

SERVICES AGREEMENT

(THORSEN CONSULTING, INC.)

Vendor #: 51461

This SERVICES AGREEMENT ("Agreement") is entered into by and between the Board of Education of the City of Chicago, a body politic and corporate, commonly known as the Chicago Public Schools (the "Board" or "CPS") and Thorsen Consulting, Inc., an Illinois corporation ("Vendor" or "Thorsen").

RECITALS

- A. The Board requires database development services as more fully described herein; and
- B. Vendor has demonstrated expertise in providing such database development services, and Vendor has represented that it has the requisite knowledge, skill, experience, legal qualifications, staff credentials and other resources necessary to perform such services and is desirous of providing such services for 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. **Term:** This Agreement is for a term of one (1) year, commencing on August 19, 2013 ("Effective Date") and continuing through August 18, 2014 ("Term"), unless terminated sooner as provided herein. The Board has one (1) option to renew the Agreement on the same terms and conditions.
3. **Scope of Services:** Vendor agrees to provide the Services set forth in **Exhibit A**, in accordance with the terms and conditions of this Agreement. "Services" means, collectively, the services, 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, including any increase or decrease in Vendor's fees, shall be documented by a written amendment to this Agreement signed by both parties.
4. **Compensation and Payment:**
 - A. **Maximum Compensation:** The total maximum compensation payable to Vendor pursuant to this Agreement shall not exceed the sum of Sixty One Thousand Six Hundred Twenty-Five and 00/100 Dollars (\$61,625.00) ("Total Maximum Compensation"). The Board shall not reimburse Vendor for any expenses. Vendor is not entitled to any payment nor is the Board obligated to pay Vendor any amount solely by virtue of entering into this Agreement. In the event of early termination of this Agreement, the Board shall only be obligated to pay for Services rendered up to the date of termination. In no event shall the Board be liable for the cost of Services performed after the effective termination or expiration date of this Agreement. Vendor agrees to provide the Services at the prices set forth in Exhibit A. If Vendor 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 Vendor under this or any other Agreement

THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNAL WEBSITE

between Vendor and the Board.

- B. Contingent Expenditure: 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 sufficient funds are not appropriated in a subsequent fiscal year by the Board for performance under this Agreement, the Board shall notify Vendor and this Agreement shall terminate on the last day of the fiscal period for which funds were appropriated. In no event shall the Board be liable to Vendor for any amount in excess of the current appropriated amount.
 - C. 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 Vendor shall not provide any Services without a valid purchase order. If Vendor provides any Services without a valid purchase order Vendor shall not be entitled to receive any payment for such Services.
 - D. 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, 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 documents.
5. Standards of Performance: Vendor must perform all Services required of it under this Agreement with that degree of skill, care and diligence normally shown by a vendor performing services of a scope, purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. 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 and care and technical accuracy of its Services and deliverables. This provision in no way limits the Board's rights against the Vendor under this Agreement, at law or in equity.
6. Personnel: Vendor must assign and maintain during the term of this Agreement, an adequate staff of competent personnel that is fully equipped, qualified, licensed by the applicable state authorities, available as needed, 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.
7. Events of Default and Remedies:
- A. Events of default ("Events of Default") includes, but are not limited to, the following:
 - i. Any material misrepresentation by Vendor in the inducement or the performance of this Agreement.
 - ii. Breach of any term, condition, representation or warranty made by Vendor in this Agreement.
 - iii. Failure of the Vendor to perform any of its obligations under this Agreement

THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNAL WEBSITE

including, but not limited, to the following:

- a. Action or failure to act which negatively affects the safety and/or welfare of students, Board staff or the public;
 - b. Failure to perform the Services with sufficient personnel or material to ensure the timely performance of Services;
 - c. Failure to timely perform Services;
 - d. Failure to perform the Services in a manner reasonably satisfactory to the Board;
 - e. Failure to promptly re-perform Services that were rejected by the Board as incomplete or unsatisfactory within a reasonable time and at no cost to the Board; and
 - f. Discontinuance of the Services for reasons within Vendor's reasonable control.
- iv. Default by Vendor under any other agreement Vendor may have or may enter into with the Board.
 - v. 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.

B. Remedies. The occurrence of any Event of Default which Vendor fails to cure within a reasonable period 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 cured within a reasonable period, after notice, Vendor fails to commence and continue diligent efforts to cure, may permit the Board to declare Vendor in default. Whether to declare Vendor in default is within the sole discretion of the Chief Procurement Officer. Written notification of an intention of the Chief Procurement 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:

- i. 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;
- ii. 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;
- iii. 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;
- iv. The right to specific performance, an injunction or any other appropriate equitable remedy;
- v. The right to receive from Vendor any and all damages incurred as a result or in consequence of an Event of Default;
- vi. The right to money damages;

THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNAL WEBSITE

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

If the Board's election to terminate this agreement for default under this Section is determined by a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered an early termination pursuant the Early Termination provision below.

8. Early Termination and Suspension of Services:

- A. **Early Termination:** The Board may terminate this Agreement in whole or in part, without cause, at any time, by a notice in writing from the Board to Vendor in accordance with the notice provisions herein. The effective date of termination shall be thirty (30) calendar days from the date the notice is received or the date stated in the notice, whichever is later.

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. Payment for any Services actually and satisfactorily performed before the effective date of the termination is on the same basis as set forth herein in the provision regarding compensation and payment.

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.

- B. **Suspension of Services:** 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.

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

- 10. **Confidential Information, Dissemination of Information, Ownership, Survival:** For purposes of this Section 10, the term "Work Product" shall exclude any and all third party intellectual property.

THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNAL WEBSITE

- 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

THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNAL WEBSITE

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 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 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 16 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.

THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNAL WEBSITE

- 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, prior to commencing any Services.
- J. Freedom of Information Act: Vendor acknowledges that this Agreement and all documents submitted to the Board related to this contract award are a matter of public record and are subject to the Illinois Freedom of Information Act (5 ILCS 140/1) and any other comparable state and federal laws and that this Agreement is subject to reporting requirements under 105 ILCS 5/10-20.44. Vendor further acknowledges that this Agreement shall be posted on the Board's Internet website at <http://www.cps.edu>.
- K. Injunctive Relief. In the event of a breach or threatened breach of this Section, Vendor acknowledges and agrees that the Board would suffer irreparable injury not compensable by money damages and would not have an adequate remedy at law. Accordingly, Vendor agrees that the Board shall be entitled to immediate injunctive relief to prevent or curtail any such breach, threatened or actual. The foregoing shall be in addition and without prejudice to such rights that the Board may have in equity, by law or statute.
- L. Survival: The provisions of this Section shall survive the termination or expiration of this Agreement.

11. Intellectual Property Rights

- A. Retention of Ownership Rights. The parties shall retain all of their respective intellectual property rights owned or acquired on or prior to the Effective Date or obtained at any time independently of this Agreement (hereafter "Background IP"), including, without limitation, all trademarks, patents, copyrights and trade secrets, marks and logos, and proprietary technology, and any and all additions, enhancements, modifications and/or substitutions thereto. Vendor grants the Board, a perpetual nonexclusive, non-transferable, irrevocable, worldwide, royalty-free license to all Vendor's Background IP that need to be accessed, that may be embedded or otherwise integrated with the Services or deliverables that Vendor provides under this Agreement.
- B. Ownership of Deliverables. Notwithstanding the foregoing subsection, the Board shall own the title and intellectual property rights for all deliverables (excluding third party intellectual property rights), created, enhanced, modified or otherwise provided by Vendor to the Board under this Agreement. Should title to these deliverables not automatically vest in the Board by law, Vendor shall at its own expense establish, preserve, protect and take all necessary steps to perfect title to the deliverables in the Board's name. Vendor will also at its own expense, undertake the necessary steps to secure for the Board, the intellectual property rights in and to such deliverables.
- C. Survival: This Section shall survive the termination or expiration of this Agreement.

12. Representations and Warranties of Vendor: Vendor represents and warrants that the following shall be true and correct as of the Effective Date and shall continue to be true and correct during the Term.

- A. Workmanship. All Services will be provided in a timely, professional and workmanlike manner, with Vendor personnel having the necessary background, experience and expertise to undertake all Services and tasks.
- B. 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 and the performance of Services in effect now or later and as amended from time

THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNAL WEBSITE

to time, including but not limited to, the Drug-Free Workplace Act, the Illinois Student Records Act, the Family Educational Rights and Privacy Act ("FERPA"), the Protection of Pupil Rights Act, the Health Insurance Portability and Accountability Act of 1996, as set forth in Title 45, Parts 160 and 164 of the Code of Federal Regulations ("HIPAA"), 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. Board policies and rules are available at <http://www.cps.edu/>.

- C. Good Standing. Vendor is not in default and has not been deemed by the Board to be in default under any other Agreement with the Board during the five (5) year period immediately preceding the Effective Date.
- D. Authorization. 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. A signature delivered by facsimile or electronic means will be considered binding for both parties.
- E. 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 complete all Services and perform all obligations under this Agreement.
- F. Gratuities. No payment, gratuity or offer of employment was made by or to Vendor in relation to this Agreement or as an Inducement for award of this Agreement.
- G. Contractor's Disclosure Form. The disclosures in the Contractor Disclosure Form, previously submitted by Vendor (if applicable), are true and correct. Vendor shall promptly notify Board in writing of any material change in 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.
- H. 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, daily 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.

THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNAL WEBSITE

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.

It is understood and agreed that Vendor's non-compliance with this Section 12.H will constitute a material breach of this Agreement, 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 Agreement or by law.

- I. Research Activities and Data Requests. Vendor acknowledges and agrees that in the event Vendor seeks to conduct research activities in the Chicago Public Schools or use CPS student data for research purposes in connection with this Agreement, Vendor shall comply with the Board's Research Study and Data Policy (10-0728-PO9) adopted on July 28, 2010, as such policy 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 Director of Research and Evaluation or his/her designee. Vendor shall cause its personnel, staff and subcontractors, if any, to undertake the same obligations agreed to by Vendor under this Section.
- J. 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.
- K. No Legal Actions Preventing Performance. 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.
- L. 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 a software manufacturer to the Board;
- M. Documentation Warranty. All documentation provided to the Board from Vendor concerning the Services shall be kept current with all applicable upgrades
- N. Prohibited Acts: Within the three (3) years prior to the Effective Date of this Agreement, neither Vendor nor any of its respective officers, directors, shareholders, members, managers, other officials, agents or employees (i) has not been convicted of bribery or attempting to bribe a public officer or employee of any public entity or (ii) has 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.
- O. 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.
- P. Freedom from Malicious Devices. The Services are and shall remain free of any malicious

THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNAL WEBSITE

devices, software or tools which have the effect of disabling, timing out, locking out, extracting unauthorized information from or destroying the Board's network, infrastructure, databases or operations, including but not limited to viruses, malicious code, malware and spyware.

- Q. Public Software/Open Source Code. There are no software or tools embedded or otherwise used in any software, services or deliverables that contain public license or open source codes, including but not limited to GNU or the Free Software Foundation.

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.

13. 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 employees shall be entitled to receive Board employee benefits. As an independent contractor, Vendor agrees to be responsible for the payment of all taxes and withholdings specified by law which may be due in regard to compensation paid by the Board. Vendor agrees that neither Vendor nor its employees, staff or subcontractors 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 federal employer identification number.
14. Indemnification: Vendor agrees to defend, indemnify and hold harmless the Board, its members, employees, agents, officers and officials from and against liabilities, losses, penalties, damages and expenses, including costs and attorney fees, arising out of all claims, liens, damages, obligations, actions, suits, judgments or settlements, or causes of action, of every kind, nature and character arising or alleged to arise out of the acts or omissions of the Vendor, its officials, agents and employees and subcontractors in the performance of this Agreement. This includes, but is not limited to, the unauthorized use of any trade secrets, U.S. patent, trademark, marks or copyright infringement.

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, the 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 the 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 immediately 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.

To the extent permissible by law, Vendor waives any limits to the amount of its obligations to defend, indemnify, hold harmless, or contribute to any sums due under any losses, including any claim by any employee of Vendor that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as *Kotacki v. Cyclops*

THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNAL WEBSITE

Welding Corporation, 148 Ill. 2nd 155 (1991)). The Board, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, any other statute or judicial decision.

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

15. **Non-Liability of Board Officials:** Vendor agrees that no Board member, employee, agent, officer or official shall be personally charged by Vendor or any subcontractors with any liability or expense under this Agreement or be held personally liable under this Agreement to Vendor or any subcontractors.
16. **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 compensation set forth in Exhibit A is 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 the Vendor. The Vendor shall be responsible for any taxes levied or imposed upon the income or business privileges of the Vendor.
17. **Insurance:** 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. Vendor shall submit to the Board satisfactory evidence of insurance coverage and upon request, shall promptly provide a certified copy of any applicable policy of insurance. Minimum insurance requirements include the coverage set forth below and any additional coverage which may be specified by the Board:
 - 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 employees who are to provide Services under this Agreement with limits of not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence. The workers' compensation policy must 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 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: all operations, contractual liability, independent contractors, products/completed operations (for a minimum of two (2) years following completion), and defense.
 - C. **Automobile Liability Insurance.** Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with Services to be performed, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
 - D. **Umbrella/Excess Liability Insurance.** Umbrella or Excess Liability Insurance with limits not less than Two Million Dollars (\$2,000,000.00) per occurrence, which will provide additional limits for employers' general and automobile liability insurance and shall cover the Board and its employees, subject to that of the primary coverage.
 - E. **Additional Insured.** Vendor shall have its General and Automobile Liability Insurance policies endorsed to provide that "the Board of Education of the City of Chicago, a body

THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNAL WEBSITE

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 Vendor for any Services if satisfactory proof of insurance is not provided by Vendor 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 Street, 7th Floor
Chicago, Illinois 60603

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 the Vendor's Agreement with the Board. In the event Vendor fails to fulfill the insurance requirements of this Agreement, the Board reserves the right to stop the Services until proper evidence of insurance is provided, or this Agreement may be terminated.

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 the Vendor under this Agreement.

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

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

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

Vendor must register with the insurance certificate monitoring company designated by the Board and must maintain a current insurance certificate on file during the entire time of providing services to the Board. The initial certificate monitoring company designated by Board is identified below. Vendor must register and pay the annual monitoring fee to the insurance certificate monitoring company prior to performing services for the Board. The initial annual monitoring fee is currently Twelve 00/100 Dollars (\$12.00) per year, but is subject to change.

Each year, Vendor will be notified 30 to 45 days prior to the expiration date of their required insurance coverage (highlighted on their latest submitted insurance certificate on file) that they must submit an updated insurance certificate with the insurance certificate monitoring company. Insurance certificate submissions and related annual fees are required to be made online at the dedicated website established by the certificate monitoring company identified below. Questions on submissions and payment options should be directed to the certificate monitoring company.

Certificate Monitoring Company:
Topiary Communications Inc.
876 N. LaSalle - Suite 230
Chicago, IL 60654
Phone - (312) 494-5709
Email - dans@topiarycomm.net

Website for online registration, insurance certificate submissions and annual fee payments: URL - <http://www.cpsVendorcert.com>.

18. **Audit and Document Retention:** Vendor shall furnish the Board with such information as may be requested relative to the progress, execution and costs of the Services. Vendor shall maintain all records, correspondence, receipts, vouchers, memoranda and other data relating to Vendor's Services provided under this Agreement. All records referenced above shall be retained for five (5) years after completion of the Services and shall be subject to inspection and audit by the Board, which shall include the right to copy such records. Vendor shall include in all subcontractor agreements for 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:

19. **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, e-mail, 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: Office of Academic Enhancement
125 South Clark Street, 4th Floor
Chicago, IL 60603
Attn: Brian Pool

Copy to: James L. Bebley, General Counsel
125 South Clark Street, Suite 700
Chicago, IL 60603
Fax: (773) 553-1701

IF TO VENDOR: Thorsen Consulting Services, Inc.
6417 N Ravenswood Ave., Suite 204
Chicago, IL 60626
Phone: (773) 761-4838
Fax: (773) 337-5650
Attn: Molly Connolly

20. **Right of Entry:** Vendor and any of its officers, employees, subcontractors or agents, performing Services hereunder shall be permitted to enter upon Board property in connection with the performance of the Services hereunder, subject to the terms and conditions contained herein and those rules established by the Board and the subject school principal. Vendor shall provide advance notice to the Board whenever applicable, of any such intended entry. Consent to enter upon a 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 officers, employees and agents to use, the highest degree of care when entering upon any property owned by the Board in connection with the Services. Any and all claims, suits or

THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNAL WEBSITE

judgments, costs, or expenses, including reasonable attorney 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.

21. **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. Vendor shall particularly remain in compliance at all times with: 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 Illinois Human Rights Act, 775 ILCS 5/1-101, *et seq.* as amended; the Illinois School Code, 105 ILCS 5/1-1 *et seq.*; the Illinois 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.
22. **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 of 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.
23. **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 the Vendor may be made, at the option of the Board, by either registered or certified mail addressed to the office identified in the "Notices" Section above, by registered or certified mail addressed to the office actually maintained by the Vendor, or by personal delivery on any officer, director, or managing or general agent of the Vendor. If any action is brought by the 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.
24. **Continuing Obligation to Perform:** In the event of any dispute between Vendor and Board, Vendor shall expeditiously and diligently proceed with the performance of all 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.
25. **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.


THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNAL WEBSITE

26. **Indebtedness:** The Vendor agrees to comply with the Board's Indebtedness Policy adopted June 26, 1996 (96-0626-PO3), as amended from time to time, which policy is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein.
27. **Ethics:** No officer, agent or employee of the Board is or shall be employed by the Vendor or has or shall 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 May 25, 2011 (11-0525-PO2), as amended from time to time, which policy is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein.
28. **Inspector General:** Each party to this Agreement hereby acknowledges that in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Board of Education of the City of Chicago 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.
29. **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 as often and as may be deemed expedient.
30. **Force Majeure.** Neither party shall incur any liability for any failure to perform or delay in performing, any of its obligations contained in this Agreement, where such failure or delay is caused by fire, flood, natural disaster, act of God, riots, wars, act of government, strikes or labor disputes, or any other act or condition beyond the reasonable control of the party in question.
31. **Counterparts and Facsimiles.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one instrument. A signature delivered by facsimile or electronic means shall be considered binding for both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date last set forth below in the signature block.

BOARD OF EDUCATION OF THE
CITY OF CHICAGO

By: _____

 MBS
Sébastien De Longeaux,
Chief Procurement Officer

Date: _____

8/16/13

CPOR # 13-0725-CPOR-1579

Approved as to legal form: sR


James L. Bebley, General Counsel

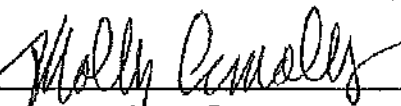
THORSEN CONSULTING SERVICES, INC.

By: _____

Name: _____

Title: _____

Date: _____



Molly Connolly

President

8/14/13

Attachments: Exhibit A - Scope of Services and Time Limits for Performance

EXHIBIT A

SCOPE OF SERVICES AND TIME LIMITS FOR PERFORMANCE

Thorsen Consulting, Inc. (Vendor No 51461)

CPOR # 13-0725-CPOR-1579

Name of Project: FileMaker Database Services with Thorsen Consulting, Inc.

Board's Project Manager: Brian Pool **Phone:** (773) 553-3679 **Email:** bdpool@cps.edu

Vendor's Project Manager: Molly Connolly **Phone:** (773) 761-4838

E-mail: molly@thorsenconsulting.com

Period of Performance: One (1) year, commencing August 19, 2013 ("Effective Date") and continuing through August 18, 2014 ("Term"), unless terminated sooner in accordance with the Agreement.

This Scope of Services will be conducted pursuant to the terms and conditions of that Services Agreement ("Agreement") by and between Thorsen Consulting, Inc. ("Vendor") and The Board of Education of the City of Chicago (the "Board" or "CPS"), commonly known as The Chicago Public Schools ("CPS"). Defined terms used in this Scope of Services will have the same meanings as those ascribed to such terms in the Agreement.

I. SCOPE OF SERVICES:

FileMaker Pro is a cross-platform database application from FileMaker Inc., allowing users to add, customize or modify elements into layouts, screens, or forms.

The Office of Access and Enrollment is engaging Thorsen Consulting to update, design, test and provide maintenance to an existing FileMaker student information database that is currently being used by CPS for Magnet High Schools, Selective Enrollment High Schools, Military Academies, Career and Technical programs, and International Baccalaureate High Schools. Vendor's Services will allow CPS to achieve the following goals and benefits:

- Vendor shall ensure that the Services manage and house all paper and online CPS and Non-CPS applicants applying to Selective Enrollment High Schools, Magnet High Schools and Programs, Military Academies, International Baccalaureate High Schools, and College to Career High Schools.
- Vendor shall ensure that the Services schedule and generate letters for students who apply through a paper application for programs or schools that need testing, auditions and/or informational sessions.
- Vendor shall ensure that the Services integrate with "apply.cps.edu" to receive registration and application data from students who apply online.
- Vendor shall ensure that the Services integrate with "apply.cps.edu" to send new and updated student information to "apply.cps.edu" in real-time.
- Vendor shall ensure that the Services integrate with CPS' Information Technology Services division (ITS) to send data to a counselor interface to provide counselors with real time data about their students applications and registrations.
- Vendor shall ensure that the Services manage user accounts.
- Vendor shall ensure that the Services push data out to four FileMaker High School applications used by central office staff and school staff.

THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNAL WEBSITE

- Vendor shall ensure that the Services generate reports for the Board.

II. PERFORMANCE MILESTONE/DELIVERABLE SCHEDULE:

Mi No	Milestone/Deliverable Description	Delivery Date(s)	Approximate Costs, based on a Rate of \$125/hour
1	Beta application system for testing ready <ul style="list-style-type: none"> • A system that has 95% of Section I (Scope of Services) requirements above, completed. 	August 26 th 2013	\$25,000
2	System Ready to Accept Student Information & Grades <ul style="list-style-type: none"> • Vendor designed system is able to contain CPS and non-public student data 	August 26 th 2013	\$15,625
3	System Ready to Accept Registration Forms <ul style="list-style-type: none"> • Vendor designed system accepts CPS and non-public student registration Data 	August 30 th 2013	\$6,250
4	ITS counselor interface and application system data integration completed <ul style="list-style-type: none"> • Vendor designed system will have the capability to pass through student application and registration data on a weekly basis 	August 30 th 2013	\$5,000
5	Apply.cps.edu and application system data integration completed <ul style="list-style-type: none"> • Vendor designed system that can pass through and receive data from apply.cps.edu in real time 	August 30 th 2013	\$3,500
6	Generate CPS Eligibility Letters w/PINS <ul style="list-style-type: none"> • Registration letters ready for distribution to students 	September 9 th , 2013	\$3,125
7	Finished database <ul style="list-style-type: none"> • A system that has 100% of the Board's requirements stated in Section I (Scope of Services) above, completed and tested. 	October 15 th 2013	\$3,125
			\$61,625 (approximate total)

III. OUTCOMES

Vendor Services will result in the upgrade and enhancement of the current student information FileMaker system that handles the business needs of the access and enrollment of students' high school application

THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNAL WEBSITE

and registration process.

IV. INVOICING SCHEDULE/RATES:

Vendor will invoice CPS for actual hours worked, at a rate of \$125/hour, not to exceed the Total Maximum Compensation. Services will be invoiced monthly, upon successful completion of each milestone/ deliverable stated in the table above, to the Board's reasonable satisfaction.