

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

SERVICES AGREEMENT
(R.R. Donnelley & Sons Company)

This Services Agreement (this "**Agreement**") is effective as of April 20, 2020 (the "**Effective Date**") and is entered into by and between the Board of Education of the City of Chicago, a body politic and corporate, commonly known as Chicago Public Schools, with offices located at 42 West Madison Street, Chicago, IL 60602 (the "**Board**" or "**CPS**") and R.R. Donnelley & Sons Company with offices located at 35 West Wacker Drive, 36th floor, Chicago, Illinois 60601 ("**Vendor**").

RECITALS

- A. The Board requires printing, processing, and mailing services for report cards;
- B. Vendor has demonstrated expertise in providing such services, has represented that it has the requisite knowledge, skill, experience and other resources necessary to perform such services and is desirous of providing such services to the Board;
- C. The Board desires that Vendor perform such services as more fully described herein;
- D. The parties now wish to execute this Agreement that defines the nature of their relationship, establishes pricing, and describes the manner in which services will be furnished by Vendor.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, which are incorporated into and made a part of this Agreement by this reference, and the mutual covenants contained herein, the parties agree:

- 1. **Term.** This Agreement will commence on the Effective Date and continue through May 15, 2020 (the "**Term**"), unless terminated sooner as provided in this Agreement.
- 2. **Scope of Services:** Vendor agrees to provide the Services as described in this Agreement, including the Scope of Services that is attached and incorporated into this Agreement as Exhibit A and any and all services, deliverables, duties, responsibilities, and 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 decisions related to the Services. The Board may, from time to time, request changes in the scope of Services. Any such changes to the Agreement shall require documentation by a written amendment to this Agreement signed by the authorized representatives of both parties and the Board's General Counsel.
- 3. **Compensation, Purchase Order, Billing and Payment Procedures:**
 - 3.1. **Compensation:** Vendor shall be paid in accordance with the fees and costs set forth in the Scope of Services. The maximum compensation payable to Vendor for the Term of this Agreement shall not exceed Two Hundred and Fifty Thousand Dollars (\$250,000) ("Maximum Compensation Amount"). It is understood and agreed that the Maximum Compensation Amount is a 'not-to-exceed amount' and is not a guaranteed payment. Compensation shall be based on actual Services performed during the Term of this Agreement, and the Board shall not be obligated to pay for any Services or other deliverables not in compliance with this Agreement. No expenses shall be reimbursed under this Agreement. In the event the Agreement is terminated early, the Board shall only be obligated to pay the fees incurred up to the effective date of termination and Vendor shall promptly refund to the Board any payments received from Services and deliverables not provided.
 - 3.2. **Purchase Order:** Any purchases by the Board of Services covered by this Agreement will be completed by submitting an order on the Board's Standard Purchase Order Form ("PO"). The terms and conditions found on the PO shall apply to the extent that such terms supplement and

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are not inconsistent with the terms and conditions contained in this Agreement. Under no circumstances shall Vendor provide any Services without a valid PO.

3.3. **Billing and Payment Procedures:** All invoices must be submitted electronically via email in PDF format to cpsinvoice@cps.edu. Each email may only contain one invoice and must include Vendor's name and the CPS Purchase Order number. All invoices must include:

- Vendor name and payment address
- Unique invoice number (determined by Vendor)
- Valid purchase order number (only one PO number may be referenced on each invoice)
- Invoice date
- Itemized description of the services rendered and/or goods delivered
- Date the services were provided and/or goods were delivered to CPS
- Detail pricing information such as quantities, unit prices, discount, and final net amount due

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 accordance with the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*). The Board reserves the right to request additional information and supporting documentation necessary for the Board to verify the Services provided under this Agreement.

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

5. **Personnel:** Vendor must assign and maintain during the term of this Agreement an adequate staff of competent personnel that is fully assigned, licensed as appropriate, available as needed, qualified and assigned to perform the Services. For the avoidance of doubt, all volunteers of Vendor shall be considered agents of Vendor and subject to the same requirements hereunder as Vendor's paid employees and subcontractors. If the Board determines, in its sole discretion, that any employee, subcontractor or other person providing Services hereunder is not performing in accordance with the performance standards or other requirements of this Agreement, the Board shall have the right to direct Vendor to remove such personnel from the Board's account and provide replacement(s) in a timely manner. In the event that the Board has concerns that an individual poses a risk to the safety or welfare of the Board's students or staff, Vendor agrees that such personnel shall be removed from the Board's account immediately and shall have no further contact with the Board's employees, agents, and students. Vendor further agrees to bear any costs associated with the removal of such person.

6. **Standards of Performance:** Vendor shall devote, and shall cause all of its employees, agents and subcontractors, if any, to devote, such of their time, attention, best skill and judgment, knowledge and professional ability as is necessary to perform Services effectively, efficiently, and consistent with the best interests of the Board and to the satisfaction of the Board's Chief Officer of School Safety and Security or his/her designee. Vendor shall retain and utilize sufficient staff to assure the most effective and efficient supply of Services and shall utilize, as required by law or by this Agreement, professionals licensed to practice in the State of Illinois in the applicable profession. Vendor shall use efficient business administration methods and perform the Services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and in an expeditious and economical manner consistent with the best interests of the Board, so as to assure, among other things, that the Services are performed at a reasonable cost to the Board and that Services supplied by other entities or persons in connection with this Agreement are efficiently and cost-effectively delivered. Vendor

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acknowledges that, in the course of providing Services hereunder, it is entrusted with or has access to valuable or confidential information or records of the Board, that with respect to that information, Vendor agrees to be held to the standard of care of a fiduciary. Any review, approval, acceptance of Services or deliverables by the Board does not relieve Vendor of its responsibility for the professional skill, care, and technical accuracy of its Services and deliverables or payment for any Services. Vendor shall remain responsible for the professional and technical accuracy of all Services, including any deliverables furnished, whether by Vendor or its subcontractors or others on its behalf.

7. Confidential Information; Dissemination of Information; Ownership; Injunctive Relief; Survival:

7.1. **Confidential Information:** In the performance of the Agreement, Vendor may have access to or receive certain information that is not generally known to others (“**Confidential Information**”). Such Confidential Information may include but is not limited to: student data as further defined below, employee data, technical data or specifications, software, ideas, budget figures, operational details, security details, unpublished school information, CPS financial information, and CPS business plans. It is understood and agreed that Confidential Information also includes proprietary or confidential information of third parties provided by the Board to Vendor. Confidential Information will not include information that is: (i) or becomes part of the public domain through no fault of Vendor; (ii) made available to Vendor by an independent third party having the legal right to make such disclosure; and (iii) information that can be established and documented by Vendor to have been independently developed or obtained by Vendor without violating the confidentiality obligations of this Agreement and any other agreements with the Board.

7.2. **Student Data:** Student Data means any data, metadata, information, or other materials of any nature recorded in any form whatsoever, that is generated, disclosed, transmitted, created, or provided by the Board, either directly or through its students, employees, agents, and subcontractors, including all information used, created, or generated through the use of any technology including but not limited to any Software (as defined in the Agreement), by the Board, through its employees, agents, subcontractors, or the parent or legal guardian of any CPS student, that is directly related to a CPS student. For purposes of this Agreement, Student Data shall still be considered Confidential Information; additional requirements regarding Student Data specifically are described below.

7.3. **Use of Confidential Information:** Vendor shall only use Confidential Information for the sole purpose of providing the Services to the Board hereunder and shall not disclose the Confidential Information except to those of its officers, agents, employees, and subcontractors who have a need to access the Confidential Information for the performance of the obligations set forth in this Agreement. Vendor shall not copy or reproduce in any manner whatsoever the Confidential Information of the Board without the prior written consent of the Board, except where required for its own internal use in accordance with this Agreement. Vendor shall use at least the same standard of care in the protection of Confidential Information 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. Notwithstanding the foregoing, it is understood and agreed that such protection of Confidential Information may be subject to the special requirements of FERPA and ISSRA as described in the Compliance with Laws Section.

7.4. **Handling of Confidential Information:** Vendor shall protect against the unauthorized access, use or disclosure of Confidential Information by employing security measures that are no less protective as those used to protect Vendor’s own confidential information. When handling Confidential Information that is personally identifiable (“Personally Identifiable Confidential Information”), which may include but is not limited to student data, Vendor shall:

1. When mailing physical copies of Personally Identifiable Confidential Information, send the Personally Identifiable Confidential Information in a tamper-proof, labeled

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container, with a tracking number and a delivery confirmation receipt, except as otherwise set forth in the Scope of Services;

2. Not store any Personally Identifiable Confidential Information on portable or removable electronic media, such as CDs, DVDs, electronic tape, flash drives, etc.;

3. Not leave Personally Identifiable Confidential Information in any medium unsecured and unattended at any time;

4. Keep all physical copies (paper, portable or removable electronic media, or other physical representations) of Personally Identifiable Confidential Information under lock and key, or otherwise have sufficient physical access control measures to prevent unauthorized access;

5. Password protect any laptop or other electronic device that contains Personally Identifiable Confidential Information. Additionally, any laptop or other electronic device that contains Personally Identifiable Confidential Information shall have its full hard drive encrypted with an encryption key of no less than 256 bits. Vendor shall not leave any laptop or other electronic device unattended without enabling a screen-lock or otherwise blocking access to the laptop or other electronic device. Vendor shall ensure that no password or other information sufficient to access a laptop or electronic device containing Personally Identifiable Confidential Information is attached to or located near the laptop or other electronic device at any time.

6. Secure the Personally Identifiable Confidential Information stored on its systems, including but not limited to any servers, by employing adequate security measures to prevent unauthorized access, disclosure and use of that information. These measures include appropriate administrative, physical, and technical safeguards, policies and procedures relating to data access controls. All Personally Identifiable Confidential Information must be secured in transit using secure FTP services or https/TLS 1.0+. Vendor must maintain industry recognized security practices to establish secure application(s), network, and infrastructure architectures.

7. Ensure that the manner in which Personally Identifiable Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed within Vendor's Products, Services, and supporting enterprise complies with applicable data protection and privacy laws, as well as the terms and conditions of this Contract.

8. Conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Vendor will also have a written incident response plan, to include prompt notification of the Board in the event of a security or privacy incident, as well as best practices for responding to a breach of Personally Identifiable Confidential Information security practices. Vendor agrees to share its incident response plan upon request.

9. Assure that its systems, Products and Services include at least the following safeguards:

1. Include component and system level fault tolerance and redundancy in system design.
2. Encrypt user passwords in any data storage location and obfuscate password entry fields in any entry interface controlled by the discloser.
3. Encrypt Personally Identifiable Confidential Information at-rest and in-transit.
4. Authentication of users at login with a 256-bit or higher encryption

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algorithm.

5. Secure transmission of login credentials.
6. Automatic password change routine.
7. Trace user system access via a combination of system logs and Google Analytics.
8. Secure (encrypt) the audit trails and system generated logs and ensure that they are stored in locations that are inaccessible to automated content discovery software.
9. Conduct or undergo system level testing whenever new functionalities are added to the system to reconfirm system security measures are retained and functional, and that interaction with the Board systems is not degraded or compromised.
10. Employ an in-line intrusion protection system that inspects incoming data transmissions.
11. Prevention of hostile or unauthorized intrusion.
12. Backup of all Personally Identifiable Confidential Information at least once every twenty-four (24) hours. Perform content snapshots at least daily and retain for at least ninety (90) days.

10. Confidential Information shall be stored, backed up, and served only on servers located in the continental United States. Vendor's network where Confidential Information may be stored shall have an in-line intrusion prevention system that inspects incoming data transmissions. Vendor shall have a documented disaster covered plan for the electronic systems where Confidential Information may be stored. Data stored in cloud-based systems must be protected in the same manner as local data as described throughout the Contract.

7.5. Dissemination of Information: Other than as may be required for the performance of Services in accordance with this Agreement, Vendor shall not disseminate any Confidential Information to a third party without 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 which may be in Vendor's possession as a result of Services and/or materials provided under the Agreement, 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.

7.6. Press Release; Publicity: Vendor shall not issue publicity news releases, grant press interviews, or use any Confidential Information or Board intellectual property (as defined below), including but not limited to the CPS logo or the logos of any schools, during or after the performance of Services without the prior written consent of the authorized representatives of the Board. Furthermore, Vendor may not photograph or film or cause others to photograph or film within any CPS school or facility without the prior express written consent of the Board's Chief Communications Officer or his/her designee.

7.7. Unauthorized Access, Use, or Disclosure of Confidential Information: If Vendor becomes aware of any unauthorized access, use, or disclosure of the Confidential Information, it shall: (i) notify the Board immediately, which shall be no more than twenty-four hours from Vendor receiving notice of the unauthorized access, use or disclosure of the Confidential Information; (ii) take prompt and appropriate action to prevent further unauthorized access, use or disclosure of the Confidential Information; (iii) cooperate with the Board and any government authorities with respect

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to the investigation and mitigation of any such unauthorized access, use, or disclosure, including the discharge of the Board's duties under the laws; and (iv) take such other actions as the Board may reasonably require to remedy such unauthorized access, use and disclosure, including if required under any federal or state law, providing notification to the affected persons. Vendor shall bear the losses and expenses (including attorneys' fees) associated with the breach of its obligations concerning the handling and protection of Confidential Information, including without limitation any costs: (1) of providing notices of a data breach to affected persons and to regulatory bodies; and (2) of remedying and otherwise mitigating any potential damages or harm of the data breach, including without limitation, establishing call centers and providing credit monitoring or credit restoration services, as requested by the Board.

7.8. Additional Obligations Regarding Treatment of Student Data: In addition to the above stated obligations for the treatment and handling of Confidential Information, Vendor shall abide by the following obligations with regards to any Student Data Vendor may receive, store, transmit, handle or otherwise have access to pursuant to this Agreement:

A. Student Data Use. Vendor shall not use Student Data, including persistent unique identifiers, data created or gathered by Vendor's site, Services, and technology, to assess a profile about a CPS student or otherwise identify a CPS student except in furtherance of specific Services as set forth in this Agreement. Vendor will use Student Data only for the purpose of fulfilling its duties and delivering Services under this Agreement, and for improving Services under this Agreement in a way that does not otherwise violate the terms of this Agreement regarding the treatment of Confidential Information.

B. Student Data Collection. Vendor will collect only Student Data necessary to fulfill its duties as outlined in this Agreement.

C. Marketing and Advertising. Vendor shall not advertise or market to students or their parents/legal guardians when the advertising is based upon any Student Data that Vendor has acquired because of the use of that Vendor's Services or the use of technology as part of the Services. Advertising or marketing may be directed to a school or Board only if the student information underlying the marketing and/or advertising is properly de-identified.

D. Student Data Mining. Vendor is prohibited from mining Student Data for any purposes other than those agreed to by the parties. Student Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited.

E. Student Data Transfer or Destruction. Vendor will ensure that all Student Data in its possession and in the possession of any subcontractors, or agents to whom Vendor may have transferred Student Data, are destroyed or transferred to the Board under the direction of the Board when Student Data is no longer needed for its specified purpose.

F. Rights and License in and to Student Data. Parties agree that all rights, including all intellectual property rights, associated with such Student Data shall remain the exclusive property of the Board. Nothing in this Agreement is meant and nothing shall be interpreted to mean that the Board releases any ownership or control of Student Data during the performance of the Services under this Agreement. Student Data shall remain under the control of the Board throughout the Term of this Agreement, including any Renewal Terms. Vendor has a limited, nonexclusive license to the use of Student Data solely for the purpose of performing its obligations as outlined under the Agreement. This Agreement does not give Vendor any rights, implied or otherwise, to Student Data, content, or intellectual property, except as expressly stated in the Agreement. Vendor does not have the right to sell or trade Student Data.

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G. Sale of Student Data. Vendor is prohibited from selling, trading, or otherwise transferring Student Data to any third parties, except with the express written prior consent of the authorized Board representative and written approval of the Board's General Counsel. This prohibition does not apply to the purchase, merger, or other type of acquisition of Vendor by another entity approved by the Board in accordance with the Assignment Section of this Agreement, provided that Vendor or successor entity continues to be subject to the provisions of this Agreement with respect to previously acquired Student Data.

H. Access. Any Student Data held by Vendor will be made available to the Board upon request of the Board. The identity of all persons having access to Student Data through Vendor will be documented and access will be logged.

7.9. **Data Security Manager:** Vendor shall provide the Board with the name and contact information for a primary and alternate employee of Vendor who shall serve as the Board's primary security contact and who shall be available to assist the Board twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Student Data-related security breach. The designated contact shall respond to any Board inquiries within two (2) hours.

7.10. **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.

7.11. **Return or Destruction of Confidential Information:** Vendor shall, at the Board's option, destroy or return all Confidential Information provided by the Board to the Board within five (5) business days of demand, or if no demand is made, it shall destroy or return all Confidential Information, including any Work Product (defined below), to the Board within five (5) days of the expiration or termination of this Agreement unless Vendor receives permission in writing from the Board's Chief Information Officer or his designee that Vendor may retain certain Confidential Information or Work Product for a specific period of time. In the event the Board elects to have Vendor destroy the Confidential Information, Vendor shall provide an affidavit attesting to such destruction. If any of the above items are lost or damaged while in Vendor's possession, such items shall be restored or replaced at Vendor's expense.

7.12. **Volunteers, Employees, Agents and Subcontractors:** Vendor agrees to cause its volunteers, employees, agents and subcontractors to undertake the same obligations as agreed to herein by Vendor.

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

8. **Use of Board's Network:** If at any time, Vendor has access to the Board's computer network, Vendor warrants that it is and shall remain in compliance with the Board's Information Security Policy adopted September 25, 2013 (13-0925-PO1), and the Board's Staff Acceptable Use Policy, adopted August 22, 2018 (18-0822-PO2), both as amended, during the term of the Agreement and any renewals thereof. Vendor shall not act or fail to act in any manner that will cause any CPS student to not comply with the Board's Student Acceptable Use Policy, adopted August 22, 2018 (18-0822-PO1), as may be amended.

9. **Intellectual Property:**

9.1. **Intellectual Property Defined:** "Intellectual Property" means all trademarks, trade dress, copyrights, and other intellectual property rights in the materials used, created, arising from and developed in the performance of obligations and Services under this Agreement.

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9.2. **Board's Intellectual Property:** Vendor agrees that all Confidential Information, as well as any Intellectual Property arising therefrom and any Work Product as defined below, shall at all times be and remain the property of the Board. Any Intellectual Property or other documents and materials created by the Board either alone or in cooperation with Vendor in connection with the Services, including but not limited to such materials that were adapted or reproduced from Vendor's Materials ("Board Materials"), shall be the property of the Board. Any and all finished or unfinished documents, screens, reports, writings, procedural manuals, forms, source code, object code, work flow, charts, methods, processes, drawings, maps, files, records, computer printouts, designs or other materials prepared in the performance of Services ("Work Product") is exclusively deemed to be "works for hire" within the meaning and purview of the United States Copyright Act, 17 U.S.C. § 101 *et seq.* To the extent that 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. 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 intellectual property rights as defined in this Section. Board Materials shall exclude any and all (i) third party intellectual property and (ii) pre-existing Vendor Intellectual Property that is delivered to the Board as part of the Services. Upon written agreement between the parties, Vendor may be licensed to use the Board's Intellectual Property for specifically defined uses and terms.

9.3. **Vendor's Intellectual Property:** All Intellectual Property owned by Vendor prior to, created in or concurrently with the performance of Services under this Agreement shall be and remain at all times "Vendor's Intellectual Property", provided that none of the Board's Confidential Information is used or disclosed in Vendor's Intellectual Property and such Intellectual Property is not Work Product. In the event that any Confidential Information is used or disclosed in any such Intellectual Property, it is the Board's Intellectual Property, and the Board shall have full and exclusive ownership rights to such Intellectual Property. Other than as may be expressly stated elsewhere in this Agreement, Vendor grants to the Board a perpetual, royalty-free, non-transferable license to use such of Vendor's Intellectual Property for non-commercial, educational purposes.

9.4. **Survival:** The obligations set forth in this Section shall survive the termination or expiration of this Agreement.

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

10.1. **Licensed Professionals:** Vendor is appropriately licensed under Illinois law to perform Services required under this Agreement and shall perform no Services for which a professional license is required by law and for which Vendor, its employees, agents, or subcontractors, as applicable, are not appropriately licensed.

10.2. **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 to time, including but not limited to the Prevailing Wage Act, 820 ILCS 130/1 *et seq.*, City of Chicago and Cook County Minimum Wage Ordinances, including applicable Executive Order(s) and Board(s) Resolutions, the Drug-Free Workplace, the Illinois School Student Records Act, the Family Educational Rights and Privacy Act, the Protection of Pupil Rights Amendment and any others relating to non-discrimination. Further, Vendor is and shall remain in compliance with all applicable Board policies and rules. Board policies and rules are available at <http://www.cps.edu/>.

10.3. **Vendor Number and Good Standing:** Vendor maintains an active CPS Vendor Number through the Term of the Agreement. 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 of this Agreement.

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10.4. **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.

10.5. **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.

10.6. **Gratuities:** No payment, gratuity or offer of employment was made by or to Vendor, or to the best of Vendor's knowledge, by or to any subcontractors, in relation to this Agreement or as an inducement for award of this Agreement. Vendor is and shall remain in compliance with all applicable anti-kickback laws and regulations.

10.7. **Contractor's Disclosure Form:** The disclosures in the Contractor Disclosure Form, previously submitted by Vendor, 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.

10.8. **Research Activities and Data Requests:** Vendor shall not conduct research in the Chicago Public Schools or use CPS student data for research. In the event Vendor seeks to conduct research in the Chicago Public Schools or use CPS student data for research, Vendor shall comply with the Board's Research Study and Data Policy adopted on July 28, 2010, as may be amended from time to time. Vendor acknowledges and agrees that it may not begin any research activities or obtain data for research purposes without the prior written consent of the Chief Education Officer or his/her designee.

10.9. **Services Warranty.** Vendor has carefully examined and analyzed the provisions of this Agreement and can and will perform, or cause the Services to be performed in strict accordance with the provisions and requirements of this Agreement. The Services will be performed by its employees, agents, and subcontractors in a timely, professional and workmanlike manner, in accordance with all applicable industry and professional standards. Such Services will be in compliance with all applicable laws, rules, regulations or orders. Vendor shall assure that all Services performed as described in the Scope of Services shall carry a minimum warranty of thirty (30) days after the Board's acceptance of the completion of such activities. If the Board notifies Vendor or if Vendor becomes aware, of any non-performance, error or defect covered by the foregoing warranties Vendor will, at its own expense, promptly (but in no event later than seven (7) days after written notification by the Board) correct such non-performance, error or defect. Any repair or replacement of Services or any portions thereof will be automatically warranted as provided herein. If the non-performance, error or defect cannot be corrected in the Board's determination, Vendor shall promptly refund amounts paid related to that portion of Services not in compliance. Vendor will assign to the Board any third-party warranties that Vendor receives in connection with any Services provided under this Agreement.

10.10. **Third Parties' Intellectual Property:** In performing and delivering the Services under this Agreement, Vendor shall 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. Vendor 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 this Agreement.

10.11. **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 to the Board.

10.12. **No Legal Action Preventing Performance.** As of the Effective Date, Vendor has no knowledge of any action, suit, proceeding, or material claim or investigation pending or to its

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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 obligations under this Agreement.

10.13. **Free of Computer Viruses:** Vendor shall use commercially reasonable best efforts to ensure that the Services, including but not limited to any Software or other software used in the performance of the Services, do not introduce or transfer any malicious code, malware, Trojan horses, ransomware, worms or other computer viruses into the Board's network, systems, and computers.

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

10.15. **Debarment and Suspension:** Vendor certifies to the best of its knowledge and belief, after due inquiry, that:

A. it, its principals, and its subcontractors providing Services under this Agreement are not barred from contracting with any unit of state or local government as a result of violation of either Section 33E-3 (bid-rigging) or Section 33E-4 (bid rotating) of the Illinois Criminal Code (720 ILCS 5/33A *et seq.*);

B. it, its principals, and its subcontractors providing Services under this Agreement are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency or any unit of State or local government; and

C. it, its principals, and its subcontractors providing Services under this Agreement have not violated the rules, regulations, or laws of any federal, state, or local government unit or agency.

"Principals" for the purposes of this certification means officers, directors, owners, partners, persons having primary management or supervisory responsibilities within a business entity; and, if a joint venture is involved, each joint venture member and the principals of each such member.

10.16. **Continued Disclosure Requirement:** If at any time during the Term of this Agreement Vendor becomes aware of any change in the circumstances that makes the representations and warranties stated above no longer true, Vendor must immediately disclose such change to the Board in accordance with the Notice provision of this Agreement.

10.17. **Survival:** All warranties in this Section shall survive inspection, acceptance, expiration or termination of this Agreement. Nothing in the foregoing warranties shall be construed to limit any other rights or remedies available to the Board under the law and this Agreement.

11. **Background Check.** Vendor shall comply with the following requirements and such other procedures as may be determined necessary by the Board from time to time for each employee, agent, volunteer or subcontractor who may have contact with a CPS student as a result of this Agreement (individually and collectively "**Staff**") ("**Background Check**"). For purposes of this Section, contact via text messages, live chats, emails, any other digital or online media, telephone, in person, or through any other means shall be considered "contact". Vendor shall not allow any Staff to have contact with students until Vendor has confirmed with the Board that each respective Staff has successfully completed the Background Check in accordance with the following requirements:

11.1. **Do Not Hire List.** The Board will perform a check of eligibility of each Staff who may have contact with a CPS student pursuant to this Agreement by checking the Board's "Do Not Hire"

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("DNH") records ("**DNH Check**"). The Board will utilize the same DNH Check process that the Board uses for its own prospective staff. Staff with a DNH designation shall not provide Services hereunder.

11.2. **Criminal History Records Check.** Vendor shall, at its own cost and expense, have a complete fingerprint-based criminal history records check conducted on each Staff who may have contact with a CPS student pursuant to this Agreement through the process established by the Board, including using the Board's contracted vendor for conducting such checks, and otherwise in accordance with the Illinois School Code (105 ILCS 5/34-18.5), which refers to and incorporates the Sex Offender and Child Murderer Community Notification Law (730 ILCS 152/101 et seq.), and the Murderer and Violent Offender Against Youth Registration Act (730 ILCS 154/1 et seq.) (collectively "**Criminal History Records Check**"). A complete Criminal History Records Check includes the following:

- A. Fingerprint-based checks through the Illinois State Police and the Federal Bureau of Investigation;
- B. A check of the Illinois Sex Offender Registry and the Nationwide Sex Offender Registry; and
- C. A check of the Illinois State Police Murderer and Violent Offender Against Youth Registry.

The results of each Criminal History Records Check shall be adjudicated by the Board. Staff shall not have contact with CPS students prior to successfully completing the Criminal History Records Check. When the Board determines that any Staff has not passed a Criminal History Records Check, such Staff shall not access any Board facility and shall not have contact with any CPS student hereunder.

11.3 **Department of Children and Family Services Check.** At Vendor's cost and expense, the Board shall have the right to check Staff who may have contact with a CPS student pursuant to this Agreement for indicated reports of child abuse and/or neglect with the Illinois Department of Children and Family Services ("**DCFS**") State Automated Child Welfare Information System (or a comparable determination of child abuse or neglect by a government agency in another jurisdiction) for each Staff ("**DCFS Check**"). Vendor shall follow the directives and processes of the Board for initiating any DCFS Check, and the results of each DCFS Check shall be adjudicated by the Board. Staff determined by the Board not to have passed a DCFS Check shall not access any Board facility and shall not have contact with any CPS student hereunder.

11.4 **Background Check Representations and Warranties:** With respect to each Background Check, Vendor further represents and warrants that Vendor shall:

- A. Utilize the process established by the Board for completing each Background Check and immediately initiate all action, as directed by the Board, to have such Background Check performed;
- B. Obtain from each of its prospective and current Staff and provide to the Board a signed copy of any release and consent required to conduct the Background Check in the form determined by, and as directed by the Board;
- C. Confirm with the Board's Chief of Safety and Security that each respective Staff has successfully completed the Background Check through the process established by the Board and complied with the Board's directives regarding the results of each Background Check before any contact with a CPS student may occur;
- D. When contact with a CPS student may occur, not allow any Staff to provide Services until a DNH Check, Criminal History Records Check, and DCFS Check have been completed by the Board and the results of the Background Check satisfy for the Board, at a minimum, the requirements of 105 ILCS 5/34-18.5 and the requirements of all other Acts and Laws referenced in this Section, as may be amended;
- E. Comply with and require compliance of all Staff with directives from the Board relating to any updates to any Background Check (which updates shall be received and

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adjudicated by the Board) and provide any other information requested by the Board necessary for the performance of the Background Check and its update process; and

F. Immediately remove from any contact with any CPS student pursuant to this Agreement and otherwise terminate access for any Staff determined by the Board not to have passed a Background Check or update for any matters arising after an initial Background Check.

11.5 Allocation of Costs and Liquidated Damages. Vendor is obligated to cause the Background Check to be performed for all Staff who may have contact with any CPS student pursuant to this Agreement, and Vendor shall be responsible for the costs of such Background Check. Whether or not Vendor allocates the costs to its subcontractors shall not affect Vendor's obligations in this Section.

If Vendor fails to comply with this Section, in whole or in part, then, in addition to the Remedies set forth in this Agreement, the Board may exercise additional remedies, including but not limited to: (i) withholding payments due under this Agreement, and any other agreement Vendor may have or enter into with the Board until Vendor remedies such non-compliance to the Board's reasonable satisfaction; (ii) immediately terminating this Agreement without any further obligation by the Board of any kind (other than payment for Services previously rendered pursuant to the terms herein); (iii) seeking liquidated damages; (iv) or taking any other action or remedy available under this Agreement or by law.

Liquidated damages shall be calculated as \$5,000.00 per breach of this Section, which, for purposes of clarity, for the aggregate calculation of liquidated damages, will include each instance of contact with CPS students by Staff as a separate breach. It is understood and agreed that Vendor's non-compliance with this Section shall constitute a material breach of this Agreement.

12. 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. Vendor is the common law employer of the individuals who perform Services for the Board. 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. To the extent that Vendor is subject to taxes under Section 4980H of the Internal Revenue Code, Vendor shall be solely responsible for paying such taxes. Vendor agrees that neither Vendor nor its employees, agents, and 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.

13. 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 (collectively "Claims") arising or alleged to arise out of the acts or omissions of Vendor, its officials, agents and employees and subcontractors in the performance of this Agreement. The foregoing obligation extends to and is intended to encompass any and all Claims that the Services infringe, misappropriate, or otherwise violate any confidentiality, proprietary, or intellectual property rights of a third party.

Furthermore, 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 Vendor's employees under this Agreement, Vendor shall indemnify the Board for any such liability. And, in the event of unauthorized access, use, or disclosure of the Board's Confidential Information arising or alleged to arise from the acts or omissions of Vendor, its employees, agents, and subcontractors, in addition to the obligations provided in this Section, Vendor shall cover any costs or fees associated with (i) providing notices of data breach to affected persons and to regulatory bodies and (ii) remedying and otherwise mitigating any potential damages or harm from the data breach, including but not limited to call centers and providing credit monitoring or credit restoration services as may be requested by the Board.

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

However, if Vendor, after receiving notice of any such proceeding, fails to 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 *Kotecki v. Cyclops Welding Corp.*, 146 Ill.2d 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, or any other statute or judicial decision.

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

14. Termination, Suspension of Services, Events of Default, Remedies and Turnover of Documents:

14.1. 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 the termination shall be the date stated in the notice.

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

Vendor must include in its contracts with subcontractors an early termination provision in form and substance equivalent to this early termination provision to prevent claims against the Board arising from termination of subcontracts after the early termination of this Agreement. Vendor shall not be entitled to make any early termination claims against the Board resulting from any subcontractor's claims against Vendor or the Board to the extent inconsistent with this provision.

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

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

- A. Any action or failure to act by Vendor that affects the safety and/or welfare of any students or Board staff;
- B. Any material misrepresentation by Vendor in the inducement of the Agreement or the provision of Services;

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- C. Breach of any term, representation or warranty made by Vendor in the Agreement;
- D. Default by Vendor under any other agreement Vendor may have with the Board;
- E. Assignment by Vendor for the benefit of creditors or consent by Vendor to the appointment of a trustee or receiver or the filing by or against Vendor of any petition or proceeding under any bankruptcy, insolvency or similar law; or
- F. Failure of Vendor to supply the Services required hereunder in accordance with the terms and conditions of the Agreement, including, but not limited to, the following:
 - 1. Failure to perform in accordance with terms, conditions, and specifications of this Agreement;
 - 2. Failure to supply any portion of the Services herein at the time fixed for performance and in the manner specified herein;
 - 3. Failure to supply the Services with sufficient personnel and equipment or with sufficient material to ensure the supply of Services due to a reason or circumstances within Vendor's reasonable control;
 - 4. 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;
 - 5. 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;
 - 6. Discontinuance of the supply of the Services for reasons within Vendor's reasonable control; or
 - 7. 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.

14.4. **Remedies:** The Board in its sole discretion may declare Vendor in default if Vendor commits an Event of Default. The Chief Procurement Officer may in his/her discretion give the Vendor an opportunity to cure the default within a certain period of time (the "Cure Period"). The Chief Procurement Officer shall give Vendor written notice of the default in the form of a cure notice ("Cure Notice"). If the Chief Procurement Officer determines, in his/her sole discretion, that no opportunity to cure is to be granted, he/she may give a default notice ("Default Notice").

The Chief Procurement Officer may give a Default Notice after a Cure Notice if: (1) Vendors fails to effect a cure within the Cure Period given in the applicable Cure Notice, or (2) if the Event of Default cannot be reasonably cured within said Cure Period, Vendor fails to commence and continue diligent efforts to cure in the sole opinion of the Board.

A written Default Notice shall be final and effective termination of the Agreement, in whole or in part as specified by the Board, upon Vendor's receipt of such notice or on the date set forth in the notice, whichever is later. When a Default Notice is given, Vendor must discontinue all Services unless otherwise specifically directed in the notice.

Upon the occurrence of an Event of Default, the Board may invoke any or all of the following remedies:

- A. Take over and complete the supply of Services or any part thereof, by contract or otherwise as agent for and at 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

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

- B. 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. Suspend performance of Services during the 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. In the event that the performance of Services is resumed, Vendor shall not be entitled to seek reimbursement from the Board for any additional costs and expenses incurred as a result of the remobilization;
- D. Specific performance, an injunction or any other appropriate equitable remedy;
- E. Receive from Vendor any and all damages incurred as a result or in consequence of an Event of Default;
- F. Money damages;
- G. Withhold all or part of Vendor's compensation under this Agreement; and
- H. Use an Event of Default as a basis to deem Vendor non-responsible in future contracts to be awarded by the Board and/or seek debarment of Vendor pursuant to the Board's Debarment Policy on Non-Responsible Persons in Procurement Transactions (08-1217-PO1), as may be amended.

The Board may elect not to declare Vendor in default or to terminate this Agreement. If the Chief Procurement Officer decides not to terminate, then she or he may decide at any time thereafter to terminate the Agreement, in whole or in part, in a subsequent Default Notice. 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, in 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 above.

14.5. Turnover of Documents and Records: Upon demand of the Board after termination of the Agreement for any reason or the expiration of the Agreement by its terms, Vendor shall turn over to the Board or its designee within five (5) days of demand, all materials, supplies, equipment owned or purchased by the Board, completed or partially completed work product or analyses, data, computer disks, documents and any other information relating in any way to this Agreement or the performance or furnishing of Services, except that Vendor may keep a copy of such information for its own records. In the event Vendor retains a copy for its own records, it shall continue to abide by the terms of this Agreement, specifically those regarding the use of such information. In the event the Board elects to have Vendor destroy materials, Vendor shall provide an affidavit attesting to such destruction.

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

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16. **Notices:** All notices, requests, consents, approvals, acknowledgements and waivers under this Agreement will be in writing and delivered to the applicable party, addressed to the designee for notification purposes set forth below:

To Vendor, at:

R.R. Donnelley & Sons Company
35 West Wacker Drive
36th Floor
Chicago, Illinois 60601

and if to the Board, at:

Chief of Information and Technology Services
Board of Education of City of Chicago
42 West Madison Street
Chicago, Illinois 60602

with a copy to:

General Counsel
Board of Education of City of Chicago
One North Dearborn Street
Ninth Floor
Chicago, Illinois 60602

Notice will be deemed given: (A) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (B) when verified by automated receipt. A party may change its address or designee for notification purposes by giving the other party written notice of the new address or designee and the date upon which it will become effective.

17. **Governing Law:** This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois. Vendor irrevocably submits itself to the original jurisdiction of those courts located in the County of Cook, State of Illinois, with regard to any controversy arising out, or relating to, or in any way concerning the execution or performance of this Agreement. Vendor agrees that service of process on Vendor may be made, at the option of the Board, by either registered or certified mail in accordance with the Notice Section of this Agreement. If any action is brought by Vendor against the Board concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

18. **Insurance.** Vendor, at Vendor's own expense, shall procure and maintain insurance for 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 prior to commencement of Services. Minimum insurance requirements include the coverage set forth below and any additional coverage which may be specified by the Board:

18.1. **Workers' Compensation and Employers' Liability Insurance:** Workers' Compensation Insurance affording workers' compensation benefits for all employees as required by Illinois law and Employers' Liability Insurance covering all employees who are to provide Services under this Agreement with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence. The workers' compensation policy shall contain a waiver of subrogation clause.

18.2. **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,

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independent contractors, products/completed operations (for a minimum of two (2) years following completion) and defense. Vendor agrees to continue insurance meeting these requirements for a minimum of two (2) years following termination or expiration of this Agreement. If Vendor's Commercial General Liability policy excludes claims regarding sexual abuse and molestation, then Vendor shall furnish separate Sexual Abuse & Molestation Insurance as specified in Section 25.3 below.

18.3. Cyber Liability and Privacy & Security Coverage. Cyber Liability and Privacy & Security Coverage for damages arising from a failure of computer security, or wrongful release of private information, including expenses for notification as required by local, state or federal guidelines, with limits of liability not less than Five Million Dollars (\$5,000,000.00) per claim. Coverage shall include failure to prevent transmission of malicious code. The Policy will be a claims-made program with any prior acts exclusion predating both the date of this Agreement and any earlier commencement of Services. Such coverage shall either be maintained continuously for a period of 2 years after expiration or termination of this Agreement or proposer must secure a 2-year extended reporting provision.

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

The insurance company, or its representative, shall submit an insurance certificate evidencing all coverage as required hereunder and indicating the Additional Insured status as required above. The Board will not pay Vendor for any Services if satisfactory proof of insurance is not provided by Vendor prior to the performance of 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
42 West Madison Street
Chicago, IL 60602

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 an agreement by the Board that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. Vendor's failure to carry or document required insurance shall constitute a breach of Vendor's agreement with the Board. In the event Vendor fails to fulfill the insurance requirements of this Agreement, the Board 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 Vendor under the Agreement.

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

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

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 stated below, and must maintain a current insurance certificate on file during the entire time of providing services to the Board. Vendor must register and pay the initial annual monitoring fee to the insurance certificate monitoring company prior to performing services for the Board. The **initial** annual monitoring fee is currently Twelve 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.
676 North LaSalle Street – Suite 230
Chicago, Illinois 60654
Phone – (312) 494-5709
Email – dans@topiarycomm.net

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

19. **Audit and Document Retention:** Vendor shall permit and cooperate in good faith in any audits by the Board, including its Department of Procurement, or its agents for compliance by Vendor with this Agreement. Vendor will furnish the Board with such information as may be requested relative to the progress, execution, and costs of the Services. Failure of Vendor to comply in full and cooperate with the requests of the Board or its agents shall give the Board, in addition to all other rights and remedies hereunder, the right to charge Vendor for the costs of such audit. Vendor will maintain all records under the Agreement. As used in this Section, “**records**” shall include all correspondence, receipts, vouchers, memoranda, and other data, regardless of type or medium (including emails or other electronically stored data) relating to this Agreement and Vendor’s performance of the Services. All records referenced above will be retained for at least five (5) years after the expiration or termination of this Agreement and 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 that proceeding is closed. Vendor will include, in all of its subcontractor agreements for Services, provisions requiring subcontractors to maintain the above-described records and allowing the Board and/or its contractors the same right to inspect and audit said records as set forth herein.

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

21. **Board Not Subject to Taxes:** The federal excise tax does not apply to the Board, and the State of Illinois sales tax does not apply to the Board by virtue of Exemption No. E9997-7109. The amounts to be paid to Vendor hereunder are inclusive of all other taxes that may be levied or based on this Agreement, including without limitation, sales, use, non-resident, value-added, excise, and similar taxes levied or imposed on the Services, but excluding taxes levied or imposed on the income or business privileges of Vendor, which remain the responsibility of Vendor.

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22. **M/WBE Program:** Vendor acknowledges that it is familiar with the requirements of the Board's "Remedial Program for Minority and Women Owned Business Enterprise Participation in Goods and Services Contracts", which is incorporated by reference as if fully set forth herein. Vendor agrees to adhere to the minimum participation goals and to all other applicable MBE/WBE requirements as set forth in the plan. Vendor agrees to submit such documentation in connection with the plan as may be requested by the Board.

23. **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. In the case of any property owned by the Board, or property owned by and leased from the Board, Vendor will comply and will cause each of its officers, employees, and agents to comply with any and all instructions and requirements for the use of such property, any licenses for which being hereby incorporated by reference. Any and all claims, suits or 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.

24. **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, national origin, religion, sex, gender identity/expression, sexual orientation, age or disability; 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, national origin, religion, sex, gender identity/expression, sexual orientation, age, or disability. Vendor shall particularly remain in compliance at all times with: the Civil Rights Act of 1964, 42 U.S.C.A. § 2000a, *et seq.*; 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.*; 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.*; the Illinois Human Rights Act, 775 ILCS 5/1-101, *et seq.*; 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, all as may be amended, and all other applicable federal, state, county, and municipal statutes, regulations, ordinances and other laws. Nothing in this paragraph is intended nor shall be construed to create a private right of action against the Board or any of its employees. Furthermore, no part of this paragraph shall be construed to create contractual or other rights or expectations for Vendor's employees or Vendor's subcontractors' employees.

25. **Minimum Wage:** Vendor must comply with the City of Chicago Minimum Wage Ordinance (01-24), as may be amended, and the Board's Minimum Wage Resolution (14-1217-RS2) and any applicable regulations issued by the Board's Chief Procurement Officer. The Board's resolution adopts Chicago Mayoral Executive Order 2014-1. A copy of the Mayoral Order may be downloaded from the Chicago City Clerk's website at: <http://chicityclerk.com/wp-content/uploads/2014/09/Executive-Order-No.-2014-1.pdf>; the Board's Resolution may be downloaded from the Chicago Public School's website at: http://www.cpsboe.org/content/actions/2014_12/14-1217-RS2.pdf. In the event of any discrepancy between the summary below and the Resolution and Order, the Resolution and Order shall control.

Vendor must: (i) pay its employees no less than the minimum wage as stated by the City of Chicago ("Minimum Wage") for work performed under the Agreement; and (ii) require any subcontractors, sublicensees, or subtenants, to pay their employees no less than the Minimum Wage for work performed under the Agreement.

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The Minimum Wage must be paid to: 1) All employees regularly performing work on property owned or controlled by the Board or at a Board jobsite; and 2) All employees whose regular work entails performing a service for the Board under a Board contract.

Beginning on July 1, 2015, and every July 1 thereafter, the Minimum Wage shall increase in proportion to the increase, if any, in the Consumer Price Index for All Urban Consumers most recently published by the Bureau of Labor Statistics of the United States Department of Labor, and shall remain in effect until any subsequent adjustment is made. On or before June 1, 2015, and on or before every June 1 thereafter, the City of Chicago may issue bulletins announcing adjustments to the Minimum Wage for the upcoming year.

The Minimum Wage is not required to be paid to employees whose work is performed in general support of Vendor's operations, does not directly relate to the services provided to the Board under the Agreement, and is included in the contract price as overhead, unless that employee's regularly assigned work location is on property owned or controlled by the Board. It is also not required to be paid by employers that are 501(c)(3) not-for-profits.

The term 'employee' as used herein does not include persons subject to subsection 4(a)(2), subsection 4(a)(3), subsection 4(d), subsection 4(e), or Section 6 of the Illinois Minimum Wage Law, 820 ILCS 105/1 et seq., in force as of the date of this Agreement or as amended. Nevertheless, the Minimum Wage is required to be paid to those workers described in subsections 4(a)(2)(A) and 4(a)(2)(B) of the Illinois Minimum Wage Law.

The Minimum Wage is not required to be paid to employees subject to a collective bargaining agreement that provides for different wages than those required by the Board's Resolution, if that collective bargaining agreement was in force prior to December 17, 2014, or if that collective bargaining agreement clearly and specifically waives the requirements of the Resolution.

If the payment of a prevailing wage is required and the prevailing wage is higher than the Minimum Wage, then the Vendor must pay the prevailing wage.

26. **Entire Agreement and Amendment:** This Agreement, including all exhibits attached to it and incorporated into it, constitutes the entire agreement of the parties with respect to the matters contained herein. All attached exhibits are incorporated into and made a part of this agreement. No modification or amendment to this Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. Any prior agreements or representations, either written or oral, relating to the subject matter of this Agreement are of no force or effect. In the event of a conflict between the terms of this Agreement and any other documents, including but not limited to any terms and conditions that may be attached to the use of any electronic media provided by Vendor, the terms of this Agreement shall supersede and prevail.

27. **Controlling Agreement:** Vendor shall not request any CPS students or staff including school principals, administrative staff or other CPS employee to sign any form, memorandum of understanding or any other agreement for the delivery of the Services except for those documents specifically approved by the Board under this Agreement. Additionally, the Board and its users shall not be bound by the terms and conditions contained in any clickwrap/clickthrough agreement or license, end user license or any other agreement or license contained or referenced in the products or service or any quote provided by Vendor. Even if a CPS student or staff or other Board user agrees to any agreement or license contained or referenced in the products or services or a quote from Vendor, Vendor acknowledges and agrees that those terms and conditions are null and void and are not binding on the Board. Vendor 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 the authorized representatives of both parties and approved by the Board's General Counsel.

28. **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

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

29. **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.

30. **Indebtedness:** 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.

31. **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.

32. **Ethics:** No officer, agent or employee of the Board is or shall be employed by 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 Code of Ethics 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 if fully set forth herein.

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

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

35. **Survival/Severability:** All express representations or indemnifications made or given in this Agreement shall survive the completion of Services or the termination of this Agreement for any reason. If any provision or part of this Agreement is held to be unenforceable, the Agreement shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable, and in all other respects the Agreement shall remain in full force and effect, provided, however, that if any such provision may be made enforceable by limitation thereof, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.

36. **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.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE.

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

THE BOARD OF EDUCATION OF THE CITY OF CHICAGO

DocuSigned by:
Janice K. Jackson
By: Janice K. Jackson, Ed.D,
Chief Executive Officer

Date: April 22, 2020

R.R. DONNELLEY & SONS COMPANY

By: [Signature]

Name: Joshua D Bryzelak

Title: President

Date: April 22, 2020

Approved as to Legal Form: [SP] [JB]

DocuSigned by:
Joseph Moriarty
By: Joseph T. Moriarty
General Counsel

Attachment:

Exhibit A – Scope of Services

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EXHIBIT A
SCOPE OF SERVICES
(R.R. Donnelley & Sons Company)

Name of Project: Print, Process, and Mail Third Quarter Report Cards

CPS Project Manager: Patrick Gallagher **Phone:** 773-553-3475 **E-Mail:** pfgallagher@cps.edu

Vendor's Project Manager: Josh Levey **Phone:** 312.256.1907 **E-Mail:** josh.levey@rrd.com

Term: April 20, 2020 through May 15, 2020

This Scope of Services will be conducted pursuant to the terms and conditions of that Services Agreement ("**Agreement**") dated April 20, 2020 by and between R.R. Donnelley & Sons Company ("**Vendor**" or "**RRD**"), 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.

I. DESCRIPTION OF SERVICES:

A. Custom Print Services

For Quarter Three CPS Report Cards (high school, elementary school, and kindergarten versions, collectively, "CPS Report Card") and IEP Report Cards ("IEP Report Card"), CPS will produce PDF report card files and transport them to the Vendor for fulfillment processing. The Vendor will extract the Student ID from pre-merged PDF files using Optical Character Recognition (OCR) scanning technology and perform a lookup function from a master address list furnished by CPS that has a Student ID tied to the correct mailing address and school return address.

Vendor shall provide the following Services to the Board:

i) Printing, Processing, and Mailing CPS Report Cards and IEP Report Cards, including but not limited to the following:

- a. Provide a secure transport method for sharing PDF files to be fulfilled;
- b. Gang run like report cards in daily batches;
- c. Matching address to student report card;
- d. Folding of report cards;
- e. Insert in 6x9.5 non-window envelope (provided by Vendor);
- f. Sealing envelopes and mailing letters as U.S. first-class (commingled); and
- g. Inkjet image mail panel and return address.

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There are four versions of report cards that Vendor shall print on 60# smooth uncoated text and as follows:

Version	Quantity (approximate)	Print	Page Count	Impression Count (approximate)
i. CPS Report Card				
a. High School	107,384	K/O	1	107,384
b. Elementary School	193,858	K/K	2	387,716
c. Kindergarten	24,512	K/K	2	49,024
ii. IEP Report Card				
	35,000	K/K	6	210,000

II. TASK/DELIVERABLE SCHEDULE:

Task/Deliverable Description	Date	Estimated Cost	Maximum Cost
Initial Fee \$.42 Commingled First-Class Sorted Postage 361,000 mailings	Upon execution of the Agreement	\$151,000.00	\$151,000.00
Printing, Processing, and Mailing approximately 325,754 CPS Report Cards and approximately 35,000 IEP Report Cards (total: 361,000)	CPS Report Cards (approximately 325,754): Mailing Date April 24, 2020 IEP Report Cards (approximately 35,000): Mailing Date April 30, 2020	\$55,650.00	\$55,650.00

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Additional report cards (above 361,000) will be charged at an all-inclusive per-unit cost of \$.47 per CPS Report Card or IEP Report Card (\$\$.42 postage + \$.05 Printing, Processing, and Mailing)	(If necessary) After final order is processed	\$0	\$43,350.00
TOTAL COST (Not to Exceed)		\$206,650.00	\$250,000.00

III. OUTCOMES:

Vendor's Services will result in:

- (i) Student report cards will be printed and mailed directly to the student address on file with the return address set to the school address of the student; and
- (ii) Parent/Guardians will receive an official report of their child's quarter grades.

IV. PAYMENT SCHEDULE:

Upon the execution of this Agreement, Vendor shall submit an invoice to CPS in the amount of One Hundred and Fifty One Thousand Dollars (\$151,000) (Initial Fee for First-Class Postage). Thereafter, Vendor shall invoice CPS for actual services provided and upon completion of each Task (as described above). The maximum compensation payable to Vendor for the Term of this Agreement, including the Initial Fee and all Tasks shall not exceed Two Hundred and Fifty Thousand Dollars (\$250,000) ("Maximum Compensation Amount"). All payment procedures and invoicing shall comply with Section 3 of the Agreement.

MEMORANDUM

BOARD OF EDUCATION OF THE CITY OF CHICAGO
LAW DEPARTMENT — JOSEPH T. MORIARTY, GENERAL COUNSEL

NOT FOR FURTHER DISTRIBUTION

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION**

To: Janice K. Jackson, EdD., Chief Executive Officer

From: Sarah Peterlin, Assistant Attorney General

Date: April 22, 2020

Re: **R.R. Donnelley & Sons Company for Printing and Mailing Report Cards**

PRIORITY: HIGH

Enclosed for signature is the above referenced agreement.

If you have any questions, please email me at speterlin@cps.edu.

Thank you.

Enclosure