

This Agreement will be posted on the CPS Internet website.

**WEBSITE DEVELOPMENT, IMPLEMENTATION AND HOSTING AGREEMENT**  
[Americaneagle.com, Inc.]

This WEBSITE DEVELOPMENT, IMPLEMENTATION AND HOSTING AGREEMENT ("Agreement") is entered into by and between the Board of Education of the City of Chicago, a body politic and corporate commonly known as the Chicago Public Schools (the "Board" or "CPS") and Americaneagle.com, Inc. ("Vendor").

**RECITALS**

A. Vendor desires to provide web development and support services to the Board as more fully described herein; and

B. Vendor has demonstrated that it has the requisite knowledge, skill, experience and other resources necessary to provide the web development and support services to the Board.

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

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

2. **Definitions:**

A. "Documentation" means any and all written materials in printed or electronic form describing the functions and utilities of the Board Site. Upon completion Vendor shall deliver to the Board a copy of the Documentation. The Board shall have the right, as part of the license granted herein, to make as many additional copies of the Documentation as it may deem necessary.

B. "Board Site" means all Web pages and content designed and developed for the Board pursuant to the requirements specified in Exhibit A together with supporting files and Programming Code, hosted and maintained by Vendor, and accessible to the Board via the Internet, including the Domain Name, Documentation and all derivative works created by the Board in connection therewith.

C. "Programming Code" shall mean programming coding and statements for developing web pages and applications, including without limitations HTML, Java, JavaScript, Active Server Pages (ASP), ASP.net, Java Server Pages (JSP), DHTML, Cold Fusion, CGI/Perl, XML, PHP, Oracle Database Server, Microsoft SQL Database Server, and Flash programming languages, including any and all executable code and source code in connection therewith.

D. "Domain Name" shall mean any domain name requested by the Board.

E. "Board Content" shall mean all materials provided by the Board to Vendor hereunder, including but not limited to text, domain names, graphics, or materials generated in any form or media.

F. "Board Marks" shall mean the trademarks, trade names, service marks, or logos owned, controlled, or licensed by Board.

G. "Pre-existing Vendor Content" shall mean all materials owned by Vendor that existed prior to the Effective Date of this Agreement, including but not limited to, text, graphics, or materials existing in any form or media.

H. "Vendor Marks" shall mean the trademarks, trade names, service marks, or logos owned, controlled, or licensed by Vendor.

I. "Site Software" shall mean the software programs capable of being run from the Board Site by users thereof.

J. "Updates" shall mean enhancements made by Vendor to any Site Software during the Term. Such enhancements shall include all modifications to the Site Software, which increase the speed, efficiency or ease of operation of the Site Software, or add additional capabilities to or otherwise improve the functionality or appearance of the Board Site.

K. "Vendor Software" shall mean all software existing and owned or licensed by Vendor at the time this Agreement is executed (except for software developed or obtained in anticipation of executing this

Agreement), and which is employed by Vendor in connection with the Board Site.

L. "Users" shall mean Board employees as well as individuals including parents of CPS students and non-cps students accessing, or attempting to access, the Board Site through the Internet.

3. **Term of Agreement:** This Agreement begins upon execution by the Board (the "Effective Date") and shall end twelve (12) months thereafter ("Term"), unless terminated sooner as provided herein. The Board shall have one option to renew this Agreement for a twelve (12) month period

4. **Scope of Services:** Vendor agrees to provide the design, development and programming services to create a website ("Board Site") for the Board's Office of Access and Enrollment's online application system; (ii) train Board-designated personnel on administering and maintaining such Board Site and (iii) provide related support with respect to the Board Site as further detailed in Exhibit A ("Services"), in accordance with the terms and conditions of this Agreement. "Services" means, collectively, the services, web development, deliverables, duties and responsibilities described in Exhibit A of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement. The Board retains final authority with respect to all Services related decisions. The Board may, from time to time, request changes in the scope of Services. Any such changes shall be documented by a written amendment to this Agreement signed by both parties and the Board's General Counsel.

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

6. **Compensation and Payment:**

A. **Compensation:** The total maximum compensation payable to Vendor pursuant to this Agreement shall not exceed Seventy Four Thousand Dollars and 00/100 (\$74,000.00) ("Total Maximum Compensation"), with no reimbursement for expenses. Vendor is not entitled to any payment nor is the Board obligated to pay Vendor any amount solely by virtue of entering into this Agreement. Vendor agrees to provide the Services at the prices set forth in Exhibit A. In the event of early termination of this Agreement, the Board shall only be obligated to pay for Services rendered up to the date of termination. In no event shall the Board be liable for the cost of Services performed after the effective termination or expiration date of this Agreement.

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

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**7. License, Implementation, Maintenance, Support, Hosting, Updates and Transfer Board Site:**

A. License Grant to Vendor: The Board grants Vendor, and Vendor accepts from the Board, a non-exclusive, revocable, non-transferable and restricted license to use the Board Content under the terms and conditions of this Agreement solely for the purposes of developing the Board Site.

B. Implementation: Vendor shall implement the Board Site on Vendor servers. Upon implementing the Board Site, Vendor shall demonstrate to the Board that the Board Site performs in accordance with the requirements set forth in Exhibit A.

C. Maintenance: During the term of this Agreement, Vendor shall be solely responsible for maintenance of the Board Site and its accessibility to the Board. At any time during the Term of the Agreement, if the Board demonstrates to Vendor a reproducible error in the Board Site, Vendor shall correct such error and redeliver source and object code for such correction as soon as possible but in no event later than ten (10) business days.

D. Support: Vendor shall provide the maintenance and support Services to the Board as described in this Agreement.

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

F. Compatibility and Data Flow: Vendor shall ensure that the Hosting Services allows data to flow properly between computer workstations and the Board Site. Vendor must ensure that any other resources that are provided by Vendor to the Board, incorporated by Vendor, or approved or recommended by Vendor for use by the Board in connection with the Board Site, be fully compatible with, and must not materially and adversely affect, or be materially and adversely affected by, each other or the other hardware, software, equipment, network components, systems, services, and other resources that are owned or leased by, or licensed to, the Board (collectively, the "Board Resources"). At all times, Vendor must cooperate and work as requested with the other service providers of the Board to coordinate the development and the provision of Services with the services and systems of such other service providers. Such coordination includes but shall not be limited to facilitating with such other relevant service providers the timely resolution of all problems that may arise and impact the Board Site, regardless of the actual or suspected root-cause of such problems, and using all commercially reasonable efforts to obtain and maintain the active participation, cooperation, and involvement of such other service providers as is required for such problem resolution.

G. Updates: During the Term, Vendor shall maintain the Site Software, including, without limitation, provision to Board of the source and object code for all Updates developed during the Term, as well as a description of such Update's functionality. Board shall have the right not to utilize any such Update.

H. Transfer of Board Site: Upon the request of Board, or upon the termination or expiration of this Agreement, whichever occurs first, Vendor shall, at no additional cost, provide all necessary assistance to Board and third parties authorized by Board to transfer the Board Site or portions thereof to an alternate server to be owned and operated by an entity of Board's choice.

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

A. Packaging and Shipment; Risk of Loss: Vendor shall package and ship all Products in a commercially reasonable manner. All shipments shall be F.O.B. destination (as indicated on the PO or some other notification from Board) with freight prepaid. Vendor shall

purchase insurance to cover the shipping period. It is understood and agreed that the Board shall have no liability for any shipping or insurance charges. The Board may adjust the purchase order or shipping destination any time up to five (5) business days prior to shipment. The risk of loss and damage to Products ordered by the Board shall pass to the Board only after delivery to the destination designated by the Board. Time is of the essence to the delivery of all Products ordered hereunder;

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

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

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

10. Non-appropriation: Expenditures not appropriated by the Board in its current fiscal year budget are deemed to be contingent liabilities only and are subject to appropriation in subsequent fiscal year budgets. In

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the event no funds or insufficient funds are appropriated and budgeted in any subsequent fiscal period by the Board for performance under this Agreement, the Board shall notify Vendor and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. Payments for Services completed to the date of notification shall be made to Vendor except that no payment shall be made or due to Vendor under this Agreement beyond those amounts appropriated and budgeted by the Board to fund payments under this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. The right to take over and complete the supply of Services or any part thereof, by contract or otherwise as agent for and at the cost of Vendor either directly or through others. Vendor shall be liable to the Board for any excess costs incurred by the Board. Any amount due

Vendor under this Agreement or any other agreement Vendor may have with the Board may be offset against amounts claimed due by the Board;

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

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

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

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

F. The right to money damages;

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

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

The Board may elect not to declare Vendor in default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the Board and that if the Board permits Vendor to continue to supply the Services despite one or more Events of Default, Vendor shall in no way be relieved of any responsibilities, duties or obligations under this Agreement nor shall the Board waive or relinquish any of its rights under this Agreement, at law, equity or statute.

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

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

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

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

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

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

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

**15. Confidential Information, Dissemination of Information, Ownership, Survival:** For purposes of this Section 15 and subsections A through K, the term "Work Product" shall exclude any and all (i) third party intellectual property and (ii) pre-existing Vendor intellectual property including Vendor Content, Vendor Marks and Vendor Software as defined in this Agreement that is delivered to the Board as part of the

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Services to be provided by Vendor hereunder or are imbedded in any Work Product to be delivered to the Board by Vendor hereunder.

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

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

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

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

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

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

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

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

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

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

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

E. Ownership: Vendor agrees that, to the extent permitted by law, any and all Work Product, including but not limited to the Board Site and its underlying Programming Code shall exclusively be deemed "works for hire" within the meaning and purview of the United States Copyright Act, 17 U.S.C. 101§ *et seq.* To the extent any Work Product does not qualify as a "work for hire," Vendor irrevocably grants, assigns, and transfers to the Board all right, title, and interest in and to the Work Product in all media throughout the world in perpetuity and all intellectual property rights therein, free and clear of any liens, claims, or other encumbrances, to the fullest extent permitted by law. All intellectual property, Confidential Information, Highly Confidential Information and Work Product shall at all times be and remain the property of the Board. Vendor shall execute all documents and perform all acts that the Board may request in order to assist the Board in perfecting or protecting its rights in and to the Work Product and all intellectual property rights relating to the Work Product.

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

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

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

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

J. Freedom of Information Act: Vendor acknowledges that this Agreement and all documents submitted to the Board related to this

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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. Vendor further acknowledges that this Agreement shall be posted on the Board's Internet website at <http://www.cps.edu>.

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

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

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

B. Good Standing: Vendor, each of its members, if a joint venture or limited liability company, and each of its subcontractors, if any, have not been deemed by the Board's Chief Purchasing Officer to be in default under any other agreement with the Board during the five (5) year period immediately preceding the effective date of this Agreement, and have not been debarred under the Board's Debarment Policy during the three (3) year period immediately preceding the effective date of this Agreement;

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

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

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

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

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

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

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

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

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

It is understood and agreed that Vendor's non-compliance with this Section will constitute a material breach of this Contract, and the Board also will have the right to withhold payments due hereunder until Vendor remedies such non-compliance to the Board's reasonable satisfaction, or take any other action or remedy available under this Contract or by law;

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

I. Research Activities and Data Requests: Vendor acknowledges and agrees that in the event Vendor seeks to conduct research activities in any Board school or use Board student data for research purposes, Vendor shall comply with the Board's Research Study and Data Policy adopted on July 28, 2010, as may be amended from time to time. Vendor acknowledges and agrees that it may not begin any research activities or obtain data for research purposes without the prior written consent of the Chief Performance Officer or their designee;

J. Ethics: No officer, agent or employee of the Board is or will be employed by Vendor or has or will have a financial interest, directly or indirectly, in this Agreement or the compensation to be paid hereunder except as may be permitted in writing by the Board's Ethics Policy adopted on May 25, 2011 (11-0525-PO2), 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 Services, Vendor will not violate or infringe upon any patent, copyright, trademark, trade secret or other proprietary or intellectual property right of any third party, and will not improperly use any third party's confidential information; and shall have, without encumbrance, all ownership, licensing, marketing and other rights required to furnish all materials and products and Services that it furnishes to the Board under the Agreement and can grant or assign all rights granted or assigned to the Board pursuant to the Agreement;

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

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

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

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

O. Ownership. Vendor is the owner of the materials and methodologies used hereunder in providing the Services to the Board and there is currently no actual or threatened suit by any such third party based on an alleged violation of such right by Vendor;

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

Q. Board Site Performance. During the Term of the Agreement, the Board Site 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 Board Site. Vendor shall promptly correct any failure of the Board Site 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. Vendor shall use commercially reasonable best efforts to ensure that the Board Site is free of Computer Viruses;

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

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

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

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

18. Indemnification: Vendor agrees to indemnify and hold harmless the Board, its members, employees, agents, officers and officials, from and against any and all liabilities, taxes, tax penalties, interest, losses, penalties, damages and expenses of every kind, nature and character, including without limitation, costs and attorney fees, arising out of, or relating to, any and all claims, liens, damages, obligations, actions, suits,

judgments, settlements or causes of action of every kind, nature and character, in connection with or arising out of the acts or omissions of Vendor or its Staff under this Agreement.

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

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

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

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

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

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

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

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

B. Commercial General Liability Insurance: Commercial General Liability Insurance or equivalent with limits of not less than One Million Dollars (\$1,000,000.00) 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:

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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: If professional services are rendered, Vendor shall maintain such coverage with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) 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;

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

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

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

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

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

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

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

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

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

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

limitation placed on the indemnity in this Agreement given as a matter of law.

22. Limitation of Liability: IN NO EVENT SHALL THE BOARD, INCLUDING ITS DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR COVER DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, INCURRED BY VENDOR OR ANY THIRD PARTY, EVEN IF THE BOARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE BOARD'S TOTAL LIABILITY TO VENDOR ARISING FROM OR RELATED TO THIS AGREEMENT FOR ANY REASON SHALL BE LIMITED TO DIRECT DAMAGES UP TO THE TOTAL MAXIMUM COMPENSATION. EXCEPT FOR VENDOR'S OBLIGATIONS UNDER SECTIONS 15 AND 18, MATTERS COVERED BY VENDOR'S INSURANCE AND THE NEGLIGENCE OR WILLFUL MISCONDUCT OF VENDOR, ITS EMPLOYEES, AGENTS AND SUBCONTRACTORS, VENDOR'S TOTAL LIABILITY ARISING OUT OF, OR IN CONNECTION WITH, ANY EVENT OR SERIES OF CONNECTED EVENTS OCCURRING IN CONNECTION WITH THIS AGREEMENT, SHALL NOT EXCEED THE TOTAL MAXIMUM COMPENSATION. THE FOREGOING LIMITATIONS ON THE BOARD'S LIABILITY APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE AND OTHER TORTS.

**23. Audit and Document Retention:**

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

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

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

**IF TO THE BOARD:** Kathryn Ellis  
Office of Access and Enrollment  
125 S. Clark St., 10<sup>th</sup> Floor  
Chicago, Illinois 60630

Copy to: James L. Bebley, General Counsel  
125 South Clark Street, Suite 700  
Chicago, IL 60603  
Fax: 773.553.1701

**IF TO VENDOR:** Michael Svanascini  
Americaneagle.com, Inc.  
1 S. Northwest Highway, 5<sup>th</sup> Floor  
Park Ridge, Illinois 60068

25. Right of Entry: Vendor, and any of its Staff supplying Services shall be permitted to enter upon a school site in connection with the supply of the Services hereunder, subject to the terms and conditions contained herein and those rules established by the Board. Vendor shall

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

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

**26. Non-Discrimination:** It shall be an unlawful employment practice for Vendor or any of its subcontractors to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, or other terms, conditions, or privileges of employment, because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, disability, marital status, parental status, military discharge status or national origin; or to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual from equal employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, disability, marital status, parental status, military discharge status or national origin. At all times, Vendor shall remain in compliance with, but not limited to: the Civil Rights Act of 1964, 42 U.S.C.A. §2000a, *et seq.*, as amended; the Age Discrimination in Employment Act, 29 U.S.C.A. §621, *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §701, *et seq.*; as amended; the Americans with Disabilities Act, 42 U.S.C.A. §12101, *et seq.*; the Individuals with Disabilities Education Act, 20 U.S.C.A. §1400 *et seq.*, as amended; the IL Human Rights Act, 775 ILCS 5/1-101, *et seq.* as amended; the IL School Code, 105 ILCS 5/1-1 *et seq.*; the IL Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.*; and the Chicago Human Rights Ordinance, ch. 2-160 of the Municipal Code of Chicago, and all other applicable federal statutes, regulations and other laws.

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

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

**29. Continuing Obligation To Perform:** In the event of any dispute between Vendor and the Board, Vendor shall expeditiously and diligently

proceed with the performance of all of its obligations under this Agreement with a reservation of all rights and remedies it may have under or pursuant to this Agreement at law or in equity.

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

**31. Indebtedness:** Vendor agrees to comply with the Board's Indebtedness Policy (98-0626-PO3) as may be amended from time to time, which is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein.

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

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

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

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

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

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

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



This Agreement will be posted on the CPS Internet website.


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

THE BOARD OF EDUCATION  
OF THE CITY OF CHICAGO

Americaneagle.com, Inc.

By:   
Sebastien De Longeaux,  
Chief Procurement Officer

By: MICHAEL SVANASONI

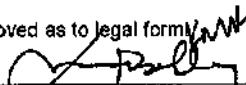
Signature: 

Date: 08/31/2012

Title: PRESIDENT

CPOR# 12-0807-CPOR-1536

Date: 8/27/12

Approved as to legal form   
James L. Bebley, General Counsel

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**Attachment:**

**Exhibit A: Scope of Services**

This Agreement will be posted on the CPS Internet website.

**Exhibit A**  
**(AMERICAN EAGLE)**  
**SCOPE OF SERVICES**

**Name of Program:** Access and Enrollment (OAE) Online Application

**CPS Program Manager:** Kathryn Ellis Phone: 773-553- 3546 E-Mail: kmellis@cps.edu

**CPS Project Manager:** Brian Pool Phone: 773-553-3679 E-Mail: bdpool@cps.edu

**Vendor Program Manager:** Joanna Morrissey Phone: 847-699-0300

**Email:** Joanna.morrissey@americaneagle.com

**CPOR:** 12-0807-CPOR-1536

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Vendor agrees that the services and deliverables (collectively, "Services") covered by this Scope of Services shall be conducted pursuant to the terms and conditions of that Website Development, Implementation and Hosting Agreement (the "Agreement"), by and between americaneagle.com, Inc. ("Vendor") and the Board of Education of the City of Chicago (the "Board"), commonly known as the Chicago Public Schools or "CPS." Defined terms used in this Scope of Services shall have the same meanings as those ascribed to such terms in the Master Agreement.

**Overview:**

The Board is initiating a project to bring its Office of Access and Enrollment ("OAE") high school application and admissions screening process online as well as modifications to the current online application system. This online application system ("Board Site") will be utilized by various user groups including parents of current CPS students and parents of prospective CPS students. Allowing for a high school online application and admission screening process for OAE's programs will help students and parents to easily apply for these schools and programs. Beyond this, moving this process online will help the Board and school administrators manage the application process, eliminate manual entry, and allow on demand access to the status of the student or prospective students application to OAE programs. Moreover, moving this application process online will allow the Board to create a more transparent application process.

The CPS Office of Access and Enrollment (OAE) Online Application solution for the Phase 3 implementation on November 1<sup>st</sup>, 2012 will meet the following requirements:

**Functional Requirements (for parents of current CPS students and Prospective CPS Students)**

- **Parent Account**
  - Parent sets up account with parent and child\children account information.
  - Generate PIN file\record.
  - Parent address is locked and cannot be changed unless by OAE.
  - System ensures no PIN duplication.
  - Account remains open until OAE determines the cycle is complete (mid-June of each year).
  
- **OAE Online Application for Selective Enrollment (SE), Selective Enrollment Elementary (SEES), Magnet \ Magnet Cluster \ Open Enrollment Elementary Schools (MES) , Magnet and Magnet Program High Schools (MHS), International Baccalaureate (IB) ,CTE (Career in Technical Education) and Military Academies.**

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- User ID, Password and PIN Prompt.
  - For Spanish speakers, provide a PDF of the Spanish paper form.
  - Populate with appropriate options- schools and programs based on student's grade level (rules to be provided by CPS).
  - Identify entry errors in the application. First, the validation is limited to field character and spacing only. (For example: Zip Code should be numeric and 5 digits). Second, the zip code is validated against address entered.
  - Save Application: Parent may save data without submitting.
  - Reenter Application: Parent may reenter application using User ID, Password.
  - Display a recap of the application and allow print prior to Submit.
  - Cancel Application.
  - Submit Application. Upon submission, parent is locked out of application.
  - Send Email Confirmation to parent.
  - Data Extracts
    - SE, SEES, IB, MES, MHS, Military and CTE (7 daily data interface files).
    - Parent accounts / PIN (1 daily data interface file).
    - Addresses for geo-coding (1 daily data interface file).
  - Display three years of active data; after three years, archive to retrievable offline retention.
  - Solution has a start date and end date for each year's application submission cycle. A static message should be displayed at the end of the cycle.
- Addition of Registration/Admissions Screening System
    - CPS would send letters with unique code/PIN to qualified students.
    - Parents/Students would login with unique code.
    - Upon login parents can select from testing and info sessions. Testing and info sessions would be displayed in a calendar/registration system. This would be a 'shopping cart' approach where the user could add more than one event.
      - LL The Admin panel would need to allow for the export of registrants by school.
      - LL CPS will upload data for Child's eligibility for programs. (Provided via export from 3rd party vendor). NOTE: Integration is not included in this SOW.
- Modifications to Application System
    - Applications will be modified into 1 application for all High School programs.
      - The application will allot for the following High School types:
        - Charter Schools
        - Contact
        - CTE Military
        - Selective Enrollment
        - IB
        - Magnet
    - The application will allow for a ranking of the High Schools applied for.
      - LL # of choices is TBD.
      - LL 350 Total Programs.
    - Locations of high schools will need to display on a map, much like current system.
    - Application must allow for denoting siblings.
- OAE Central Administration
    - Search and display student application(s).
    - Update Application.
    - Capture and display audit trail of all application data updates, in case of future legal challenge by parent.

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- Display and report statistics.

#### **Technical and Service Requirements**

- **User Interface**
  - The solution will have a browser-based user interface. No client software will be required on user machines.
  - The solution will work with and be tested on Internet Explorer 6.0 or above, Firefox, Chrome, and Safari browsers.
  - The solution will be built in accordance to the Web Accessibility Guidelines provided by the W3C and should be easily accessible to the novice and experienced Internet user.
  - The solution will meet all federally-mandated access requirements for ADA (Americans with Disabilities Act) adopted under section 508 (1194.21-Software applications and operating systems & 1194.22- Web-based intranet and internet information and applications).
- **Data Interface:** The scope of the project includes creating a data interface that will be provided on request to the existing back-end Filemaker Pro system. This will be a comma-delimited (or similar flat file) format. The fields and formats will be driven by the back-end system and a list will be provided to [Americaneagle.com](http://Americaneagle.com).
- **Hosting**
  - 24 x 7 99.95% availability during hosting period, except for mutually-agreed, prescheduled maintenance window. Vendor to provide monthly reports of availability and outages.
  - Vendor will establish infrastructure and backup schedule, including redundancy and offsite backups, to ensure availability requirements.
  - In case of disaster, system will be available within 24 hours.
  - Offline archive data will be able to be brought online with 48 hour notice (future).
  - Must meet CPS security standards:
    - Secure socket layer technology (HTTPS).
    - CPS confidential data will be protected by 128 bit encryption or higher. CPS confidential data includes, but is not limited to, all student-identifiable data and User IDs and Passwords.
  - No use of data supplied by the Board by Vendor is permitted other than for support and testing of solution.
  - Weekly database backups will be provided to CPS during application cycle.
- **Access**
  - Access to the online solution will be restricted to authorized users
  - For CPS staff, user authentication using CPS Microsoft Active Directory.
    - The solution will include user roles with differentiated authorization access, rights, and privileges which should include (in order of broadest to narrowest rights):
      - District technical administrator
      - OAE administrator
      - School administrator
      - Parents
      - Other roles as determined during solution development, if any
- **Data Management**
  - Data interfaces will be in a standard format (e.g., Excel or common flat files) and approved by the Board's Project Manager.
  - Data interfaces with confidential data will be transmitted securely (e.g., secure FTP).
- **Support and Maintenance**

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

- Vendor toll-free line to live technical support for CPS administrators 7 am - 6 pm CST or of similar hours.
- OAE Online Application will be developed in a Microsoft ASP.NET platform with Microsoft SQL database.
- Vendor services provided by monthly accruable maintenance hours will be prioritized and approved in advance by the Board's Project Manager.

#### **Deliverables**

- Mock screen shots/ prototype for parent usability testing.
- Tested Board Site that meets the functional requirements required under this Agreement.
- Programming Code for the Board Site and instructions for set-up, if CPS elects to install and host in-house after the contract period.
- Hosting of the Board Site and monthly availability report.
- Load Test at full potential peak load.
- At the close of the application cycle, display a static message when the URL is accessed.
- Technical support and maintenance.
- Weekly database backups.
- Project Management
  - Project Plan, Issue Log, Change Log.
  - Written weekly status reports during development cycle (7/15/2010- 10/15/2010).
  - Periodic meetings with Vendor Account Manager to report review and address implementation issues.
  
- **Graphic Design Strategy:** Americaneagle.com will work with the existing graphic design of <https://apply.cps.edu>. However, some graphic considerations will need to be taken for the "Select Schools" option cited in the Scope Document.
  
- **Application Additions to <https://apply.cps.edu>**
  
- **Enhancements to <https://apply.cps.edu>**
  
- **Testing:** A series of tests will be conducted by Americaneagle.com in three phases:
  - The programmer who creates the site will test his own work.
  
  - From there, the project manager will then begin their testing. Their testing involves verifying that each of the sites main functions are working correctly, that all aspects of the project plan are functioning on the site and that all areas of the site have a user friendly interface.
  
  - After the site goes to beta and the client has had a chance to critique the work and make their first round of changes, Americaneagle.com alerts the quality control team to review the details of the site. The quality control team uses a customized test plan to test each field and function of the site looking for bugs, errors, broken links, and missing or incorrect information. In addition the quality control team tests basic compliance to browser rules and testing for issues that can arise by seldom used browsers. After the programmer fixes the issues reported, each issue is retested by the quality control personnel for final verification.
  
- **Training:** Americaneagle.com will provide CPS with one half-day training session prior to the launch of the new website. This will be conducted via Web demo, at Americaneagle.com offices, or at the CPS office, whichever is preferred. Additional training can be provided within your retainer hours or via a separate proposal; however, it is worth noting that the training sessions we provide clients like CPS are typically very adequate. This is due to the fact that the interface is developed to mimic word-processing software and is replete with intuitive prompts.

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- **Launch:** Americaneagle.com will launch the website on the current server. However, CPS can also host in house if desired.
- **Content Submission/ Collection of Information:** All content and files such as copy, photographs, and branding materials should be delivered to Americaneagle.com in digital format (MS Word, MS Excel, JPEG, etc.) at the outset of this project. This will conserve development time and ensure the website is completed on schedule.

**Performance Milestone /Deliverable Schedule:**

**This schedule assumes a contract is in place by August 27, 2012.**

<b>Step</b>	<b>Task/Deliverable Description</b>	<b>Cost</b>	<b>Phase Time</b>
Project Planning & Consultation	Kick Off Meeting, Consultation, Additional Meetings, Project Plan	\$10,000	Completed by 9/10/12.
Graphic Design	Graphic Mock Ups	\$5,000	Completed by 9/24/12.
Registration & Enhancements to Phase 1	Americaneagle.com will work with CPS OAE on the development of the enhancements to the <a href="https://apply.cps.edu">https://apply.cps.edu</a> website/online application. The project includes a registration component for registering for school events and testing, as well as modifications to the current system, including combining all High School Applications into one core application. Please see Outline of Additions and Enhancements below for full project details.	\$43,000	Completed by 9/28/12.
Testing	Testing of application	\$4,000	Completed by 10/10/12.
Training	Training session on CMS	\$1,500	Completed by 10/15/12.
Completion of Planning, Graphics, Additions, Enhancements, Testing, and Launch.	Beta Site Live (secure password protected), training completed.	\$1,500	Completed by 10/20/12.
Site set to full functionality.		NA	Completed by 11/1/12.

**HOSTING:**

→ 1 Dedicated Web Server

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

*→ 1 Dedicated Sql Server*

**HOSTING FEES:**

October-January	\$1,450.00/Month
February-September	\$400.00/Month
<b>Total Annual Hosting Fees</b>	<b>\$9,000.00</b>

**\*\*Payments are subject to completion and acceptance by the Board of the applicable Deliver**