



Request for Vendor Contract Update

Pursuant to the terms of your awarded vendor contract, all vendors must notify and receive approval from Region 4/OMNIA Partners, Public Sector when there is an update in the contract. No request will be officially approved without the prior authorization of Region 4. Region 4 reserves the right to accept or reject any request.

KEV Group Inc. _____ hereby provides notice of the following update to
(Vendor Name)

Contract number: R190103 for Online Registration and Automated Payment Solutions on this date Oct 26, 2020
Contract Title

Instructions: Vendors must check all that may apply and shall provide supporting documentation. Place your initials next to each item to confirm that documents are indeed included. Request received without supporting documentation will be returned. Be sure to sign prior to submitting your update for approval. **This form is not intended for use if there is a material change in operations, which may adversely affect members, i.e. assignment, bankruptcy, change of ownership, merger, etc. Please contact a member of the OMNIA Partners Contracting Team to request a "Notice of Material Change to Vendor Contract" form.**

Authorized Distributors/Dealers
____ Addition
____ Deletion
____ Supporting Documentation

Price Update
____ Supporting Documentation

Products/Services
____ New Addition
____ Update Only
____ Supporting Documentation

Discontinued Products/Services
____ Supporting Documentation

States/Territories
____ Supporting Documentation

Other Updated SLA
 Supporting Documentation

Notes: Vendor may include other notes regarding the contract update here: (attach another page if necessary).
Updated Vendor SLA attached to replace version contained in the RFP posted.

Submitted By: Joshua Shuval

Approved Date 10/27/2020 | 1:11 PM PDT

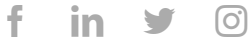
Title: Director of Operations and Risk Management

Denied Date _____

Contact Number: R190103

Email Address: joshs@kevgroup.com

DocuSigned by:
Robert Zingelmann
Region 4 ESC: _____
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[BOOK A DEMO](#)

Protected: US Service Level Agreement Effective May 8, 2020

U.S. Service Level Agreement

[PRINT THIS PAGE](#)

This SERVICE LEVEL AGREEMENT (the “**Agreement**”) is entered into by and between KEV and the Client.

RECITALS:

WHEREAS, the purpose of this Agreement is to establish the general terms and conditions applicable to KEV's provision of certain software and internet-based solutions to the Client for which the Parties will enter into a specific Statement of Work.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, KEV and the Client (the "**Parties**") hereby agree as follows:

ARTICLE 1.

INTERPRETATION AND DEFINITIONS

1.1. **Service Level Agreement.** This Agreement is a service level agreement, the terms of which shall be incorporated by reference into all Statements of Work.

1.2. **Rules of Interpretation.** Interpretation of this Agreement shall be governed by the following rules of construction, unless the context requires otherwise:

(a) The word "including" and words of similar import shall mean "including, without limitation" and "including, but not limited to";

(b) The headings contained herein are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement;

(c) In the event of a conflict between the terms of this Agreement or any Schedule to this Agreement and the applicable Statements of Work (or any documents referred to therein), the terms and conditions of the Statement of Work shall prevail, unless otherwise expressly provided to the contrary in any applicable Statement of Work; and

(d) This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting.

1.3. **Definitions.** Capitalized terms used but not defined herein have the meanings set forth on the Website. By agreeing to the terms and conditions of this Agreement, the Client acknowledges that it has read and accepts the Definitions, which are expressly incorporated herein by reference.

ARTICLE 2.

PRODUCTS AND SERVICES

2.1. **Products.**

(a) **General.** Pursuant to this Agreement and the applicable Statement of Work, KEV grants to the Client a license to use certain Products as selected by the Client in the applicable Statement of Work for the purposes and subject to the terms described herein and in the applicable Statement of Work.

(b) **Upgrades and Enhancements.**

(i) KEV shall monitor server utilization levels and acquire additional hardware as necessary to supply the Products and Services;

(ii) KEV shall promptly notify the Client of any upgrades or enhancements of the Products that KEV from time to time makes available to its Clients. The Client shall implement such upgrades within thirty (30) days of receipt of such notification;

(iii) The implementation of any additional upgrades requested by the Client shall be charged for at the Professional Services hourly rate set forth in **Section 6.2(c)**.

(c) **Product Availability.** KEV shall not schedule downtime for routine and preventative maintenance, modifications and/or upgrades of the Products that will prohibit system availability without providing the Client with notification (i) not less than two (2) Business Days in advance of the planned downtime in the event of major scheduled maintenance; and (ii) as soon as possible in the event of emergency downtime.

2.2. **Services.** Pursuant to this Agreement and the applicable Statement of Work, KEV shall provide to the Client the following Services, as they may evolve during the Statement of Work Term or be modified or replaced in accordance with the terms of this Agreement: (a) Configuration; (b) Data Migration; (c) Installation Services; (d) Application Platform Maintenance; (e) Training Services; and (f) Support; and (g) Professional Services for which the Client shall be charged additional fees pursuant to **Section 6.2(c) (Additional Charges)** (the "**Services**").

2.3. **Change Orders.**

(a) **General.** In the event the Client wishes to propose new Products, features or functionality or a change to the Products or Services, the Client shall complete a 'Change Request Form', which is available from KEV personnel. Upon receipt of a Change Request Form, KEV shall provide the Client with a written quote following which the Client shall indicate its approval or rejection of the Change Order.

(b) No such change will be effective or binding upon the Parties until the change has been agreed upon by both Parties and the Parties shall continue to perform their respective obligations hereunder until such change becomes effective at KEV's current Professional Service rate in **Section 6.2(c)**.

ARTICLE 3.

TRAINING SERVICES

3.1. Training.

(a) **General.** The complete list of Training Services offered by KEV is attached hereto as **Exhibit A**.

(b) **Mandatory Training.** KEV shall be under no obligation to provide Support if (i) client personnel assigned to the User Logins fail to successfully complete the User Login Training or (ii) the Client's District Designates fail to successfully complete the District Designate Training.

(c) **Additional Training.** In addition to the User Login Training and the District Designate Training, the Client may retain additional Training Services at a rate of \$150 per hour, which shall be charged on all Support Requests and telephone queries that fall outside the scope of Support.

(d) **Cancellation Policy.** The Client shall be entitled to a full refund for any scheduled training session that is cancelled by the Client with at least two (2) Business Days' notice to KEV. In the event that a Training Session is cancelled with less than two (2) Business Days' notice to KEV, the Client shall be entitled to a refund of half of the cost of each Training Session.

ARTICLE 4.

SUPPORT

4.1. Support.

(a) **Telephone.** KEV shall maintain a telephone technical support line during Business Hours to provide Support to the District Designates.

(b) **Process.** KEV shall follow the following process in resolving a Support Request:

- (i) Acknowledge receipt of the Support Request;
- (ii) Review the issue and respond with any additional questions;
- (iii) Resolve the issue within the agreed upon timeframe; and
- (iv) Communicate with the affected parties.

(c) **Timing.** KEV shall respond to all Support Requests within four (4) Business Hours, measured beginning with the assignment of a unique log number to the Support Request by the KEV Support Agent.

(d) The Client shall provide access to all information required and requested by KEV in order to provide Support. In the event that KEV requires access to the Products installed on the Client's Server to provide Support, KEV shall request, and the Client shall grant, such access for an unlimited duration; provided that if the Client fails to comply with this obligation, KEV shall be under no obligation to provide Support with respect to the Support Request in question.

4.2. **Product Errors.**

(a) KEV shall provide a correction (a "**Correction**") or a work-around solution and final resolution (a "**Final Resolution**") to any reproducible and material programming error in a Product with a level of effort reasonably commensurate with the severity of the error as soon as reasonably practicable; provided that KEV shall not be responsible if the error is due to (i) instructions or specifications of the Client or services or goods supplied by the Client or its agents not conforming to their respective technical, functional and performance specifications and criteria, including, requests for system enhancements; (ii) wrongful acts or omissions of the Client or its agents; (iii) the failure of the Client to comply with its obligations under the applicable Statement of Work, including the Client's obligation to successfully complete, and cause its employees to successfully complete, all mandatory Training Services; (iv) force majeure (subject to **Section 14.7**); (v) power outages or hardware system failures at Client premises; or (vi) Third Party Software; and KEV shall have no liability or obligation as a result thereof.

(b) If KEV is unable to provide a Correction or a Final Resolution, then KEV shall refund a *pro rata* share of the fees paid by the Client in proportion to the functions required to be performed by the Product which cannot be fixed.

4.3. **Data Backups and Disaster Recovery.** In addition to KEV's responsibilities as set forth in this Agreement, KEV shall perform the following data backup and disaster recovery

services;

(a) **Data Backups.** KEV shall perform data backup only with respect to data on its own servers as follows:

(i) Hot (partial) backups of the database shall be performed at a minimum of daily intervals;

(ii) Full backups of the web servers shall be performed at a minimum of weekly intervals.

(b) **Disaster Recovery.** Recovery requests for data hosted on KEV's servers shall be completed within one Business Day using the most recent version of the backup. Backups consist of data, databases, applications, and all configuration tasks required to restore the Client Data and are only available when the Products are hosted on KEV's servers. Disaster recovery services shall be charged for at the Professional Services hourly rate set forth in **Section 6.2(c)**.

ARTICLE 5.

STATEMENTS OF WORK

5.1. **General.** The process to be followed with respect to Statements of Work is described below. The Parties intend that Statements of Work shall be used as a means to bring work under this Agreement and to further describe the Products and Services to be provided by KEV in accordance with this Agreement.

5.2. **Process.** KEV shall be responsible for the drafting of the documents required pursuant to this Agreement. Specifically, KEV shall develop a draft Statement of Work for the Client's review, following which KEV shall make any amendments agreed to by the Parties. The Statement of Work or amendment to an existing Statement of Work shall become effective only when signed by the Parties.

ARTICLE 6.

FEES, PAYMENTS, INVOICING, TAXES & AUDITS

6.1. **Fees.** In consideration of KEV's provision of the Products and Services, the Client shall pay KEV the applicable Fees as set forth herein and in **Schedule A** to the applicable Statement of Work.

6.2. **Additional Charges.**

(a) Overtime charges at a rate of \$150 per hour shall apply for Support Requests that require attention outside of Business Hours.

(b) Additional charges of \$150 per hour shall apply to any Support Request outside the scope of the Support as defined herein.

(c) Any Professional Services provided to the Client shall be charged at a rate of \$150 per hour.

(d) Any reasonable expenses that KEV incurs in providing the Service Offering shall be reimbursed by the Client, provided that the Client has agreed in advance to reimburse KEV for such expenses.

6.3. **Scheduled Price Increases.** From time to time KEV may, upon thirty (30) days' prior written notice to the Client, increase the rates for the Additional Charges set forth in **Section 6.2.**

6.4. **Prepaid Fees and Deposits.** Prepaid Fees and deposits are non-refundable.

6.5. **Prior Charges.** Any costs incurred by KEV prior to the Statement of Work Effective Date are included in the Fees set forth the applicable Statement of Work and are not to be separately paid or reimbursed by the Client. Each Party shall bear and pay its own costs of, or incidental to, the drafting, preparation and execution of this Agreement and any schedule attached hereto.

6.6. **Payment Terms.** Invoices shall be due and payable in full within thirty (30) days from the date of invoice (the "**Due Date**"). Payments made after the Due Date shall accrue interest at a rate of 1.5% per month compounding or the maximum permitted by Law, whichever is less. The Client is encouraged to remit payment by EFT, which may be set up by contacting KEV's Accounts Receivable Department.

6.7. **Suspension of Service Offering.** If any amount payable under this Agreement is not paid on or before the Due Date and such non-payment has continued for thirty (30) days, then, without prejudice to any other rights and remedies KEV may have in this Agreement or in Law, KEV may suspend the performance of any of its obligations under this Agreement without incurring any liability to the Client or any third party.

6.8. **Taxes.** All sums payable under, or in connection with, this Agreement shall be exclusive of taxes, which shall be payable by the Client at the prescribed rate of taxation of the region in which the transaction occurred.

6.9. **Audit Rights.**

KEV shall have the right to inspect the User Login credentials, the IP addresses of the Client and any information related to the provision of the Service Offering (the “**Audit**”).

(a) In the event that KEV requires any documentation relating to the Audit from the Client, the Client shall provide such documentation to KEV as soon as reasonably practicable;

(b) If the Audit shows that the Client has made unauthorized copies of the Products, has altered the Products in any way whatsoever or has more User Logins than purchased, the Client shall pay to KEV the license fees for the unauthorized copies of the Products and the cost of any unauthorized User Logins, if any, plus interest thereon at the rate of 1.5% per month compounding or the maximum permitted by law, whichever is less, computed from the date on which the Client first breached its obligations giving rise to the interest payment and KEV may, at its option, seek applicable legal recourse, or/and terminate this Agreement pursuant to **Section 12.1** (Termination by Either Party).

ARTICLE 7.

BANK ACCOUNTS

7.1. **Client Accounts.** In the event that the Client wishes to accept or make online payments through any of the Products, the Client shall:

(a) Open and maintain in good standing bank accounts (the “**Client Accounts**”) with financial institutions as required to operate the Products as advised by KEV’s Implementation Department, including, if desired, a Merchant Account; and

(b) Be responsible for any fees that the Client’s financial institution may charge for accepting electronic deposits or for any processing of any other credit or debit transactions related to this Agreement and the applicable Statement of Work.

7.2. **Merchant Accounts.** If the Client has purchased School Cash Online and wishes to offer End Users the ability to pay for Student Items by credit card, the Client shall:

(a) Open and maintain in good standing a Merchant Account with a provider as mutually agreed upon by the Parties; and

(b) Share all information relevant to the Merchant Bank relationship with KEV as advised by KEV’s implementation department.

7.3. **Account Balances.**

(a) The Client shall be responsible for maintaining an adequate balance in all Client Accounts as is reasonably determined by the Client and KEV's Implementation Department.

(b) To the extent that a balance in a Client Account is inadequate and non-sufficient funds ("NSF") fees are incurred, the Client shall be responsible for the payment of such NSF fees and all other charges related thereto.

7.4. EWallet. All eWallet funds shall remain in the eWallet until such time as such funds are used to make a purchase via the Products.

ARTICLE 8.

INTELLECTUAL PROPERTY

8.1. **Intellectual Property.**

(a) The Products are and shall remain the sole and exclusive property of KEV and its suppliers, if any, whether the Products are separate or combined with any other products. KEV's rights under this **Section 8.1** include:

(i) All copies of the Products, in whole and in part;

(ii) All Intellectual Property rights in the Products and the Services; and

(iii) All modifications to, and Derivative Works based upon, the Products and the Services, as made by the Client or by KEV, its third party licensors or any of its subsidiary companies, including software customization whether or not at the Client's request.

(b) The Client shall have and retain all right, title, and interest to all Client Data. The Client shall, however, obtain no rights to the database, source code or other applications in which the Client Data is contained or stored. In the event that the Client wishes to expunge the Client Data from KEV's database, such services shall be charged for at the Professional Services hourly rate set forth in **Section 6.2(c)**.

8.2. **Notices.** Client shall maintain and reproduce all applicable branding or proprietary notices (such as words and logos marked with ® or ™) on any documentation related to the Products, including on any marketing materials.

8.3. **Third Party Infringement.** The Client shall immediately bring to the attention of KEV any infringement or suspected infringement by any third party of any of KEV's rights in Intellectual Property of which it is, or becomes, aware. KEV reserves the sole and exclusive right at its discretion to assert claims against third parties for infringement or misappropriation of its rights in Intellectual Property.

ARTICLE 9.

CONFIDENTIALITY

9.1. **Confidentiality Obligations.**

(a) In connection with this Agreement and the applicable Statement of Work, KEV and the Client will each have access to certain Confidential Information belonging to, or in which the supplier of the information has rights or interest.

(b) Each Party shall keep the other Party's Confidential Information confidential and shall not disclose any Confidential Information to any third party, except to its service providers, agents and Representatives who have a need to know the Confidential Information, provided that such service providers, agents or Representatives are bound by the provisions of this **Article 9**.

ARTICLE 10.

WARRANTIES

10.1. **General.**

(a) **Existence.** Each Party is duly organized and existing and is in good standing in the jurisdiction of its formation and is qualified and in good standing as a foreign corporation under the laws of any jurisdiction where the ownership of its assets or the conduct of its business require such Party to be so qualified, or if such Party is not so qualified, the failure to so qualify will not have an adverse effect on (i) the ability of each Party to perform its obligations under this Agreement; or (ii) each Party to enforce this Agreement;

(b) **Duly Authorized.** Each Party's execution, delivery, and performance of this Agreement has been duly authorized by all appropriate corporate action on the part of such Party and this Agreement constitutes the valid and binding obligation of such Party enforceable against such Party in accordance with the terms thereof and hereof;

(c) **No Conflict.** The execution and delivery of this Agreement will not conflict with or violate any other license, instrument, contract, agreement, or other commitment or arrangement to which each Party is a party or by which such Party is bound.

10.2. **Preservation of Client Data.** Both Parties shall take reasonable precautions (having regard to the nature of their obligations pursuant to this Agreement) to preserve the integrity of the Client Data and to prevent any unauthorized access, corruption or loss of such data.

10.3. **No Prior Agreement.** The Client warrants that it has not been induced to enter into this Agreement by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in this **Article 10**.

10.4. **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN THE APPLICABLE STATEMENT OF WORK, KEV HEREBY EXCLUDES AND DISCLAIMS ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY FROM COURSE OF DEALING OR USAGE OF TRADE.

10.5. **TOTAL LIABILITY.**

(a) KEV'S TOTAL LIABILITY TO THE CLIENT FOR ANY AND ALL CAUSE(S) OF ACTION, REGARDLESS OF THE FORM OF ACTION (INCLUDING CONTRACT, TORT, NEGLIGENCE OR ANY OTHER), ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OR BREACH OF THIS AGREEMENT OR THE APPLICABLE STATEMENT OF WORK SHALL BE LIMITED TO THE CUMULATIVE SUM OF FEES PAID BY CLIENT TO KEV IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH CAUSE OF ACTION.

(b) KEV SHALL NOT BE LIABLE TO THE CLIENT OR ANY OTHER PERSON OR ENTITY FOR:

(i) ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, AGGRAVATED, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR DAMAGES FOR LOSS OF PROFIT OR REVENUE ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT OR THE APPLICABLE STATEMENT OF WORK, EVEN IF KEV HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN BY KEV; OR

(ii) ANY DAMAGES WHATSOEVER RELATING TO THIRD PARTY PRODUCTS, CLIENT MATERIALS OR ANY GOODS OR SERVICES NOT DEVELOPED OR PROVIDED BY KEV.

10.6. **Mutual Indemnity.**

(a) KEV shall indemnify, defend and hold harmless the Client from and against Losses resulting from or arising out of any third party claims or actions resulting from or arising out of: (i) fraudulent, criminal, or dishonest acts or fraudulent, criminal or dishonest omissions of KEV; and (ii) any breach by KEV of the confidentiality provisions in **Article 9** (Confidentiality).

(b) The Client shall indemnify, defend and hold harmless KEV from and against Losses resulting from or arising out of any third party claims or actions resulting from or arising out of (i) the use of any material or data provided by or on behalf of the Client; (ii) death or bodily injury to a third party (or its legal representatives or successors) or physical damage to real or tangible personal property of such third party to the extent caused directly and proximately by the negligent misconduct of such Client; (iii) fraudulent, criminal, or dishonest acts or fraudulent, criminal or dishonest omissions of such Client; and (iv) any breach by such Client of the provisions in **Article 9** (Confidentiality) and **Section 11.2** (Restrictions).

10.7. **Non-Excludable Items.** Nothing in this Agreement is to be read as excluding, restricting or modifying the application of any legislation, which by Law cannot be excluded, restricted or modified.

ARTICLE 11.

CLIENT RESPONSIBILITIES AND RESTRICTIONS

11.1. **Responsibilities.** In addition to the Client's responsibilities as set forth elsewhere in this Agreement and in the applicable Statement of Work, the Client shall be responsible for the following:

(a) **Compliance with Products and Services Documentation and Training.** The Client acknowledges that where any of the Client's responsibilities in respect of the Products and Services are clearly defined in the relevant Products and Services Documentation, the Client shall use all reasonable efforts to satisfy these responsibilities. Client further agrees to successfully complete, and cause its employees to successfully complete, all mandatory Training Services. KEV's non-performance of any particular obligation under the Agreement shall be excused if and to the extent that:

(i) Such KEV non-performance results from the Client's failure to perform its responsibilities as set forth in this Agreement, the applicable Statement of Work and/or the Products and Services Documentation; or

(ii) Such KEV non-performance was due to written instructions of the Client, where KEV recommended that such instructions not be followed.

(b) Use of Products.

(i) The Client shall use an appropriate Internet browser that supports the current KEV Service Offering. KEV shall post the required browser on the Website and the Client shall review such website upon upgrades and annually in order to comply with its obligations under this **Section 11.1(b)(i)**;

(ii) The Client shall use commercially reasonable efforts to ensure that End Users use such Products and Services as intended. KEV shall not be liable for any failure of the Client to do so;

(iii) The Client shall perform regular internal audits to verify the number of User Logins and shall notify KEV in writing in the event that the Client wishes to increase the number of User Logins permitted pursuant to this Agreement and the applicable Statement of Work. **Client Personnel.** The Client shall provide staff possessing suitable competence to provide training, support, marketing and the implementation of ongoing services pursuant to the Client's duties and obligations hereunder.

11.2. Restrictions.

(a) **No Assignment.** The Client shall not transfer or assign any unused Services;

(b) **No Distribution.** The Client's right to use the Products is non-transferable and the Products may only be used internally by the Client and/or its Affiliates by User Logins designated in accordance with this Agreement. The Client shall not resell, rent, lease, share, or otherwise distribute the use of the Products;

(c) **No Sharing.** The Client shall permit only the purchased number of User Logins to access the Products and User Logins shall not share login credentials. The Client may substitute or replace User Logins to reflect personnel changes, provided that no User Login account may be transferred more than one (1) time annually without the prior written consent of KEV, which consent shall not be unreasonably withheld. In the event the Client wishes to purchase additional User Logins, the Client shall notify KEV in writing;

(d) **No Modification.** Under no circumstances whatsoever may the Client share, copy, modify, enhance, alter, disassemble, decompile, demonstrate, reverse engineer or connect the Products with any Third Party Software or application, or otherwise reproduce any Products or Documentation, in whole or in part, or attempt to do any of the foregoing.

ARTICLE 12.

TERMINATION

12.1. **Termination by Either Party.** This Agreement may be terminated by either Party upon written notice by registered mail to the other Party:

(a) If the other Party has breached this Agreement and such breach has continued or has not been cured for thirty (30) days following written notice via registered mail identifying the breach;

(b) If bankruptcy, composition, insolvency or liquidation proceedings are instituted by or against the other Party without such proceedings being dismissed within sixty (60) days from the date of the institution thereof; or

(c) If a trustee or receiver or similar officer of any court is appointed for the other Party.

12.2. **By Client.** The Client may terminate this Agreement:

(a) Immediately, if KEV breaches its obligations set forth in **Article 9** (Confidentiality Obligations);

(b) If, without prior agreement, KEV breaches any term of this Agreement or the applicable Statement of Work, and such breach is not remedied within thirty (30) days of written notice thereof; or

(c) At any time upon, upon one-hundred and eighty (180) days' prior notice written notice to KEV.

12.3. **By KEV.** KEV may terminate this Agreement:

(a) Immediately, if the Client breaches its obligations set forth in **Article 9** (Confidentiality) or **Section 11.2** (Restriction);

(b) If, without prior agreement, the Client breaches any term of this Agreement or the applicable Statement of Work, including the failure to pay any amount due under this Agreement, and such breach is not remedied within thirty (30) days of written notice thereof; or

(c) If the Client (or any of its Affiliates) engages a service provider other than KEV (or an Affiliate thereof) to provide Products and/or Services similar to those contemplated

hereunder by KEV without (i) in the case of a pre-existing relationship, disclosing such pre-existing relationship prior to entering into this Agreement; or (ii) in the case of a relationship formed during the term of this Agreement, disclosing such relationship upon the engagement of such other service provider, and such breach is not remedied within fifteen (15) days of written notice thereof.

12.4. Consequences Upon Termination. Upon termination of this Agreement:

(a) All amounts due to KEV for Products and Services rendered prior to termination shall become immediately due and payable and may not be withheld for any reason; and

(b) All amounts paid by the Client prior to the date of termination are non-refundable.

12.5. No Prejudice. The foregoing termination provisions shall be in addition and without prejudice to any other rights a Party may have pursuant to this Agreement or at Law.

ARTICLE 13.

ACH PROCESSING SERVICES

13.1. In order to use the payment functionality of KEV's School Cash Online application, you must open a "Dwolla Platform" account provided by KEV's third party ACH Service Provider (Dwolla, Inc.) which includes the Dwolla [Terms of Service](#) and [Privacy Policy](#). Any funds held in the Dwolla account are held by Dwolla's financial institution partners as set out in the Dwolla Terms of Service. You authorize KEV to collect and share with Dwolla your personal information including full name, address, email address, date of birth, and financial information, and you are responsible for the accuracy and completeness of that data. You understand that you can access and manage your Dwolla account through KEV's application, and Dwolla account notifications will be sent by KEV, not Dwolla. KEV will provide customer support for your Dwolla account activity via our standard technical support channels.

ARTICLE 14.

DISPUTE RESOLUTION

14.1. **Disputes.** Any dispute or controversy which may arise at any time between the Parties in connection with this Agreement or any Statement of Work which cannot be resolved through good faith discussions shall be resolved exclusively by final and binding arbitration; provided that nothing in this **Section 14.1** shall prevent a Party from instituting formal proceedings to (a) avoid the expiration of any applicable limitations period; (b)

preserve a superior position with respect to other creditors; and (c) address a claim arising out of the breach of a Party's obligations under **Article 8** (Intellectual Property), **Article 9** (Confidentiality), **Section 10.2** (Preservation of Client Data) and **Article 11** (Client Responsibilities and Restrictions).

ARTICLE 15.

MISCELLANEAOUS PROVISIONS

15.1. **Amendments.** No amendment to this Agreement shall be valid unless in writing and signed by an authorized representative of each of the Parties. Notwithstanding the foregoing, the following provisions may be amended from time to time by KEV, in its sole discretion, upon thirty (30) days' written notice to the Client:

- (a) The Training Services and associated costs set forth in **Exhibit A** hereto;
- (b) The URL of the Website
- (c) Documents required for online payment processing;
- (d) The hourly rates for any of the following:
 - (i) Professional Services;
 - (ii) Additional Training; and
 - (iii) Overtime charges.

15.2. **Assignment.** Neither Party may assign, delegate, subcontract or otherwise transfer any or all of its rights or responsibilities under this Agreement, or the applicable Statement of Work, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any attempted assignment in contravention of the foregoing shall be void.

15.3. **Entire Agreement.** Subject to **Section 1.1** (Service Level Agreement) and **Section 1.3** (Definitions), this Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. There are no agreements, representations, warranties, promises, covenants, commitments or undertakings other than those expressly set forth herein. This Agreement supersedes all prior agreements, representations, warranties, promises, covenants, commitments or undertakings, whether written or oral, with respect to the subject matter contained in this Agreement.

15.4. **Notices.** Unless otherwise specified in this Agreement, all notices required or provided pursuant to this Agreement may be sent in hard copy to the address set forth in the Preamble to the applicable Statement of Work.

(a) **Deemed Receipt.** Any notice to be given by either Party to the other shall be deemed to have been duly received:

(i) If addressed to the addressee at its Legal Address and delivered by registered or certified mail, return receipt requested, postage prepaid, on the tenth (10th) day after the date of posting thereof;

(ii) If delivered to the addressee's Legal Address by hand during Business hours on a Business Day, on the date of delivery thereof; or

(iii) If sent by electronic mail to the addressee with explicit acknowledgment of receipt by reply, on the date of delivery thereof.

(b) **Change of Address.** A Party may change its Legal Address or designee for notification purposes by giving the other prior notice of the new address or designee and the date upon which it shall become effective.

15.5. **Covenant of Good Faith.** Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.

15.6. **Relationship Between the Parties.** KEV, in furnishing the Service Offering to the Client, is acting as an independent contractor, and KEV has the sole obligation to supervise, manage, contract, perform or cause to be performed, all work to be performed by KEV under this Agreement. The relationship of the Parties under this Agreement shall not constitute a partnership, joint venture or employment arrangement for any purpose. Except as expressly provided in this Agreement, KEV is not an agent of the Client and has no right, power or authority, expressly or impliedly, to represent or bind the Client as to any matters.

15.7. **Force Majeure.**

(a) A Party shall not be liable for failure to perform its obligations hereunder if such failure is caused by fire, flood, earthquake, elements of nature, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism, strikes, lockouts or labor disputes or any other similar cause beyond the reasonable control of such Party. No Party is entitled to terminate this Agreement under **Article 12** (Termination) in such circumstances.

(b) In the event a Party asserts Force Majeure as an excuse for failure to perform its obligations, then such Party must prove: (i) it took reasonable steps to minimize delay or damages caused by foreseeable events, (ii) it substantially fulfilled all non-excused obligations, and (iii) that the other Party was timely notified of the likelihood or actual occurrence of an event described in this **Section 15.7**.

15.8. **Right to Reference.** With the prior written consent of the Client, which consent shall not be unreasonably withheld, KEV may use the Client's name and a general description of the Service Offering undertaken by KEV pursuant to this Agreement and the applicable Statement of Work in any proposals or promotional materials, including press releases, or other similar such documents that KEV may issue or submit from time to time, and/or on KEV's website.

15.9. **Severability.** In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid or unenforceable by a court with jurisdiction over the Parties, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable Law. The remaining provisions shall be valid and enforceable to the full extent permitted by applicable Law.

15.10. **Survival.** The rights and obligations of the Parties pertaining to **Article 8** (Intellectual Property), **Article 9** (Confidentiality), **Section 10.5** (Total Liability), **Section 11.2(d)** (No Modification), **Section 12.4** (Consequences upon Termination) and **Article 14** (Dispute Resolution) shall survive the termination or expiration of this Agreement and the applicable Statement of Work.

15.11. **Consents.** Except where expressly provided as being in the sole discretion of a Party, consent, notice or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld.

15.12. **Waiver.** The Parties' failure at any time to enforce any of the provisions of this Agreement or any right or remedy available hereunder or at Law or in equity, or to exercise any option herein provided, shall in no way be construed to be a waiver of such provisions, rights, remedies or options or any other term, condition or covenant of this Agreement, or in any way to affect the validity of this Agreement.

15.13. **Remedies Cumulative.** Except as set forth herein, no right or remedy herein conferred upon or reserved to either Party is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any

other right or remedy under this Agreement, or under applicable Law, whether now or hereafter existing.

15.14. **Governing Law.** With respect to Products and Services rendered by KEV in the United States of America, this Agreement will be governed by and construed and enforced in accordance with the laws of the state of Delaware and all disputes arising out of or related to this Agreement shall be brought exclusively in the courts located in the state of Delaware.

15.15. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and each fully executed counterpart shall be deemed an original.

15.16. **Language.** It is agreed that it is the express wish of the parties that this Agreement and any related documents be drawn up and executed in English. ***Il est la volonté expresse des parties que cette convention et tous les documents s’y rattachant soient rédigés en anglais. Es concordado que es el deseo expreso de los partidos que este Acuerdo y algún documento relacionado son preparados y ejecutados en ingles.***

EXHIBIT A

Training Services

The following is a list of KEV’s current Training Services:

	Training options	User Login	District Designate	PriceSchool User
School Cash Accounting				
1	Webinar Training			\$ 800.00
2	Rollout Presentation (On-Site)	X		\$ 2,500.00
3	Rollout Presentation (Webinar)	X		\$ 800.00
4	Receipts and Deposits	X	X	\$ 100.00
5	Disbursements	X	X	\$ 100.00
6	Ledger Query, Reports, NFS, Transfer	O	X	\$ 100.00
7		O	X	\$ 100.00

	Change Fund, Purchase Order, Journal Entry				
8	Monthly Reconciliation	X	X	\$	100.00
9	Year End Rollover Preparation	O	X	\$	100.00
10	Year End Rollover Sign Off	O	X	\$	100.00
11	District Level Program Maintenance		X	\$	100.00
12	District Level Investments		X	\$	100.00
13	District Level Reports		X	\$	100.00

School Cash Online

14	School Cash Online Rollout Webinar	O		\$	800.00
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School Cash Catalog

15	School Cash Catalog	X		\$	100.00
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School Cash Register

16	School Cash Register Receipting (combined with School Cash Catalog when SCR purchased)	X	X	\$	100.00
17	School Cash Register Closeout	X	X	\$	100.00

1. Maximum 17 participants per session
2. Client must participate in training session 2 or 3 outlined above
3. "X" indicates required training session; "O" indicates recommended training sessions
4. Plus travel and related expenses

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