

**This Agreement will be posted on the CPS Internet website.**

**SOFTWARE AND SERVICES AGREEMENT**  
**[CITYSPAN TECHNOLOGIES, INC.]**

This SOFTWARE LICENSE AND SERVICES AGREEMENT ("Agreement") dated this 1st day of July, 2012 ("Effective Date") 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" or "Client" or "Chicago Public Schools") and Cityspan Technologies, Inc. ("Contractor").

**RECITALS**

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

B. Contractor has demonstrated that it has the requisite knowledge, skill, experience and other resources necessary to provide the software 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:** Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

A. "**Agreement**" means this document and any attached appendices and exhibits, including any future written and duly executed amendments.

B. "**Authorization**" means this Agreement, a Blanket Purchase Order, Contract Order, or Purchaser Order of the Client, properly executed by the **Chicago Public Schools** for the specific funding of this Agreement or any modification thereof.

C. "**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. Contractor shall deliver to the Board a copy of the Documentation for each licensed user identified of the Software. 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.

D. "**Licensed Software**" means a computer software program identified as the Cityspan After School Attendance System, all related materials, documentation, all corrections, patches or updates thereto, and other written information received by Client from Contractor, whether in machine-readable or printed form.

E. "**Proprietary**" means human and machine-readable software code that has been produced by Contractor.

F. "**Software Code**" means outside of this Agreement and which shall remain under the exclusive ownership and control of the Contractor.

3. **Term of Agreement:** This Agreement is for a term commencing on the Effective Date and terminating on June 30, 2013 ("Term"), unless terminated sooner as provided herein. The parties shall have two (2) options to renew this Agreement for periods of one (1) year each ("**Renewal Period**") upon the expiration of the Term and upon the mutual written consent of both parties.

4. **Scope of Services:** Contractor agrees to provide the services set forth in **Exhibit A** ("**Services**"), in accordance with the terms and conditions of this Agreement. "**Services**" means, collectively, the services, Software, products, 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:** Contractor 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 Contractor is not performing in accordance with the performance standards or other requirements of this Agreement, the Board shall have the right to direct the Contractor to remove that person from performing Services under this Agreement.

**6. Compensation, Purchase Orders and Payment:**

A. **Compensation:** The total maximum compensation payable to Contractor pursuant to this Agreement shall not exceed the sum of **Three Hundred Thirteen Thousand Two Hundred Fifty and 00/100 Dollars (\$313,250.00)** ("**Total Maximum Compensation**"), as may be amended from time to time. It is understood and agreed that the Total Maximum Compensation is a 'not-to-exceed' amount and is not a guaranteed payment. Compensation shall be based on actual Services performed and the Deliverables, and Software License delivered during the Term of this Agreement; and the Board shall not be obligated to pay for any Services, Deliverables, or Licenses not provided in compliance with this Agreement and the related Purchase Order. The Board shall not reimburse Contractor for any expenses. Contractor is not entitled to any payment nor is the Board obligated to pay Contractor 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. Contractor agrees to provide the Services at the prices set forth in **Exhibit A**. If Contractor overcharges, in addition to all other remedies, the Board shall be entitled to a refund in the amount of the overcharge, plus interest at the rate of 3% per month from the date the overcharge was paid by the Board until the date refund is made. The Board has the right to offset any overcharge against any amounts due to Contractor under this or any other Agreement between Contractor and the Board.

B. **Purchase Orders:** Orders must be on the Board's Standard Purchase Order Form ("**PO**"). The pre-printed terms and conditions found on the PO shall apply to the extent that such terms supplement and are not inconsistent with the terms and conditions contained in this Agreement. It is understood and agreed that Contractor shall not provide any Services without a valid purchase order. If Contractor provides any Services without a valid purchase order Contractor shall not be entitled to receive any payment for such Services.

C. **Payment:** Contractor 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 Contractor 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.

**Submit original invoices to:**

Chicago Public Schools  
Office of Pathways to College and Career  
125 S. Clark St., 12th Floor  
Chicago, IL 60603

Attn: Heather Wendell

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

A. **Grant of License:** Contractor hereby grants to the Board a non-exclusive, perpetual, worldwide, nontransferable (to a third party), annual license to use the Licensed Software to support all CPS sites, for the fees specified in this Agreement, for the Term of the Agreement. The Board shall not sell, lease, license or otherwise transfer, use or dispose of the Licensed Software except as expressly provided herein. The Licensed Software shall at all times remain the sole and exclusive property of Contractor. The Board shall not copy or knowingly permit the copying by any third party of the Licensed 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 Licensed Software except as permitted under this Agreement. The Board shall not make any alterations, additions or modifications, create derivative works, decompile, disassemble or reverse engineer the Licensed Software without the prior written consent of Contractor.

i. Contractor agrees that in the event it discontinues its obligations under the terms of this Agreement, except as expressly provided for in Section 14 (Termination), or ceases to market and/or provide maintenance and support for the Licensed Software, and there is no successor in interest by merger, operation of law, assignment, purchase, or otherwise, it will provide Client, without charge, one (1) copy of the then-current Source Code and one (1) copy of the Object Code for all of the programs and all supporting Documentation for the Licensed Software then operating and installed at Client's locations. If Client should obtain the Source Code and the Documentation will be for the proper maintenance of the Licensed Software in connection with Client's use of the Licensed Software as provided for, and limited by, the provisions of this Agreement.

B. **Permissible Board Actions:** Nothing in this Section shall prevent the Board, its employees and representatives from:

i. sharing reports and data generated from the Contractor's Services with other Contractors of the Board; and

ii. disseminating Contractor's training materials and data to the Board's Contractors who participate in Train the Trainer sessions.

C. **Implementation of the Software:** Contractor shall provide installation, configuration, and implementation Services for the Software so that it is accessible through the Board's computer workstations.

D. **Licensed Users:** Contractor shall provide a username and password for each licensed user of the Software. "Licensed Users" or "Board Users" means those schools, classrooms, or administrators, teachers, and students licensed to access the Software. If the number of Licensed Users is not fixed by Exhibit A, then the number of Licensed Users shall be identified in the applicable PO(s).

E. **Software Maintenance:** During the term of this Agreement, Contractor shall be solely responsible for maintenance of the Software and its accessibility to the Board.

F. **Software Support:** Contractor shall provide the maintenance and support Services to the Board as described in Agreement.

G. **Controlling Agreement:** The Board shall not be bound by the terms and conditions contained in any clickwrap agreement, clickwrap license, clickthrough agreement, clickthrough license, end user license agreement or any other agreement or license contained or referenced in the Software or any quote provided by Contractor. Even if a Board User agrees to any agreement or license contained or referenced in the Software or a quote from the Contractor, Contractor acknowledges and agrees that those terms and conditions null and void and are not binding on the Board. Rather, Contractor acknowledges and agrees that the terms and conditions of this Agreement represent the entire agreement of the parties for the Services. No additional terms or conditions shall apply to the Board unless a written amendment to this Agreement is made and signed by both parties and the Board's General Counsel.

H. **Hosting of the Software and Board Data:** Contractor shall provide the following hosting, maintenance and support services (collectively, "Services"):

i) Host the Licensed Software at a secure datacenter (located at

Savvis Communications, Santa Clara, California). Contractor will maintain all server hardware and software, internet connectivity, data storage and back-up, error correction, and security controls. Contractor shall ensure that the Licensed Software allows data to flow properly between the Board's IMPACT System and the Licensed Software. Contractor must ensure that the Services, Licensed Software, and other resources and materials (collectively, the "Provided Resources") that are provided by Contractor to the Board, incorporate by Contractor, or approved or recommended by Contractor for use by the Board in connection with the Services, are 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"). Contractor shall cooperate and work as requested with the other service providers of the Board to facilitate the timely resolution of any and all compatibility problems that may arise with respect to the Licensed Software during the Term of this Agreement.

ii) Upload student data from IMPACT into the Licensed Software application.

iii) Provide user support services. Contractor will provide toll-free phone and e-mail based support to end users during business hours (M-F, 7a.m. - 5 p.m. PST). Support requests will be met within one (1) business day.

iv) Free Software upgrades and bug fixes, and support manual updates.

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 Contractor, such particular service or function shall be considered to be a part of the Licensed Software and Services hereunder if it is consistent with, and reasonably inferable to be within, the scope of Contractor's Services, as set forth in this Agreement, and it more reasonably would be associated with the scope of Contractor'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 Contractor 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.

Contractor 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 Contractor or Contractor's Software or Services, shall be the sole responsibility of the Board.

8. **Warranties: Right to Grant License:** Contractor warrants that the Licensed Software does not violate or infringe upon any patent, copyright, trademark, trade secret or other proprietary or intellectual property right of any third party. Contractor further warrants that it has, without encumbrance, all ownership, licensing, marketing and other rights required to furnish the Licensed Software and the associated documentation to the Board under this Agreement, and it can grant or assign all rights granted or assigned to the Board pursuant to this Agreement.

9. **Packaging, Warranty and Inspection:** The following provisions shall apply if Contractor is providing any products as part of or in connection with the Services ("Products") The term "Services" as used in this Agreement shall be inclusive of any Products Contractor provides pursuant to this Agreement.

A. **Packaging and Shipment: Risk of Loss:** Contractor 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. Contractor 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

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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:** Contractor 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 Contractor 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. Contractor 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 Contractor 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 Contractor (at Contractor'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 Contractor 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.

**10. Standards of Performance:** Contractor 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. Contractor 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. Contractor 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. Contractor 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, Contractor 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 Contractor of its responsibility for the professional skill, care, and technical accuracy of its Services and deliverables. Contractor shall remain responsible for the professional and technical accuracy of all Services, including any deliverables furnished, whether by Contractor or its subcontractors or others on its behalf.

**11. 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 Contractor 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 Contractor except that no payment shall be made or due to Contractor under this Agreement beyond those amounts appropriated and budgeted by the Board to fund payments under this Agreement.

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

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

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

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

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

E. Failure of Contractor 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 Contractor'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 Contractor'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.

**13. Remedies:** The occurrence of any Event of Default which Contractor 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, Contractor fails to commence and continue diligent efforts to cure in the sole opinion of the Board, may permit the Board to declare Contractor in default. Whether to declare Contractor 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 Contractor'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 Contractor either directly or through others. Contractor shall be liable to the Board for any excess costs incurred by the Board. Any amount due Contractor under this Agreement or any other agreement Contractor may have with the Board may be offset against amounts claimed due by the Board;

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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 Contractor'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 Contractor 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 Contractor's compensation under this Agreement; and

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

The Board may elect not to declare Contractor 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 Contractor to continue to supply the Services despite one or more Events of Default, Contractor 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.

**14. 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, Contractor 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.

Contractor 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.

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

The Board may, upon fifteen (15) calendar day's written notice, request that Contractor suspend supplying Services in whole or part. Contractor 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 Contractor. Responsibility for any additional costs or expenses actually incurred by Contractor as a result of remobilization shall be determined by mutual agreement of the parties.

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

**16. 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 Contractor intellectual property that is delivered to the Board as part of the Services to be provided by Contractor hereunder or are imbedded in any Work Product to be delivered to the Board by Contractor hereunder.

A. **Confidential Information:** In performance of Services to the Board, Contractor may have access to or receive certain information that is not generally known to others, whether in oral, or in written, graphic or machine-readable form including, without limitation, student information (e.g., student names, student social security numbers, address, phone number, student demographic information, student academic information, student testing information, date of birth, alien registration number, Medicaid recipient ID, student IDs), parent/guardian information (e.g. parent/guardian names, address, phone number, social security numbers, alien registration number, Medicaid Recipient ID, income, place of employment, date of birth, demographic information), Board/CPS employee information, Board/CPS IDs, Board financial information, training information, computer programs, technical data, proprietary software, processes, specifications, designs, research, or other confidential Board information ("Board Confidential Information"). The Board may have access to or receive certain information that is not generally known to others, whether in oral, or in written, graphic or machine-readable form including, but not limited to, the logon identifiers and/or passwords provided to the Board and each Authorized User ("Contractor Confidential Information"). Each party shall use appropriate administrative, technical and physical safeguards to prevent the improper use or disclosure of any Confidential Information received from or on behalf of the other party. Vendor shall comply with all applicable laws concerning data security, including but not limited Illinois' Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505).

Each party will take all reasonable precautions necessary to safeguard the confidentiality of the other party's Confidential Information including, at a minimum, those precautions taken by a party to protect its own Confidential Information, which will in no event be less than a commercially reasonable standard of care. Each party acknowledges and agrees that it will use Confidential Information solely in accordance with the provisions of this Agreement and its exhibits; and it will not disclose, or permit to be disclosed, the Confidential Information of the other party to any third party without the disclosing party's prior written consent, except as provided herein. Confidential Information will not include information that is: (a) publicly available; (b) already in the other party's possession and not subject to a confidentiality obligation; (c) obtained by the other party from any source without any obligation of confidentiality; (d) independently developed by the other party without reference to the disclosing party's Confidential Information; or (e) required to be disclosed by order of a court or other governmental entity or by operation of law.

B. **Transmitting and Storing Confidential Information:** Contractor shall:

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

ii. Only mail 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 Confidential Information shall only be mailed in accordance with the provisions of Section i, above;

iii. Encrypt all Confidential Information prior to transmitting it electronically. Contractor shall not transmit any unencrypted 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 Confidential Information with the Encrypted Confidential Information;

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

vi. Encrypt any 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.

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Contractor shall not leave Confidential Information in any electronic format unsecured and unattended at any time;

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

C. Dissemination of Information: Contractor shall not disseminate any Confidential Information to a third party without the prior written consent of the Board. Contractor 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 Contractor is presented with a request for documents by any administrative agency or with a *subpoena duces tecum* regarding any Confidential Information or Work Product which may be in Contractor's possession, Contractor 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. Contractor 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. Contractor shall cause its personnel, staff and subcontractors, if any, to undertake the same obligations regarding confidentiality and dissemination of information as agreed to by Contractor under this Agreement.

D. Ownership: Contractor 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," Contractor 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, and Work Product shall at all times be and remain the property of the Board. Contractor 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.

E. Use of Confidential Information: Contractor warrants and represents that it shall not use the 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 Contractor. Any use of the Confidential Information or any Work Product not specifically contemplated in this Agreement shall be considered a material breach of this Agreement.

F. Third Party Confidential Information and Proprietary Information: Contractor 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 Contractor 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 Contractor has previously secured the appropriate authorization in writing from such third party. In accordance with the provisions of Section 19 of this Agreement, Contractor 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 Contractor or its Staff under this Agreement.

G. Return or Destruction of Confidential Information: Contractor shall, at the Board's option, destroy or return all Confidential Information to the Board upon demand within three (3) business days of demand. In addition, Contractor shall, at the Board's option, destroy or return all 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 Contractor destroy the Confidential Information, Contractor shall provide an affidavit attesting to such destruction.

H. Data Security and access within the Software: Security in the Software shall be hierarchical. Students shall only have access to their application(s) and their data only. Students shall not be able to access any other students' data or information. Teachers shall only be able to access their active classes for all products and data for students in their active classes only. School administrators shall only be able to access the grades, classes and programs in their school. Network Chiefs shall only be able to access the grades, classes and schools in their area. The Board's central office shall be able to access all grades, classes and schools in the district.

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

J. Freedom of Information Act: Contractor 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 5/10-20.44. Contractor 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.

17. Representations and Warranties of Contractor: Contractor 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: Contractor 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, Contractor 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: Contractor, 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 Policy during the three (3) year period immediately preceding the effective date of this Agreement;

C. Authorization: In the event Contractor is an entity other than a sole proprietorship, Contractor 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 Contractor is duly authorized by Contractor and has been made with complete and full authority to commit Contractor to all terms and conditions of this Agreement which shall constitute valid, binding obligations of Contractor;

D. Financially Solvent: Contractor 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 Contractor, any of its members if a limited liability company or joint venture or, to the best of Contractor's knowledge, to any subcontractors, in relation to this Agreement or as an inducement for award of this Agreement. Contractor 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 Contractor are true and correct. Contractor 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

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such change shall be subject to Board approval, which shall not be unreasonably withheld;

**G. Background Investigations and Criminal Background Investigations:** Contractor 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.

Contractor 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 Contractor is an individual, Contractor represents and warrants that Contractor 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, Contractor 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 Contractor, all at Contractor's expense.

It is understood and agreed that Contractor'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 Contractor 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:** Contractor 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 Contractor to demonstrate its compliance with the provisions of this Section;

**I. Research Activities and Data Requests:** Contractor acknowledges and agrees that in the event Contractor seeks to conduct research activities in any Board school or use Board student data for research purposes, Contractor shall comply with the Board's Research Study and Data Policy adopted on July 28, 2010, as may be amended from time to time. Contractor 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 Performance Officer or their designee;

**J. Ethics:** No officer, agent or employee of the Board is or will be employed by Contractor 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 (11-0525-PO2), adopted May 25, 2011, 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 Licensed Software and Services, Contractor 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, Contractor 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 Contractor's ability to perform its obligation under the Agreement;

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

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

**O. Ownership.** Contractor is the owner of the Services and 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 Contractor;

**P. Business Requirements.** Contractor is fully aware of the Board's requirements and intended uses for the Licensed Software, including any set forth in the exhibits, and the Licensed 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. Licensed Software Performance.** During the Term of the Agreement, the Licensed 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 Licensed Software. Contractor shall promptly correct any failure of the Licensed 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 Computer Viruses.** Contractor shall use commercially reasonable best efforts to ensure that the Licensed Software is free of Computer Viruses. Contractor shall also maintain a master copy of the appropriate versions of the Licensed Software, free of Computer Viruses;

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

**T. No Disabling Code.** Contractor shall not knowingly cause any disabling code to be incorporated into Licensed Software;

**U. Prohibited Acts:** Within the three (3) years prior to the effective date of this Agreement, Contractor 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

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prospective contractors in restraint of trade, including bid-rigging or bid-rotating, as those terms are defined under the Illinois Criminal Code; and

V. **Warranty of Title:** The Services are free and clear from all liens, contracts, chattel mortgages or other encumbrances; that Contractor has the lawful right to dispose of and sell the Services and that Contractor 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.

18. **Independent Contractor:** It is understood and agreed that the relationship of Contractor to the Board is and shall continue to be that of an independent contractor and neither Contractor nor any of Contractor'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 Contractor, its agents, employees or subcontractors, and the payment of any such taxes incurred or due by Contractor shall be the sole responsibility of Contractor. Contractor agrees that neither Contractor, nor its Staff shall represent themselves as employees or agents of the Board. Contractor 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.

19. **Indemnification:** Contractor 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 Contractor or its Staff under this Agreement.

In addition, Contractor 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.

Contractor 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, Contractor 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 Contractor 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 Contractor, 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 Contractor) retain counsel and undertake the defense, compromise or settlement of such claim or action at the expense of Contractor, subject to the right of Contractor 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 Contractor and Contractor 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 Contractor was conducting the defense.

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

20. **Non-Liability of Board Officials:** Contractor agrees that no Board member, employee, agent, officer or official shall be personally charged by Contractor, 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 Contractor, its members if a joint venture or any subcontractors.

21. **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 Contractor 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 Contractor. Contractor shall be responsible for any taxes levied or imposed upon the income or business privileges of Contractor.

22. **Insurance Requirements:** Contractor, at its own expense, shall procure and maintain insurance covering all operations under this Agreement, whether performed by Contractor 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. Contractor 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 Contractor'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 (Primary and Umbrella):** Commercial General Liability Insurance or equivalent with limits of not less than Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate for bodily injury, personal injury and property damage liability. Coverage shall include, but not be limited to: all operations, contractual liability, independent contractors, products/completed operations (for a minimum of two (2) years following completion), and defense;

C. **Professional Errors and Omissions:** Proposer shall maintain such coverage with limits of not less than Two Million Dollars (\$2,000,000.00) per claim for errors and omissions in conjunction with professional services inclusive of assumption of contractual liability. The policy shall have a retroactive date effective with the commencement of professional services and have an extended reporting period of not less than two (2) years following completion of such professional service. Subcontractors performing work for technical services for Proposer must maintain limits of not less than \$1,000,000.00 per occurrence with the same terms herein;

D. **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

E. **Additional Insured:** Contractor shall have its General Liability 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 Board will not pay Contractor for any Services if satisfactory proof of insurance is not provided by Contractor prior to the performance of any Services. The Certificate must provide thirty (30) days prior written notice of material change, cancellation, or non-renewal be given to:

Risk Management  
Board of Education of the City of Chicago  
125 S. Clark St., 7<sup>th</sup> Floor  
Chicago, IL 60603

Any failure of the Board to demand or receive proof of insurance coverage shall not constitute a waiver of Contractor's obligation to obtain

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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. Contractor's failure to carry or document required insurance shall constitute a breach of Contractor's agreement with the Board. In the event Contractor 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 Contractor. Any insurance or self-insurance programs maintained by the Board of Education do not contribute with insurance provided by Contractor under this Agreement. Contractor agrees that insurers waive their rights of subrogation against the Board.

All subcontractors are subject to the same insurance requirements of Contractor unless otherwise specified in this Agreement. The Contractor shall require any subcontractors under this Agreement to maintain comparable insurance naming the Contractor, the Board inclusive of its members, employees and agents, and any other entity designated by the Board, as Additional Insureds. The Contractor will maintain a file of subcontractor's insurance certificates evidencing compliance with these requirements.

The coverages and limits furnished by Contractor in no way limit Contractor'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.

The Contractor agrees that insurers waive their rights of subrogation against the Board.

**23. 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 CONTRACTOR OR ANY THIRD PARTY, EVEN IF THE BOARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE BOARD'S TOTAL LIABILITY TO CONTRACTOR 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.

**24. Audit and Document Retention:**

A. **Audit:** Contractor shall furnish the Board with such information as may be requested relative to the progress, execution and costs of supplying the Services. Contractor shall permit and cooperate in a periodic audit by Board staff or Board-appointed auditors for compliance by Contractor with this Agreement. Failure of Contractor 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 Contractor for the cost of such audit.

B. **Document Retention:** Contractor shall maintain all records, correspondence, receipts, vouchers, memoranda and other data relating to Contractor'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. Contractor 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.

**25. 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:** Heather Wendell  
Office of Pathways to College and Career  
125 S. Clark Street, 12th Floor  
Chicago, IL 60603  
Fax: 773.553.2148

Copy to: Patrick J. Rocks, General Counsel  
125 South Clark Street, Suite 700  
Chicago, IL 60603  
Fax: 773.553.1701

**IF TO CONTRACTOR:** Mark Min  
Cityspan Technologies, Inc.  
2054 University Ave., 5F  
Berkeley, CA 94704  
Phone: 510.665.1700  
Fax: 510.665.1702

**26. Right of Entry:** Contractor, 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. Contractor 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. Contractor 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, Contractor 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 Agreement including without limitation the indemnification provisions contained in this Agreement.

**27. Non-Discrimination:** It shall be an unlawful employment practice for Contractor 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 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, Contractor 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.

**28. 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



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written or oral, relating to the subject matter of this Agreement are of no force or effect.

**29. Governing Law:** This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois. Contractor 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. Contractor agrees that service of process on Contractor may be made, at the option of the Board, by either registered or certified mail to the address and to the person set forth in the Notice Provision of this Agreement, to such other address or person as may be designated by Contractor in writing, to the office actually maintained by Contractor or by personal delivery on any officer, director or managing or general agent of Contractor. If any action is brought by Contractor against the Board concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

**30. Continuing Obligation To Perform:** In the event of any dispute between Contractor and the Board, Contractor 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.

**31. 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.

**32. Indebtedness:** Contractor 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.

**33. 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.

**34. 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.

**35. M/WBE Program:** Contractor 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.

**36. Survival Severability:** All express warranties, representations and indemnifications made or given in this Agreement shall survive the supply of Services by Contractor 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.

**37. 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.

**38. Joint and Several Liability:** If Contractor, 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 Contractor shall be the joint and several obligation or undertaking of each such individual or other legal entity.

**39. 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 Contractor to the Board of Education, and result in no observed diminished Services from the Contractor 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.

**40. Debarment Policy.** Contractor acknowledges that, in supplying Services for the Board, Contractor 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 Contractor has engaged any firm to supply Services that is later debarred, Contractor shall sever its relationship with that firm with respect to supplying Services to the Board.

[SIGNATURE PAGE FOLLOWS]

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.

THE BOARD OF EDUCATION  
OF THE CITY OF CHICAGO

CITYSPAN TECHNOLOGIES, INC.

By: David J. Vitale  
David J. Vitale, President

By: Mark Min

Attest: Estela G. Beltran  
Estela G. Beltran, Secretary

Signature: [Signature]

Date: 7/13/12

Title: CEO

Board Report No.: 12-0627-PR 5-1

Date: 6/21/12

Approved as to legal form: Patrick Rocks  
Patrick Rocks, General Counsel

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**Attachment:**

**Exhibit A: Scope of Services**

This Agreement will be posted on the CPS Internet website.

**EXHIBIT A**  
**[Cityspan, Inc.]**

**SCOPE OF SERVICES**

**Contractor:** Cityspan Technologies, Inc.

**Board Report #** 12-0627-PR<sup>5</sup>

**Name of Project:** Software License and Product Development

**Board's Project Manager:** Jennifer Axelrod; Phone: 773-553-1499

**E-Mail:** [jlaxelrod@cps.k12.il.us](mailto:jlaxelrod@cps.k12.il.us)

**Contractor's Project Manager:** Mark Min; Phone: 510-665-1700; Email: [mark@cityspan.com](mailto:mark@cityspan.com)

**Period of Performance: Start Date:** July 1, 2012 **End Date:** June 30, 2013

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This Scope of Services shall be conducted pursuant to the terms and conditions of the above-referenced Board Report and Agreement ("**Agreement**") by and between Cityspan Technologies, Inc. ("**Contractor**" or "**Cityspan**") and The Board of Education of the City of Chicago ("**Board**"), commonly known as the Chicago Public Schools ("**CPS**"). Defined terms used in this Scope of Services shall have the same meanings as those ascribed to such terms in the Agreement.

**I. Scope of Work**

This scope of work describes costs associated with licensing, customizing and hosting Cityspan software. Cityspan will provide attendance tracking and contract management systems to the Chicago Public Schools to support the management of Out of School Time ("**OST**"), Supplemental Educational Services ("**SES**") and other CPS enrichment programs. The software will collect student level data and generate summary reports that meet requirements of CPS and its funding sources. Further, the student-level data shall be used for research, reporting and program administration to support the City of Chicago Department of Family and Support Services, the Chicago Park District, After School Matters, the Chicago Public Library, the Chicago Housing Authority, and Chicago Allies ("**Data Partners**").

**II. Deliverables**

**Year 1: July 1, 2012 – June 30, 2013**

**1. Licensing, Hosting & User Support**

Cityspan will charge CPS an enterprise license fee for software licensing, hosting and user support. The fee pays for costs related to development of Cityspan's code base, data center operations, internet connectivity, security monitoring and user support services. The enterprise license will provide CPS with an unlimited number of school sites and Community Based Organizations ("**CBO**") database instances. The license will also provide for an unlimited number school level and administrative (multi-school) user accounts. Cityspan's help desk will provide toll-free phone and email-based support to all users during business hours (M-F, 10AM-7PM CST). Support requests will be met within one business day.

**Cost: Annual Enterprise License = \$230,000**

**This Agreement will be posted on the CPS Internet website.**

## **2. Project Management**

A project management fee will cover costs associated with meetings, email and phone communications between CPS staff and Cityspan. Project management tasks shall include development of system specifications, management of custom programming, oversight of daily operations, monitoring of data uploads and project status reporting.

**Annual Cost = \$15,000**

## **3. Custom Programming**

A programming fee will cover the cost to implement software customization requests.

### **3.1. Develop Request for Proposals (RFP) System**

Cityspan will develop data-entry forms, navigation and reports that allow CPS central office to receive, review and approve proposals online.

#### **3.1.1. Develop RFP System for ASAS**

Cityspan will develop forms, instructions and evaluation tools to support the ASAS RFP. Forms shall include: Cover Sheet, Narrative, Budget, Program Schedule and Evaluation

Cost = \$5,000

#### **3.1.2. Develop CSI Service Plan**

Cityspan will develop forms, instructions, and evaluation tools to support the CSI Service Plan. Forms shall include: School Information, Program Schedule, Strategies, Lead Partner, Advisory Committee, Budget, Certification Form, and Evaluation.

Cost = \$5,000

**TOTAL COST: \$10,000**

### **3.2. SES Participant Tracking System**

Cityspan will customize the software, and perform data imports/exports, to meet CPS SES data collection requirements for the FY12-13 school year.

#### **3.2.1 Export Data to the State of Illinois**

Cityspan will export student attendance data to the Illinois State Board of Education (ISBE), Office of Innovation and Improvement. Cityspan will work with ISBE's technology staff to confirm the export specification.

Cost = \$1,000

#### **3.2.2 Import Student Data from IMPACT**

Cityspan will import student data from IMPACT. Data management tasks include mapping to match CPS data with Cityspan's SES data structure, importation of data items specific to SES, and providing a method for archiving student data when it is found a student is no longer eligible for SES.

Cost = \$1,000

#### **3.2.3 Develop Additional SES Administrative and Site Management Reports**

Additional administrative and site-level reports will be created to assist with the management of SES programs.

**This Agreement will be posted on the CPS Internet website.**

Cost = \$2,500

**3.2.4 Autodrop and Waitlisting**

Cityspan will perform weekly and periodic drops of students based on the SES Program and defined by the Project Manager. Cityspan will waitlist/unwaitlist students in the SES system for any supplemental registration period as defined by the Project Manager.

Cost = \$1,250

**3.2.5 Miscellaneous Customization for FY12-13**

Cityspan will customize the SES software data-entry forms, navigation, business rules to reflect requirements for FY12-13.

Cost = \$5,000

**TOTAL COST: \$10,750**

**3.3 Out of School Time Reporting Features**

Cityspan will develop site-level and administrative reports to meet ASAS, CSI, Debate, and Decathlon requirements.

**3.3.1 OST Performance Indicator Reports**

BusinessObjects reports will be created and updated as needed to report on the status of key OST indicators as defined by the Project Manager. Reports will be generated on a monthly and annual basis. Cityspan will develop school level performance indicator reports to be emailed to school contacts on a periodic basis.

Cost = \$3,750

**3.3.2 Program-specific OST Management Reports**

Administrative and site-level reports will be created to assist with the management of OST programs (ASAS, CSI, Debate).

Cost = \$3,750

**3.3.3 Data Export Reports**

Cityspan will develop and provide exports of program and student level attendance data as specified by CPS for use in CPS internal systems (e.g. school dashboards) and for data analysis.

Cost = \$7,500

**TOTAL COST: \$15,000**

**3.4 Youth Employability Assessment**

Cityspan will develop and deploy the Youth Employability Assessment across CPS participating schools. Reports will be developed to summarize assessment results.

Cost = \$5,000

**3.5 CBO Provider Access**

Cityspan will develop user roles and permissions to enable CBO access to school-level information. Reports and custom navigation will be developed to allow CBO access to

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selected software features and reports.

Cost = \$7,500

**3.6 Enterprise Module**

Cityspan will develop a tracking module that allows CPS to collect common data items across program initiatives. The module will also serve as a base module for CPS schools that do not have specific funding sources.

Cost = \$5,000

**CUSTOM PROGRAMMING SUB-TOTAL**

3.1 RFP Development	= \$10,000
3.2 SES Development	= \$10,750
3.3 OST Report Development	= \$15,000
3.4 Youth Employment Assessment	= \$5,000
3.5 CBO Provider Access	= \$7,500
3.6 Enterprise Module	= \$5,000

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**Grand Sub-Total = \$53,250**

**4. 21<sup>st</sup> Century APR Reports and PPICS Data-entry**

Cityspan will prepare APR reports for CPS 21<sup>st</sup> CCLC schools and enter the results into the US Department of Education PPICS system.

Cityspan will send the Board a file listing all StudentIDs of students required for 21<sup>st</sup> Century APR reporting. The Board will return the following three (3) data sets ("Data Sets") to Cityspan for said students:

- Course Marks
- PSAE test scores
- ISAT test scores

CPS data provided for 21<sup>st</sup> Century APR reporting **may not be distributed** or used for any other purpose without the express written consent of the Board. The Data Sets and all traces of their content shall be destroyed by Cityspan once reporting requirements have been met accordingly.

Cost = \$15,000

**5. Conduct Research and Generate Reports from Student Data Files for CPS departments and Data Partners**

Cityspan shall obtain from the Board a set of student information files ("**Student Data**") that shall be used by Cityspan for research, reporting and program administration to support the Board and the Data Partners. Student Data shall have the following contents and uses.

**5.1 File: Student Identifying Information**

1. **Contents:** StudentID, LastName, FirstName, BirthDate, Gender, Ethnicity, GradeLevel, SchoolID, CPSOrganizationUnitID, CPSFacilityID, ELLStudent, PM, StreetNumber, AddressDirection, StreetName, StreetType, PostalCode, StudentPhone, RelatedLastName, RelatedFirstName, Relation, ContactPhone, PrimaryLanguageCode, IEP Status, FRMCode, Homeroom, Homeless, StateNumber, RCDTS, StartDate, TrackSchedule, EndDate, **Leave Code**.
2. **Frequency of Transfer:** Daily, except for weekends and holidays.
3. **CPS Uses:** Student Identifying Information will pre-populate student registration forms that appear in the OPCC software application. Student identifying information

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will be made available to authorized CPS staff for the purpose of authoring reports. CPS staff will have access to individually identified student data.

4. **Data Partner Uses:** Cityspan will use Student Identifying Information for the purpose of authoring summary reports on behalf of the Data Partners. The Data Partners shall not have direct access to Student Identifying Information. In order to maintain student confidentiality, calculated results in summary reports authored by Cityspan on behalf of the Data Partners shall include a minimum of 10 students.
5. Student Identifying Information also will be used by the Cityspan to match CPS students to individuals that have been registered separately by the Data Partners. Cityspan will use the LastName, FirstName, BirthDate, Gender, Ethnicity and PostalCode for matching. Data Partners will not be made aware of the identities of individual students that have been matched and no individually identified student data will be revealed as a result of the matching process.

#### **5.2 File: Staff Data**

1. **Contents:** First Name, Last Name, School, Employee ID
2. **Frequency of Transfer:** Daily
3. **CPS Uses:** Staff Identifying Information will pre-populate staff registration forms that appear in the OPCC software application. Staff identifying information will be made available to authorized CPS staff for the purpose of authoring reports.
4. **Data Partner Uses:** N/A.

#### **5.3 De-identified Data Export**

Cityspan shall make available to the Data Partners a de-identified student-level file that will allow the Data Partners to support research, reporting and program administration. The student level file will be de-identified by removing the following fields: StudentID, StateIDNumber, FirstName, LastName, StreetNumber, AddressDirection, StreetName, StreetType, StudentPhone, RelatedLastName, RelatedFirstName, Relation, ContactPhone, and Homeroom.

#### **5.4 Additional Data Files:**

The Board may choose to designate and share additional files with Cityspan. For any additional files designated for sharing by the Board, the Board will prepare a written statement of work ("SOW") which will detail the content, frequency of transfer and uses for each data file and will be subject to the terms and conditions of the Agreement and any renewals thereof. The SOW shall be executed by both the Board's Chief Office of Pathways to College and Careers and an authorized representative of Cityspan, prior to the transfer of any additional data files to Cityspan.

### **6. Cityspan Data Files**

Cityspan shall make available to the Board student-level files that will allow the Board to support research, reporting and program administration. .

#### **6.1 File: Service Activity – General Data**

1. **Contents:** Program Year; School ID; Program Category; Funding Source; Activity Name; Activity Description; Service Provider; Service ID; Service Type; Activity Schedule; Delivery Method; Activity Type; Conference; Grant Name; In-Kind Type; Fee Scale; Fee Type; Fee; Service Category
2. **Frequency of Transfer:** Nightly
3. **CPS Uses:** Cityspan program data will be loaded and organized into the data warehouse for output reporting and analytical purposes.
4. **Data Partner Uses:** N/A

#### **6.2 File: Service Activity – Focus Area Data**

1. **Contents:** Service ID; Focus Area
2. **Frequency of Transfer:** Nightly

**This Agreement will be posted on the CPS Internet website.**

3. **CPS Uses:** Cityspan program data will be loaded and organized into the data warehouse for output reporting and analytical purposes.
4. **Data Partner Uses:** N/A

**6.3 File: Service Activity – Target Enrollment Data (by Service Type and Eligible Grades)**

1. **Contents:** Service ID; Service Type; Grade; Target Enrollment
2. **Frequency of Transfer:** Nightly
3. **CPS Uses:** Cityspan program data will be loaded and organized into the data warehouse for output reporting and analytical purposes.
4. **Data Partner Uses:** N/A

**6.4 File: Service Activity – Target Event Enrollment and Actual Data**

1. **Contents:** Service ID; Service Type; Target - Event Student; Target - Event Adult; Actual – Event Student; Actual – Event Adult
2. **Frequency of Transfer:** Nightly
3. **CPS Uses:** Cityspan program data will be loaded and organized into the data warehouse for output reporting and analytical purposes.
4. **Data Partner Uses:** N/A

**6.5 File: Service Activity – Target Groups Data**

1. **Contents:** Service ID; Target Group
2. **Frequency of Transfer:** Nightly
3. **CPS Uses:** Cityspan program data will be loaded and organized into the data warehouse for output reporting and analytical purposes.
4. **Data Partner Uses:** N/A

**6.6 File: Service Activity – Target Sub-Groups Data**

1. **Contents:** Service ID; Target Sub Group
2. **Frequency of Transfer:** Nightly
3. **CPS Uses:** Cityspan program data will be loaded and organized into the data warehouse for output reporting and analytical purposes.
4. **Data Partner Uses:** N/A

**6.7 File: Service Activity – Enrollment Data**

1. **Contents:** Service ID; School ID; Student ID; Activity Enrollment Begin Date; Activity Enrollment End Date; Activity Enrollment Drop Date; Activity Reason for Drop
2. **Frequency of Transfer:** Nightly
3. **CPS Uses:** Cityspan program data will be loaded and organized into the data warehouse for output reporting and analytical purposes.
4. **Data Partner Uses:** N/A

**6.8 File: Service Activity – Attendance Data**

1. **Contents:** Service ID; School ID; Student ID; Activity Attendance Date; Activity Attendance Status; Activity Minutes Scheduled; Activity Minutes Received
2. **Frequency of Transfer:** Nightly
3. **CPS Uses:** Cityspan program data will be loaded and organized into the data warehouse for output reporting and analytical purposes.
4. **Data Partner Uses:** N/A

**6.9 File: Service Activity – Common Core State Standards / Illinois Learning Standards**

1. **Contents:** Service ID; Service Standard ID; Standard Type; Standard Description
2. **Frequency of Transfer:** Nightly
3. **CPS Uses:** Cityspan program data will be loaded and organized into the data warehouse for output reporting and analytical purposes.
4. **Data Partner Uses:** N/A



**This Agreement will be posted on the CPS Internet website.**

**6.10 File: Service Activity – Staff Data**

- 1. Contents:** Service ID; Staff ID; Staff Role; Staff Type; Activity Attendance
- 2. Frequency of Transfer:** Nightly
- 3. CPS Uses:** Cityspan program data will be loaded and organized into the data warehouse for output reporting and analytical purposes.
- 4. Data Partner Uses:** N/A

**GRAND TOTAL (7/1/12 – 6/30/13)**

<b>Licensing, Hosting &amp; User Support</b>	<b>= \$230,000</b>
<b>Project Management</b>	<b>= \$15,000</b>
<b>Custom Programming</b>	<b>= \$53,250</b>
<b>21CCLC APR Data Entry</b>	<b>= \$15,000</b>
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<b>GRAND TOTAL</b>	<b>= \$313,250*</b>

**\*All foregoing costs shall not exceed the totals indicated from each subsection without the prior written approval from the Board. The Total Maximum Compensation in the amount of Three Hundred Thirteen Thousand Two Hundred Fifty and 00/100 Dollars (\$313,250.00) shall be paid in two installments. The first installment in the amount of Two Hundred Thirty Thousand and 00/100 Dollars (\$230,000.00) shall be paid no later than July 15, 2012. The second installment in the amount of Eighty Three Thousand Two Hundred Fifty and 00/100 Dollars (\$83,250.00) shall be paid no later than June 15, 2013.**