

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

**SOFTWARE AND SERVICES AGREEMENT**

[Frontline Technologies Group, LLC]

This SOFTWARE AND 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 Frontline Technologies Group, LLC ("Consultant" or "Frontline") with offices located at 397 Eagleview Blvd., Exton, PA 19341, previously known as General ASP, Inc D/B/A Aspex Solutions..

**RECITALS**

A. The Board and General ASP, Inc. D/B/A Aspex Solutions, an Illinois corporation entered into a Software and Services agreement on June 1, 2011 for TeacherFit software. The parties renewed the agreement two times, with the second option to renew expiring on June 30, 2014. The original agreement and its renewals were for the provision of Polaris TeacherFit Inventory software.

B. On August 1, 2014 Aspex Solutions sold its technology and software business to Frontline Technologies Group, LLC and the assets of Aspex Solutions, including the licensing rights for Polaris TeacherFit Inventory software, were sold to Frontline Technologies Group ("Consultant" or "Frontline").

C. Pursuant to said transactions and the subsequent transfer of assets to Frontline Technologies Group, LLC, Frontline Technologies Group LLC is assuming and is responsible and liable for any and all liabilities, obligations and contractual awards granted to Aspex Solutions, and the Board agrees to and approves the assignment of the agreement.

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

E. Frontline has demonstrated that it has the requisite knowledge, skill, experience and other resources necessary to provide the software and support services to the Board.

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

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

2. **Definitions:**

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

B. "Software" means the software identified in Exhibit A, hosted and maintained by Consultant, and accessible to the Board via the Internet.

3. **Term of Agreement:** This Agreement is for a term commencing on October 1, 2014 and terminating September 30, 2015 ("Term"), unless terminated sooner as provided herein. Upon mutual agreement, the parties shall have two (2) options to renew for periods of one (1) year each (each a "Renewal Term").

4. **Scope of Services:** Consultant agrees to provide the services set forth in Exhibit A ("Services"), in accordance with the terms and conditions of this Agreement. "Services" means, collectively, the services, Software, products, deliverables, duties and responsibilities described in Exhibit A of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement. The Board retains final authority with respect to all Services related purchasing 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:** Consultant 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 Consultant is not performing in accordance with the performance standards or other requirements of this Agreement, the Board shall have the right to direct the Consultant to remove that person from performing Services under this Agreement.

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

A. **Compensation:** The total maximum compensation payable to Consultant pursuant to this Agreement shall not exceed Fifty Two Thousand and 00/100 Dollars ("52,000.00") ("Total Maximum Compensation"). The Board shall not reimburse Consultant for any expenses. Consultant is not entitled to any payment nor is the Board obligated to pay Consultant 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. Consultant agrees to provide the Services at the prices set forth in Exhibit A. If Consultant 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 verified overcharge against any amounts due to Consultant under this or any other Agreement between Consultant and the Board.

B. **Purchase Orders:** Orders must be on the Board's Standard Purchase Order Form ("PO"). It is understood and agreed that Consultant shall not provide any Services without a valid purchase order. If Consultant provides any Services without a valid purchase order Consultant shall not be entitled to receive any payment for such Services.

C. **Payment:** Consultant 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 Consultant 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 and make payment within thirty (30) days of receipt of such invoices.

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

A. **License:** Consultant hereby grants to the Board a non-exclusive, worldwide, nontransferable (to a third party), license to use the Software for the fees specified in this Agreement, for the Term of the Agreement. The Board shall not sell, lease, license or otherwise transfer, use or dispose of the Software except as expressly provided herein. The Software and Documentation shall at all times remain the sole an exclusive property of Consultant. The Board shall not copy or knowingly permit the copying by any third party of the Software (other than for a reasonable number of back-up copies) or distribute, market, sell, rent, lease, license, transfer, sublicense or assign to any third party any portion of the Software, use the Software for timesharing or service bureau purposes or otherwise for the benefit of a third party, except as permitted under this Agreement. The Board shall not make any alterations, additions or modifications, create derivative works,

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

decompile, disassemble or reverse engineer the Software without the prior written consent of Consultant.

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

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

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

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

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

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

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

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

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

I. Compatibility and Data Flow: Consultant shall ensure that the Hosting Services allows data to flow properly between the Board's computer workstations and the Consultant's Software and Services. Consultant must ensure that any other resources that are provided by Consultant to the Board, incorporated by Consultant, and approved or recommended by Consultant for use by the Board in connection with the Software and Services, be fully compatible with, and must not materially and adversely affect, or be materially and adversely affected by, each other or the other hardware, software, equipment, network components, systems, services, and other resources that are owned or leased by, or licensed to, the Board in accordance with the applicable Documentation (collectively, the "Board Resources"). At all times, Consultant 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. Subject to Consultant's confidentiality agreement, such coordination shall include:

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

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

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

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

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

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

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

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

8. Standards of Performance: Consultant 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 reasonable satisfaction of the Chief Purchasing Officer. Consultant 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. Consultant 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. Consultant 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, Consultant 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 Consultant of its responsibility for the professional skill, care, and technical accuracy of its Services and deliverables. Consultant shall remain responsible for the professional and technical accuracy of all Services, including any deliverables furnished, whether by Consultant or its subcontractors or others on its behalf.

9. Non-appropriation: Expenditures not appropriated by the Board in its current fiscal year budget are deemed to be contingent liabilities only and are subject to appropriation in subsequent fiscal year budgets. In the event no funds or insufficient funds are appropriated and budgeted in any subsequent fiscal period by the Board for performance under this Agreement, the Board shall notify Consultant and this Agreement shall terminate on the earlier of the last day of the fiscal period for which

This Agreement will be posted on the CPS Internet website.

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

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

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

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

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

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

E. Failure of Consultant 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 Consultant'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 Consultant'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.

**11. Remedies:** The occurrence of any Event of Default which Consultant 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, Consultant fails to commence and continue diligent efforts to cure in the reasonable opinion of the Board, may permit the Board to declare Consultant in default. Whether to declare Consultant in default is within the reasonable 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 Consultant'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 Consultant either directly or through others. Consultant shall be liable to the Board for any excess costs incurred by the Board. Any amount due Consultant under this Agreement or any other agreement Consultant 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 Consultant'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 Consultant any and all damages incurred as a result or in consequence of an Event of Default, subject to Section 22;

F. The right to money damages;

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

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

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

**12. 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, Consultant 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.

Consultant 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.

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

The Board may, upon fifteen (15) calendar day's written notice, request that Consultant suspend supplying Services for a period not to exceed thirty (30) days in whole or part. Consultant 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 Consultant. Responsibility for any additional costs or expenses actually incurred by Consultant as a result of remobilization shall be determined by mutual agreement of the parties.

Consultant may terminate this Agreement upon thirty (30) days written notice in the event the Board fails to perform in accordance with terms and conditions of this Agreement, including failure to make payments when due.

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

**14. 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 (ii) pre-existing Consultant intellectual property that is delivered to the Board as part of the Services to be provided by Consultant hereunder or are imbedded in any Work Product to be delivered to the Board by Consultant hereunder and (iii) all methods, tools, analyses, or processes developed or used by Consultant without use or reference to the Board's Confidential Information and which methods, tools, analyses, or processes were not created specifically for the Board and which are generally applicable to projects and services performed by Consultant.

**A. Confidential Information:** In performance of this Agreement, Consultant may have access to or receive certain information that is not generally known to others ("Confidential Information"). Consultant acknowledges that Confidential Information includes, but is not limited to proprietary information, copyrighted material, educational records, student data, employee data, information relating to health records, and any other information of a personal nature. Consultant shall not use or disclose any Confidential Information or any finished or unfinished, documents, screens, reports, writings, procedural manuals, forms, source code, object code, work flow charts, methods, processes, data, data studies, drawings, maps, files, records, computer printouts, designs, equipment descriptions, or other materials prepared or generated as a result of this Agreement ("Work Product") without the prior written consent of the Board. Consultant shall use at least a commercially reasonable standard of care in the protection of the Confidential Information of the Board. Upon the execution or termination of this Agreement, Consultant shall promptly cease using and shall return or destroy (and certify in writing the destruction of) all Confidential Information furnished by the Board along with all copies thereof in its possession including copies stored in any computer memory or storage medium.

**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, Consultant may have access to or receive Highly Confidential Information. Consultant shall not use or disclose any Highly Confidential information without the prior written consent of the Board.

**C. Transmitting and Storing Highly Confidential Information:** Consultant 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. Consultant 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. Consultant 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. Consultant shall not leave Highly Confidential Information in any electronic format unsecured and unattended at any time;

vii. Consultant 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. Consultant shall not leave any laptop or computer unattended without enabling a screen-lock or otherwise blocking access to the laptop or computer. Consultant 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:** Except to perform its obligations under this Agreement, Consultant shall not disseminate any Confidential Information or Highly Confidential Information to a third party without the prior written consent of the Board. Consultant 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 Consultant 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 Consultant's possession, Consultant shall immediately give notice (if permitted) 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. Consultant 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. Consultant shall cause its personnel, staff and subcontractors, if any, to undertake the same obligations regarding confidentiality and dissemination of information as agreed to by Consultant under this Agreement.

**E. Ownership:** Consultant agrees that, to the extent permitted by law, any and all Work Product shall exclusively be deemed "works for hire" within the meaning and purview of the United States Copyright Act, 17 U.S.C. 101§ et seq. To the extent any Work Product does not qualify as a "work for hire," Consultant 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. Consultant 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. Aggregated data not relating to individual employees of the Board acquired by Consultant in the course of performing this Agreement will be the sole property of Consultant.

**F. Use of Confidential Information and Highly Confidential Information:** Consultant 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 Consultant. 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:** Consultant 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 Consultant 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 Consultant has previously secured the appropriate authorization in writing from such third party. In accordance with the provisions of Section 18 of this Agreement, Consultant hereby agrees to indemnify and hold harmless the Board against any and all claims related to third party Confidential Information

This Agreement will be posted on the CPS Internet website.

and proprietary information in connection with or arising out of the acts or omissions of Consultant or its Staff under this Agreement.

**H. Return or Destruction of Confidential Information and Highly Confidential Information:** Consultant 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, Consultant 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 Consultant destroy the Confidential Information and Highly Confidential Information, Consultant shall provide an affidavit attesting to such destruction.

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

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

**K. Freedom of Information Act:** Consultant 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. Consultant further acknowledges that this Agreement shall be posted on the Board's Internet website at <http://www.cps.edu>.

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

**15. Representations and Warranties of Consultant:** Consultant 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:** Consultant is and shall remain in compliance with all applicable federal, state, county, and municipal, statutes, laws, ordinances, and regulations relating to Consultant's performance under 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, Consultant 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:** Consultant, 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 Consultant is an entity other than a sole proprietorship, Consultant 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 Consultant is duly authorized by Consultant and has been made with complete and full authority to commit Consultant to all terms and conditions of this Agreement which shall constitute valid, binding obligations of Consultant;

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

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

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



I. Research Activities and Data Requests: Consultant acknowledges and agrees that in the event Consultant seeks to conduct research activities in any Board school or use Board student data for research purposes, Consultant shall comply with the Board's Research Study and Data Policy adopted on March 25, 2009, as may be amended from time to time. Consultant 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 Consultant or has or will have a financial interest, directly or indirectly, in this Agreement or the compensation to be paid hereunder except as may be permitted in writing by the Board's Ethics Policy (04-0623-PO4), adopted June 23, 2004, as may be amended from time to time, which policy is incorporated herein by reference as if fully set forth herein;

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

L. No Legal Actions Preventing Performance. As of the Effective Date Consultant 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 Consultant's ability to perform its obligation under the Agreement;

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

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

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

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

Q. Software Performance. During the Term of the Agreement, the Software shall (i) be free from defects in material and workmanship under normal use and remain in good working order; and (ii) function properly and in conformity with the warranties herein and in accordance with this Agreement and with the description, specifications and Documentation on the Board computer workstations and system software including updates or new releases to such hardware, system software and other software, and interface with other programs as required, and the Documentation shall completely and accurately reflect the operation of the Software. Consultant shall promptly correct any failure of the Software to perform in accordance with the current published specifications and Documentation, but in no case shall the failure be fixed in more than five (5) business days;

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

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

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

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

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

All warranties will survive inspection and payment. 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.

16. Independent Contractor: It is understood and agreed that the relationship of Consultant to the Board is and shall continue to be that of an independent contractor and neither Consultant nor any of Consultant's Staff shall be entitled to receive Board employee benefits. Consultant is the common law employer of the individuals who perform services for the Board. As an independent contractor, Consultant 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. To the extent that the Consultant is subject to taxes under Section 4980H of the Internal Revenue Code, the Consultant shall be solely responsible for paying such taxes. Consultant agrees that neither Consultant, nor its Staff shall represent themselves as employees or agents of the Board. Consultant 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.

17. Indemnification: Consultant 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 third party 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 Consultant or its Staff under this Agreement. This includes, but is not limited to, the unauthorized use of any trade secrets, patent infringement, or trademark or copyright violation. In the event that the Board is determined to be liable for taxes under Section 4980H of the Internal Revenue Code as a result of its use of the Consultant's employees under this Agreement, the Consultant shall indemnify the Board for any such liability.

Consultant 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, Consultant 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 Consultant of any of its obligations hereunder. The Board retains final approval of any and all settlements or legal strategies which admit any liability of the Board.

However, if Consultant, 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 Consultant) retain counsel and undertake the defense, compromise or settlement of such claim or action at the expense of Consultant, subject to the right of Consultant 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

This Agreement will be posted on the GPS internet website.

Board in these circumstances shall be borne by Consultant and Consultant 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 Consultant was conducting the defense.

To the extent permissible by law, Consultant 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 Consultant 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 Kotecki v. Cyclops Welding Corporation, 146 Ill. 2<sup>nd</sup> 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 indemnities set forth herein shall survive the expiration or termination of this Agreement.

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

**19. 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. E9997-7109-06. The amounts to be paid to Consultant 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 Consultant. Consultant shall be responsible for any taxes levied or imposed upon the income or business privileges of Consultant.

**21. Insurance:** Consultant, at its own expense, shall procure and maintain insurance covering all operations under this Agreement, whether performed by Consultant 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. Consultant 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 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. 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 this Contract, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.

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

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

The insurance company, or its representative, shall submit an insurance certificate evidencing all coverage as required hereunder and indicating the Additional Insured status as required above. The Board reserves the right to withhold payment under this Contract pending receipt of satisfactory proof of insurance meeting the requirements set forth herein. 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  
One North Dearborn Street, 2<sup>nd</sup> Floor  
Chicago, Illinois 60602

Any failure of the Board to demand or receive proof of insurance coverage shall not constitute a waiver of Consultant'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 Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all Contract requirements. Consultant's failure to carry or document required insurance shall constitute a breach of the Consultant's Contract with the Board. In the event Consultant fails to fulfill the insurance requirements of this Contract, the Board reserves the right to stop all work until proper evidence of insurance is provided, or this Contract may be terminated.

Any deductibles or self-insured retentions on referenced insurance coverage must be borne by Consultant. Any insurance or self-insurance programs maintained by the Board do not contribute with insurance provided by the Consultant and subcontractors under this Contract. All Consultant and subcontractor insurance is considered by the parties to this Contract to be primary and collectible above all other coverage, including, but not limited to, the Board's insurance and self-insurance.

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

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

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

**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 CONSULTANT OR ANY THIRD PARTY, EVEN IF THE BOARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE BOARD'S TOTAL LIABILITY TO CONSULTANT ARISING FROM OR RELATED TO THIS AGREEMENT FOR ANY REASON SHALL BE LIMITED TO DIRECT DAMAGES UP TO THE TOTAL MAXIMUM COMPENSATION. THE FOREGOING LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE AND OTHER TORTS.

This Agreement will be posted on the CPS Internet website.

The maximum liability of Consultant, its employees, agents, representatives, attorneys, officers and directors, for all damages, claims or losses whatsoever, including those relating to any error, failure, malfunction, or defect of the Software, any breach of this Agreement and any negligence or other malfeasance by Consultant shall not exceed the amount of the Insurance provided by Consultant as stated in this Agreement. This provision shall survive termination or expiration of this Agreement and shall continue in full force and effect.

**23. Audit and Document Retention:** Upon thirty (30) days prior written notice, Consultant shall permit and cooperate in good faith in any audits by the Board, including its Department of Procurement and Contracts, or its agents for compliance by the Consultant with this Agreement, subject to Consultant's confidentiality obligations. Consultant shall furnish the Board with such information, supporting documentation and reports as may be requested relative to the progress, execution and costs of the Services and compliance with applicable MBE/WBE requirements. Failure of the Consultant to reasonably comply 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 the Consultant for the cost of such audit.

Consultant shall retain all records relating to Consultant's Services under this Agreement for five (5) years after the termination or expiration of this Agreement and such records shall be subject to inspection and audit by the Board. If any audit, litigation or other action involving the records is being conducted or has not been resolved, all applicable records must be retained until the proceeding is closed. As used in this clause "records" includes correspondence (including e-mails), receipts, vouchers, memoranda and other data, regardless of type and regardless of whether such items are in written form, electronic, digital, or in any other form. Consultant shall require all of its subcontractors to maintain the above-described records and allow 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:** Talent Office  
24 West Madison, Suite 900  
Chicago, IL 60602  
Phone: 773.553.3671

Copy to: James L. Bebley, General Counsel  
One North Dearborn Street, Suite 900  
Chicago, IL 60602  
Fax: 773.553.1701

**IF TO CONSULTANT:** Frontline Technologies Group, LLC  
397 Eagleview Blvd.,  
Exton, PA 19341  
Phone: 847.475.2283  
Attn: President

**25. Right of Entry:** Consultant, 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. Consultant shall provide advance notice to the Board whenever applicable, of any such intended entry. Consent to enter upon a school site given by the Board shall not create, nor be deemed to imply, the creation of any additional responsibilities on the part of the Board. Consultant 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, Consultant 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 Consultant 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, Consultant 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 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.

**28. Governing Law:** This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois. Consultant 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. Consultant agrees that service of process on Consultant 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 Consultant in writing, to the office actually maintained by Consultant or by personal delivery on any officer, director or managing or general agent of Consultant. If any action is brought by Consultant 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 Consultant and the Board, Consultant 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:** Consultant agrees to comply with the Board's Indebtedness Policy (96-0626-PO3) as may be amended from time to time, which is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein.

**32. Inspector General:** Each party to this Agreement hereby acknowledges that in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Chicago Board of Education has the authority to conduct



This Agreement will be posted on the CPS Internet website.

certain investigations and that the Inspector General shall have access to all information and personnel necessary to conduct those investigations.

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

34. **MWBE Program:** Consultant 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 Consultant 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 Consultant, or its successors or assigns, if any, is comprised of more than one individual or other legal entity for a combination thereof; then, and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by Consultant shall be the joint and several obligation or undertaking of each such individual or other legal entity.

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

39. **Debarment Policy:** Consultant acknowledges that, in supplying Services for the Board, Consultant 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-PC01, as amended from time to time. If Consultant has engaged any firm to supply Services that is later debarred, Consultant shall sever its relationship with that firm with respect to supplying Services to the Board.

40. **Favored Nation:** Consultant shall furnish the Services to the Board at the lowest price that Consultant charges to other similarly situated parties under similar terms and conditions and otherwise comparable to the terms of this Agreement. If Consultant 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 1% 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 Consultant under this or any other Agreement between Consultant and the Board.

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

THE BOARD OF EDUCATION  
OF THE CITY OF CHICAGO

By: Sebastien De Longeau  
Chief Procurement Officer

Date: 11/19/14

CPOR Report No.: M-0402-PRC2

Approved as to legal form: [Signature]  
James L. Bebley, General Counsel

FRONTLINE TECHNOLOGIES GROUP, LLC

Signature: Managing Partner  
Title: Roland Thompson

Date: 11/19/14

ASPEX SOLUTIONS, LLC

By: Abe Reese  
Abe Reese, CEO

Date: 11/19/14

Attachment:

Exhibit A: Scope of Services

**Exhibit A**  
**Scope of Services**  
**(Frontline Technologies Group, LLC)**

**Name of Project:** General ASP's Polaris TeacherFit Inventory

**User Departments:** Talent Office

**Board's Project Manager:** Rohit Paul

**E-mail:** rpaul1@cps.edu

**Consultant's Project Manager:** Abe Reese

**E-mail:** Abe@generalasp.com

**Period of Performance:** October 1, 2014 – September 30, 2014

---

This Scope of Services will be conducted pursuant to the terms and conditions of that Software and Services Agreement ("**Agreement**") dated October 1, 2014 by and between Frontline Technologies Group, LLC ("**Consultant**") and The Board of Education of the City of Chicago (the "**Board**"), 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.

The CPS Office of Human Capital implemented Consultant's Polaris TeacherFit Inventory as a tool to measure predictive accomplishment in five key dimensional attributes found to be successful to CPS teachers. This tool will be given to all new to CPS teachers as part of the CPS online application for employment process that was be launched in June 2011.

**I. Project Objectives:**

Consultant will provide the Polaris TeacherFit Inventory, an online teacher assessment for CPS teacher applicants that is predictive in determining attributes that lead to success in CPS teachers. Consultant's online assessment will be integrated into the CPS new teacher application process and system.

CPS Principals will be guided by the results of the assessment. Scoring will be provided online by Consultant. The scoring methodology will help assist CPS principal's in the selection process by focusing on those teacher candidates in the applicant pool that show predictive evidence of success.

Consultant will also provide the automated production of interview guides based on teacher candidates' responses to the inventory. These guides will be in HTML version online for each candidate, with unlimited printing. These guides provide CPS interviewers with two questions for each dimension assessed by the inventory and have the ability to be customized to meet CPS' needs.

Based on the prior work of The Chicago Education Fund and CPS Office of Human Capital, a comprehensive development and validation study took place with the Consultant to arrive at the 5 key dimensions that would result in predictive success as a CPS teacher. The five key dimensions are Planning and Organizing, Student Focus, Perseverance, Focus on Results, and Self Initiative. Consultant has taken that work and has turned it into a new validated tool that will be used by CPS during the selection process that measures the probability of future teacher success.

This Agreement will be posted on the CPS Internet website.

**II. Services and Schedule of Compensation:**

<u>Services</u>	<u>Total Solution Cost</u>
<ul style="list-style-type: none"> <li>• Implementation</li> <li>• Set up</li> <li>• Configuration</li> <li>• Technical support</li> <li>• Six hours per calendar month consulting services</li> <li>• Annual hosting</li> <li>• Additional consulting and training time that may be beyond the allocated six hours per month.</li> </ul>	<i>Included in the Total Amount below</i>
<p>Consultant shall also provide implementation support including set up, configuration, technical support, and six hours per calendar month of consulting Services. The six (6) hours of consulting Services per month includes, but is not limited to, training, question development and validation, scoring review and recommendations. CPS will have unlimited use of the TeacherFit Inventory during the Agreement Term. All CPS schools will have access to the tool through CPS systems used for Human Capital Selection and Transactions.</p>	<i>Included in the Total Amount below</i>
<p><u>Support includes:</u>  E-mail technical support:  Email Hours: 24 hours, 7 days per week, 365 days of the year  Email Address: <a href="mailto:support@generalasp.com">support@generalasp.com</a>  Phone technical support:  Phone Hours: 8 AM to 6 PM CST Monday through Friday, excluding U.S. national holidays  Phone Number: 847-475-2283 x1</p> <p>After hours emergency support:  Send an email to <a href="mailto:serverAlerts@generalasp.com">serverAlerts@generalasp.com</a> stating the nature of the emergency and your contact information. The system managers on staff will be paged with your message.</p> <p>Requests for support shall be responded to within four (4) business hours for Critical support requests and within one (1) business day for Non-Critical Requests. Critical requests shall be resolved within twenty-four (24) hours. Non-Critical Requests shall be resolved on a first-come first-served basis, typically within two (2) to five (5) business days, depending on the complexity of the inquiry and support requests volume.</p> <p>Critical requests are defined as one of the following: (i) a complete failure that results in the inability by CPS to use Product for a period</p>	<i>Included in the Total Amount below</i>

This Agreement will be posted on the CPS Internet website.

longer than four (4) consecutive hours or (ii) the loss, corruption or unintended migration of CPS data.	
<b>Total Maximum Compensation:</b>	<b>\$52,000</b>

**III. Optional Services:**

Consultant may receive an additional amount up to but not to exceed \$10,000 for additional consulting and training services, as determined and needed by CPS. Consultant will be paid Seventy Five and 00/100 Dollars (\$75.00) an hour for the additional consulting or training services. The additional consulting or training services will be provided at the request of CPS and Consultant may not bill or invoice for these services unless the services have been requested and approved by CPS. Consultant will provide invoices to CPS for any agreed upon additional services and will be paid upon receipt of detailed invoices from Consultant for such additional services.

**IV. Total Maximum Compensation:**

The total maximum compensation payable to Consultant during this Agreement Term shall not exceed Fifty Two Thousand and 00/100 (\$52,000.00) ("Total Maximum Compensation").