish, create derivative works or distribute the Documentation without the prior written approval of ChildPlus.

## **3. Ownership.**

**3.1 ChildPlus’ Intellectual Property Rights.** Licensee acknowledges that ChildPlus (and its licensors, where applicable) own all right, title, and interest, including all patent, copyright, trade secret, trademark, moral rights, mask work rights, and other intellectual property rights (“Intellectual Property Rights”) in and to the Licensed Application (including all components thereof) and the Documentation, as well as any and all suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Licensee or any other party relating to the Services (all of the foregoing being the “Rights”). To the extent that any such Rights are not deemed owned by ChildPlus pursuant to the prior sentence, Licensee hereby irrevocably assigns and transfers all such Rights to ChildPlus. ChildPlus expressly reserves all rights not expressly granted to Licensee in this Agreement. Licensee shall not engage in any act or omission that would impair ChildPlus’ and/or its licensors’ Intellectual Property Rights in the Licensed Application or the Documentation and any other materials, information, processes or subject matter proprietary to ChildPlus.

**3.2.1 Licensee Data.** ChildPlus agrees that it may (a) create, host, maintain, (b) receive from or on behalf of the Customer, or (c) have access to, records or record systems containing Licensee Data. Licensee Data is deemed to be Confidential Information of the Customer. In the event of a conflict or inconsistency between this Section 3.2 and Section 10 on confidentiality, the terms and conditions set forth in this Section 3.2.1 shall govern and control the Licensee Data.

**3.2.2. Data Ownership.** The Customer possesses and retains all right, title, and interest in and to Licensee Data, and ChildPlus’s use and possession thereof is solely on the Customer’s behalf. The Customer may access and copy any

Licensee Data in ChildPlus's possession at any time, and ChildPlus shall reasonably facilitate such access and copying promptly after the Customer's request.

**3.2.3. Access and Use.** Unless it receives the Customer's prior written consent, ChildPlus: (a) shall not access, process, or otherwise use Licensee Data other than as necessary to facilitate the Services; (b) shall not give any of its employees access to Licensee Data except to the extent that such individual needs access to facilitate performance under this Agreement; and (c) shall not give any third party access to Licensee Data, including without limitation ChildPlus's other customers.

**3.2.4. Data Security.** ChildPlus shall implement and maintain a written information security program including appropriate policies, procedures, and risk assessments that are reviewed at least annually. Without limiting ChildPlus's obligations hereunder, ChildPlus shall implement administrative, physical, and technical safeguards to protect Licensee Data from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage that are no less rigorous than accepted industry practices (including the National Institute of Standards and Technology (NIST) Cybersecurity Framework, or other applicable industry standards for information security), and shall ensure that all such safeguards, including the manner in which Licensee Data is created, collected, accessed, received, used, stored, processed, disposed of, and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement. Licensee Data shall be stored in data centers located within the continental United States and shall not be co-mingled with data from other clients of ChildPlus. ChildPlus shall notify the Customer in writing not less than one hundred and eighty (180) days in advance of any changes in the location of Licensee Data if, as a result of the change, Licensee Data will be stored outside of the continental United States.

**3.2.5 Data Breaches.** ChildPlus will promptly report to the Customer any compromise of security that it becomes aware of with regard to Licensee Data. ChildPlus will notify the Customer of any actual or reasonably suspected breach of confidentiality or security with regard to Licensee Data as soon as reasonably practicable, but no later than four (4) hours after ChildPlus becomes aware of such breach. ChildPlus will cooperate with the Customer in investigating the breach, including, but not limited to, the provision of system, application, and access logs, conducting forensics reviews of relevant systems, imaging relevant media, and making personnel available for interview, provided that any such investigation does not unreasonably disrupt ChildPlus's business operations. On notice of any actual or reasonably suspected breach, ChildPlus will institute appropriate controls to maintain and preserve electronic evidence relating to the breach. ChildPlus will reasonably cooperate with the Customer and any regulator or other governmental entity having jurisdiction over the Customer or the Licensee Data relating to ChildPlus's performance of this Agreement and possession and use of the Licensee Data, provided that such cooperation does not unreasonably disrupt ChildPlus's business operations. ChildPlus agrees that it shall not inform any third party or the public of a breach of Licensee Data without first obtaining the Customer's prior written consent. ChildPlus shall reimburse the Customer for actual costs incurred by the Customer in responding to, and mitigating damages caused by any breach hereunder, including all costs of notice and/or remediation.

**3.2.6. Compliance.** Upon the Customer's written request, ChildPlus shall promptly and accurately complete a written information security questionnaire provided by the Customer, or a third party on Customer's behalf, regarding ChildPlus's business practices and information technology environment in relation to all Licensee Data being handled and/or services being provided by ChildPlus to the Customer pursuant to this Agreement. ChildPlus shall fully cooperate with such inquiries. The Customer shall treat the information provided by ChildPlus in the security questionnaire as ChildPlus's Confidential Information.

**3.2.7 Equitable Relief.** ChildPlus acknowledges that monetary damages may be inadequate to compensate for any breach of the provisions of this Section 3. ChildPlus agrees that any such breach or threatened breach may cause irreparable injury to the Customer and that the Customer shall be entitled to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction with respect to the Licensee Data, without proof of actual damages.

**3.2.8 Material Breach.** ChildPlus’s failure to comply with any of the provisions of this Section 12 is a material breach of this Agreement. In such event, and notwithstanding anything in this Agreement to the contrary, the Customer may terminate the Agreement effective immediately upon written notice to ChildPlus without further liability or obligation to ChildPlus.

**3.3 Licensee Data License for DRDP Assessment Features.** Notwithstanding Section 3.2, where the Services include the DRDP Assessment Features, Licensee hereby grants to ChildPlus a perpetual, non-exclusive, transferable, assignable, royalty-free, worldwide license to anonymize Licensee Data from time to time and transfer files of such anonymized Licensee Data to the WestEd Center for Child and Family Studies (WestEd) and its research partners, and its and their successors and assigns, for the purposes of determining participants’ assessment results and for ongoing research activities related to the DRDP assessment.

#### **4. ChildPlus Obligations.**

**4.1 Service Level.** ChildPlus will provide the following service levels for the Licensed Application:

4.1.1 Availability of 99.75% during the primary hours of operation which means 7 am Eastern to 6 pm Pacific, Monday - Friday, excluding federal holidays and Excusable Delays (defined below).

4.1.2 Availability of 97% during the non-primary hours of operation, excluding scheduled maintenance windows and Excusable Delays. Non-primary hours of operation means 6pm Pacific to 7am Eastern, Monday - Friday, federal holidays and weekends. ChildPlus will use commercially reasonable efforts to announce maintenance at least 1 week in advance and schedule it during the non-primary hours of operation.

4.1.3 “Excusable Delays” means unscheduled emergency maintenance or a Force Majeure Event pursuant to Section 13.2 of the Agreement.

**4.2 Standard Support.** The ChildPlus Technical Support Department will be staffed during the primary hours of operation, 8:30 am to 6:30 pm Eastern Monday – Friday excluding federal holidays, to provide telephone or email assistance to the designated Technical Contact Person(s) for the Licensee as designated on the Order Form, as such contact may be modified from time to time in writing via fax, mail or e-mail from one of the Contact Persons designated on the Order Form.

**4.3 Standard Database Backup and Retention.** ChildPlus’ Licensee Data retention and backup policies are attached hereto as Exhibit A.

**4.4 Software Defect Resolution.** In the event the Licensee encounters a defect in the Services, an authorized Technical Contact Person from the Licensee will submit the description of the defect to the ChildPlus Technical Support Department in writing, via fax or e-mail along with screenshots, a step-by-step procedure to recreate the issue, and any other information that will help ChildPlus troubleshoot the issue. ChildPlus will evaluate the reported issue and will make its best efforts to respond as follows:

- Critical Service Defect resulting in an outage condition: Immediate response to restore service.
- Major Service Defect resulting in the loss of a major application function: Provide resolution or acceptable work-around procedure within one to two (1-2) business days
- Minor Service Defect resulting in an inconvenience to the User, but no loss of critical function: Provide resolution in the next regularly scheduled maintenance release.

- Service Issue that has no operational impact to the User: Will consider implementing as time and budget permit.

**4.5 Supplemental Professional Services; Training and Configuration.** User may request that ChildPlus provide certain supplemental professional services related to Licensee's use of the Services, including, by way of example, configuration or customization of the Licensed Application, training of Authorized Users regarding use of the Services and/or additional (enhanced) maintenance or support of the Services. See quotation provided by ChildPlus Sales Representative for a list of services and costs. However, unless otherwise set forth in this Agreement or otherwise agreed between the Parties in an Order Form to this Agreement or in a separate written agreement, ChildPlus shall have no obligation to provide or perform any such services for or on behalf of Licensee.

**4.6 Data Import.** ChildPlus agrees to provide a one-time, basic data import (including demographic for families, community resources, and personnel) to new clients for a cost of \$2,500. User may request to receive a complete list of fields included in the basic data import.

## **5. Personal Information**

**5.1 Licensee Obligations.** Licensee represents and warrants that (a) the Licensee Data, including Personal Information, entered into the Licensed Application by Licensee or otherwise provided to ChildPlus for processing under the Agreement is collected and/or validly obtained by and may be utilized by Licensee and shared with ChildPlus as described in this Agreement in compliance with all applicable laws, rules and regulations, including without limitation all Privacy Laws; (b) Licensee has obtained parental or guardian consent for the collection of all Personal Information relating to a child and for the transfer of such information to ChildPlus as a third party service provider; (c) if Licensee utilizes the ChildPlus online participant application, Licensee has and shall have at all times posted on pages that collect Personal Information an accurate and complete privacy policy that describes such Licensee's data handling practices and that is in compliance with all applicable Privacy Laws; and (d) Licensee is and shall at all times be in compliance with all applicable laws rules and regulations governing telephone, text and e-mail communications with consumers, including, without limitation the Telephone Consumer Protection Act of 1991 and all related guidance of the Federal Communications Commission. Licensee shall defend, indemnify and hold harmless ChildPlus from and against all loss, expense (including reasonable out-of-pocket attorneys' fees and court costs), damage or liability arising out of any claim arising out of a breach of this Section 5.1.

### **5.2 ChildPlus Obligations.**

**5.3.1 Data Subject Requests.** ChildPlus agrees to cooperate with Licensee to address data subject rights afforded by Privacy Laws.

**5.3.2 Further Assurances.** To the extent that it is determined by any data protection or enforcement authority that this Agreement is insufficient to comply with Privacy Laws, or to the extent required otherwise by any changes in Privacy Laws or issuance of formal regulations, the Parties agree to cooperate in good faith to amend this Agreement or enter into further mutually agreeable data processing agreements in an effort to comply with any Privacy Laws or regulations applicable to the Parties.

**5.2.3 For California Licensees Only:** The Parties acknowledge that ChildPlus is a “Service Provider” as that term is defined in the California Consumer Privacy Act (“CCPA”). Licensee Data may include Personal Information, as defined by the CCPA (“CCPA Personal Information”). When ChildPlus processes CCPA Personal Information for Licensee, except for usage of such information as necessary to bring and defend claims, to comply with requirements of the legal process, to cooperate with regulatory authorities, and to exercise other similar permissible uses as expressly provided under Privacy Laws, ChildPlus shall not retain, use, sell or disclose the CCPA Personal Information (that is not de-identified) for any purpose, including other commercial purposes, outside of the direct business relationship with Licensee.

## **6. General Usage Restrictions.**

**6.1 Prohibited Uses.** Customer shall allow only the Agencies identified on the Order Form to use the Services and only for the purposes of their internal management and administration of such Agencies’ programs. Licensee shall not, and shall not permit any third party to, use the Services or Documentation for any purposes beyond the scope of the licenses granted in this Agreement. Without limiting the generality of the foregoing, Licensee shall not, and shall not permit any third party to, (i) authorize or permit use of the Services or Documentation by persons other than Authorized Users; (ii) distribute any copies of Documentation or content on the Services to persons other than Authorized Users without the prior written approval of ChildPlus; (iii) modify or create any derivative works of the Services or the Documentation, except with the prior written consent of ChildPlus; or (v) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any component of the Licensed Application is compiled or interpreted. Licensee acknowledges and agrees that nothing in this Agreement shall be construed to grant Licensee any right to obtain or use such source code.

**6.2 Third-Party Restrictions.** Licensee represents and warrants that its use of the Services and the Documentation complies in all respects with any contractual or other legally binding obligations of ChildPlus to any third party, provided that ChildPlus has notified Customer in writing with respect to any such obligations. Licensee shall not enter into any contractual relationship or other legally binding obligation with any third party which shall have the purpose or effect of encumbering the use by ChildPlus of the Services or the Documentation.

**6.3 Compliance with Laws.** Licensee represents and warrants that its use of the Services and the Documentation complies in all respects with all applicable laws, statutes, regulations, ordinances or other rules promulgated by governing authorities having jurisdiction over the Parties, the Services or the Documentation.

**6.4 Trademarks and Proprietary Notices.** The ChildPlus name, the ChildPlus logo, the marks of ChildPlus’ licensors, and the product names associated with the Licensed Application are trademarks of ChildPlus or third parties, and no right or license is granted to Licensee to use them. To the extent any duplication of Documentation or content available from the Services is permitted hereunder, Licensee shall duplicate all proprietary notices and legends of ChildPlus and its suppliers or licensors upon any and all such copies, and Licensee shall not remove, alter or obscure any such such proprietary notice or legend of ChildPlus or any of ChildPlus’ suppliers or licensors.

## **6.5 Compliance Records; Auditing Rights.**

Throughout the Term, and for a period of six (6) months thereafter, ChildPlus will have the right with a legitimate business reason, at its own expense, upon reasonable prior notice, periodically to inspect and audit Licensee's use of the Services and Documentation for purposes of determining Licensee's compliance with the terms and conditions herein. Licensee agrees to cooperate with ChildPlus in the performance of any such audit, and shall provide to ChildPlus such access to Licensee's relevant records, data, information, personnel and/or facilities as ChildPlus may reasonably request for such limited purposes. Such inspection and/or audit shall be conducted in such a manner as to not unreasonably interfere with the regular business operations of Licensee, as well as to protect and maintain the integrity of Licensee's Confidential Information that may be discovered during such audit and/or inspection.

## **7. Fees and Payments.**

**7.1 Fees Payable.** In consideration for the Services provided to Licensee and the performance of ChildPlus' obligations under this Agreement, Customer shall pay to ChildPlus, without offset or deduction, the Fees set forth on the Order Form. Unless otherwise provided in such Order Form, all such fees shall be due and payable within sixty (60) calendar days after an invoice is issued by ChildPlus with respect thereto. ChildPlus will invoice Customer, not any Authorized User or Agency, for the Services used by Licensee, and Customer shall pay all invoices to ChildPlus.

**7.2 Disputed Charges.** Customer must notify ChildPlus in writing of any dispute or disagreement with invoiced charges within sixty (60) days after the date of invoice. Absent such notice, Customer shall be deemed to have agreed to the charges as invoiced after the expiration of such time period.

**7.3 Late Charges.** ChildPlus reserves the right to charge, and Customer agrees to pay, a late charge equal to 2% or \$25, whichever is greater, per month on any amount that is not the subject of a good faith dispute that is unpaid 60 days after the due date, and on any other outstanding balance.

**7.4 Fees Upon Renewal.** Unless otherwise agreed in writing, following the initial term, Fees are subject to annual increases at the level of then-current standard pricing, which will become effective beginning upon the first day of each renewal term.

**7.5 Money-Back Guarantee.** If at any time during the term of this Agreement you are not satisfied with the Services, you may terminate this Agreement and all Order Forms upon notice to us and request a prorated refund for the unused portion of your license subscription.

## **8. Warranties and Limitations.**

**8.1 Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that (i) it has the authority to enter into this Agreement and perform its obligations hereunder; (ii) the Agreement does not conflict with any other agreement entered into by it; and (iii) it does not conduct business for any unlawful purpose.

**8.2 Other Warranties** (a) ChildPlus will comply with all applicable laws, rules and regulations in performing the Services, (b) it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement, (c) the Services will meet any and all specifications and requirements set forth in this Agreement, (d) ChildPlus has, and shall maintain in effect for the duration of this Agreement, all licenses, permits, qualifications and approvals that are legally required for ChildPlus to render the Services and (e) none



of the Services, deliverables or Work Product, and the Customer's use thereof, infringe or will infringe any intellectual property right of any third party.

## **9. Limitations of Liability.**

**9.1 Limitations.** In no event shall ChildPlus be liable to Licensee or any third party for any incidental, indirect, special, consequential or punitive damages, regardless of the nature of the claim, including, without limitation, lost profits, lost revenues, costs of delay, any failure of delivery, business interruption, costs of lost or damaged data or documentation or liabilities to third parties arising from any source, even if ChildPlus has been advised of the possibility of such damages. The aggregate liability of ChildPlus to Licensee for all claims arising from or relating to this agreement, including, without limitation, in contract, tort, or strict liability, shall not exceed the total amount of all fees that have been paid to ChildPlus by customer during the twenty-four (24)-month period immediately prior to the event, act or omission giving rise to such liability. This limitation of liability in this section is intended to apply without regard to whether other provisions of this agreement have been breached or are determined to be invalid. The limitations set forth in this section shall not apply to damages or liabilities arising from (A) claims that are subject to Indemnification under Section 11; (B) Breaches of Confidentiality obligations under Section 10; or (C) Breaches of data security under Section 3.2

**9.2 Essential Basis.** The disclaimers, exclusions and limitations of liability set forth in this Agreement form an essential basis of the bargain between the Parties, and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of this Agreement, including, without limitation, the economic terms, would be substantially different.

## **10. Confidentiality.**

**10.1 Ownership of Confidential Information.** The Parties acknowledge that during the performance of this Agreement, each Party may have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and shall remain the sole property of the disclosing Party or such third party.

**10.2 Mutual Confidentiality Obligations.** Each Party agrees as follows: (i) to use the Confidential Information only for the purposes described herein; (ii) that such Party will not reproduce the Confidential Information and will hold in confidence and protect the Confidential Information from dissemination to, and use by, any third party except as necessary to perform its obligations under this Agreement or otherwise expressly permitted hereunder; (iii) that neither Party will create any derivative work or competing product or service using Confidential Information disclosed to such Party by the other Party; (iv) to restrict access to the Confidential Information to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the requirements of this Agreement; and (v) to return or destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement. For the avoidance of doubt and not limiting the generality of the foregoing, Licensee agrees that it shall not provide the Licensed Application or Documentation or access to the Licensed Application or Documentation, to any person or entity that offers or is developing any competing product or service to the Services.

**10.3 Confidentiality Exceptions.** Notwithstanding the foregoing, the provisions of Sections 10.1 and 10.2 shall not apply to Confidential Information that (i) is publicly available or in the public domain at the time

disclosed and such availability is not due to any fault of the receiving Party; (iii) is rightfully communicated to the receiving Party by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the receiving Party's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the receiving Party as can be demonstrated with reasonable evidence; or (vi) is approved for release or disclosure by the disclosing Party without restriction.

Notwithstanding the foregoing, the receiving Party may disclose without liability hereunder that portion of Confidential Information of the disclosing Party that it is compelled by law to do so, provided the receiving Party gives the disclosing Party prior notice of such compelled disclosure (to the extent legally permitted), exercises its best efforts to limit the disclosure to what is legally required and preserves the confidentiality of the remaining Confidential Information.

**10.4 Survival.** The obligations of the Parties, with regard to the Confidential Information of the other that constitutes trade secrets, shall remain in effect for as long as such Confidential Information shall remain a trade secret under applicable law. All other Confidential Information shall remain protected during the Term of this Agreement and for three (3) years thereafter.

**10.5 Equitable Relief.** ChildPlus and Licensee acknowledge that the damages for unauthorized and/or improper disclosure of the Confidential Information of the other Party may be irreparable; therefore, the Parties may seek equitable relief, including injunction and preliminary injunction for such alleged breaches.

## **11. Indemnification**

### **11.1 Indemnification by ChildPlus.**

11.1.1 ChildPlus shall defend, indemnify, and hold Customer harmless against all costs and reasonable expenses (including reasonable attorneys' fees), damages, and liabilities arising out of any claim by a third party that any use of, or access to, the Services by Customer as expressly authorized under this Agreement infringes or misappropriates, as applicable, any U.S. patent issued as of the Effective Date or any copyrights or trade secrets under applicable laws of any jurisdiction within the United States, provided that Customer gives ChildPlus (a) prompt written notice of such claim; (b) authority to control and direct the defense and/or settlement of such claim; and (c) such information and assistance as ChildPlus may reasonably request, at ChildPlus' expense, in connection with such defense and/or settlement.

11.1.2 Notwithstanding Section 11.1.1, ChildPlus shall have no obligation or liability to indemnify Customer to the extent that the alleged infringement arises from (a) the combination, operation, or use of the Services with products, services, information, materials, technologies, business methods or processes not furnished by ChildPlus; (b) use of the Services to analyze and/or audit any third party software; (c) Licensee Data; (d) use of the Services not in accordance with the Documentation and the terms of this Agreement; and (e) Customer's specifications (circumstances under the foregoing clauses (a) through (e), collectively, "Customer Indemnity Responsibilities"). Customer shall not settle any third-party claim against ChildPlus unless such settlement completely and forever releases ChildPlus with respect thereto or unless ChildPlus provides its prior written consent (not to be unreasonably withheld) to such settlement. In any action for which Customer provides defense on behalf of ChildPlus, ChildPlus may participate in such defense at its own expense by counsel of its choice. ChildPlus shall not settle any third-party claim against the Customer unless such settlement completely and forever releases Customer with respect thereto or unless Customer provides its prior written consent (not to be unreasonably withheld) to such settlement. In any action for which ChildPlus provides defense on behalf of Customer, Customer may participate in such defense at its own expense by counsel of its choice .

11.1.3 Upon the occurrence of any infringement claim for which indemnity is or may be due under this Section 11.1, or in the event that ChildPlus believes that such a claim is likely, ChildPlus may, at its option (i) appropriately modify the Services so that it becomes non-infringing, or substitute functionally equivalent software or services; (ii) obtain a license to the applicable third-party intellectual property rights; or (iii) terminate this Agreement on written notice to Customer and refund to Customer any unused license fees under the then current term. The obligations set forth in this Section 11.1 shall constitute ChildPlus' entire liability and Customer's sole remedy for any actual or alleged infringement or misappropriation.

### **11.2 Indemnification by Customer.**

Customer shall indemnify, hold harmless, and, at ChildPlus' option, defend ChildPlus from and against all losses, expenses (including reasonable attorneys' fees), damages, and liabilities resulting from any claim by any third party arising from or in connection with Customer Indemnity Responsibilities or Licensee's breach of this Agreement. ChildPlus agrees to give Customer (i) prompt written notice of such claim; (ii) authority to control and direct the defense and/or settlement of such claim; and (iii) such information and assistance as Customer may reasonably request, at Customer's expense, in connection with such defense and/or settlement. Customer shall not settle any third-party claim against ChildPlus unless such settlement completely and forever releases ChildPlus with respect thereto or unless ChildPlus provides its prior written consent (not to be unreasonably withheld) to such settlement. In any action for which Customer provides defense on behalf of ChildPlus, ChildPlus may participate in such defense at its own expense by counsel of its choice.

## **12. Term and Termination**

**12.1 Agreement.** This Agreement shall become effective upon the Effective Date and shall continue in force until it expires or is terminated by either Party under the terms of this Section 12. The initial term shall commence on the Service Commencement Date and shall continue for 12 months. At the end of the initial term, Services may be renewed, at the Customer's option, for successive one (1)-year terms beginning upon the completion of the previous term, by notifying ChildPlus of Customer's intention to renew and paying all Fees for the renewal term. If Customer does not renew Services, the Agreement will expire one day from the end of the Term. The initial term plus all renewal terms shall be defined as the "Term."

**12.2 Termination for Breach.** Either Party may terminate this Agreement upon written notice to the other Party in the event that the other Party materially breaches this Agreement and thereafter (i) in the case of material breach resulting from non-payment of amounts due hereunder, has failed to pay such amounts within ten (10) days after receiving written notice thereof; or (ii) has failed to cure any other material breach within thirty (30) days after receiving written notice thereof. If Customer terminates the Agreement or any Service as a result of ChildPlus' material breach, then ChildPlus shall refund Customer a pro rata amount of any prepaid Fees applicable to the unused portion of the then current term of the terminated Services (*excluding any one-time fees*). If ChildPlus terminates the Agreement or any Services due to Licensee's material breach, ChildPlus shall not refund any amounts to Customer.

**12.3 Termination upon Bankruptcy, Insolvency, Etc.** Either Party may terminate this Agreement immediately upon written notice after the other Party has executed an assignment for the benefit of creditors or filed for relief under any applicable bankruptcy, reorganization, moratorium, or similar debtor relief laws, or in the event

that a receiver has been appointed for the other Party or any of its assets or properties, or an involuntary petition in bankruptcy has been filed against such other Party, which proceeding or petition has not been dismissed, vacated, or stayed within sixty (60) days.

**12.4 Termination of Individual Order Forms.** In addition to each Party's rights under Sections 12.2 and 12.3, each Party may terminate any particular Order Form according to any provision therein permitting such termination, provided that this Agreement and any other Order Forms shall remain in full force and effect in accordance with their respective terms.

**12.5 Accrued Obligations.** Termination of this Agreement and/or any particular Order Form shall not release the Parties from any liability which, at the time of termination, has already accrued or which thereafter may accrue with respect to any act or omission before termination, or from any obligation which is expressly stated in this Agreement and/or any applicable Order Form to survive termination. Notwithstanding the foregoing, the Party terminating this Agreement or any Order Form as permitted by any provision in this Section 12 shall incur no additional liability merely by virtue of such termination.

**12.6 Cumulative Remedies.** Termination of this Agreement and/or any Order Form, regardless of cause or nature, shall be without prejudice to any other rights or remedies of the Parties and shall be without liability for any loss or damage occasioned thereby. Except as otherwise expressly stated in this Agreement, all remedies specified in this Agreement are cumulative with any other remedies that may be available at law or in equity.

**12.7 Effect of Termination.** Upon any termination of this Agreement, each Party shall (i) immediately discontinue all use of the other Party's Confidential Information; (ii) return or destroy the other Party's Confidential Information from its computer storage or any other media, including, but not limited to, online and off-line libraries; (iii) shall return to the other Party or, at the other Party's option, destroy, all copies of such other Party's Confidential Information then in its possession; and (iv) shall promptly pay all amounts due and remaining payable hereunder.

**12.8 Survival of Obligations.** The provisions of Sections 3, 5.1, 5.3.2, 6, 7, 8, 9, 10, 11, 12.6, 12.7, 12.8, 12.9, 13 as well as Customer's obligations to pay any amounts due and outstanding hereunder, shall survive termination or expiration of this Agreement.

**12.9 Data Access after Termination.** ChildPlus allows access to your ChildPlus data even after termination of Services. You may log in as usual and run reports or export your data. You will not be able to enroll children. You can also request a full database backup at any time. You will have limited access to ChildPlus Technical Support. Notwithstanding the expiration or termination of any Order Form or this Agreement, the provisions identified in Section 12.8, including but not limited to the usage restrictions set forth in Section 6, shall survive and govern all such Licensee access.

## **13 Miscellaneous.**

**13.1 Applicable Law.** PWCS shall be governed in all respects by the laws of the Commonwealth of Virginia, including but not limited to the Virginia Public Procurement Act, and any litigation with respect thereto shall be brought in the courts of Prince William County, Virginia, except to the extent that Federal Court is appropriate. The Contractor shall comply with applicable federal, state and local laws and regulations, and be legally authorized to do business in the Commonwealth of Virginia.

**13.2 Force Majeure.** ChildPlus shall be excused from performance of its obligations under this Agreement if such a failure to perform results from compliance with any requirement of applicable law, acts of god, fire, strike, embargo, terrorist attack, war, insurrection or riot or other causes beyond the reasonable control of ChildPlus (a "Force Majeure Event"). Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances. In the event of a Force Majeure event, ChildPlus shall promptly notify the other party of such force majeure condition, work diligently to mitigate its effects and provide workarounds and fixes, and make best efforts to resume performance as soon as practicable.

**13.3 Notices.** All notices required by or relating to this Agreement shall be in writing and shall be sent by means of certified mail (postage prepaid), fax, or email, to the Parties to the Agreement and addressed, if to Customer, as set forth on the Order Form, or if to ChildPlus, as follows:

Management Information Technology USA, Inc.

d/b/a ChildPlus Software

303 Perimeter Center North, Suite 400

Atlanta GA, 30346

Phone: (800) 888-6674

Fax: (404) 252-7337

Email: [sales@childplus.com](mailto:sales@childplus.com)

or addressed to such other address as that Party may have given by written notice in accordance with this provision. All notices required by or relating to this Agreement may also be communicated by fax or email, provided that the sender receives and retains confirmation of successful transmittal to the recipient. Such notices shall be effective on the date indicated in such confirmation.

**13.4 Assignment.** Neither Party shall assign its rights or delegate its obligations under this Agreement (or under any Order Form) without the other Party's prior written consent, and, absent such consent, any purported assignment or delegation shall be null, void and of no effect, except that ChildPlus may assign this Agreement to an affiliate or upon a sale of all or substantially all of the assets of ChildPlus or the transfer of a controlling interest in the voting stock of ChildPlus. Subject to the foregoing, the rights and obligations of the Parties will bind and inure to the benefit of their respective successors and assigns.

**13.5 Independent Contractors.** Licensee and ChildPlus acknowledge and agree that the relationship arising from this Agreement does not constitute or create any joint venture, partnership, employment relationship or franchise between them, and Licensee and ChildPlus are acting as independent contractors in making and performing this Agreement.

**13.6 Amendment.** No amendment to this Agreement or any Order Form shall be valid unless such amendment is made in writing and is signed by the authorized representatives of the Parties.

**13.7 Waiver.** No waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described therein and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder shall not be deemed a waiver of that right.

**13.8 Severability.** If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision shall be construed to have been adjusted to the minimum extent necessary to cure

such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement shall not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

**13.9 No Third-Party Beneficiaries.** The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, shall confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

**13.10 U.S. Government End-Users.** If the Licensee is a U.S. Government End-User, each of the components that constitute the Licensed Application is a “commercial item” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and/or “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. Parts 27 and 52, all U.S. Government end users acquire the Licensed Application with only those rights set forth herein.

**13.11 Headings.** The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this Agreement.

**13.12 Entire Agreement.** This Agreement (together with any Order Forms and the Exhibits and Schedules attached hereto) sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof, and neither of the Parties shall be bound by any conditions, inducements or representations other than as expressly provided for herein.

## **EXHIBIT A**

### **ChildPlus Customer Data Retention Policy**

This document defines the policies and procedures of ChildPlus with respect to the retention, archiving and deleting of Licensee data.

Each ChildPlus Licensee's online data is made up of a production database and, optionally, a set of archives that represent their data as of a given point in time.

In addition to the online data, ChildPlus makes regular, encrypted backups of each database throughout the workday and copies one encrypted backup of each production database offsite each week as part of our disaster recovery plan.

ChildPlus Licensees manage their own online data in compliance with their data retention policies, purging records and deleting archives as necessary.

It is the policy of ChildPlus to permanently destroy database backups after 7 years. Onsite backups are overwritten or destroyed after 28 days, so this policy only affects offsite copies of backups. Such backups are permanently deleted after 7 years.

## EXHIBIT B

### ChildPlus Software Breach Management Policies and Procedures

#### Background

Only those ChildPlus employees with a “need to know” have access to Personal Information that is collected by our customers. Access to that information is managed to guard the integrity, confidentiality and availability of the Personal Information that is entrusted to ChildPlus.

#### Purpose

The purpose of this policy is to define how ChildPlus will respond to security and/or privacy incidents or suspected privacy and security incidents that result in a breach of Personal Information.

#### Policy

ChildPlus shall establish a process to notify customers if their data has been breached.

#### Action

ChildPlus senior management is responsible for initiating breach notification in the event of a data breach. Breach notification will not occur until the incident and the data breached is reviewed by legal counsel to determine if notification is required. Also, notification may be delayed if law enforcement is notified and law enforcement requests a delay in notification to assist with the investigation process.

Notification is not required if the breach included only securely encrypted data.

#### Breach Notification Steps Shall Include –

1. If breach notification is required, depending on the applicable law and the circumstances of the breach, ChildPlus may first contact law enforcement.
2. Law enforcement may by written request ask notification be delayed to assist with conducting a criminal investigation.
3. Notice must be made as soon after the breach as is feasible but no later than 60 days from the date the breach is discovered, or such earlier time as required by applicable law.
4. Notification will be made to each organization’s senior management.
5. Information to be included in the notice includes:
  - a. A description of the incident in general terms
  - b. The approximate date of the breach of security
  - c. The type of data breached
  - d. Brief description of actions being taken to investigate the incident, mitigate damages and protect against like breaches in the future



Agency Information	Management Information Technology USA, Inc
<p><b>Webb County</b></p>	<p>d/b/a ChildPlus Software 303 Perimeter Center North, Suite 400 Atlanta, Ga 30346</p>
<p>Signature: <i>Tano E. Tijerina</i></p>	<p>Signature: <i>Ken Katz</i></p>
<p>Print Name: Tano E. Tijerina</p>	<p>Print Name: Kenneth Katz</p>
<p>Title: Webb County Judge</p>	<p>Title: Account Manager</p>
<p>Date: <b>November 13, 2023</b></p>	<p>Dates: 11/1/2023-10/31/2024</p>

**ATTESTED:**

*Margie Ramirez Ibarra*

**Margie Ramirez Ibarra  
Webb County Clerk**

