

# Non-Disclosure Agreement

**Parties.** This Non-Disclosure Agreement is entered into between

STATE OF MONTANA  
OFFICE OF PUBLIC INSTRUCTION (“State”),

and

POWERSCHOOL GROUP LLC  
 (“Contractor”),

**1. Purpose.**

The purpose of this Agreement is to establish the terms and conditions governing the disclosure of confidential information by the parties to allow the completion of the services contracted for in the Data Modernization Contract entered by the parties on June 30, 2023.

**2. Term.**

This Agreement’s effective date is June 30, 2023, and expires one (1) year after the expiration or termination of the Data Modernization Contract entered by the parties on June 30, 2023.

**3. Definitions.**

**3.1 Confidential Information.**

For purposes of this Agreement, Confidential Information means:

- Information meeting the definition of confidential information in [§2-6-1002\(1\), MCA](#), “. . . [i]nformation that is accorded confidential status or is prohibited from disclosure as provided by applicable law. The term includes information that is:
  - (a) constitutionally protected from disclosure because an individual privacy interest clearly exceeds the merits of public disclosure;
  - (b) related to judicial deliberations in adversarial proceedings;
  - (c) necessary to maintain the security and integrity of secure facilities or information systems owned by or serving the state; and
  - (d) designated as confidential by statute or through judicial decisions, findings, or orders.”
- Information meeting the definition of trade secret in [§30-14-402\(4\), MCA](#), “[i]nformation or computer software, including a formula, pattern, compilation, program, device, method, technique, or process, that:
  - (a) derives independent economic value, actual or potential, from

not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

- Information disclosed previously or during the term of this Agreement by either Party to the other Party, either directly or indirectly, in writing, orally, or by drawings or observation of tangible objects such as documents, prototypes, samples, products, facilities, proprietary ideas, patentable ideas, or trade secrets and information otherwise identified pursuant to Section 5 (Identification).

### **3.2 Exclusion**

This Agreement is not confidential and may be disclosed to third parties without prior consent.

### **3.3 Discloser.**

The party disclosing confidential information is the Discloser.

### **3.4 Recipient.**

The party receiving the confidential information is the Receiver.

## **4. Exclusions.**

Confidential Information does not include information that:

- (a) is or becomes available to the public without breach of this Agreement;
- (b) is lawfully obtained from a source that is, to its knowledge, not under an obligation of confidentiality to the party to which the Confidential Information relates;
- (c) is lawfully in the possession of the receiving party at the time of disclosure;
- (d) is disclosed by Discloser to a third party without the duty of confidentiality;
- (e) is independently developed by or on behalf of the receiving party by individuals who have not received Confidential Information;
- (f) is summary information provided by Contractor such as a meeting agenda, project plan, executive summaries, or other information similar to the summary documents provided by Contractor to the State on August 31, 2023; or
- (g) is a general synthesis of information exchanged by the Parties, which may not include statutorily protected information.

## **5. Identification.**

Recipient's obligations only extend to Confidential Information that:

- (a) Is marked as confidential at the time of disclosure;

- (b) Is disclosed orally or visually but is identified as confidential at the time of disclosure; or
- (c) Due to the circumstances of disclosure or the nature of the information, should be reasonably considered Confidential Information.

**6. Use.**

Contractor and State shall not use the other party's Confidential Information for its own use or for any purpose except as described in Section 1.

**7. General Non- Disclosure Duty.**

**7.1 Third Parties.**

Contractor and State shall not disclose Confidential Information to any third-party, whether a person or entity, and shall take all reasonable measures to protect the secrecy of and prevent disclosure of the Confidential Information.

**7.2 State Employees.**

The State shall only disclose Confidential Information to its employees who are required to have the Confidential Information for the purpose of this Agreement.

**7.3 Contractor Representatives.**

The Contractor shall only disclose Confidential Information to its partners, principals, directors, employees, agents, subcontractors, or advisors (collectively, "Representatives") who are required to have the Confidential Information for the purpose of this Agreement.

**7.4 Termination.**

The parties are bound by this Agreement so long as this Agreement is in effect and for three years from the date of this Agreement's termination provided, however, that Confidential Information that constitutes a party's trade secrets will be protected for as long as the Confidential Information constitutes a trade secret.

**8. Standard of Care.**

The Recipient shall take at least those measures that the Recipient takes to protect its own most highly confidential information and shall advise its employees, agents or advisors who have access to such Confidential Information of their non-use and nondisclosure obligations. The Recipient shall immediately notify the Discloser in the event of any unauthorized use or disclosure of the Confidential Information. Upon discovery or notice that, in the Recipient's possession or handling of Confidential Information, there has been a breach of confidentiality, the Recipient shall undertake immediate measures to prevent further breach and to retrieve from the breach any written, electronic media or other tangible forms of the Confidential Information, to rectify any harm to the Discloser, to protect the affected individual persons from further harm that may arise from the breach, and to comply with applicable federal and state law.

**9. Warranty.**

Discloser warrants that it has the right to make the disclosures under this Agreement. Each party states that all Confidential Information is its to disclose or does so without infringing on a nonparty's rights.

THIS WARRANTY IS EXCLUSIVE AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**10. Nonparty's Confidential Information.**

The parties understand disclosed Confidential Information may include a nonparty's Confidential Information, provided that the nonparty has authorized such disclosure, and in such event this Agreement shall apply equally to such nonparty's Confidential Information.

**11. Public's Request for Confidential Information Process.**

If a member of the public requests to review the Contractor's "Confidential Information," the following process will be used:

- (a) State shall review the request and independently determine if the Contractor's information meets the requirements of Montana law.
- (b) If the State determines that the information is exempt from disclosure, but the person seeking the information disagrees and seeks judicial review, then Contractor shall defend the suit at its cost.
- (c) If the State determines that the information is not exempt from disclosure, then the State shall provide Contractor written notice of its decision. Contractor shall have 30 days from the State's written notice to seek appropriate judicial review before the State discloses the information.

**12. Remedies.**

Contractor and State each acknowledge that compliance with the provisions of this Agreement is necessary to protect their proprietary interests. Each party further acknowledges that any unauthorized use or disclosure to any person or entity in breach of this Agreement may result in irreparable and continuing damage, and that each party may be authorized and entitled to seek immediate injunctive relief and any other rights or remedies to which it may be entitled.

**13. Waiver.**

A party's failure to enforce any provision of this Agreement is not a waiver in a future comparable situation or of any other obligation or responsibility under this Agreement. Neither party may assert the defense of waiver in these situations.

**14. Choice of Law and Venue.**

Montana law applies to this Agreement without regard to any choice-of-law rules that might direct the application of the laws of any other jurisdiction. The parties agree the venue for any litigation concerning this Agreement must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana. Each party shall pay its own costs and attorney fees.

**15. Modification of Agreement.**

Additions, deletions, amendments, or changes are collectively called “modifications.” This Agreement can only be modified in writing, and any modification must contain an explicit statement that it constitutes a modification of this Agreement and be signed by an authorized individual with the authority to enter into Agreements from the State and Contractor.

**16. Return of Confidential Information.**

All materials, including Confidential Information disclosed by the Discloser under this Agreement, shall remain the property of the disclosing party. Each party shall, upon the termination of this Agreement or upon written request, return or permanently destroy, all materials received or obtained under this Agreement, including Confidential Information, and all copies and all documents containing any portion of any Confidential Information. However, the Recipient shall not be required to return or destroy Confidential Information that may be stored in archived electronic back-up files or similar electronic storage systems. Such information will remain subject to this Agreement and will be destroyed in the ordinary course of business. Notwithstanding the foregoing, each party may keep a copy of this Agreement for archival or evidentiary purposes.

**17. Headings.**

Headings are for convenience only and do not affect the interpretation of this Contract.

**18. Entire Agreement.**

This Agreement is the complete and exclusive statement of the Agreement between the parties. It supersedes all previous proposals, oral or written, and all other communications between the parties relating to this Agreement.

*[Signature Page Follows]*

The parties, through their authorized agents, have executed this Contract as of the Effective Date.

By: DocuSigned by:  
Michael Bisignano Date: 9/8/2023  
80A66B8FDA064D2...  
Name: Michael Bisignano  
PowerSchool Group LLC  
150 Parkshore Ave.  
Folsom, CA 95630  
[legalnotices@powerschool.com](mailto:legalnotices@powerschool.com)

By: DocuSigned by:  
Robert Stutz Date: 9/8/2023  
AD307ABB7C0B477...  
Name: Robert Stutz  
State of Montana  
Montana Office of Instruction  
P. O. Box 202501  
Helen, MT 59620-2501  
Email: rob.stutz@mt.gov

**APPROVED AS TO LEGAL CONTENT FOR DOA**

By: DocuSigned by:  
Don Harris Date: 9/9/2023  
8E20882A8D64473...  
Attorney Don Harris  
  
don.harris@mt.gov