

This Agreement will be posted on the CPS Internet website.

SOFTWARE LICENSE, IMPLEMENTATION, HOSTING, MAINTENANCE AND SUPPORT SERVICES AGREEMENT

This SOFTWARE LICENSE, IMPLEMENTATION, HOSTING, MAINTENANCE AND SUPPORT SERVICES AGREEMENT ("Agreement") is entered into by and between the Board of Education of the City of Chicago, a body politic and corporate commonly known as the Chicago Public Schools (the "Board" or "CPS") and Rubicon West, Inc. ("Vendor" or "Rubicon").

RECITALS

A. Vendor desires to provide the software, implementation, hosting, maintenance and support services to the Board, and the Board desires to purchase or license the software, implementation, hosting, maintenance and support services pursuant to the terms and conditions that follow; and

B. Vendor has demonstrated that it has the requisite knowledge, skill, experience and other resources necessary to provide the software, implementation, hosting, maintenance and support services to the Board.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties hereby agree as follows:

1. **Incorporation of Recitals:** The matters recited above are hereby incorporated into and made a part of this Agreement.

2. **Definitions:**

A. "Documentation" means any and all operator's and user's manuals, training materials, guides, commentary, listings and other materials for use in conjunction with the Software. Vendor shall deliver to the Board a copy of the Documentation for each licensed user identified in Exhibit A. The Board shall have the right, as part of the License granted herein, to make as many additional copies of the Documentation as it may deem necessary.

B. "Software" means the software identified in Exhibit A, including all updates, upgrades, maintenance releases, patches, and fixes.

3. **Term of Agreement:** This Agreement is for a term commencing on the date executed by the Board and terminating on fifteen months thereafter ("Term"), unless terminated sooner as provided herein.

4. **Scope of Services:** Vendor agrees to provide the services set forth in Exhibit A ("Services") at the schools and Board facilities listed in Exhibit B, in accordance with the terms and conditions of this Agreement. "Services" means, collectively, the services, Software, deliverables, duties and responsibilities described in Exhibit A of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement. The Board retains final authority with respect to all Services related decisions. The Board may, from time to time, request changes in the scope of Services. Any such changes shall be documented by a written amendment to this Agreement signed by both parties and the Board's General Counsel.

5. **Personnel:** Vendor agrees to assign and maintain during the term of this Agreement and any renewal of it, an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Services. If the Board determines, in its sole discretion that any employee, subcontractor or other person providing Services hereunder for the Vendor is not performing in accordance with the performance standards or other requirements of this Agreement, the Board shall have the right to direct the Vendor to remove that person from performing Services under this Agreement.

6. **Compensation and Payment:**

A. **Compensation:** The total maximum compensation payable to Vendor pursuant to this Agreement shall not exceed \$42,000 ("Total Maximum Compensation"), with no reimbursement for expenses. Vendor is not entitled to any payment nor is the Board obligated to pay Vendor any amount solely by virtue of entering into this Agreement. In the event of early termination of this Agreement, the Board shall only be obligated to pay for Services rendered up to the date of termination. In no event shall the Board be liable for the cost of Services performed after the effective termination or expiration date of this Agreement.

B. **Payment:** Vendor shall submit invoices referencing this Agreement. All invoices must include: a valid purchase order number, itemized description of the Services rendered, date the Services were rendered, date the materials were delivered, invoice date, and invoice amount. Invoices shall be submitted in a timely manner. The final invoice shall be submitted no later than ninety (90) days after the expiration or termination of this Agreement. If Vendor has more than one contract with the Board, separate invoices must be submitted for each contract. The Board shall process payments in its normal course of business after receipt of invoices and all supporting documentation necessary for the Board to verify the Services provided under this Agreement.

7. **License, Implementation, Hosting, and Support:**

A. **License:** Vendor hereby grants to the Board a non-exclusive, worldwide, nontransferable royalty-free (except for fees specified in this Agreement) license to use the Software. The Board shall not sell, lease, license or otherwise transfer, use or dispose of the Software except as expressly provided herein. The Software and Documentation shall at all times remain the sole and exclusive property of Vendor. The Board shall not copy or permit the copying by any third party of the Software (other than for a reasonable number of back-up copies) or distribute, market, sell, rent, lease, license, transfer, sublicense or assign to any third party any portion of the Software. The Board shall not make any alterations, additions or modifications, create derivative works, decompile, disassemble or reverse engineer the Software without the prior written consent of Vendor.

B. **Implementation of the Software:** Vendor shall provide installation, configuration, and implementation Services for the Software.

C. **Software Maintenance and Support:** Vendor shall provide the maintenance and support Services to the Board as described in Agreement.

D. **Hosting of the Software and Board Data:** Subject to the terms and conditions of this Agreement, Vendor shall provide the Board with storage space on, and access to, a computer system with the capability of making materials accessible by the Board through a secure online means set forth by Vendor and approved by the Board's Chief Information Officer ("CIO"), and related materials, facilities and services, in order to host the Software and the Board Data (as further described in the exhibits) and to otherwise make the Software and the Board Data accessible on demand by the Board's designated users (collectively, the "Hosting Services"). The Hosting Services shall be included in the term "Services" as that term is defined and used herein.

E. **Compatibility and Data Flow:** Vendor shall ensure that the Hosting Services allows data to flow properly between the Board's computer workstations and the Vendor's Software and Services. Vendor must ensure that any other resources that are provided by Vendor to the Board, incorporated by Vendor, or approved or recommended by Vendor for use by the Board in connection with the Software and Services, be fully compatible with, and must not materially and adversely affect, or be materially and adversely affected by, each other or the other hardware, software, equipment, network components, systems, services, and other resources that are owned or leased by, or licensed to, the Board (collectively, the "Board Resources"). At all times, Vendor must cooperate and work as requested with the other service providers of the Board to coordinate the development and the provision of Services with the services and systems of such other service providers. Such coordination shall include:

i. Facilitating with such other relevant service providers the timely resolution of all problems that may arise and impact the Software and Services, regardless of the actual or suspected root-cause of such problems, and using all commercially reasonable efforts to obtain and

This Agreement will be posted on the CPS Internet website.

maintain the active participation, cooperation, and involvement of such other service providers as is required for such problem resolution;

ii. Providing information concerning the Software, Services, data, computing environment, and technology direction used in implementing and the Software and Services;

iii. Working with the Board's other service providers in the implementation and integration of the Software and Services with the Board Resources in the Board's environment and the integration and interfacing of the services of such other service providers with the Software and Services;

iv. Providing reasonable access to and use of the Software and Services; and

v. Performing other reasonable necessary tasks in connection with the Software and Services in order to accomplish the foregoing activities described in this section.

In the event of any dispute between the parties as to whether a particular service or function falls within the scope of services to be provided by the Board's third-party service providers (or by the Board itself), or within the scope of Software and Services provided by Vendor, such particular service or function shall be considered to be a part of the Software and Services hereunder if it is consistent with, and reasonably inferable to be within, the scope of Vendor's Services, as set forth in this Agreement, and it more reasonably would be associated with the scope of Vendor's Services than with the scope of the services to be provided by such other service providers. If any of the foregoing requires the disclosure of any proprietary information or confidential information of Vendor to any third party, such third party shall be required to enter into a reasonable confidentiality agreement with Board, with terms substantially equivalent to those of this Agreement regarding the protection of Confidential Information.

Vendor shall have no obligation under this section to ensure that the Board maintains an active internet connection. Any unavailability of the Software or Services due to the Board's lack of an internet connection, unless such lack of an internet connection is caused by Vendor or Vendor's Software or Services, shall be the sole responsibility of the Board.

8. **Packaging, Warranty and Inspection:** The following provisions shall apply if Vendor is providing any products as part of or in connection with the Services ("Products"):

A. **Packaging and Shipment; Risk of Loss:** Vendor shall package and ship all Products in a commercially reasonable manner. All shipments shall be F.O.B. destination (as indicated on the PO or some other notification from Board) with freight prepaid. Vendor shall purchase insurance to cover the shipping period. It is understood and agreed that the Board shall have no liability for any shipping or insurance charges. The Board may adjust the purchase order or shipping destination any time up to five (5) business days prior to shipment. The risk of loss and damage to Products ordered by the Board shall pass to the Board only after delivery to the destination designated by the Board. Time is of the essence to the delivery of all Products ordered hereunder;

B. **Warranty:** Vendor hereby warrants that all Products furnished hereunder shall be new and conform to the specifications in Exhibit A. The Products shall be of merchantable quality and in good working order, and shall be free from defects in material, workmanship and design for a period of three years from date of receipt of shipment unless otherwise stated in Exhibit A. The warranty shall further cover accidental damage repair or replacement of the Products for a period of three years. The Board shall have the option to require Vendor to repair or replace defective Products without charge or expense, or to reject any defective Products and obtain a full refund or credit for any payment therefore. Repaired Products, excluding out-of-box failures that are covered in Section C below, shall be warranted for a minimum period of six (6) months from completion of repairs or the remainder of the Product's original warranty, whichever is longer. Vendor shall be responsible for transportation charges for all warranty shipments. This warranty shall survive inspection, acceptance, payment and expiration or termination of this Agreement. Each warranty shall include, but is not limited to, the manufacturer's name, the school's name, the Product number, the length of the warranty, the manufacturer's contact person

and the contact number. A letter containing all warranty information shall be provided when Vendor submits its invoice or the invoice will not be processed by the Board; and

C. **Inspection and Out-Of-Box Failures:** The Board reserves the right to inspect all Products upon delivery and to perform any test the Board deems necessary to adequately demonstrate that the Products meet all of the specifications, as more particularly described in Exhibit A. Products which do not conform to the specifications or that are otherwise damaged must either, at the Board's discretion, be retrieved by Vendor (at Vendor's expense) for replacement at no charge to the Board, or the Board may cancel that portion of the purchase order relating to the nonconforming Products at no charge to the Board. For any such returned Products, the Board shall either debit or offset from Vendor the cost of such Product plus freight, or receive a refund for such, at Board's discretion. The warranty period for any Product replaced pursuant to this Section shall be two (2) years from the date the replaced Product is received by the Board, unless otherwise indicated in the Specifications in Exhibit A.

9. **Standards of Performance:** Vendor shall devote, and shall cause all of its staff and subcontractors, if any, to devote, such of their time, attention, best skill and judgment, knowledge and professional ability as is necessary to supply all Services effectively, efficiently, and consistent with the best interests of the Board and to the satisfaction of the Chief Purchasing Officer. Vendor shall retain and utilize sufficient staff to assure the most effective and efficient supply of Services and shall utilize, as required by law or by this Agreement, professionals licensed to practice in the State of Illinois in the applicable profession. Vendor shall use efficient business administration methods and supply the Services in the best way and in the most expeditious and economical manner consistent with the best interests of the Board, so as to assure, among other things, that the Services are supplied at a reasonable cost to the Board and that Services supplied by other entities or persons in connection with this Agreement are efficiently and cost-effectively delivered. Vendor acknowledges that, if in the course of providing Services hereunder, it is entrusted with or has access to valuable or confidential information or records of the Board, that with respect to that information, Vendor agrees to be held to the standard of care of a fiduciary. Any review, approval, acceptance of Services or deliverables or payment for any of the Services by the Board does not relieve Vendor of its responsibility for the professional skill, care, and technical accuracy of its Services and deliverables. Vendor shall remain responsible for the professional and technical accuracy of all Services, including any deliverables furnished, whether by Vendor or its subcontractors or others on its behalf.

10. **Non-appropriation:** Expenditures not appropriated by the Board in its current fiscal year budget are deemed to be contingent liabilities only and are subject to appropriation in subsequent fiscal year budgets. In the event no funds or insufficient funds are appropriated and budgeted in any subsequent fiscal period by the Board for performance under this Agreement, the Board shall notify Vendor and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. Payments for Services completed to the date of notification shall be made to Vendor except that no payment shall be made or due to Vendor under this Agreement beyond those amounts appropriated and budgeted by the Board to fund payments under this Agreement.

11. **Events of Default:** Events of default ("Events of Default") include, but are not limited to, any of the following:

A. Any material misrepresentation by Vendor in the inducement of the Agreement or the provision of Services;

B. Breach of any agreement, representation or warranty made by Vendor in the Agreement;

C. Default by Vendor under any other agreement Vendor may have with the Board;

D. Assignment by Vendor for the benefit of creditors or consent by Vendor to the appointment of a trustee or receiver or the filing by or against Vendor of any petition or proceeding under any bankruptcy, insolvency or similar law; or

This Agreement will be posted on the CPS Internet website.

E. Failure of Vendor to supply the Services required hereunder in accordance with the terms and conditions of the Agreement, including, but not limited to, the following:

i. Action or failure to act which affects the safety or welfare of students or Board staff;

ii. Failure to perform in accordance with terms, conditions, and specifications of this Agreement;

iii. Failure to supply any portion of the Services herein at the time fixed for performance and in the manner specified herein;

iv. Failure to supply the Services with sufficient personnel and equipment or with sufficient material to ensure the supply of Services due to a reason or circumstances within Vendor's reasonable control;

v. Failure to supply the Services in a manner satisfactory to the Board, or inability to supply the Services satisfactorily as a result of insolvency or filing for bankruptcy;

vi. Failure to promptly re-supply Services that were determined by the Board to be defective or failing to meet the scope of Services within a reasonable time;

vii. Discontinuance of the supply of the Services for reasons not beyond Vendor's reasonable control; or

viii. Failure to comply with any term of this Agreement, including but not limited to, the provisions concerning insurance and nondiscrimination, and any other acts specifically and expressly stated in this Agreement constituting an event of default.

12. Remedies: The occurrence of any Event of Default which Vendor fails to cure within fifteen (15) calendar days after receipt of notice given in accordance with the terms of this Agreement and specifying the Event of Default or which, if such Event of Default cannot be reasonably cured within fifteen (15) calendar days after notice, Vendor fails to commence and continue diligent efforts to cure in the sole opinion of the Board, may permit the Board to declare Vendor in default. Whether to declare Vendor in default is within the sole discretion of the Chief Purchasing Officer. Written notification of an intention of the Chief Purchasing Officer to terminate this Agreement, in whole or in part, shall be provided and shall be final and effective upon Vendor's receipt of such notice. Upon the giving of such notice as provided in this Agreement, the Board may invoke any or all of the following remedies:

A. The right to take over and complete the supply of Services or any part thereof, by contract or otherwise as agent for and at the cost of Vendor either directly or through others. Vendor shall be liable to the Board for any excess costs incurred by the Board. Any amount due Vendor under this Agreement or any other agreement Vendor may have with the Board may be offset against amounts claimed due by the Board;

B. The right to terminate this Agreement, in whole or in part, as to any or all of the Services yet to be supplied effective at a time specified by the Board;

C. The right to suspend the supply of Services during the fifteen (15) day cure period if the default results from Vendor's action or failure to act which affects the safety or welfare of students or Board staff;

D. The right to specific performance, an injunction or any other appropriate equitable remedy;

E. The right to receive from Vendor any and all damages incurred as a result or in consequence of an Event of Default;

F. The right to money damages;

G. The right to withhold all or part of Vendor's compensation under this Agreement; and

H. The right to use an Event of Default as a basis to deem Vendor non-responsible in future contracts to be awarded by the Board.

The Board may elect not to declare Vendor in default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the Board and that if the Board permits Vendor to continue to supply the Services despite one or more Events of Default, Vendor shall

in no way be relieved of any responsibilities, duties or obligations under this Agreement nor shall the Board waive or relinquish any of its rights under this Agreement, at law, equity or statute.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall be construed as a waiver of any Event of Default or acquiescence thereto, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

13. Early Termination, Suspension of Product Delivery: The Board may terminate this Agreement in whole or in part, without cause upon thirty (30) days written notice.

After notice is received, Vendor must restrict its activities and those of its subcontractors, to winding down any reports, analyses, or other activities previously begun. No costs incurred after the effective date of the termination are allowed.

Vendor must include in its contracts with subcontractors an early termination provision in form and substance equivalent to this early termination provision to prevent claims against the Board arising from termination of subcontracts after the early termination of this Agreement.

Vendor shall not be entitled to make any early termination claims against the Board resulting from any subcontractor's claims against Vendor or the Board to the extent inconsistent with this provision.

The Board may, upon fifteen (15) calendar day's written notice, request that Vendor suspend supplying Services in whole or part. Vendor shall promptly resume supplying Services upon written notice from the Board and upon such equitable extension of time as may be mutually agreed upon, in writing, by the Board and Vendor. Responsibility for any additional costs or expenses actually incurred by Vendor as a result of remobilization shall be determined by mutual agreement of the parties.

14. Assignment: This Agreement shall be binding on the parties and their respective successors and assigns, provided however, that Vendor may not assign this Agreement or any obligations imposed hereunder without the prior written consent of the Board.

15. Confidential Information, Dissemination of Information, Ownership, Survival: For purposes of this Section 15 and subsections A through K, the term "Work Product" shall exclude any and all (i) third party intellectual property and (ii) pre-existing Vendor intellectual property that is delivered to the Board as part of the Services to be provided by Vendor hereunder or are imbedded in any Work Product to be delivered to the Board by Vendor hereunder.

A. **Confidential Information:** In performance of this Agreement, Vendor may have access to or receive certain information that is not generally known to others ("Confidential Information"). Vendor shall not use or disclose any Confidential Information or any finished or unfinished, documents, screens, reports, writings, procedural manuals, forms, source code, object code, work flow charts, methods, processes, data, data studies, drawings, maps, files, records, computer printouts, designs, equipment descriptions, or other materials prepared or generated as a result of this Agreement ("Work Product") without the prior written consent of the Board. Vendor shall use at least the same standard of care in the protection of the Confidential Information of the Board as Vendor uses to protect its own confidential information, but in any event such Confidential Information shall be protected in at least a commercially reasonable manner.

B. **Highly Confidential Information:** "Highly Confidential Information" means employee, volunteer, student, or teacher data including, but not limited to name, address, student identification number, social security number, phone number, email address, gender, date of birth, ethnicity, race, foster care status, disabilities, school, grade, grade point average, standardized test scores, ISAT scores, assessment data, after school activities, highest grade completed, discipline history, criminal history, free or reduced lunch qualifications, housing status, income, household income or payroll information. In performance of this Agreement, Vendor may have access to or receive Highly Confidential Information. Vendor shall not use or disclose any Highly Confidential information without the prior written consent of the Board.

This Agreement will be posted on the CPS Internet website.

C. Transmitting and Storing Highly Confidential Information: Vendor shall:

i. When mailing physical copies of Highly Confidential Information, send the Highly Confidential Information in a tamper-proof, labeled container, with a tracking number and a delivery confirmation receipt;

ii. Only mail Highly Confidential Information on electronic media, such as CDs, DVDs, electronic tape, etc., if the Highly Confidential Information is encrypted. Encryption must utilize the Advanced Encryption Standard ("AES") algorithm with a key of 256 bits or greater ("Encrypt"). The Highly Confidential Information shall only be mailed in accordance with the provisions of Section I, above;

iii. Encrypt all Highly Confidential Information prior to transmitting it electronically. Vendor shall not transmit any unencrypted Highly Confidential Information via email, blackberry, blackjack, instant messages or any other unencrypted protocols;

iv. Not send any password or other information sufficient to allow decryption of Highly Confidential Information with the Encrypted Highly Confidential Information;

v. Keep all physical copies (paper or other physical representations) of Highly Confidential Information under lock and key, or otherwise have sufficient physical access control measures to prevent unauthorized access. Vendor shall not leave Highly Confidential Information unsecured and unattended at any time;

vi. Encrypt any Highly Confidential Information stored on electronic media, such as CDs, DVDs, tape, flash drives, etc. Further, such electronic media shall be kept locked, or otherwise have sufficient physical access control measures to prevent unauthorized access. Vendor shall not leave Highly Confidential Information in any electronic format unsecured and unattended at any time;

vii. Vendor shall password protect any laptop or computer that contains Confidential Information or Highly Confidential Information. Additionally, any laptop or computer that contains Highly Confidential Information shall have its full hard drive Encrypted. Vendor shall not leave any laptop or computer unattended without enabling a screen-lock or otherwise blocking access to the laptop or computer. Vendor shall ensure that no password or other information sufficient to access a laptop or computer containing Hardware Confidential Information is attached or located near the laptop or computer at any time.

D. Dissemination of Information: Vendor shall not disseminate any Confidential Information or Highly Confidential Information to a third party without the prior written consent of the Board. Vendor shall not issue publicity news releases or grant press interviews related to this Agreement, except as may be required by law or with the prior written consent of the Board. If Vendor is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any Confidential Information, Highly Confidential Information or Work Product which may be in Vendor's possession, Vendor shall immediately give notice to the Board and its General Counsel with the understanding that the Board shall have the opportunity to contest such process by any means available to it prior to submission of any documents to a court or other third party. Vendor shall not be obligated to withhold delivery of documents beyond the time ordered by a court of law or administrative agency, unless the request for production or subpoena is quashed or withdrawn, or the time to produce is otherwise extended. Vendor shall cause its personnel, staff and subcontractors, if any, to undertake the same obligations regarding confidentiality and dissemination of information as agreed to by Vendor under this Agreement.

E. Ownership: Vendor agrees that, to the extent permitted by law, any and all Work Product shall exclusively be deemed "works for hire" within the meaning and purview of the United States Copyright Act, 17 U.S.C. 101§ et seq. To the extent any Work Product does not qualify as a "work for hire," Vendor irrevocably grants, assigns, and transfers to the Board all right, title, and interest in and to the Work Product in all media throughout the world in perpetuity and all intellectual property rights therein, free and clear of any liens, claims, or other encumbrances, to the fullest extent permitted by law. All intellectual property, Confidential Information, Highly Confidential Information and Work

Product shall at all times be and remain the property of the Board. Vendor shall execute all documents and perform all acts that the Board may request in order to assist the Board in perfecting or protecting its rights in and to the Work Product and all intellectual property rights relating to the Work Product.

F. Use of Confidential Information and Highly Confidential Information: Vendor warrants and represents that it shall not use the Confidential Information, Highly Confidential Information or Work Product for any purpose not specifically identified in Exhibit A, including, but not limited to any research project whether internal or external to Vendor. Any use of the Confidential Information, Highly Confidential Information, or any Work Product not specifically contemplated in this Agreement shall be considered a material breach of this Agreement.

G. Third Party Confidential Information and Proprietary Information: Vendor agrees not to utilize, analyze, reverse engineer, or otherwise exploit any third party Confidential Information or proprietary information in performing the Services regardless of where Vendor obtained the third party Confidential Information or proprietary information (even if the third party Confidential Information or proprietary information was provided by the Board) unless Vendor has previously secured the appropriate authorization in writing from such third party. In accordance with the provisions of Section 14 of this Agreement, Vendor hereby agrees to indemnify and hold harmless the Board against any and all claims related to third party Confidential Information and proprietary information in connection with or arising out of the acts or omissions of Vendor or its Staff under this Agreement.

H. Return or Destruction of Confidential Information and Highly Confidential Information: Vendor shall, at the Board's option, destroy or return all Confidential Information and Highly Confidential Information to the Board upon demand within three (3) business days of demand. In addition, Vendor shall, at the Board's option, destroy or return all Confidential Information and Highly Confidential Information to the Board within three (3) days of the expiration or termination of this Agreement. In the event the Board elects to have Vendor destroy the Confidential Information and Highly Confidential Information, Vendor shall provide an affidavit attesting to such destruction.

I. Staff and Subcontractors: Vendor agrees to cause its personnel, staff and subcontractors, if any, to undertake the same obligations of confidentiality and ownership agreed to herein by Vendor.

J. Freedom of Information Act: Vendor acknowledges that this Agreement and all documents submitted to the Board related to this contract award are a matter of public record and are subject to the Illinois Freedom of Information Act (5 ILCS 140/1) and any other comparable state and federal laws and that this Agreement is subject to reporting requirements under 105 ILCS 5/10-20.40. Vendor further acknowledges that this Agreement shall be posted on the Board's Internet website at <http://www.cps.edu>.

K. Survival: The provisions of this Section shall survive the termination or expiration of this Agreement.

16. Representations and Warranties of Vendor: Vendor represents and warrants that the following shall be true and correct as of the effective date of this Agreement and shall continue to be true and correct during the Term of this Agreement:

A. Compliance with Laws: Vendor is and shall remain in compliance with all applicable federal, state, county, and municipal, statutes, laws, ordinances, and regulations relating to this Agreement, as amended from time to time, including but not limited to the Prevailing Wage Act, 820 ILCS 130/1 et seq., the Drug-Free Workplace, the Illinois Student Records Act, the Family Educational Rights and Privacy Act, the Protection of Pupil Rights Act and any others relating to non-discrimination. Further, Vendor is and shall remain in compliance with all Board policies and rules, as may be amended from time to time. Board policies and rules are available at <http://www.cps.edu/>.

B. Good Standing: Vendor, each of its members, if a joint venture or limited liability company, and each of its subcontractors, if any, have not been deemed by the Board's Chief Purchasing Officer to be in default under any other agreement with the Board during the five (5) year period immediately preceding the effective date of this Agreement, and have not been debarred under the Board's Debarment

This Agreement will be posted on the CPS Internet website.

Policy during the three (3) year period immediately preceding the effective date of this Agreement;

C. Authorization: In the event Vendor is an entity other than a sole proprietorship, Vendor represents that it has taken all action necessary for the approval and execution of this Agreement, and execution by the person signing on behalf of Vendor is duly authorized by Vendor and has been made with complete and full authority to commit Vendor to all terms and conditions of this Agreement which shall constitute valid, binding obligations of Vendor;

D. Financially Solvent: Vendor warrants that it is financially solvent, is able to pay all debts as they mature, and is possessed of sufficient working capital to supply all Services and perform all obligations under this Agreement;

E. Gratuities: No payment, gratuity, or offer of employment was made to or by Vendor, any of its members if a limited liability company or joint venture or, to the best of Vendor's knowledge, to any subcontractors, in relation to this Agreement or as an inducement for award of this Agreement. Vendor is and shall remain in compliance with all applicable anti-kickback laws and regulations;

F. Contractor's Disclosure Form: The disclosures in the Contractor's Disclosure Form (or any ratification thereof) submitted by Vendor are true and correct. Vendor shall promptly notify the Board of any material change in the information set forth therein, including, but not limited to, change in ownership or control, and any such change shall be subject to Board approval, which shall not be unreasonably withheld;

G. Background Investigations and Criminal Background Investigations: Vendor represents and warrants that, at its own cost and expense, it shall have a complete fingerprint-based criminal history records check ("Records Check") conducted on any and all employees, agents and subcontractors ("Staff") who may have direct, regular contact with CPS students under this Agreement in accordance with the Illinois School Code (§105 ILCS 5/34-18.5); the Sex Offender and Child Murderer Community Notification Law, created under Illinois Public Act 94-219, eff. August 2005; and the Child Murderer Violent Offender Against Youth Notification Law, created under Public Act 94-945. Such complete Records Check consists of the following:

- fingerprint-based checks through the Illinois State Police (ISP) and the FBI;
- check of the Illinois Sex Offender Registry (IL-SOR); and
- check of the Violent Offender Against Youth Registry (see below).

The purpose of the Records Check is to confirm that none of these persons have been convicted of any of the criminal or drug offenses enumerated in subsection (c) of §105 ILCS 5/34-18.5 or any offenses enumerated under the Sex Offender and Child Murderer Community Notification Law, or the Child Murderer Violent Offender Against Youth Notification Law, or have been convicted within the past seven (7) years of any other felony under the laws of Illinois or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in the State of Illinois, would have been punishable as a felony under the laws of Illinois.

Vendor understands and agrees that it shall not allow any of its employees or subcontractors to have direct regular contact with a CPS student until a Records Check has been conducted for such person and the results of the Records Check satisfies the requirements of §105 ILCS 34-18.5 and the requirements of the Acts and Laws referenced in the preceding paragraph, as amended from time to time.

If Vendor is an individual, Vendor represents and warrants that Vendor is in compliance with Section 5/34-18.5 of the Illinois School Code as from time to time amended, and has never been convicted of the offenses enumerated therein. Further, Vendor agrees to submit to the above procedure regarding background investigations and to fully cooperate and provide the Board with all necessary information in order for the Board to perform all such above checks on Vendor, all at Vendor's expense.

It is understood and agreed that Vendor's non-compliance with this Section will constitute a material breach of this Contract, and the Board

also will have the right to withhold payments due hereunder until Vendor remedies such non-compliance to the Board's reasonable satisfaction, or take any other action or remedy available under this Contract or by law;

H. Freedom from Communicable Disease: Vendor shall require all persons assigned to perform Services at any school to show evidence that they are free from communicable disease, including tuberculosis. Acceptable evidence is described in the Illinois School Code, 105 ILCS 5/24-5. From time to time, the Board may require Vendor to demonstrate its compliance with the provisions of this Section;

I. Research Activities and Data Requests: Vendor acknowledges and agrees that in the event Vendor seeks to conduct research activities in any Board school or use Board student data for research purposes, Vendor shall comply with the Board's Research Study and Data Policy adopted on November 14, 2007, as may be amended from time to time. Vendor acknowledges and agrees that it may not begin any research activities or obtain data for research purposes without the prior written consent of the Chief Officer of the Office of Research, Evaluation and Accountability or their designee;

J. Ethics: No officer, agent or employee of the Board is or will be employed by Vendor or has or will have a financial interest, directly or indirectly, in this Agreement or the compensation to be paid hereunder except as may be permitted in writing by the Board's Ethics Policy (04-0623-PO4), adopted June 23, 2004, as may be amended from time to time, which policy is incorporated herein by reference as if fully set forth herein;

K. Intellectual Property: That in performing and delivering the Software and Services, Vendor will not violate or infringe upon any patent, copyright, trademark, trade secret or other proprietary or intellectual property right of any third party, and will not improperly use any third party's confidential information; and shall have, without encumbrance, all ownership, licensing, marketing and other rights required to furnish all materials and products that it furnishes to the Board under the Agreement and can grant or assign all rights granted or assigned to the Board pursuant to the Agreement;

L. No Legal Actions Preventing Performance: As of the Effective Date Vendor has no knowledge of any action, suit, proceeding, or material claim or investigation pending or to its knowledge threatened against it in any court, or by or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, or before any arbitrator of any kind, that, if adversely determined, would materially affect Vendor's ability to perform its obligation under the Agreement;

M. Assignment of Warranties: Vendor has the right, title, and ability to assign and shall assign to the Board any third-party warranties concerning the Software and Services provided under this Agreement from the software manufacturer to the Board;

N. Documentation Warranty: All Documentation provided to the Board from Vendor concerning the Software and Services shall be kept current with the upgrades of the Software and Services;

O. Ownership: Vendor is the owner of the Software or otherwise has the right to grant to the Board the License without violating any rights of any third party, and there is currently no actual or threatened suit by any such third party based on an alleged violation of such right by Vendor;

P. Business Requirements: Vendor is fully aware of the Board's requirements and intended uses for the Software, including any set forth in the exhibits, and the Software shall satisfy such requirements in all material respects, is fit for such intended uses and will operate on the Board's computer workstations;

Q. Software Performance: During the Term of the Agreement, the Software shall (i) be free from defects in material and workmanship under normal use and remain in good working order, and (ii) function properly and in conformity with the warranties herein and in accordance with this Agreement and with the description, specifications and Documentation on the Board computer workstations and system software including updates or new releases to such Hardware, system software and other software, and interface with other programs as required, and the Documentation shall completely and accurately reflect the operation of the Software. Vendor shall promptly correct any failure of

This Agreement will be posted on the CPS Internet website.

the Software to perform in accordance with the current published specifications and Documentation, but in no case shall the failure be fixed in less than five (5) business days;

R. Free of Defect Media. The tapes, diskettes, and CD-Rom and other media on which the Software are furnished shall be free from defects in materials and workmanship under normal use for 90 days from the date of deliver;

S. Free of Computer Viruses. Vendor shall use commercially reasonable best efforts to ensure that the Software is free of Computer Viruses. Vendor shall also maintain a master copy of the appropriate versions of the Software, free of computer viruses;

T. Not Alter Program. Vendor shall not, directly or through a third party, knowingly remove, alter, change or interface with the Software or any other program for the purpose or preventing the Board from utilizing the Software or any other program;

U. No Disabling Code. Vendor shall not knowingly cause any disabling code to be incorporated into Software;

V. Prohibited Acts. Within the three (3) years prior to the effective date of this Agreement, Vendor or any of its members if a joint venture or a limited liability company, or any of its or their respective officers, directors, shareholders, members, managers, other officials, agents or employees (i) have not been convicted of bribery or attempting to bribe a public officer or employee of any public entity and (ii) have not been convicted of agreeing or colluding among contractors or prospective contractors in restraint of trade, including bid-rigging or bid-rotating, as those terms are defined under the Illinois Criminal Code; and

W. Warranty of Title. The Services are free and clear from all liens, contracts, chattel mortgages or other encumbrances; that Vendor has the lawful right to dispose of and sell the Services and that Vendor shall warrant and defend its title against all claims.

All warranties will survive inspection, acceptance payment and expiration or termination of this Agreement. Nothing in the foregoing warranties will be construed to limit any other rights or remedies available to the Board under the law and the Agreement.

17. Independent Contractor. It is understood and agreed that the relationship of Vendor to the Board is and shall continue to be that of an independent contractor and neither Vendor nor any of Vendor's Staff shall be entitled to receive Board employee benefits. It is further understood and agreed that the Board shall not be responsible for, nor incur any liability for, any State or Federal withholding or other taxes or for FICA or State unemployment insurance for Vendor, its agents, employees or subcontractors, and the payment of any such taxes incurred or due by Vendor shall be the sole responsibility of Vendor. Vendor agrees that neither Vendor, nor its Staff shall represent themselves as employees or agents of the Board. Vendor shall provide the Board with a valid taxpayer identification number as defined by the United States Internal Revenue Code, including, but not limited to, a Social Security Number or a Federal Employer Identification Number.

18. Indemnification. Vendor agrees to indemnify and hold harmless the Board, its members, employees, agents, officers and officials, from and against any and all liabilities, taxes, tax penalties, interest, losses, penalties, damages and expenses of every kind, nature and character, including without limitation, costs and attorney fees, arising out of, or relating to, any and all claims, liens, damages, obligations, actions, suits, judgments, settlements or causes of action of every kind, nature and character, in connection with or arising out of the acts or omissions of Vendor or its Staff under this Agreement.

In addition, Vendor will indemnify, hold harmless, and defend the Board from any claim, demand, cause of action, debt or liability (including reasonable attorneys' fees and expenses) that the Services infringes, misappropriates, or otherwise violates any intellectual property (patent, copyright, trade secret or trademark) rights of a third party.

Vendor shall, at its own cost and expense, appear, defend and pay all attorney fees and other costs and expenses arising hereunder. In addition, if any judgment shall be rendered against the Board in any such action, Vendor shall, at its own expense, satisfy and discharge such obligation of the Board. The Board shall have the right, at its own expense, to participate in the defense of any suit, without relieving

Vendor of any of its obligations hereunder. The Board retains final approval of any and all settlements or legal strategies which involve the interest of the Board.

However, if Vendor, after receiving notice of any such proceeding, fails to promptly begin the defense of such claim or action, the Board may (without further notice to Vendor) retain counsel and undertake the defense, compromise or settlement of such claim or action at the expense of Vendor, subject to the right of Vendor to assume the defense of such claim or action at any time prior to settlement, compromise or final determination thereof. The cost and expense of counsel retained by the Board in these circumstances shall be borne by Vendor and Vendor shall be bound by, and shall pay the amount of any settlement, compromise, final determination or judgment reached while the Board was represented by counsel retained by the Board pursuant to this paragraph, or while Vendor was conducting the defense.

The indemnities set forth herein shall survive the expiration or termination of this Agreement.

19. Non-Liability of Board Officials: Vendor agrees that no Board member, employee, agent, officer or official shall be personally charged by Vendor, its members if a joint venture or any subcontractors with any liability or expense under the Agreement or be held personally liable under the Agreement to Vendor, its members if a joint venture or any subcontractors.

20. Board Not Subject to Taxes: The federal excise tax does not apply to the Board by virtue of Exemption Certificate No. 36-600584, and the State of Illinois sales tax does not apply to the Board by virtue of Exemption No. E9997-7109. The amounts to be paid to Vendor hereunder are inclusive of all other taxes that may be levied or based on this Agreement, including without limitation sales, use, nonresident, value-added, excise, and similar taxes levied or imposed on the Services to be provided under this Agreement, but excluding taxes levied or imposed on the income or business privileges of Vendor. Vendor shall be responsible for any taxes levied or imposed upon the income or business privileges of Vendor.

21. Insurance Requirements: Vendor, at its own expense, shall procure and maintain insurance covering all operations under this Agreement, whether performed by Vendor or by subcontractors. All insurers shall be licensed by the State of Illinois and rated A-VII or better by A.M. Best or a comparable rating service and policies shall not contain non-standard exclusions. Vendor shall submit to the Board satisfactory evidence of insurance coverage prior to the supply of any Services and upon request, shall promptly provide a certified copy of any applicable policy of insurance. Minimum insurance requirements are:

A. Workers' Compensation and Employers' Liability Insurance: Workers' Compensation Insurance affording workers' compensation benefits for all employees as required by law and Employers' Liability Insurance covering all Vendor's employees, with limits of not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) per occurrence. The workers' compensation policy shall contain a waiver of subrogation clause;

B. Commercial General Liability Insurance: Commercial General Liability Insurance or equivalent with limits of not less than Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence, combined single limit for bodily injury, personal injury and property damage liability coverage, which shall include the following: all premises and operations; Services/completed operations (for a minimum of two (2) years following completion); explosion; collapse; independent contractors; separation of insureds; defense; and contractual liability. The Board shall be named as an additional insured, on a primary non-contributory basis, for any liability arising directly or indirectly from the supply of the Services;

C. Professional Errors and Omissions: Professional errors and omissions insurance coverage in the amount of at least Two Millions and 00/100 Dollars (\$2,000,000) covering contractor and its employees. If insurance is on a claims-made basis, coverage must be in place for a minimum of three (3) years beyond the termination of this Agreement;

D. Umbrella/Excess Liability Insurance: Umbrella or Excess Liability Insurance with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence, which will provide additional

This Agreement will be posted on the CPS Internet website.

limits for Commercial General Liability Insurance and Automobile Liability Insurance;

E. Automobile Liability Insurance: Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with any Agreement, with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage; and

F. Additional Insured: Vendor shall have its Commercial General Liability Insurance and Automobile Liability Insurance policies endorsed to provide that the Board of Education of the City of Chicago, a body politic and corporate, and its members, employees and agents, and any other entity as may be designated by the Board are named as additional insured on a primary basis without recourse or right of contribution from the Board.

The insurance company, or its representative, shall submit an insurance certificate evidencing all coverage as required hereunder and indicating the Additional Insured status as required above. The Certificate must provide sixty (60) days prior written notice of material change, cancellation, or non-renewal be given to:

Opal L. Walls, Chief Purchasing Officer
Board of Education of the City of Chicago
125 South Clark Street, 10th Floor
Chicago IL 60603

The Board will not pay Vendor for any Services if satisfactory proof of insurance is not provided before the supply of any Services. The Board reserves the right to modify, delete, alter, or change insurance requirements at any time.

Vendor shall require any subcontractors under this Agreement to maintain insurance at the same levels described above and naming Vendor, the Board inclusive of its members, employees and agents, and any other entity designated by the Board as additional insureds. Vendor will maintain a file of subcontractor's insurance certificates evidencing compliance with these requirements.

Any failure of the Board to demand or receive proof of insurance coverage shall not constitute a waiver of Vendor's obligation to obtain the required insurance. The receipt of any certificate does not constitute agreement by the Board that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. Vendor's failure to carry or document required insurance shall constitute a breach of Vendor's agreement with the Board. In the event Vendor fails to fulfill the insurance requirements of this Agreement, the Board retains the right to stop the supply of Services until proper evidence of insurance is provided, or the Board may terminate this Agreement.

Any deductibles or self-insured retentions on referenced insurance coverage must be borne by Vendor. Any insurance or self-insurance programs maintained by the Board of Education do not contribute with insurance provided by Vendor under this Agreement. Vendor agrees that insurers waive their rights of subrogation against the Board.

The coverages and limits furnished by Vendor in no way limit Vendor's liabilities and responsibilities specified within this Agreement or by law. The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

22. Limitation of Liability: IN NO EVENT SHALL THE BOARD, INCLUDING ITS DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR COVER DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, INCURRED BY VENDOR OR ANY THIRD PARTY, EVEN IF THE BOARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE BOARD'S TOTAL LIABILITY TO VENDOR ARISING FROM OR RELATED TO THIS AGREEMENT FOR ANY REASON SHALL BE LIMITED TO DIRECT DAMAGES UP TO THE TOTAL MAXIMUM COMPENSATION. THE FOREGOING LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE AND OTHER TORTS.

23. Audit and Document Retention:

A. Audit: Vendor shall furnish the Board with such information as may be requested relative to the progress, execution and costs of supplying the Services. Vendor shall permit and cooperate in a periodic audit by Board staff or Board-appointed auditors for compliance by Vendor with this Agreement. Failure of Vendor to comply in full and cooperate with the requests of the Board or its agents shall give the Board, in addition to all other rights and remedies hereunder, the right to charge Vendor for the cost of such audit.

B. Document Retention: Vendor shall maintain all records, correspondence, receipts, vouchers, memoranda and other data relating to Vendor's supplying the Services under this Agreement. All records referenced above shall be retained for six (6) years after delivery of the Services and shall be subject to inspection and audit by the Board. Vendor shall include in all subcontractor contracts for the Services, provisions requiring subcontractors to maintain the above-described records and allowing the Board the same right to inspect and audit said records as set forth herein.

24. Notices: All notices required under this Agreement shall be in writing and sent to the addresses and persons set forth below, or to such other addresses as may be designated by a party in writing. All notices shall be deemed received when (i) delivered personally, or (ii) sent by confirmed telex or facsimile (followed by the actual document), or (iii) one day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt. Refusal to accept delivery has the same effect as receipt.

IF TO THE BOARD: Rick Miles, Chief Area Officer
3519 S. Giles Avenue
Chicago, IL 60653
Fax: (773) 534-9771

Copy to: Patrick J. Rocks, General Counsel
125 South Clark Street, Suite 700
Chicago, IL 60603
Fax: (773) 553-1701

IF TO VENDOR: John Moore
Rubicon West, Inc.
One World Trade Center, Suite 1200
121 SW Salmon Street
Portland, Oregon 97204
Phone: (503) 223-7600
Fax: (503) 224-7474

25. Right of Entry: Vendor, and any of its Staff supplying Services shall be permitted to enter upon a school site in connection with the supply of the Services hereunder, subject to the terms and conditions contained herein and those rules established by the Board. Vendor shall provide advance notice to the Board whenever applicable, of any such intended entry. Consent to enter upon a school site given by the Board shall not create, nor be deemed to imply, the creation of any additional responsibilities on the part of the Board. Vendor shall use, and shall cause each of its Staff to use, the highest degree of care when entering upon any property owned by the Board in connection with the supply of the Services. In the case of any property owned by the Board, or property owned by and leased from the Board, Vendor shall comply and shall cause each of its Staff, to comply with any and all instructions and requirements of Board or authorized Board representative for the use of such property. Any and all claims, suits or judgments, costs, or expenses, including, but not limited to, reasonable attorneys fees, arising from, by reason of, or in connection with any such entries shall be treated in accordance with the applicable terms and conditions of this Bid including without limitation the indemnification provisions contained in this Agreement.

26. Non-Discrimination: It shall be an unlawful employment practice for Vendor or any of its subcontractors to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, or other terms, conditions, or privileges of employment, because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, disability, marital status, parental status, military discharge status or national origin; or to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual from equal

This Agreement will be posted on the CPS Internet website.

employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, disability, marital status, parental status, military discharge status or national origin. At all times, Vendor shall remain in compliance with, but not limited to: the Civil Rights Act of 1964, 42 U.S.C.A. §2000a, *et seq.*, as amended; the Age Discrimination in Employment Act, 29 U.S.C.A. §621, *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §701, *et seq.*; as amended; the Americans with Disabilities Act, 42 U.S.C.A. §12101, *et seq.*; the Individuals with Disabilities Education Act, 20 U.S.C.A. §1400 *et seq.*, as amended; the IL Human Rights Act, 775 ILCS 5/1-101, *et seq.* as amended; the IL School Code, 105 ILCS 5/1-1 *et seq.*; the IL Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.*; and the Chicago Human Rights Ordinance, ch. 2-160 of the Municipal Code of Chicago, and all other applicable federal statutes, regulations and other laws.

27. Entire Agreement and Amendment: This Agreement, including all exhibits attached to it and incorporated into it, constitutes the entire agreement of the parties with respect to the matters contained herein. All attached exhibits are incorporated into and made a part of this Agreement. No modification or amendment to this Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. Any prior agreements or representations, either written or oral, relating to the subject matter of this Agreement are of no force or effect.

28. Governing Law: This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois. Vendor irrevocably submits itself to the original jurisdiction of those courts located in the County of Cook, State of Illinois, with regard to any controversy arising out, or relating to, or in any way concerning the execution or performance of this Agreement. Vendor agrees that service of process on Vendor may be made, at the option of the Board, by either registered or certified mail to the address and to the person set forth on the Bid Execution Page, to such other address or person as may be designated by Vendor in writing, to the office actually maintained by Vendor or by personal delivery on any officer, director or managing or general agent of Vendor. If any action is brought by Vendor against the Board concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

29. Continuing Obligation To Perform: In the event of any dispute between Vendor and the Board, Vendor shall expeditiously and diligently proceed with the performance of all of its obligations under this Agreement with a reservation of all rights and remedies it may have under or pursuant to this Agreement at law or in equity.

30. Conflict Of Interest: This Agreement is not legally binding on the Board if entered into in violation of the provisions of 105 ILCS 5/34-21.3, which restricts the employment of, or the letting of contracts to, former Board members within a one year period following expiration or other termination of their office.

31. Indebtedness: Vendor agrees to comply with the Board's Indebtedness Policy (96-0626-PO3) as may be amended from time to time, which is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein.

32. Inspector General: Each party to this Agreement hereby acknowledges that in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Chicago Board of Education has the authority to conduct certain investigations and that the Inspector General shall have access to all information and personnel necessary to conduct those investigations.

33. Waiver: No delay or omission by the Board to exercise any right hereunder shall be construed as a waiver of any such right and the Board reserves the right to exercise any such right from time to time and as often as may be deemed expedient.

34. MWBE Program: Vendor acknowledges that it is familiar with the requirements of the Board's Remedial Program for Minority and Women Owned Business Enterprise Participation in Goods and Services Contracts and agrees to comply with the provisions of such program.

35. Survival Severability: All express warranties, representations and indemnifications made or given in this Agreement shall survive the supply of Services by Vendor or the termination of this Agreement for any reason. In the event that any one or more of the provisions contained herein will for any reason be held to be unenforceable or illegal, such provision will be severed; and the entire Agreement will not fail, but the balance of this Agreement will continue in full force and effect. In such event, the parties agree to negotiate in good faith a substitute enforceable and legal provision that most nearly effects the intent of the parties in entering into this Agreement.

36. Uniform Commercial Code: In the absence of a governing provision under this Agreement or should any provision of this Agreement be construed by a court of competent jurisdiction as vague, unenforceable or illegal and the parties are unable to agree on a substitute enforceable and legal provision, the corresponding provision of the Uniform Commercial Code, Article 2, shall apply.

37. Joint and Several Liability: If Vendor, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof); then, and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by Vendor shall be the joint and several obligation or undertaking of each such individual or other legal entity.

38. Participation by Other Local Government Agencies: Other local government agencies may be eligible to purchase Services pursuant to the terms and conditions of this Agreement if such agencies are authorized, by law or their governing bodies, to execute such purchases, and if such authorization is allowed by the Board of Education's Chief Purchasing Officer, and if such purchases have no significant net adverse effect on the Board of Education, and result in no observed diminished Services from the Vendor to the Board of Education, and result in no observed diminished Services from the Vendor to the Board's user departments pursuant to such purchases. Examples of such agencies are: City of Chicago, Chicago Park District, City Colleges of Chicago, Chicago Transit Authority, Chicago Housing Authority, Chicago Board of Elections, Metropolitan Pier & Exposition Authority (McCormick Place, Navy Pier), and the Municipal Courts.

39. Debarment Policy: Vendor acknowledges that, in supplying Services for the Board, Vendor shall not utilize any firms that have been debarred from doing business with the Board under the Board's Debarment Policy and Procedures, 08-1217-PO1, as amended from time to time. If Vendor has engaged any firm to supply Services that is later debarred, Vendor shall sever its relationship with that firm with respect to supplying Services to the Board.

This Agreement will be posted on the CPS Internet website.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the latest date signed below.

BOARD OF EDUCATION OF
THE CITY OF CHICAGO

By: Opal F. Walls

Opal Walls, Chief Purchasing Officer

Date: 5/19/10

CPR 10-0406-CPR-1191

Approved as to legal form: Pat J. Rocks

Patrick J. Rocks, General Counsel

RUBICON WEST, INC.

By: Roger W. Smith

Name: Roger W. Smith

Title: Managing Partner

Attachment:

Exhibit A: Scope of Services

Exhibit B: List of Licensed Schools and Board Facilities

Attachment A: Product Pricing and Service Schedule ATLAS Curriculum Management Software

Rubicon shall grant usage of the ATLAS Curriculum Management Software licensed for the duration of the Agreement and priced as described below. The following items are included with the licensing of ATLAS.

Product	
ATLAS Curriculum Management Software	
▪ Initial 15-Month License Fee (May 1, 2010 - Jul. 31, 2011) (Up to 50% of Area 25 & 26 faculty, programs)	\$35,500
Services	
▪ Initial Implementation Support Consultation and assistance Inclusion of Client's logo and colors Loading of initial required tables Inclusion of Client's mapping parameters	Included
▪ Training Sessions [10 units]	\$6,500
▪ Product Updates	Included
▪ Maintenance	Included
▪ Hosting of Client system on Rubicon servers	Included
▪ ATLAS Web Hosting of Teacher Curriculum Documents	Included

1. The above annual license fee includes the following:

- Licensed use of the Atlas Curriculum Management Software.
- Fixes to any errors in the Licensed Software.
- 15 months of product maintenance, including new releases.
- 15 months of limited product warranty.
- Specified units of training as defined later in this Attachment.
- Services related to hosting Client system on Rubicon servers.

2. **Software Implementation Assistance**

Each product license includes professional service time for the purpose of implementing the system. Implementation consists of a six-step process:

- Planning
- Requirements Development
- Atlas Prototype Set-Up
- Electronic Curriculum Development Support
- Implementation and Faculty Roll-Out
- Follow-Up Evaluation

3. **Training**

Ten (10) units of training are included with this Agreement. The training units are:

- Curriculum Mapping Academy
- Area Leadership
- Core Curriculum Team
- Area School Faculty and Staff
- Advanced Training for Area Facilitators
- System Administrators
- Online and Podcast Training Resources

Attachment B: Product Pricing and Service Schedule ATLAS Curriculum Management Software

Rubicon shall grant usage of the ATLAS Curriculum Management Software licensed for the duration of the Agreement and to the Client member schools identified below. This Attachment B identifies the Client schools covered under the licensing agreement.

ATLAS Curriculum Management Software

Participating Schools (Area 25 and Area 26):

- Air Force Academy High School
- Chicago Military Academy
- Carver Military Academy
- David Farragut Career Academy High School
- Edwin Foreman High School
- Gordon Hubbard High School
- Kelvyn Park High School
- Marine Academy
- Phoenix Military Academy
- Rickover Naval Academy
- Charles Steinmetz Academic Centre High School
- William Howard Taft High School
- World Language High School
- Charles Allen Prosser Career Academy High School
- Infinity Math and Science Technology High School
- Thomas Kelly High School
- Roberto Clemente Community Academy High School
- Daniel Hale Williams Prep School of Medicine
- Frederick Douglass Academy High School
- Nicholas Senn High School
- Uplift Community High School
- VOISE Academy High School



Periscope Holdings, Inc.
211 East 7th Street
Suite 1100
Austin, TX 78701

Invoice

Date 8/1/2009
Invoice # 10931

Bill To

Chicago Public Schools
Attn: Accounts Payable
P.O. Box 661
Chicago, IL 60690-0661

P.O. Number	Terms	Due Date
	1%/10, Net 30	8/31/2009

Quantity	Description	Rate	Amount
1	NIGP 5-Digit Commodity Code Annual License Renewal (\$300 Million to \$400) - For the period of October 1, 2009 to September 30, 2010 NIGP 10% Membership Discount	1,155.00 -10.00%	1,155.00 -115.50
Pay your bills online at: https://www.intuitbillpay.com/periscopeholdingsinc			
The 1% discount for prompt payment is allowed if postmarked within 10 days of invoice (See Pmt Terms)		Total	\$1,039.50

Thank you for your continued business.

Our FEIN is 74-2995705. Direct questions to
Accounting (512) 472-9062 ext. 220 or accounting@goperiscope.com.

Past due invoices are subject to finance charges of 18% per annum or 1.5% per month.