

SERVICES AGREEMENT

(Vendor Number: 16619)

This SERVICES AGREEMENT ("**Agreement**") is entered into as of the 21st day of September, 2015 ("**Effective Date**") by and between the Board of Education of the City of Chicago, a body politic and corporate commonly known as the Chicago Public Schools (the "**Board**" or "**CPS**") and PAUL TOBACK ("**Vendor**").

RECITALS

- A. The Board desires that Vendor render certain services more fully described herein; and
- 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 for the Board.

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

1. **Incorporation of Recitals:** The matters recited above are hereby incorporated into and made a part of this Agreement.
2. **Term:** This Agreement is for a term commencing with the Effective Date of this Agreement and continuing through September 20, 2016 ("**Term**"), unless terminated sooner as provided herein.

2.1 **Renewal Option(s):** (Check and initial one box only. If there are options to renew, fill in the missing information.)

☐ (Initial) The parties shall have _____ option(s) to renew this Agreement for period(s) of _____ each ("**Renewal Period**") under the same terms and conditions as contained in this original Agreement upon the expiration of the initial Term;

OR

☒ (Initial) There are no options to renew under this Agreement.

3. **Scope of Services and Delivery of Materials:**

3.1 **Scope of Services:** Vendor agrees to provide the services set forth on Exhibit A ("**Services**"), in accordance with the terms and conditions of this Agreement. "Services" means, collectively, the services, deliverables, duties and responsibilities described in Exhibit A of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement. The Board retains final authority with respect to all Services related decisions. The Board may, from time to time, request changes in the scope of Services. Any such changes, including any increase or decrease in Vendor's fees, shall be documented by a written amendment to this Agreement signed by both parties.

3.2 **Delivery of Materials:** If Vendor is also providing goods, supplies or other materials (collectively, "**Materials**") under this Agreement, then the following provisions shall apply:

- a. **Purchase Orders:** Orders must be on the Board's Standard Purchase Order Form. The pre-printed terms and conditions found on the Board's Purchase Order shall

apply to the extent that such terms supplement and are not inconsistent with the terms and conditions contained in this Agreement.

b. Packaging and Shipment and Risk of Loss: Vendor shall package and ship all Materials in a commercially reasonable manner. All shipments shall be F.O.B. destination (as indicated on the Board's Purchase Order or some other written notification) with freight and insurance prepaid. The Board may request that shipment be made to any location that the Board designates as a Chicago Public School or a CPS facility. Any and all deliveries made to a Chicago Public School shall occur between the hours of 8:00 a.m. – 2:30 p.m. and Vendor shall advise carrier of this restriction. **It is understood and agreed that the Board shall have no liability for any insurance charges not incorporated in the prices quoted in Exhibit B, and that freight charges shall be limited to those charges listed in Exhibit B.** The Board may adjust the Purchase Order shipping destination any time up to ten (10) business days prior to shipment. The risk of loss and damage to Materials ordered by the Board shall pass to the Board only after delivery to the destination designated by the Board. Time is of the essence to the delivery of all Materials ordered hereunder.

c. Uniform Commercial Code. In the absence of a governing provision under this Agreement or should any provision of this Agreement be construed by a court of competent jurisdiction as vague, the corresponding provision of the Uniform Commercial Code, Article 2, shall apply.

d. Survival: The provisions of this Section 3 shall survive the expiration or termination of this Agreement.

4. Compensation and Payment: The total maximum compensation payable to Vendor under this Agreement during the initial term shall not exceed Seventy-Five Thousand Dollars (\$75,000.00), inclusive of all reimbursable expenses, if any ("**Total Maximum Compensation**"). Payments under this Agreement shall not exceed the Total Maximum Compensation amount without a written amendment to this Agreement in accordance with Section 25 (Entire Agreement and Amendment). The Board shall pay Vendor for Services provided and Materials delivered by Vendor in accordance with the provisions of this Agreement. Payments shall be made as specified in the "**Schedule of Compensation**" attached hereto and incorporated herein by reference as Exhibit B.

All reimbursable expenses, if any, must be specifically identified in the Scope of Services. Except for reimbursable expenses specified in the Scope of Services, there shall be no additional reimbursement for expenses. All reimbursable expenses shall be in accordance with the maximum rates set forth in the Board's Policy on Reimbursement for Work-Related Expenses adopted on October 23, 2002 (02-1023-PO04) as amended from time to time. Vendor must submit original receipts and proof of payment that is acceptable to the Board for any and all claimed reimbursables at the time of invoicing. Canceled checks, debit, or credit card statement copies are considered as proof of payment. It is understood and agreed that the Board shall have the right to deny payment of any invoiced expense that is not substantiated by a paid receipt or some other proof of payment that is acceptable to the Board.

5. Billing and Payment Procedures; Electronic Payments

5.1 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 your Vendor name and the CPS Purchase Order number. All invoices must include:

- Vendor name and payment address

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- 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
- Detailed 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.

5.2 Electronic Payments: Vendor agrees that, at the Board's sole discretion, the Board may make payment electronically to Vendor for any and all amounts due to Vendor pursuant to this Agreement by means of the Board's procurement charge card account. Vendor recognizes that any charge to the Board's procurement charge card that is in excess of the open remaining amount as stipulated in the applicable Purchase Order, or any charge unaccompanied by the requisite documentation and data as required by the Board, shall be deemed invalid and disputed by the Board. Vendor further recognizes that, in the absence of any supporting documentation as may be required by the Board, payments associated with disputed charges shall be rescinded by the Board and deemed not owed by the Board. Vendor agrees to comply with the rules, procedures and documentation required for electronic payment via the Board's procurement charge card as established by the Board's Department of Procurement and Contracts.

6. Standards of Performance: Vendor must perform all Services required of it under this Agreement with that degree of skill, care and diligence normally shown by a Vendor performing services of a scope, purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. Vendor acknowledges that, if in the course of providing Services hereunder, it is entrusted with or has access to valuable and confidential information and records of the Board, that with respect to that information, Vendor agrees to be held to the standard of care of a fiduciary. Any review, approval, acceptance of Services or deliverables or payment for any of the Services by the Board does not relieve Vendor of its responsibility for the professional skill and care and technical accuracy of its Services and deliverables. This provision in no way limits the Board's rights against the Vendor under this Agreement, at law or in equity.

7. Personnel

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

7.2 Key Personnel: Exhibit C to this Agreement may list individuals of the Vendor who have particular expertise on which the Board is relying ("Key Personnel"). Vendor may not reassign or replace Key Personnel without the written consent of the Board, which consent shall not be unreasonably withheld or delayed. If one or more Key Personnel terminate their employment with Vendor or otherwise become unavailable for reasons beyond Vendor's reasonable control, Vendor shall promptly replace such person with another person with comparable training and

experience, subject to the approval of the Board, which approval shall not be unreasonably withheld or delayed.

8. **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. Payments for Services completed to the date of notification shall be made to Vendor except that no payment shall be made or due to Vendor under this Agreement beyond those amounts appropriated and budgeted by the Board to fund payments under this Agreement.

9. **Events of Default and Remedies.**

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

- a. Any material misrepresentation by Vendor in the inducement or the performance of this Agreement.
- b. Breach of any term, condition, representation or warranty made by Vendor in this Agreement.
- c. Failure of the Vendor to perform any of its obligations under this Agreement including, but not limited, to the following:
 - (i) Action or failure to act which negatively affects the safety and/or welfare of students or Board staff;
 - (ii) Failure to perform the Services with sufficient personnel or material to ensure the timely performance of Services;
 - (iii) Failure to timely perform Services;
 - (iv) Failure to perform the Services in a manner reasonably satisfactory to the Chief Purchasing Officer of the Board;
 - (v) Failure to promptly re-perform Services that were rejected by the Board as incomplete or unsatisfactory within a reasonable time and at no cost to the Board; and
 - (vi) Discontinuance of the Services for reasons within Vendor's reasonable control.
- d. Default by Vendor under any other agreement Vendor may have or may enter into 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.

9.2. **Remedies.** The occurrence of any event of default permits the Board, at the Board's sole option, to declare Vendor in default. The Chief Purchasing Officer may in her/his sole discretion give Vendor an opportunity to cure the default within a certain period of time ("**Cure Period**"), which period of time must not exceed 30 days unless extended by the

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Chief Purchasing Officer. Whether or not to declare Vendor in default is within the sole discretion of the Chief Purchasing Officer.

The Chief Purchasing Officer shall give Vendor written notice of the default either in the form of a cure notice ("**Cure Notice**") or, if no opportunity to cure shall be granted, a default notice ("**Default Notice**"). If the Chief Purchasing Officer gives Default Notice, she/he shall also indicate any present intent she/he may have to terminate this Agreement. It is understood and agreed that any such decision to terminate this Agreement in whole or in part is final and effective upon giving the notice. If the Chief Purchasing Officer decides not to terminate, this decision shall not preclude him or her from later deciding to terminate the Agreement in a later notice, which shall be final and effective upon the giving of the notice or on the date set forth in the notice, whichever is later. The Chief Purchasing Officer may give a Default Notice if Vendor fails to effect a cure within the Cure Period given in the applicable Cure Notice. When a Default Notice with intent to terminate is given as provided in this Section, Vendor must discontinue all Services, unless otherwise directed in the notice, and must deliver to the Board all materials prepared or created in the performance of this Agreement, whether completed or in-process. Following the giving of notice hereunder and the expiration of any Cure Period, if no adequate cure is made, the Board may invoke any or all of the following remedies:

- a. Take over and complete the Services or any part thereof, either directly or through others, as agent for and at the cost of Vendor. In such event, Vendor shall be liable to the Board for any excess costs incurred by the Board. Any amount due Vendor under this Agreement or any other agreement Vendor may have with the Board may be offset against amounts claimed due by the Board in exercising this remedy.
- b. Terminate this Agreement, in whole or in part, as to any or all of the Services yet to be performed, effective at a time specified by the Board.
- c. Suspend Services during the designated Cure Period if the default results from an action or failure to act by Vendor which affects the safety and/or welfare of students or Board staff.
- d. Seek 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 that are due or future payments that may become due under this Agreement.
- h. Deem Vendor non-responsible in future contracts to be awarded by the Board, pursuant to the Board's Debarment Policy on Non-Responsible Persons in Procurement Transactions (08-0602-PO1), as may be amended from time to time.

If the Board considers it to be in its best interest, it may elect not to declare Vendor in default or it may elect not to terminate this Agreement. The parties acknowledge that if the Board permits Vendor to continue to provide the Services despite one or more Events of Default, Vendor is not relieved of any responsibilities, duties or obligations under this Agreement, nor shall the Board be deemed to have waived or relinquished any of the rights it has to declare an Event of Default in the future.

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 the occurrence of 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 as described in Section 10 below (Early Termination).

10. **Early Termination.** In addition to termination under Section 8 (Non-appropriation) and 9.2 (Remedies) of this Agreement, the Board may terminate this Agreement at any time by a notice to the Vendor in accordance with the provisions of Section 22 (Notices). The effective date of termination shall be the date the notice is received by Vendor or the date stated in the notice, whichever is later.

After notice is received, Vendor must restrict its activities and those of its subcontractors, to winding down any reports, analyses, or other activities previously begun. No costs incurred after the effective date of the termination are allowed. Payment for any Services actually and satisfactorily performed before the effective date of the termination is on the same basis as set forth in Section 4 above (Compensation and Payment) and the Schedule of Compensation.

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.

11. **Assignment:** This Agreement shall be binding on the parties and their respective successors and assigns, provided however, that neither party may assign this Agreement or any obligations imposed hereunder without the prior written consent of the other party.

12. **Confidential Information, Dissemination of Information, Ownership, Survival.**

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

12.2 **Dissemination of Information.** Vendor shall not disseminate any information obtained in performance or delivery of Services and/or Materials for the Board to a third party without the prior written consent of the Board. Vendor shall not issue publicity news releases or grant press interviews during or after the performance or delivery of the Services and/or Materials, except as

may be required by law or with the prior written consent of the Board. If Vendor is presented with a request for documents by any administrative agency or with a *subpoena duces tecum* regarding any Confidential Information and/or Work Product which may be in Vendor's possession as a result of Services and/or Materials provided under this 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. Vendor shall cause its personnel, staff and subcontractors, if any, to undertake the same obligations regarding confidentiality and dissemination of information as agreed to by Vendor under this Agreement.

12.3 Ownership. Vendor agrees that, to the extent permitted by law, any and all Work Product shall exclusively be deemed "works for hire" within the meaning and purview of the United States Copyright Act, 17 U.S.C. 101§ *et seq.* To the extent any Work Product does not qualify as a "work for hire," Vendor irrevocably grants, assigns, and transfers to the Board all right, title, and interest in and to the Work Product in all media throughout the world in perpetuity and all intellectual property rights therein, free and clear of any liens, claims, or other encumbrances, to the fullest extent permitted by law. All intellectual property, Confidential Information, and Work Product shall at all times be and remain the property of the Board. Vendor shall execute all documents and perform all acts that the Board may request in order to assist the Board in perfecting or protecting its rights in and to the Work Product and all intellectual property rights relating to the Work Product. All of the foregoing items shall be delivered to the Board upon demand at any time and in any event, shall be promptly delivered to the Board upon expiration or termination of this Agreement within three (3) business days of demand. In addition, Vendor shall return the Board's data in the format requested by the Board. 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.

12.4 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.

12.5 Freedom of Information Act. Vendor acknowledges that this Agreement and all documents submitted to the Board related to this contract award are a matter of public record and are subject to the Illinois Freedom of Information Act (5 ILCS 140/1) and any other comparable state and federal laws and that this Agreement is subject to reporting requirements under 105 ILCS 5/10-20.44. Vendor further acknowledges that this Agreement shall be posted on the Board's Internet website.

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

13. 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.

13.1 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.

13.2 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., the Drug-Free Workplace Act, the Illinois Student Records Act, the Family Educational Rights and Privacy Act, the Protection of Pupil Rights Act and any others relating to non-discrimination. Further, Vendor is and shall remain in compliance with all Board policies and rules, including, but not limited to, tuberculosis testing and warrants that Vendor, and any individual who Vendor assigns to provide Services hereunder, is free from a communicable disease in accordance with 105 ILCS 5/24-5. Board policies and rules are available at <http://www.cps.edu/>.

13.3 Good Standing. Vendor is not in default and has not been deemed by the Board to be in default under any other Agreement with the Board during the five (5) year period immediately preceding the effective date of this Agreement.

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

13.5 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.

13.6 Gratuities. No payment, gratuity or offer of employment was made by or to Vendor in relation to this Agreement or as an inducement for award of this Agreement.

13.7 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.

13.8 Criminal History Records Search. Vendor represents and warrants that, at its own cost and expense, it shall have a fingerprint-based criminal history records check ("Records Check") conducted on any and all employees, agents and subcontractors ("Staff") who may have direct, daily contact with CPS students under this Agreement in accordance with the Illinois School Code (§105 ILCS 5/10-21.9) to confirm that none of these persons have been convicted of any of the criminal or drug offenses enumerated in subsection (c) of §105 ILCS 5/10-21.9, or have been convicted within the past 7 years of any other felony under the laws of Illinois or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in the State of Illinois, would have been punishable as a felony under the laws of Illinois. Vendor understands and agrees that it shall not allow any Staff person to have direct regular contact with a CPS student until a Records Check has been conducted for such Staff person and the results of the Records Check satisfies the requirements of §105 ILCS 34-18.5. In addition to the foregoing, Vendor shall, at its own cost and expense, conduct a check of the Statewide Sex Offender Database and the Statewide Child Murderer and Violent Offender against Youth Database for each Staff person with direct regular contact with any CPS student.

13.9 Research Activities and Data Requests. Vendor acknowledges and agrees that in the event Vendor seeks to conduct research activities in the Chicago Public Schools or use CPS student data for research purposes in connection with this Agreement, Vendor shall comply with the Board's Research Study and Data Policy adopted on November 14, 2007, 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 Officer of the Office of Research, Evaluation and Accountability or his/her designee.

14. Independent Contractor: It is understood and agreed that the relationship of Vendor to the Board is and shall continue to be that of an independent contractor and neither Vendor nor any of Vendor's employees shall be entitled to receive Board employee benefits. As an independent contractor, Vendor agrees to be responsible for the payment of all taxes and withholdings specified by law which may be due in regard to compensation paid by the Board. Vendor agrees that neither Vendor nor its employees, staff or subcontractors shall represent themselves as employees or agents of the Board. Vendor shall provide the Board with a valid taxpayer identification number as defined by the United States Internal Revenue Code, including but not limited to, a social security number or federal employer identification number.
15. Indemnification: Vendor agrees to defend, indemnify and hold harmless the Board, its members, employees, agents, officers and officials from and against liabilities, losses, penalties, damages and expenses, including costs and attorney fees, arising out of all claims, liens, damages, obligations, actions, suits, judgments or settlements, or causes of action, of every kind, nature and character arising or alleged to arise out of the negligent or willful acts or omissions of the Vendor, its officials, agents and employees and subcontractors in the performance of this Agreement. This includes, but is not limited to, the unauthorized use of any trade secrets, U.S. patent or copyright infringement.

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

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

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

16. 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 this Agreement or be held personally liable under this Agreement to Vendor, its members if a joint venture, or any subcontractors.
17. Favored Nation: Vendor shall furnish Services to the Board at the lowest price that Vendor charges to other similarly situated parties. If Vendor overcharges, in addition to all other

remedies, the Board is entitled to a refund in the amount of the overcharge, plus interest at the rate of 1% per month from the date the overcharge was paid by the Board until the date refund is made. The Board has the right to offset any overcharge against any amounts due to Vendor under this or any other Agreement between Vendor and the Board, and at the Board's sole option the right to declare Vendor in default under this Agreement.

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

19. **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 the Services. Minimum insurance requirements are:

19.1 **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance affording workers' compensation benefits for all employees as required by law and Employers' Liability Insurance covering all employees who are to provide Services under this Contract with limits of not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence. The workers' compensation policy must contain a waiver of subrogation clause.

19.2 **Commercial General Liability Insurance (Primary and Umbrella).** Commercial General Liability Insurance or equivalent with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate for bodily injury, personal injury and property damage liability. Coverage shall include, but not be limited to: all operations, contractual liability, independent contractors, products/completed operations (for a minimum of two (2) years following completion), and defense.

19.3 **Automobile Liability Insurance.** Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with Services to be performed, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.

19.4 **Umbrella/Excess Liability Insurance.** Umbrella or Excess Liability Insurance with limits not less than Two Million Dollars (\$2,000,000.00) per occurrence, which will provide additional limits for employers' general and automobile liability insurance and shall cover the Board and its employees, subject to that of the primary coverage.

19.5 **Additional Insured.** Vendor shall have its General and Automobile Liability Insurance policies endorsed to provide that "the Board of Education of the City of Chicago, a body 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

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by Vendor prior to the performance of any Services. The Certificate must provide thirty (30) days prior written notice of material change, cancellation, or non-renewal be given to:

Risk Management
Board of Education of the City of Chicago
42 W Madison Ave, 2nd Floor
Chicago, Illinois 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 agreement by the Board that the insurance requirements in this Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all Contract requirements. Vendor's failure to carry or document required insurance shall constitute a breach of the Vendor's Contract with the Board. In the event Vendor fails to fulfill the insurance requirements of this Contract, the Board reserves the right to stop the Services until proper evidence of insurance is provided, or this Contract may be terminated.

Any deductibles or self-insured retentions on referenced insurance coverage must be borne by Vendor. Any insurance or self-insurance programs maintained by the Board of Education do not contribute with insurance provided by the Vendor under this Contract.

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

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

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

20. **Audit and Document Retention:** Vendor shall furnish the Board with such information as may be requested relative to the progress, execution and costs of the Services. Vendor shall maintain all records, correspondence, receipts, vouchers, memoranda and other data relating to Vendor's Services provided under this Agreement. All records referenced above shall be retained for five (5) years after completion of the Services and shall be subject to inspection and audit by the Board, which shall include the right to copy such records. Vendor shall include in all subcontractor agreements for Services, provisions requiring subcontractors to maintain the above-described records and allowing the Board the same right to inspect and audit said records as set forth herein.
21. **M/WBE Program:** Vendor acknowledges that it is familiar with the requirements of the Board's Remedial Program for Minority and Women Owned Business Enterprise Participation in Goods and Services Contracts and agrees to comply with the provisions of such program.
22. **Notices:** All notices required under this Agreement shall be in writing and sent to the addresses and persons set forth below, or to such other addresses as may be designated by a party in writing. All notices shall be deemed received when (i) delivered personally, or (ii) sent by confirmed telex or facsimile (followed by the actual document), or (iii) one day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt. Refusal to accept delivery has the same effect as receipt.

IF TO THE BOARD:

Chief Purchasing Officer
42 W Madison Ave, 9th Floor
Chicago, Illinois 60602
Fax: (773) 553-1224

Copy to:

General Counsel
1 North Dearborn, Suite 900
Chicago, Illinois 60602
Fax: (773) 553-1701

IF TO VENDOR:

Paul Toback
22 Aberdeen Ct.
Bannockburn, Illinois 60015
Phone: (847) 722-5949
Fax: (847) 374-0461
Attn: _____

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. 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, ancestry, religion, sex, sexual orientation, age, disability, marital status, parental status, military discharge status or national origin; or to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual from equal employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, disability, marital status, parental status, military discharge status or national origin. Vendor shall particularly remain in compliance at all times with: the Civil Rights Act of 1964, 42 U.S.C.A. §2000a, *et. seq.*, as amended; the Age Discrimination in Employment Act, 29 U.S.C.A. §621, *et. seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §701, *et. seq.*; as amended; the Americans with Disabilities Act, 42 U.S.C.A. §12101, *et. seq.*; the Individuals with Disabilities Education Act, 20 U.S.C.A. §1400 *et. seq.*, as amended; the Illinois Human Rights Act, 775 ILCS 5/1-101, *et. seq.* as amended; the Illinois School Code, 105 ILCS 5/1-1 *et. seq.*; the Illinois Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et. seq.*; and the Chicago Human Rights Ordinance, ch. 2-160 of the Municipal Code of Chicago, and all other applicable federal statutes, regulations and other laws.
25. **Entire Agreement and Amendment:** This Agreement, including all exhibits attached to it and incorporated into it, constitutes the entire agreement of the parties with respect to the matters contained herein. All attached exhibits are incorporated into and made a part of this Agreement.

No modification of or amendment to this Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. Any prior agreements or representations, either written or oral, relating to the subject matter of this Agreement are of no force or effect.

26. **Governing Law:** This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois.

Vendor irrevocably submits itself to the original jurisdiction of those courts located in the County of Cook, State of Illinois, with regard to any controversy arising out, or relating to, or in any way concerning the execution or performance of this Agreement. Vendor agrees that service of process on the Vendor may be made, at the option of the Board, by either registered or certified mail addressed to the office identified in Section 22 above, by registered or certified mail addressed to the office actually maintained by the Vendor, or by personal delivery on any officer, director, or managing or general agent of the Vendor. If any action is brought by the Vendor against the Board concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

27. **Continuing Obligation to Perform:** In the event of any dispute between Vendor and Board, Vendor shall expeditiously and diligently proceed with the performance of all its obligations under this Agreement with a reservation of all rights and remedies it may have under or pursuant to this Agreement at law or in equity.

28. **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.

29. **Indebtedness:** The Vendor agrees to comply with the Board's Indebtedness Policy adopted June 26, 1996 (96-0626-PO3), as amended from time to time, which policy is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein.

30. **Ethics:** No officer, agent or employee of the Board is or shall be employed by the Vendor or has or shall have a financial interest, directly, or indirectly, in this Agreement or the compensation to be paid hereunder except as may be permitted in writing by the Board's Ethics Policy adopted May 25, 2011 (11-0525-PO2), as amended from time to time, which policy is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein.

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

32. **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.

33. **Minimum Wage:** Vendor must comply with the Board's Minimum Wage Resolution (14-1217-RS2) and any applicable regulations issued by the Board's CPO. The Board's resolution adopts Chicago Mayoral Executive Order 2014-1. As of December 17, 2014 the minimum wage to be paid pursuant to the Resolution is \$13.00 per hour (the "Minimum Wage"). A copy of the Mayoral Order may be downloaded from the Chicago City Clerk's website at: <http://chiccityclerk.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 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.

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.

THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNET WEBSITE

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

BOARD OF EDUCATION OF THE
CITY OF CHICAGO

By: _____

Chief Purchasing Officer

PAUL TOBACK

By: _____

Name: _____

Title: _____

CPOR No. 15-0923-CPOR-1716-1

Attest:

By: _____

Name: _____

Title: _____

Attachments: (Note: Exhibits A and B are required for all agreements)

Exhibit A – Scope of Services and Time Limits for Performance

Exhibit B – Schedule of Compensation

Exhibit C – List of Key Personnel (Attach if applicable)

EXHIBIT A

SCOPE OF SERVICES AND TIME LIMITS FOR PERFORMANCE

PAUL TOBACK (16619) – 15-0923-CPOR-1716

Name of Project: Organizational Change

Board's Project Manager: Andrell Holloway

Phone: 773-553-1056

Vendor's Project Manager: Paul Toback

Phone: 847-722-5949

Period of Performance: Start Date: September 21, 2015

End Date: September 20, 2016

This Scope of Services and Time Limits for Performance ("Scope of Services") shall be conducted pursuant to the terms and conditions of the above-referenced Chief Operating Officer Report ("CPOR") and the Services Agreement ("Agreement") dated September 21, 2015 between Paul Toback ("Vendor") and the Board of Education of the City of Chicago ("Board"). Defined terms used in this Scope of Services shall have the same meaning as those ascribed to such terms in the Agreement.

I. DESCRIPTION OF SERVICES

At the direction of the Chief Internal Auditor and his delegate, assist in the development of strategies for alternative delivery mechanisms for common core district services. Also provide recommendations for common core delivery efficiency through the use of improved processes, risk analysis, data analysis, technology, and leading edge ideas based on research with other large and mid-size school districts.

Vendor will provide the following services:

- Common Core Delivery Alternatives

II. INVOICING/PAYMENT

Invoices will be remitted on bi-weekly basis including a recap of work performed, hours worked, and extended amount due. Work will be billed at a rate not to exceed of One Hundred Twenty Dollars (\$120.00) per hour.

The total maximum compensation payable to Vendor under this Agreement shall not exceed Seventy-Five Thousand Dollars (\$75,000.00), inclusive of all reimbursable expenses, if any. Vendor will invoice for services rendered pursuant to an approved CPS Purchase Order.

III. OUTCOMES

To recommend and provide additional innovative ways to deliver traditional services

IV. TASKS/DELIVERABLE SCHEDULE


- Bi-weekly status reports detailing work performed, interviews performed to date, and point in time observations.
- Marketing strategy and materials and information/sales presentations including action plans to execute

EXHIBIT B

SCHEDULE OF COMPENSATION AND TIME LIMITS FOR PERFORMANCE

[Please include details: The unit rate (fee per hour, day, week, month, per acceptance of deliverables, etc.) for the services to be provided, including any: (1) payment schedule, (2) hourly, daily or unit rates, and/or (3) a line item budget. Also include any other detailed information for a full understanding of the contract's cost.]

Check and initial one of the following.

☒  (Initial) A Schedule of Compensation is included in Exhibit A, Scope of Services and Time Limits for Performance.

OR

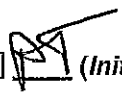
☐  (Initial) A Schedule of Compensation is attached hereto. (See attached.)


EXHIBIT C

LIST OF KEY PERSONNEL

Check **and** initial **one** of the following.

☐ ____ (*Initial*) There are no Key Personnel assigned to provide Services under this Agreement.

OR

☒  ____ (*Initial*) There are Key Personnel assigned to provide Services under this Agreement. (See below)

Paul Toback