

SACRAMENTO COUNTY OFFICE OF EDUCATION

FOSTER FOCUS SYSTEM

LICENSE AGREEMENT

This License Agreement (or “Agreement”) is entered into this 1st day of July 1, 2021 (“Effective Date”), by and between the Sacramento County Office of Education, a county office of education of the State of California, (hereinafter “Provider”) and San Bernardino County Children and Family Services, (hereinafter “Customer”). Provider and Customer shall be identified collectively as the “Parties” or “parties.”

RECITALS

WHEREAS, the Provider is the creator and owner of a web-based system, known as Foster Focus;

WHEREAS, the Customer is interested in contracting with Provider in order to use Foster Focus in Customer’s county;

WHEREAS, the California Legislature has recognized that the mobility of children in foster care disrupts their educational experience and the efficient transfer of student records is a critical factor in the swift placement of foster children in educational settings (Cal. Ed. Code § 49069.5);

WHEREAS, The Foster Focus system, enables Customer to satisfy the legal requirement to compile, and transfer to a new educational placement, the records of foster youth within two business days of receiving a transfer notification;

WHEREAS, the Family Educational Rights and Privacy Act (FERPA) and California Education Code permit local educational agencies (LEAs) to share information with a representative of a state or local child welfare agency that has legal responsibility for the care and protection of a child (20 USC § 1232g(b)(1)(L); Cal. Ed. Code § 49076(a)(1)(N);

WHEREAS, LEAs may develop cooperative agreements with county placing agencies to facilitate confidential access to and exchange of pupil information (Cal. Ed. Code §§ 49076(a)(1)(K), 49076(a)(4));

WHEREAS, Customer has established such a cooperative agreement and will utilize Foster Focus to enable confidential access to and exchange of pupil information;

WHEREAS, Foster Focus helps Customer to identify services provided to foster youth and comply with state reporting requirements;

NOW, THEREFORE, the Parties hereto agree as follows:

ARTICLE I DEFINITIONS

1.1 “Administrative Contact” means the individual authorized by the Customer to receive and provide information required to administer this Agreement. The Administrative Contact is the local registration administrator authorized to approve an entity’s Authorized Users of Foster Focus.

1.2 “Agreement” means this License Agreement.

1.3 “Authorized User” means the individual(s) authorized to access Foster Focus on behalf of the Customer according to the terms of this Agreement.

1.4 “Customer Data” means documents, information and data submitted to Provider by Customer for processing through Foster Focus and/or documents, information and data input and maintained in Foster Focus by Customer. Customer Data includes “Pupil Records” as defined herein. Customer Data does not include Pupil-Generated Content.

1.5 “Effective Date” means the date set forth above, provided that this Agreement is fully executed by both the Provider and the Customer.

1.6 “Password” means the license code provided to Customer’s Authorized Users to enable access to Foster Focus.

1.7 “User ID” means the user name given to Customer’s Authorized Users.

1.8 “Local Administrator” means the individual or individuals authorized by the Customer to receive access to the Local Administrator features of Foster Focus

1.9 “Pupil-Generated Content” means materials created by a pupil, including, but not limited to, essays, research, reports, portfolios, creative writing, music or other audio files, photographs, and account information that enables ongoing ownership of pupil content. It does not include pupil responses to standardized assessment where pupil possession and control would jeopardize the validity and reliability of that assessment. (Cal. Ed. Code § 49073.1) The parties understand and agree that Foster Focus does not permit student users and contains no Pupil-Generated Content within the meaning of Education Code section 49073.1.

1.10 “Pupil Records” means any information directly related to a pupil that is maintained by the Customer in the same manner and location that the Customer stores all other pupil records. (Cal. Ed. Code §§ 49061, 49073.1(d)(4); 34 C.F.R. § 99.3 (also called “Education Records”).) It shall not apply to records that are created or maintained by third parties, pertain to students enrolled at another LEA (including former students of Customer that have transferred to a different LEA). In addition, as used herein, “Pupil Records” shall not include Directory Information unless a parent of the pupil has notified Customer that the information should not be released. (Cal. Ed. Code § 49073; 34 C.F.R. §§ 99.31(a)(11), 99.37.)

1.11 “Directory Information” shall have the same definition as found in the California Education Code and FERPA unless otherwise specified by Customer. (Cal. Ed. Code §49061, 34 C.F.R. § 99.3.)

ARTICLE II FOSTER FOCUS SET UP AND SERVICES

2.1 Foster Focus is a secure web-based database system for the use of Foster Youth Services Coordinating Programs, county child welfare, probation, and school district programs in the participating counties and districts (“entity users”) to confirm and maintain information necessary to assist in the timely and appropriate provision of services to foster youth. Provider is responsible for ensuring that all entity users are authorized to access the data and information stored in the Foster Focus system in accordance with Customer’s designations and with the legal requirements applicable to such entities such as, and without limitation, the legal authorities cited elsewhere in this Agreement, as well as California Education Code section 49076(a)(1)(N); California Education Code section 49076(a)(1)(I); 34 CFR section 99.31(a)(2); and 20 USC § 1232g(b)(1)(L). Provider shall restrict an entity user’s access to data and information stored in Foster Focus to that information that is within each entity users’ jurisdiction.

2.2 **Initial Submission and Loading.** Customer must submit to Provider specific Customer Data as start-up information to enable Provider to customize Foster Focus in accordance with Customer’s preferences. Start-up information may include: zip codes with Customer’s school district boundaries; Customer’s school names, addresses, and phone numbers; foster youth liaisons; nonpublic school names associated with Customer; user agency names and access preferences (“Start-up Information”). When the data meets Provider’s specifications, Provider will load the Start-up Information into Foster Focus. After the Start-up Information is successfully loaded, Customer is responsible for ongoing maintenance and control of the Customer Data.

2.3 **Linking of Customer Data.** Customer may submit Customer Data to Provider for existing data fields selected by Customer via an electronic link established between Foster Focus and a district’s student information system. The electronic link enables the automated delivery of Customer Data to Foster Focus at regular intervals. Customer must deliver the Customer Data for each district to the appropriate secure server location in the format established by the Provider. This data is limited to current students. The Customer is responsible for monitoring the progress of each of its district’s delivery of the data, completion of validation testing of the data, and delivery to the Provider of signed validation documents approving installation of district data to Foster Focus.

2.3.1 Customer will pay \$5,000 per school district for the initial cost of linking a district’s data. After the new link is successfully established, Customer will pay a maintenance fee of \$500 per school district, per fiscal year beginning with the fiscal year after the link is successfully established.

The cost of linking is in addition to the Annual License Fee paid by Customer.

In order to exercise this option to link data, Customer and Provider will execute an Addendum to this Agreement (“Linking Addendum”), as provided for in section XVIII (“Modifications”) herein. This

section, 2.3.1, applies to all Linking Addendums executed after July 1, 2016. The parties understand and agree that no electronic linking fee will apply to Customer under this Agreement unless Customer executes a Linking Addendum.

2.4 Training, Support, and Consultation. Provider will provide a maximum of eight (8) hours of training during the first year Customer implements Foster Focus. The training will encompass topics related to set-up and implementation of Foster Focus, including assigning, monitoring, and safeguarding passwords; adding and editing information; compiling reports and managing data. Local Administrator Training and User Training will be scheduled at a location, date, and time that is mutually acceptable to both the Provider and Customer. The training sessions may be conducted in person or remotely.

In all subsequent years, Provider will provide up to four hours (4) of training, support, and consultation to Customer. Provider will charge Customer a fee of \$150 per hour for training, support, and consultation in excess of four (4) hours, plus any travel costs associated therewith, subject to an addendum to this Agreement as provided for in Article XVIII ("Modifications") of this Agreement.

2.5 Hosting and Enhancement.

(a) Foster Focus will be hosted for the Customer for the Term of this Agreement (Article V).

(b) It is anticipated that enhancements to Foster Focus will be ongoing. Enhancements that become available during the Term of this contract will be made available to the Customer. The Provider will install all available enhancements.

2.6 Maintenance. It is understood and agreed that maintenance to the Foster Focus system may be required from time to time. Provider will endeavor to provide Customer with reasonable notice of such maintenance by posting such notice on the home page of Foster Focus. It is also understood that emergency maintenance also may be required and, in such cases, prior notice of such maintenance may not be provided to Customers.

2.7 Customized reports. Any changes to existing reports or views and/or request for additional reports or views in the Foster Focus system may be modified or created for an additional fee to the Customer, subject to a modification of this Agreement as provided for in Article XVIII ("Modifications") herein. Use of custom reports or functions may result in an increase of the annual license fee, subject to a modification of this Agreement as provided for in Article XVIII ("Modifications") herein.

ARTICLE III LICENSE

3.1 Grant of License by Customer to Provider. Customer hereby grants to Provider for the Term of this Agreement a revocable, nonexclusive, royalty-free license to include the Customer Data in Provider's Foster Focus system for use by Customer's Authorized Users and other Authorized Users from other counties to the extent authorized by Customer. The license

includes, but is not limited to copying, displaying, and modifying Customer Data in accordance with the provisions of this Agreement.

3.2 Grant of License by Provider to Customer. Provider hereby grants to Customer for the Term of this Agreement a revocable, nonexclusive term license, for the purposes and subject to the terms and conditions stated in this Agreement, for Customer's Authorized Users to obtain access to and use Foster Focus (as defined in this Agreement including without limitation Article II herein), located on the Internet at www.sacfys.org/index.cfm, as detailed in this Agreement.

3.3 Grant of License to Use the Results. Provider hereby grants to Customer a perpetual right to retain and use any records, results, reports, data tables, charts, studies, memoranda, computer data files and media, or other documents in electronic or paper format, or in any format or media that may come into existence, which are produced by Customer's Authorized Users using the Foster Focus system during the Term and which contain Customer student information, solely for the purpose of fulfilling the Customer's public education mission and in accordance with applicable laws.

ARTICLE IV FEES AND PAYMENT TERMS

4.1 License and Maintenance Fees: In consideration for the License to use Foster Focus as provided herein, Customer agrees to pay Provider an annual license fee based on the number of court supervised child welfare cases plus the number of out-of-home probation cases supervised by the Customer's county. Customer also agrees to pay an annual maintenance fee of \$500 for each school district which completed an electronic data link where the Linking Addendum was executed after July 1, 2016 (as provided in section 2.3.1).

- (a) The Annual License Fee for the Agreement's Term is Fourteen Thousand Seven Hundred Dollars (\$14,700).
- (b) The Annual Maintenance Fee for the Agreement's Term is Five Hundred Dollars (\$500) for the zero (0) school district(s) with an electronic link. The parties understand and agree that no electronic linking fee will apply to Customer under this Agreement unless Customer executes a Linking Addendum, pursuant to section 2.3.1 above.
- (c) The Total Fee for the Agreement's Term is **Fourteen Thousand Seven Hundred Dollars (\$14,700)**.

4.2 Payment Terms:

- (d) **License and Maintenance Fee:** Customer shall be invoiced after receipt of the signed license agreement by Provider for all fees due for the Agreement's Term.
- (e) **Fee Schedule:** Customer shall remit payment to provider within thirty (30) calendar days of Customer's receipt of invoice.

ARTICLE V
TERM; POST-TERM OBLIGATIONS

5.1. **Term.** This Agreement shall be in effect between the Provider and the Customer for one year beginning with the Effective Date and expiring at 11:59 p.m. Pacific Standard Time on June 30, 2022 (the “Term”).

5.2. Post-Term Obligations.

5.2.1 Upon termination or expiration of this Agreement, Customer shall cease usage of the Foster Focus system unless the Customer and Provider enter into a new License Agreement. Absent a new agreement, any subsequent use, storage and access to information received pursuant to this Agreement will continue to be subject to the surviving terms and conditions of this Agreement (See Paragraph 12.5).

5.2.2 Within thirty (30) days of the effective date of termination or expiration of this Agreement, and upon Customer’s written request, Provider shall return Customer Data to Customer in an ASCII delimited file format or such other mutually agreeable format. The Provider shall charge the Customer for the service of returning the Customer Data an hourly rate of \$150 for each hour that it takes to produce the requested file.

5.2.3 Provider will not retain or have access to Pupil Records upon termination or expiration of this Agreement unless Customer and Provider enter into a new License Agreement, except as expressly provided for in this Article.

5.2.4 Upon termination or expiration of this Agreement, Customer shall provide to Provider a list of Pupil Records in Foster Focus that are maintained by Customer that Customer desires to delete. Customer shall also notify Provider if it has not included all categories of information found in Education Code section 49061 in its definition of Directory Information.

5.2.5 Upon receipt of Customer’s list of Pupil Records, Provider shall provide certification of the secure deletion of those records from the active database within 90 days.

ARTICLE VI
PROVIDER’S PROPRIETARY RIGHTS
IN FOSTER FOCUS/NONDISCLOSURE

6.1 Customer acknowledges that Foster Focus is the property of the Provider and that the value of Foster Focus is, in part, determined by the Provider’s ability to limit access to and use of Foster Focus.

6.2 The Customer shall not disclose or make available to any third party any of Provider’s proprietary information, trade secrets, and intellectual property to which Customer is granted access pursuant to this Agreement, including, without limitation, manuals and instructions for operation of Foster Focus, knowledge of operating methods, Passwords, User ID, and the names and designations of any equipment comprising the system, except as may be required by law or court order. Customer agrees to keep all such information strictly confidential and to refrain from discussing this information with anyone else without proper authority, except as may be required by law or court order.

6.3 To further protect the Provider's Proprietary Rights in Foster Focus, Customer agrees to restrict access to Foster Focus to Customer's Authorized Users. In addition, Customer agrees to advise each Authorized User before he or she receives access to Foster Focus, of Customer's obligations under this Agreement and require each Authorized User to maintain those obligations.

6.4 Foster Focus and all supporting documentation shall remain the property of the Provider.

ARTICLE VII PROTECTION OF PRIVATE CUSTOMER DATA

7.1 Customer and Provider recognize that Customer Data which relates to children in foster care are confidential pursuant to relevant federal and state law, including those regarding the privacy and security of student information. Customer and Provider are required to preserve the confidentiality of any information relating to children's records maintained in Foster Focus.

7.2 Both parties will comply with FERPA and corresponding state law in implementing this Agreement and in handling student records. The parties will comply with all security measures discussed herein to protect the confidentiality of those records. All requests regarding access to the records will continue to be governed by FERPA and corresponding California law, and shall be directed to the local educational agency where the student is enrolled.

7.3 Customer is responsible for ensuring that Customer Data does not violate any privacy rights of third parties and assumes responsibility for its Authorized User's compliance with privacy laws regarding Customer Data. Customer shall inform each Authorized User of the need to protect Customer Data containing private information. Customer shall not disclose or make available to any third party any private information to which Customer's Authorized Users are granted access pursuant to this Agreement, unless otherwise permitted by law.

7.4 Customer shall restrict access to Foster Focus solely to Customer's Authorized Users. In addition, Customer shall advise each Authorized User before he or she receives access to Foster Focus of the obligations of Customer under this Agreement. Customer shall require each Authorized User to maintain those obligations and electronically agree to an online confidentiality agreement, which is attached hereto as Exhibit A and incorporated herein. Customer's Administrative Contact will review the registration information and complete the approval form for each Authorized User prior to registration. (See the sample provided in Exhibit B of this Agreement.)

7.5 Customer Data shall remain the property of Customer and under the control of Customer.

7.6 All requests from a parent, legal guardian, or eligible pupil to review information in the pupil's record and correct erroneous information, shall be directed to Customer. Customer shall notify the pupil's LEA, who will comply with the procedures it has adopted pursuant to Education Code section 49069 for granting parent requests for student records, and the provisions of Education Code section 49070 regarding challenging the content of records. Provider shall assist Customer in

modifying information in the Foster Focus system to effectuate any changes to a pupil's records agreed to by Customer pursuant to this section when Customer is unable to do so.

7.7 Provider will use its best effort to protect Customer Data from changes, physical loss, or destruction through the operation of its computer system or by its personnel. "Best efforts" shall include nightly backup of all input provided by Customer and offsite storage of backup material for a 30-day period.

7.8 In the event of unauthorized disclosure of a pupil record caused by Provider, Provider will send notice to the last known address of the parent, legal guardian, or eligible pupil. If the breach is caused by Customer, Customer's agent, or Customer's entity users, Customer shall be responsible for notifying the parent, legal guardian, or eligible pupil.

7.9 Provider may use de-identified Customer Data for the purpose of research and evaluation with prior written authorization from Customer. "De-identified Customer Data" means Customer Data that has had all personally identifiable information removed. "Personally identifiable information" is defined as follows: "The term includes, but is not limited to (a) The student's name; (b) The name of the student's parent or other family members; (c) The address of the student or student's family; (d) A personal identifier, such as the student's social security number, student number, or biometric record; (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates." 34 CFR § 99.3. Any third party who receives de-identified information will be notified of their obligation to comply with FERPA and corresponding state law, including their obligation to destroy the information when it is no longer needed for the purpose for which it was obtained. (Cal. Ed. Code § 49076(a)(2)(E).)

7.10 Provider shall not use information in a record for any purpose other than those specifically required or permitted in this Agreement. Provider will not use any personally identifiable information in the records to engage in targeted advertising.

7.11 Provider will apply physical, network, and application security measures to safeguard the confidentiality of the records. All Provider employees with access to Foster Focus will sign a Confidentiality Agreement indicating that they understand the confidentiality of Customer Data and measures to be taken to maintain that confidentiality. In addition, Provider will designate Foster Focus administrators who will regularly consider, among other things, the system's confidentiality measures and data sharing best practices. All Provider employees will receive training on password protections and other confidentiality measures used to safeguard Customer Data.

7.12 Provider may enter into agreements with other educational entities with similar web-based systems designed to help serve the educational needs of foster youth. Such agreements will enable LEAs to better serve students who move between LEAs in different geographical regions by allowing cross-system exchange of information. Provider will not share Customer Data with another web-based system unless Customer opts-in to such data sharing and identifies the

scope of data to be shared. Such opt-in must be done via a written addendum to this MOU.

7.13 Six months after the pupil turns 21, Provider will delete all Customer Data related to that pupil. If Customer submits a written request prior to the data's destruction, Provider shall provide a pupil list or other mutually agreed upon Customer Data to Customer in an ASCII delimited file format or such other mutually agreed format.

ARTICLE VIII PERSONAL USER NAME AND PASSWORD PROVIDED

8.1 Customer's Authorized Users shall gain access to Foster Focus via the Internet through the Authorized User's User ID and Password.

8.2 Immediately following the initial data loading of Authorized Users, Customer shall assume sole responsibility for the management of User ID and Passwords for all of Customer's Authorized Users. The Customer's Administrative Contact or designee at the County Office of Education or Child Welfare Services shall be responsible for ensuring that User ID and Passwords are provided only to Authorized Users and for managing, disabling or authorizing all Authorized Users User ID and Passwords.

ARTICLE IX PERSONAL USER NAME SECURITY

9.1 Customer shall be solely responsible for the security of the Passwords and User ID issued to it. Customer is solely responsible for disabling lost, stolen, or inactive Passwords OR User ID.

ARTICLE X DELAYS; FORCE MAJEURE

10.1 **Delays.** Except as otherwise required in this Agreement, Customer agrees that Provider shall not be liable to Customer or any entity user associated with Customer for any delays due to any interruption of Provider's service.

10.2 **Force Majeure.** Neither Party shall be liable to the other for delays or failures in performance under this Agreement from events beyond their reasonable control, including acts of God, war (declared or undeclared), government regulation, terrorism, disaster, strikes, civil disorder, curtailment of transportation facilities, or similar occurrence beyond the Party's control, making it impossible, illegal, or commercially impracticable for one or both Parties to perform its obligations under this Agreement, in whole or in part. Either Party may terminate this Agreement without liability for any one or more of such reasons upon written notice to the other party within ten (10) days of such occurrence or receipt of notice of any of the above occurrences.

ARTICLE XI NO WARRANTIES, DATA ACCURACY, INTELLECTUAL PROPERTY

11.1 **No Warranties.** Except as otherwise specifically provided for in this Agreement,

Provider makes no representations or warranties of any kind with respect to services or data made available by Foster Focus, including but not limited to the warranties of fitness for a particular purpose or merchantability.

11.2 Data Accuracy. Provider will make a reasonable effort to verify the validity of data. However, Provider assumes no responsibility for the accuracy or completeness of Customer Data made available through Foster Focus or for Customer's use of such data or use of the tools made available to manipulate such data in the Foster Focus system.

11.3 Intellectual Property. Customer is responsible for ensuring that Customer Data does not violate any intellectual property rights of third parties. Customer further assumes sole responsibility for compliance with all intellectual property laws regarding Customer Data by any Authorized Users of the Customer.

ARTICLE XII

DEFAULT; TERMINATION; REMEDIES; SURVIVAL

12.1 Events of Default. Each of the following constitutes an Event of Default under this Agreement: (1) if a party materially fails to perform or comply with this Agreement or any provision hereof; (2) if a party becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (3) if a petition under any foreign, state or United States Bankruptcy Act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by a party; or (4) if such a petition is filed by any third party, or an application for a receiver is made by anyone and such petition or application is not resolved favorably within ninety (90) days.

12.2 Termination. In an Event of Default, the non-defaulting party may terminate this Agreement for an Event of Default after first giving written notice of default and an opportunity to cure within 15 days (the "Cure Period"). If the failure is not cured within the Cure Period, the non-defaulting party may terminate the Agreement effective upon receipt of the written notice of termination for default and failure to cure.

12.3 Provider Rights Upon Termination Due to Customer Default. Notwithstanding any other provisions of this Agreement, Provider reserves the right to disable any and all Passwords issued to Customer upon the occurrence of an uncured Customer Event of Default as provided for herein.

12.4 Remedies. The provisions under which this Agreement may be terminated for an Event of Default shall be in addition to any and all other legal remedies which either party may have for the enforcement of any and all terms hereof, and do not in any way limit any other legal remedy such party may have.

12.5 Survival. The following provisions of this Agreement shall survive the termination or expiration of this Agreement:

Section 3.3	Grant of License to Use the Results	Section 12.5	Survival
Section 5.2	Post-Term Obligations	Article XIV	Governing Law; Jurisdiction & Venue

Article VI	Provider's Proprietary Rights in Foster Focus/Nondisclosure	Article XVII	Entire Agreement
Article VII	Protection of Private Customer Data	Section 19.1	Nonwaiver of Rights
Article XI	No Warranties, Data Accuracy, Intellectual Property	Section 20.3	Indemnification; Limitation of Damages
Section 12.3	Provider's Rights Upon Termination Due to Customer Default	Section 20.4	Section Headings
Section 12.4	Remedies	(This box is intentionally left blank.)	

ARTICLE XIII NOTICES

13.1 All invoices, authorizations, and requests in connection with this Agreement shall be deemed given five (5) days after being deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or one (1) day after being sent by overnight courier, charges prepaid, with confirming fax; and addressed as first set forth below or to such other addresses as the Party to receive the notice so designates by written notice to the other Party.

Provider	Customer
Name: Sacramento County Office of Education	Name: San Bernardino County Children & Family Services
Attn: Trish Kennedy, Director Foster Youth Services Coordinating Program	Attn: Letesha Brager, Supervising Social Services Practitioner, Education Liaison Unit
Address: P.O. Box 269003 Sacramento, CA 95826-9003	Address: 1094 South E Street San Bernardino, CA 92415-0084
Phone: (916) 228-2730	Phone: (909) 388-4711

ARTICLE XIV GOVERNING LAW, JURISDICTION AND VENUE

14.1 The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California without regard to its conflict of law provisions.

14.2 Any legal proceeding arising out of or relating to this Agreement shall be brought in Sacramento County, California. Customer hereby consents to the jurisdiction of such courts.

ARTICLE XV SEVERABILITY

15.1 If any provisions of this Agreement shall be held to be invalid, the legality and enforceability of the remaining provisions shall not be in any way affected or impaired thereby.

ARTICLE XVI NONASSIGNABILITY

16.1 This Agreement and the rights and benefits conferred upon Customer hereunder may not be assigned or otherwise transferred by Customer without prior written consent of the Provider.

ARTICLE XVII ENTIRE AGREEMENT

17.1 This Agreement embodies the entire understanding of the parties and supersedes all previous communications, representations, or understandings, either oral or written, between the parties relating to the subject matter herein. This Agreement supersedes any click-through, click-on and/or “screen wrap” terms and conditions or other user agreement that may appear on the web-based Foster Focus system.

ARTICLE XVIII MODIFICATIONS

18.1 This Agreement may not be supplemented, modified, amended, released or discharged except by an instrument in writing signed by each party’s duly authorized representatives and approved in the same manner as this Agreement.

ARTICLE XIX NONWAIVER OF RIGHTS; EXECUTION IN COUNTERPARTS

19.1 **Nonwaiver of Rights.** Customer and Provider agree that no failure to exercise and no delay in exercising any right, power, or privilege on the part of either Party shall operate as a waiver of any right, power or privilege under this Agreement. Customer and Provider further agree that no single or partial exercise of any right, power, or privilege under this Agreement shall preclude further exercise thereof.

19.2 **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the same party an original signed Agreement upon request.

ARTICLE XX MISCELLANEOUS

20.1 **Conflict of Interest.** Provider understands and certifies that it does not know of any facts which would make entering into this Agreement a violation of the California Political Reform Act, which states in part: “[N]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which he/she knows or has reason to know he/she has a financial interest.” (California Government Code Section 87100 et seq.)

20.2 **Insurance.** Without in any way limiting the Customer’s or Provider’s liability pursuant to Section 20.3 (“Indemnification; Limitation of Damages”) herein, each party hereto shall keep in full force and effect during the Term of this Agreement, at each party’s respective expense, comprehensive general liability insurance (including coverage under a Joint Powers Agreement or

self-insurance) with coverages not less than \$1,000,000 per occurrence, and workers compensation as required by law. Either party may request proof of insurance from the other party, who will provide a Certificate of Insurance to the requesting party within 30-days of receiving the request.

20.3 Indemnification; Limitation of Damages.

20.3.1 Each party hereto shall indemnify, defend and hold harmless the other party, and its respective Board, employees and agents, from and against any and all third-party claims, liability, loss, expense, including reasonable attorneys' fees, or claims for injury or other damages (collectively "Claims") arising out of the performance of this Agreement but only in proportion to and to the extent such Claims are caused by or result from the negligent acts or omissions or intentional misconduct of the indemnifying party and/or its Board, employees and/or agents.

20.3.2 In the event of concurrent negligence of the parties, the parties' respective Board, employees and/or agents, the liability for any and all Claims shall be apportioned under the California theory of comparative negligence. Nothing in this Agreement shall constitute a waiver or limitation of any rights that the indemnifying party may have against third-parties.

20.3.3 The parties intend and agree to cooperate with each other in the investigation and disposition of third-party Claims arising out of the performance of this Agreement. Such cooperation may include joint investigation, defense and disposition of claims of third parties arising from services performed under this Agreement. The parties agree to promptly inform one another whenever any incident report, claim or complaint is filed or when an investigation is initiated concerning the performance of this Agreement. In the event of a conflict in interest, each party may obtain its own counsel at its own expense.

20.3.4 LIMITATION OF DAMAGES. NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES OR LOST PROFITS IN CONNECTION WITH THIS AGREEMENT.

20.4 **Section Headings.** The section headings contained in this Agreement are for convenience in reference and are not intended to define the scope of any provision of this Agreement.

20.5 **Non-Discrimination.** Each party hereto represents and affirms that it will not discriminate in employment or in services provided pursuant to this Agreement based on the actual or perceived race, religious creed, color, national origin, nationality, immigration status, ethnicity, ethnic group identification, ancestry, age, marital status, pregnancy, physical or mental disability, medical condition, genetic information, gender, gender identity, gender expression, sex, or sexual orientation, in accordance with all applicable Federal and State laws and regulations.

20.6 **Independent Contractors.** Provider and Customer shall at all times be deemed to be independent contractors in each party's performance of this Agreement. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship, or a joint venture relationship, between the Customer, or its agents and employees, and Provider, or its agents and employees. Each party shall be responsible for the manner in which it performs the services under this Agreement.

20.7 **Incorporation of Recitals.** The Parties understand and agree that the recitals set forth

above in this Agreement are terms of this Agreement and are fully incorporated herein by this reference.

20.8 Americans with Disabilities Act. To the extent that the District is required to provide reasonable accommodations in compliance with the Americans with Disability Act or other state or federal disability rights legislation including without limitation Section 504 of the Rehabilitation Act (collectively, the “ADA”) relating to the services provided to District under this Agreement, the parties will work together to address any such accommodation. If such work will involve added Provider staff time, or if modification of the Foster Focus system is required as a means to address such accommodation, such work must be negotiated, mutually agreed to by the parties and detailed in an addendum to this Agreement pursuant to Section XVIII (“Modifications”) herein. District would be responsible for paying for such work at a rate to be mutually agreed to by the parties. If such additional work or modification to the Foster Focus system would not be commercially reasonable, or otherwise not feasible for either party, and if a mutually-agreeable solution cannot be agreed upon between the parties, then the District may choose to continue this Agreement with Provider and explore alternate solutions to the issue, or may terminate this Agreement for convenience upon thirty (30) days’ written notice, and such termination shall not be a breach of, or Event of Default under, this Agreement. Sections 12.3 (“Provider Rights Upon Termination Due to Customer Default”), 12.4 (“Remedies”) and 12.5 (“Survival”) shall apply to any such termination for convenience.

(Continued on the next page.)

Party Signatures to the Agreement

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the date first set forth above.

PROVIDER

**SACRAMENTO COUNTY OFFICE OF
EDUCATION**

APPROVED:

By: Nancy Herota, Ed.D.

Title: Deputy Superintendent

Signed:



Date: 3/31/21

CUSTOMER

**SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES**

APPROVED:

By: Curt Hagman

Title: Chairman, Board of Supervisors

Signed:

Date:

Exhibit A



**Foster Youth Services Coordinating Program of Sacramento
Sample Foster Focus Confidentiality Agreement**

The confidentiality agreement is completed online at the time of registration. The registrant must provide the following information and agree to the statement below.

First Name		Middle Name		Last Name	
Work Phone				Email	
Agency Name				Job Title	
Supervisor Name		Supervisor Phone		Supervisor Email	
User ID					

**Foster Youth Services Coordinating Program of Sacramento
Foster Focus Confidentiality Agreement**

As an **employee** of _____, the undersigned may have access to confidential communications and foster youth information currently or previously in, or to be entered into, the *Foster Focus* system, maintained by the Sacramento County Office of Education's (SCOE's) Foster Youth Services Coordinating Program (FYSCP). In consideration of said relationship and in consideration of the granting of access to *Foster Focus*, the undersigned agrees as follows:

1. For the purposes of this agreement, "confidential communications and foster youth information" shall be considered to include any and all information defined as such under federal and state law contained in *Foster Focus* at any time, or information accessible to the undersigned for the purpose of entering all or any part of the information into *Foster Focus*.
2. Confidential information shall be accessed only as necessary to perform legitimate FYSCP related job duties.
3. Confidential information shall be handled carefully and with due diligence to protect against such information inadvertently being disclosed.
4. Confidential information shall not be divulged, copied, released, sold, loaned, reviewed, transmitted, altered or destroyed except as authorized by FYSCP.
5. The undersigned's login identity, password or other access codes shall be safeguarded to avoid their unauthorized use by others. The undersigned agrees to be responsible for all activities undertaken using his or her login, password or other access codes.
6. The undersigned agrees not to divulge his or her password to others.
7. The undersigned agrees to immediately request a new login identity and password if there is reason to suspect that another person may have access to his or her login or password.
8. The undersigned understands and agrees that the obligations under this agreement will continue after termination of employment with the agency identified above and/or after access to *Foster Focus* has terminated.

I understand revealing confidential information is a violation of FYSCP policy and law, and could result in civil, criminal, or adverse employment action and/or termination of my relationship with SCOE.

Exhibit B



**Foster Youth Services Coordinating Program of Sacramento
Sample Foster Focus Electronic Approval Form**

The following user is requesting permission to access Foster Focus. Please review this request and approve or deny it.

Name:	
Agency:	
Title:	
Email:	
Phone:	
Registered on:	

Supervisor Information: The local administrator is responsible for notifying the registrant's supervisor regarding specific access parameters before approving the account.

Supervisor Name:	
Supervisor Phone:	
Supervisor Email:	

To Approve this User:

1. Select User Type [View List]	No Access								
2. Day/Time Access	<input type="checkbox"/> 24/7 OR <input type="checkbox"/> Custom								
	Custom Access Options								
	Access Time Please Choose a Time Span								
	<table border="1"><tr><td><input type="checkbox"/> Monday</td><td><input type="checkbox"/> Friday</td></tr><tr><td><input type="checkbox"/> Tuesday</td><td><input type="checkbox"/> Saturday</td></tr><tr><td><input type="checkbox"/> Wednesday</td><td><input type="checkbox"/> Sunday</td></tr><tr><td><input type="checkbox"/> Thursday</td><td></td></tr></table>	<input type="checkbox"/> Monday	<input type="checkbox"/> Friday	<input type="checkbox"/> Tuesday	<input type="checkbox"/> Saturday	<input type="checkbox"/> Wednesday	<input type="checkbox"/> Sunday	<input type="checkbox"/> Thursday	
<input type="checkbox"/> Monday	<input type="checkbox"/> Friday								
<input type="checkbox"/> Tuesday	<input type="checkbox"/> Saturday								
<input type="checkbox"/> Wednesday	<input type="checkbox"/> Sunday								
<input type="checkbox"/> Thursday									
3. Allow Use From									
4. Set to expire in	<input type="checkbox"/> 6 months <input type="checkbox"/> 1 year <input type="checkbox"/> None, until further notice								

I agree to notify SCOE when this employee's employment terminates or his/her work assignment changes to non-FYSCP activities.