

(ATTACHMENT 6) ACTION ON THE AWARD OF EXCEPTION TO BID CONTRACTS



Exhibit A Frontline Customer Order Form  
Q-17979

1400 Atwater Drive Malvern, PA 19355

12/03/2019

Customer:	Order Form Details:
Milwaukee Public School District P.O. Box 2181 Milwaukee, Wisconsin, 53201 United States Contact: Chad Meyer Title: Director of Information Technology Phone: (414)475-8660 Email: 518@milwaukee.k12.wi.us	Pricing Expiration: 12/24/2019 Quote Currency: USD Account Manager: Brian Caldicott Startup Cost Billing Terms: One-Time, Invoiced after signing Subscription Billing Frequency: Annual Sale Type: New Initial Term: 12/20/2019 – 6/30/2021

Pricing Overview	Amount
One-Time Fees	\$10,700.00
Annual Recurring Fees	\$189,921.75
(Initial Term Prorated Fees)	\$100,424.38

One-Time Fees Itemized Description	Quantity
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**Frontline Implementation**

Annual Recurring Fees Itemized Description	Start Date	End Date
(Recruiting & Hiring Solution Prorated Term)	12/20/2019	6/30/2020
(Frontline Central Solution Prorated Term)	12/20/2019	6/30/2020
Frontline Central Solution	7/01/2020	6/30/2021
Recruiting & Hiring Solution	7/01/2020	6/30/2021

**Additional Order Form Information****Contract Special Instructions**

- a. The HUB requirement for this Agreement is 0%
- b. The Student Engagement Requirement for this Agreement is 100 hours per 12 months. Milwaukee Public Schools ("MPS") will place a student in an internal position at an MPS district office or school. The parties acknowledge and agree that Frontline will reimburse MPS for the cost of 100 hours of said student's work, at a rate of a \$11.32 per hour, not to exceed \$1,132 per 12 months, plus administrative fees in the amount of \$169.80. MPS shall invoice Frontline upon completion of the 100 hours; Frontline shall pay said invoice within 60 calendar days of receipt of the invoice. Upon MPS's receipt of Frontline's payment, the Student Engagement Requirement shall be satisfied in full. The parties acknowledge and agree that Frontline will not employ said student and shall have no liability whatsoever for the conduct, behavior, or performance of said student or MPS. MPS shall indemnify and hold harmless Frontline for any and all liabilities, claims, expenses, and losses arising from or related to this requirement.
- c. The Career Education Requirement for this Agreement is 10 hours per 12 months. The parties acknowledge and agree that Frontline will reimburse MPS for the cost of 10 hours of career education work, at a rate of a \$11.32 per hour, not to exceed \$113.20 per 12 months, plus administrative fees in the amount of \$16.98. MPS shall invoice Frontline upon completion of the 10 hours; Frontline shall pay said invoice within 60 calendar days of receipt of the invoice. Upon MPS's receipt of Frontline's payment, the Career Education Requirement shall be satisfied in full. The parties acknowledge and agree that Frontline shall have no liability whatsoever for the conduct, behavior, or performance of the career education work. MPS shall indemnify and hold harmless Frontline for any and all liabilities, claims, expenses, and losses arising from or related to this requirement.
- d. Frontline's failure to achieve the Student Engagement Requirement and the Career Education Requirement may result in the application of some or all of the sanctions set forth in Milwaukee Board of School Directors' Administrative Policy 3.10, which is hereby incorporated by reference.

**Tax Information**

**Tax Exemption:** We currently have a tax exemption certificate on file for you.

**PO Information**

**PO Status:** Purchase order to follow

**PO #:**

**Note:** If a Purchase Order is required, Customers shall submit the PO to Frontline within ten (10) business days of signing this Order Form by emailing it to [billing@frontlineed.com](mailto:billing@frontlineed.com), otherwise a PO shall not be required for payment



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Invoicing Schedule	Due Date	Amount
Invoice: One Time <b>Frontline Implementation</b>	Upon Signing	\$10,700.00 + applicable sales tax
Invoice: Prorated <b>Recruiting &amp; Hiring Solution Frontline Central Solution</b>	1/19/2020	\$100,424.38 + applicable sales tax
Invoice: Annual <b>Recruiting &amp; Hiring Solution Frontline Central Solution</b>	7/31/2020	\$189,921.75 + applicable sales tax



1400 Atwater Drive Malvern, PA 19355

This Order Form and any software, downloads, upgrades, documentation, service packages, material, information, or services set forth herein are governed by the terms of the Master Services Agreement, software license or other agreement with Frontline (the "Agreement"). **BY SIGNING BELOW OR OTHERWISE ACCESSING, VIEWING, OR USING ANY SOFTWARE, DOWNLOADS, UPGRADES, DOCUMENTATION, SERVICE PACKAGES, MATERIAL, INFORMATION, OR SERVICES SET FORTH HEREIN, CUSTOMER CERTIFIES THAT IT HAS READ AND AGREES TO THE ORDER FORM TERMS (the "Order Form Terms") ATTACHED HERETO AND THE AGREEMENT INCORPORATED HEREIN AND SHALL BE BOUND BY THE SAME.** Customer also agrees that the terms of the Agreement and the Order Form Terms are confidential information of Frontline Technologies Group LLC, its affiliates and predecessors (collectively, "Frontline") and are not to be shared with any third party without the prior written consent of Frontline.

<b>Frontline Technologies Group LLC dba Frontline Education</b>	<b>Milwaukee Public School District</b>
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Address: 1400 Atwater Drive _____ _____ Malvern, PA 19355	Address: P.O. Box 2181 _____ Milwaukee, Wisconsin 53201 _____
Email: <u>billing@frontlineed.com</u>	Email: _____

**Attached:** *Terms and Conditions  
Exhibit A*



1400 Atwater Drive Malvern, PA 19355

**Master Services Agreement**  
MSA-001f400000S90PO  
12/03/2019



1400 Atwater Drive Malvern, PA 19355

#### ORDER FORM TERMS AND CONDITIONS

1. The initial term of this Order Form shall (a) begin on the Subscription Start Date (as defined in Section 2 below) and (b) continue for one year or such longer period as provided in an Order Form (the "Order Form Initial Term") and will automatically renew for successive one-year terms thereafter (each, a "Renewal Term"), unless one Party notifies the other Party of non-renewal in writing at least sixty (60) days prior to the end of the current term of such Order Form. Customer may terminate any Order Form at any time after the Order Form Initial Term, in whole or in part, for any reason or no reason, on sixty (60) days prior written notice. Upon notice of such termination, a pro-rata portion of all outstanding invoices shall become immediately due and payable. If such invoice has been paid by the Customer, Customer shall be entitled to a pro-rata credit to be applied to future Frontline services.
2. The Startup Cost set forth on the first page of this Order Form will be invoiced to Customer by Frontline upon execution of this Order Form. Startup Costs are priced with the assumption that implementation will be completed within 120 days after signing. Frontline reserves the right to charge Customers additional service fees for added project costs due to Customer-caused delays occurring after the 120 day implementation period. The Annual Subscription will be invoiced to Customer by Frontline based on the Subscription Start Date unless otherwise stated on the front of an Order Form. The Subscription Start Date shall be defined as thirty (30) days after Customer's signature of an applicable Order Form.
3. Frontline reserves the right to increase any of the fees once annually during any Renewal Term by providing at least thirty (30) days advance notice to Customer.
4. The Startup Cost, Annual Subscription and any other applicable fees do not include any local or state sales or use taxes, any assessment of which shall be paid by the Customer. Without limiting the foregoing, Customer shall promptly pay to Frontline any amounts actually paid or required to be collected or paid by Frontline pursuant to any statute, ordinance, rule or regulation of any legally constituted taxing authority. If the Customer claims tax exempt status or the right to remit taxes directly, the tax exempt number must be entered on the first page of this Order Form and the Customer shall indemnify and hold Frontline harmless for any loss occasioned by its failure to pay any tax when due.

To the extent Proactive Recruiting is included in this Order Form, the following terms and conditions shall apply

1. Proactive Recruiting, accessed at the URL [www.teachers-teachers.com](http://www.teachers-teachers.com) or any successor (referred to as "Proactive Recruiting") is a web-based service where employers (such as, but not limited to, schools or school districts) can advertise to and communicate with a database of individuals and prospective employees (such as, but not limited to, prospective teachers or administrators) ("Prospective Employees"). The terms and conditions set forth below govern the Customer's and its representatives' use of the Proactive Recruiting website and services and are legally binding on the Customer.
2. Information pertaining to Prospective Employees and other individuals found through Proactive Recruiting is confidential and will not be shared with anyone by Customer outside of the Customer. The Customer will not distribute, disclose or transfer such information to third parties unless compelled to by law.
3. Notwithstanding anything to the contrary in these terms and/or any other agreements between the parties, as between the parties, Frontline owns all right, title and interest in and to any and all individual Prospective Employee (and or any other individuals') profile data and resume data, whether or not created or updated via the Proactive Recruiting services, including, without limitation, via Teachers- Teachers.com and/or K12jobspot.com.
4. The Customer will not provide services in competition with or substantially similar to the services provided by Frontline.

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5. The Customer understands that Frontline does not screen or verify any information provided by the individuals listed on its website. Therefore, the Customer is responsible for conducting its own search into the background, qualifications and credentials of any Prospective Employee it chooses to hire. The Customer will use the Teachers- Teachers service in compliance with all applicable laws.
6. The Customer is prohibited from taking any action to circumvent or attempt to circumvent the security and access control provisions of Teachers-Teachers.com. The Customer acknowledges that it may not:
  - a. Provide false or misleading information on Teachers-Teachers.com or to Frontline.
  - b. Use Teachers-Teachers.com to violate any applicable law or regulation, or violate the privacy or publicity rights of any other person.
  - c. Post any information that is abusive, defamatory, discriminatory, hateful, obscene, vulgar, sexually-orientated, threatening, or otherwise objectionable.
  - d. Harass, stalk, or otherwise subject any user of Teachers-Teachers.com and/or its services to unwanted and/or inappropriate contact.
  - e. Post any position or business opportunity which requires payment from the applicant/Prospective Employee or requires recruitment of other individuals, sub-distributors or sub-agents such as a multi-level marketing scheme, pyramid scheme, franchise or distributorship arrangement.
  - f. Use Teachers-Teachers.com and/or its services and/or its materials for any purpose other than to identify Prospective Employees for employment opportunities.
  - g. Make any changes, additions and/or deletions to any submissions posted by any user without the express written authorization of such other user.
  - h. Intentionally expose Teachers-Teachers.com and/or its services to any computer virus or any other program or code intended to disrupt or disable to operations of the website or its services.
  - i. Use any robot, spider or other program or device to retrieve or index any portion of the Teachers-Teachers.com website.
  - j. Harvest or otherwise collect information about users for any purpose other than use of Teachers-Teachers.com and/or its services as expressly permitted herein.
7. The foregoing list of prohibitions is illustrative and is not intended to be complete or exclusive. Frontline reserves the right to terminate our relationship with the Customer under these terms and prohibit the Customer's access to Teachers-Teachers.com and/or its services or to edit, remove or close any posting by the Customer for any reason.

**MASTER SERVICES AGREEMENT**

This Master Services Agreement is made effective as of the date of the signature below (the "Effective Date") by and between Frontline Technologies Group LLC dba Frontline Education, with an address at 1400 Atwater Drive, Malvern, PA 19355 ("Frontline"), and the customer identified below ("Customer"). Frontline and Customer are sometimes referred to herein, individually, as a "Party" and, collectively, the "Parties."

By signing below, the Parties agree to be legally bound by the Terms and Conditions contained herein (the "Terms and Conditions"), including any exhibits, Order Form(s), Order Form Terms and Conditions and Statements of Work (collectively, the "Agreement"). To place orders subject to this Agreement, at least one Order Form (as defined below) must be incorporated into this Agreement. This Agreement constitutes the complete and exclusive statement of the agreement between the Parties with respect to the Software and the Services set forth herein and any other software, products or other services provided by Frontline or any of its affiliates or predecessors prior to the Effective Date. For the avoidance of doubt, this Agreement supersedes any and all prior oral or written communications, proposals, RFPs, contracts, and agreements (including all prior license and similar agreements) and the Parties hereby terminate any such agreements. In the event of a conflict between the provisions of the Terms and Conditions and the provisions of any Statement of Work or any Order Form or any Order Form Terms and Conditions, the provisions of the Statement of Work or Order Form or Order Form Terms and Conditions, as applicable, shall govern, but only with respect to the services forth in the Statement of Work or that particular Order Form.

<p><b>Frontline Technologies Group LLC dba Frontline Education</b></p> <p>Signature: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Address: _____</p> <p>_____</p> <p>Email: _____</p>	<p><b>Milwaukee Public School District</b></p> <p>Signature: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Address: _____</p> <p>_____</p> <p>Email: _____</p>
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**Effective Date:** \_\_\_\_\_

**Attached:**     *Terms and Conditions*  
                       *Exhibit A Executed Order Forms*



## MASTER SERVICES AGREEMENT

### TERMS AND CONDITIONS

#### 1 Software and Services

1.1 Software Subject to the terms and conditions set forth in this Agreement (including any Order Forms, Order Form Terms and Conditions and/or Statement of Work), Frontline hereby grants Customer a non-exclusive, non-transferable license to use the software identified on any Order Form (the "Software") and the technical manuals, instructions, user information, training materials, and other documentation that accompany the Software and contain its technical specifications, as may be amended from time to time ("Documentation") solely for internal use by its then-current employees, contractors, agents, representatives and other end users authorized to use the Software on Customer's behalf (collectively, "Authorized Users" or "End Users") in the ordinary course of Customer's business. Frontline shall provide any professional or other services set forth in an Order Form (the "Services"). All rights, title and interest to the Software and any work product, deliverables or other materials provided by Frontline ("Work Product") are expressly reserved and retained by Frontline or its licensors, including any program or other application that is designed to integrate and be used with the Software, whether or not developed independently by Frontline, and all improvements, modifications and intellectual property rights therein. Customer shall not, and Customer shall require any Authorized Users to not (a) transfer, assign, export, or sublicense the Software or Work Product except as specifically set forth herein, or its license rights thereto, to any other person, organization or entity, including through rental, timesharing, service bureau, subscription, hosting, or outsourcing the Software (whether or not such sublicense, hosting or outsourcing is by Customer or for Customer), (b) attempt to create any derivative version thereof, (c) remove or modify any marking or notice on or displayed through the Software, Work Product or Documentation, including those related to Frontline's or its licensors' proprietary rights in and to the Software, Work Product or Documentation, as applicable, or (d) de-compile, decrypt, reverse engineer, disassemble, or otherwise reduce same to human-readable form. Without limiting the foregoing, Customer may not sublicense, outsource or otherwise grant access to the Software to any third party vendor without Frontline's prior written consent, including any third party host of the Software for Customer. Frontline shall have the right (but not the obligation) to monitor Customer's and its Authorized Users' use of the Software to confirm Customer's and its Authorized Users' compliance with the terms of this Agreement.

1.2 Authorized Users The total number of Authorized Users will be limited to the numerical or category limitations set forth in an Order Form, if any. Customer acknowledges and agrees that, depending on the specific Software provided by Frontline to Customer and/or the category of Authorized User, Authorized Users may have different access and usage rights to the Software. Customer shall ensure that Authorized Users comply with the terms and conditions of this Agreement with respect to access and use of the Software and any acts or omissions of such Authorized Users with respect to the same will be deemed acts or omissions of Customer for which Customer will be responsible on a joint and several basis. Customer is solely responsible for approving and provisioning any and all usernames and passwords assigned to or adopted by Customer's Authorized Users in connection with use of the Software. Customer is responsible for all activities that occur as a result of the use of such usernames and passwords. Customer will notify Frontline promptly of any unauthorized use of such usernames and passwords or any other breach of security known to Customer.

1.3 Order Forms Customer may place orders for the Software and Services by entering into a mutually agreed Order Form, which shall become a part of this Agreement and be attached hereto as Exhibit A. No other document shall be required to effect a legally binding purchase under this Agreement. Any preprinted or other terms contained on Customer's purchase order or otherwise shall be inapplicable to this Agreement. Unless an Order Form states otherwise, each Order Form is independent of each other Order Form (but each Order Form is a part of and integral to this Agreement).

1.4 Software Administrator, Maintenance Windows At all times, Customer must have an employee who has obtained the Software administrator certification training from Frontline and who is certified by Frontline as a Software administrator ("Software Administrator"). If Software Administrator ceases to serve as such, Customer shall promptly provide written notice to Frontline and have another employee obtain Frontline Software administrator certification and be designated as a Software Administrator, at Customer's expense. Frontline shall provide Customer with assistance regarding the use of the Software during Frontline's normal business hours (EST), Monday through Friday. Such assistance shall be provided only to Customer's Software Administrator. Frontline may perform system maintenance and/or software updates periodically upon advanced notice to Customer. However, due to extenuating circumstances, Frontline may, at times, need to perform maintenance without the ability to provide advance notice.

1.5 Customer Content The Software and Services may enable Customer and its Authorized Users to provide, upload, link to, transmit, display, store, process and otherwise use text, files, images, graphics, illustrations, information, data (including Personal Data as that term is defined in applicable laws), audio, video, photographs and other content and material in any format (collectively, the "Customer Content") in connection with the Software and Services. Customer hereby grants to Frontline a non-exclusive, royalty-free license to reproduce, display, distribute, modify, prepare derivative works of and otherwise use the Customer Content for the purpose of providing the Software and otherwise performing its obligations and exercising its rights under this Agreement. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of the Customer Content. Frontline will act as a data processor, and will act on Customer's instruction concerning the treatment of Personal Data provided in connection with the Software and Services, as specified in the Order Form. Customer shall provide any notices and obtain any consents (including consent of any parent or guardian for any minor) related to Customer's use of the Software and receipt of the Services and Frontline's provision of the Software and Services, including those related to the collection, use, processing, transfer and disclosure of Personal Data. Customer acknowledges and agrees that it must properly enter data, information and other Customer Content and configure settings within the Software in order for the Software to operate properly. Customer shall verify the accuracy of any of the Customer Content, forms, workflow and configuration settings entered on the Software. Frontline shall not have any liability arising from the inaccuracy of scoring, completeness, use of or reliance on the information contained in the extract of data from any Software or Services under this Agreement. Customer assumes the sole responsibility for the selection of the Software and Services to achieve Customer's intended results, the use of the Software and Services, and the results attained from such selection and use. Customer

represents and warrants that it is the owner of the Customer Content, or has obtained permission for such use from the owner of the Customer Content, including evaluation frameworks and/or rubrics uploaded into the Software. As to any content or data made available to Frontline, Customer represents that it has notified and obtained consent from all necessary persons (including parents, students, teachers, interns, aides, principals, other administrative personnel, and classroom visitors), and has taken all other actions that may be necessary to ensure that use of the products, services, or related materials provided or produced hereunder complies with all applicable laws and regulations as well as school or district policies.

1.6 **Integration.** Customer may, at Customer's direction and with or without Frontline's assistance, integrate or otherwise use the Software in connection with third party courseware, training, and other information and materials of third parties ("Third Party Materials") and Frontline may make certain Third Party Materials available in connection with the Software and Services. Customer acknowledges and agrees that (a) Frontline is authorized to provide the Customer Content to a specified third party or permit such third party to have access to the Customer Content in connection with Third Party Materials, and (b) Frontline does not control and is not responsible for, does not warrant, support, or make any representations regarding (i) Third Party Materials, (ii) the Customer Content provided in connection with such Third Party Materials, including a third party's storage, use or misuse of the Customer Content, or (iii) Customer's uninterrupted access to Third Party Materials. Customer understands that the use of the Software may involve the transmission of the Customer Content over the Internet and over various networks, only part of which may be owned or operated by Frontline, and that Frontline takes no responsibility for data that is lost, altered, intercepted, or stored without Customer's authorization during the transmission of any data whatsoever across networks whether or not owned or operated by Frontline. If Customer engages Frontline to assist in Customer's integration or use of the Software with Third Party Materials, you authorize Frontline to access and use such Third Party Materials in connection with such assistance and you represent and warrant that you have the rights necessary to grant such authorization. Customer agrees to be bound by the terms, conditions and restrictions of the applicable third party license agreement with respect to such Third Party Materials.

1.7 **Hosting.** The Software will be hosted by an authorized subcontractor (the "Hosting Service Provider") that has been engaged by Frontline and shall only be accessed by Customer on websites, using Customer's computers. As part of the Services, the Hosting Service Provider shall be responsible for maintaining a backup of the Customer Content. The Hosting Service Provider is an independent third party not controlled by the Frontline. Accordingly, IN NO EVENT WILL FRONTLINE BE LIABLE FOR ANY DIRECT, GENERAL, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE TO DATA, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, DUE TO PROBLEMS (INCLUDING BUT NOT LIMITED TO ERRORS, MALFUNCTIONS) ASSOCIATED WITH THE FUNCTIONS OF SERVERS MAINTAINED BY THE HOSTING SERVICE PROVIDER, EVEN IF FRONTLINE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

1.8 **Customer Responsibilities.** Customer understands and agrees that (a) Customer shall have sole responsibility for administering access security (e.g. the granting of rights to Customer's users), (b) Customer shall review any calculations made by using the Services and satisfy Customer that those calculations are correct, and (c) if Customer uses the Services for reimbursement or payment from Medicaid and other government agencies, Frontline shall have no responsibility, and Customer shall have sole responsibility, to submit information and claims for such reimbursement or payment. Frontline does not warrant that the Services, or the results derived there from, will meet Customer's requirements, or that the operation of the Services will be uninterrupted or error-free. Customer is solely responsible for obtaining and maintaining, at its own expense, all hardware, software and services needed to use the Software, including any and all servers, computers, and Internet access services. In connection with the performance of the Services, Customer shall provide Frontline's personnel with all such cooperation and assistance as they may reasonably request, or otherwise may reasonably be required, to enable Frontline to perform its obligations (including the provision of the Services), and exercise its rights, under and in accordance with the terms and conditions of this Agreement.

**2. Invoicing and Payment.** All fees and charges will be set forth in the applicable Order Form(s). The Startup Cost set forth on the first page of an Order Form will be invoiced to Customer by Frontline upon execution of the applicable Order Form. Startup Costs are priced with the assumption that implementation will be completed within 120 days after signing. Frontline reserves the right to charge Customer's additional service fees for added project costs due to Customer-caused delays occurring after the 120 day implementation period. The Annual Subscription will be invoiced to Customer by Frontline based on the Subscription Start Date (as set forth in the Order Form) unless otherwise stated on the front of an Order Form. The Subscription Start Date shall be defined as thirty (30) days after Customer's signature of an applicable Order Form. Except as otherwise provided, Frontline shall invoice Customer in US Dollars and Customer shall pay all fees, charges, and expenses within thirty days of the date of an invoice via check or ACH. Without prejudice to its other rights and remedies, if Frontline does not receive any payment by its due date, Frontline may assess a late payment charge on the unpaid amount at the rate of 1.5% per month or, if less, the highest rate allowed under applicable law. Frontline reserves the right to increase any of the fees once annually during any Renewal Term by providing at least thirty (30) days advance notice to Customer. All charges under this Agreement are exclusive of, and Customer is solely responsible for, any applicable taxes, duties, fees, and other assessments of whatever nature imposed by governmental authorities. Without limiting the foregoing, Customer shall promptly pay to Frontline any amounts actually paid or required to be collected or paid by Frontline pursuant to any statute, ordinance, rule or regulation of any legally constituted taxing authority. If the Customer claims tax exempt status or the right to remit taxes directly, the tax exempt number must be entered on the first page of any applicable Order Form and the Customer shall indemnify and hold Frontline harmless for any loss occasioned by its failure to pay any tax when due. If for any reason Frontline's personnel travel to Customer's facility or otherwise in connection with the Software or Services under this Agreement, Customer shall be responsible for the reasonable costs of transportation, lodging, meals and the like for Frontline's personnel.

### **3 Warranties and Disclaims.**

3.1 **Mutual.** Each Party represents and warrants that the Party's execution, delivery, and performance of this Agreement (a) have been authorized by all necessary action of the governing body of the Party, (b) do not violate the terms of any law, regulation, or court order to which such Party is subject or the terms of any agreement to which the Party or any of its assets may be subject, and (c) are not

subject to the consent or approval of any third party. Customer represents and warrants on behalf of itself and any of its Authorized Users that it has the full legal right to provide the Customer Content and that the Customer Content will not (a) infringe any intellectual property rights of any person or entity or any rights of publicity, personality, or privacy of any person or entity, including as a result of failure to obtain consent to provide Personal Data or otherwise private information about a person, (b) violate any law, statute, ordinance, regulation, or agreement, including school or district policies, or (c) constitute disclosure of any confidential information owned by any third party.

3.2 **Software Warranties.** Frontline represents and warrants that (a) the Software will perform substantially in accordance with the specifications set forth in the then-current Documentation and (b) the Services will be performed in a professional and workmanlike manner. The foregoing warranty will not apply (i) if Customer is in default or breach of any of its obligations under this Agreement, or (ii) to any non-conformance of the Software, Work Product or Services due to (A) Customer's failure to permit the installation/implementation of any update, upgrade or release provided by Frontline, (B) Customer's negligence, abuse, misapplication or misuse of the Software (including Customer's failure to operate the Software in accordance with Documentation), or (C) Customer's use or operation of the Software in or with any technology (including any software, hardware, firmware, system or network) not approved in writing by Frontline. In the event of a non-conformance of the Software, Work Product or Services, reported to and verified by Frontline, Frontline will make commercially reasonable efforts to correct such non-conformance. Customer's sole remedy is limited to the replacement, repair, or refund, at Frontline's option, of defective Software or Work Product or re-performance of the Services. Notwithstanding the foregoing, any Third Party Materials shall be subject only to such third party terms and any warranties therein.

3.3 **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, FRONTLINE AND ITS LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO ANY ASPECT OF THE SOFTWARE, WORK PRODUCT, SERVICES, OR OTHER PRODUCTS INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FRONTLINE AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE, WORK PRODUCT, SERVICES, OR OTHER PRODUCTS WILL BE UNINTERRUPTED, OR ERROR-FREE, NOR DO THEY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE, WORK PRODUCT, SERVICES, OR OTHER PRODUCTS.

#### 4. Confidential Information; Privacy.

4.1 **Confidential Information.** During the term of this Agreement and for two (2) years thereafter, each Party will use the same degree of care to protect the other Party's Confidential Information as it uses to protect its own confidential information of like nature, but in no circumstances less than reasonable care. "Confidential Information" means any information that is marked or otherwise indicated as confidential or proprietary, in the case of written materials, or, in the case of information that is disclosed orally or written materials that are not marked, by notifying the other Party of the proprietary and confidential nature of the information, such notification to be done orally, by email or written correspondence, or via other means of communication as might be appropriate. Notwithstanding the foregoing, (a) Confidential Information of Frontline shall include the Software and the terms of this Agreement and (b) Confidential Information of Customer shall include Personal Data regarding Customer's users provided in connection with the Software and Services. Confidential Information does not include information which (a) was known to the receiving Party or in the public domain before disclosure, (b) becomes part of the public domain after disclosure by a publication or other means except by a breach of this Agreement by the receiving Party, (c) was received from a third party under no duty or obligation of confidentiality to the disclosing Party, or (d) was independently developed by the receiving Party without reference to Confidential Information. Aggregated data that does not contain personally identifiable information regarding Customer's users provided in connection with the Software and Services will be Confidential Information and property of Frontline. The receiving Party will not be liable for disclosures of Confidential Information that are required to be disclosed by law or legal process, so long as the recipient notifies the disclosing Party, provides it with an opportunity to object and uses reasonable efforts (at the expense of the disclosing Party) to cooperate with the disclosing Party in limiting disclosure.

4.2 **Privacy.** Frontline understands that its performance of the Services may involve the disclosure of student personally identifiable information ("Student PII") (as defined in the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g, 34 C.F.R. Part 99) ("FERPA") by the Customer to Frontline. Frontline agrees that it will not use or re-disclose Student PII except in compliance with and all applicable state and federal laws, including FERPA. Customer acknowledges that Frontline is a "school official" with a legitimate educational interest in receiving Student PII under FERPA and Frontline agrees that it will comply with the requirements of 34 C.F.R. § 99.33 regarding its use and re-disclosure of Student PII.

4.3 **Data Security.** Frontline will utilize commercially reasonable administrative, technical, and physical measures designed to maintain the confidentiality and security of Confidential Information and Student PII submitted by Customer. Customer understands and agrees that no security measures can be 100% effective or error-free and understands that Frontline expressly disclaims (a) any warranty that these security measures will be 100% effective or error-free or (b) any liability related to the confidentiality and security measures utilized by third parties.

5. **Indemnification.** Customer shall indemnify Frontline and its officers, directors, employees, and agents and hold them harmless from all third party claims, liabilities, expenses, and losses (including attorneys' fees and expenses) arising from or related to any breach by Customer of this Agreement, including failure to obtain consent to provide Personal Data or otherwise private information about a person.

6. **Limitations of Liability.** OTHER THAN THE FEES, CHARGES AND EXPENSES PAYABLE PURSUANT HERETO, IN NO EVENT SHALL EITHER PARTY (OR IN THE CASE OF FRONTLINE, ITS LICENSORS) BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORFEASIBLE OR UNFORFEASIBLE, OF ANY KIND WHATSOEVER (INCLUDING LOST PROFITS) ARISING FROM OR RELATING TO THIS AGREEMENT OR THE USE OR NON-USE OF THE SOFTWARE, WORK PRODUCT OR SERVICES. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL FRONTLINE'S (OR ITS LICENSORS') TOTAL LIABILITY ARISING FROM OR RELATING TO THIS

## AGREEMENT,

WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID TO FRONTLINE HEREUNDER DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH CLAIMS. Each Party acknowledges and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material, bargained for provisions of this Agreement and that fees and consideration payable hereunder reflects these disclaimers and limitations.

**7. Term and Termination.** The term of this Agreement will commence on the Effective Date and continue until such time that there are no valid Order Forms. The initial term of each Order Form under this Agreement shall (a) begin on the Subscription Start Date (as defined in Section 2 above) and (b) continue for one year or such longer period as provided in an Order Form (the "Order Form Initial Term") and will automatically renew for successive one-year terms thereafter (each, a "Renewal Term"), unless one Party notifies the other Party of non-renewal in writing at least sixty (60) days prior to the end of the current term of such Order Form. Customer may terminate any Order Form at any time after the Order Form Initial Term, in whole or in part, for any reason or no reason, on sixty (60) days prior written notice. Upon notice of such termination, a pro-rata portion of all outstanding invoices shall become immediately due and payable. If such invoice has been paid by the Customer, Customer shall be entitled to a pro-rata credit to be applied to future Frontline services. Either Party may terminate this Agreement in the event that the other Party materially breaches this Agreement the other Party does not cure such breach within thirty (30) days after written notice of such breach. Expiration or termination of any Order Form or Statement of Work shall constitute the expiration or the termination of such Order Form or Statement of Work only and shall not affect this Agreement or any other Order Form or Statements of Work outstanding under this Agreement. Notwithstanding the foregoing, unless otherwise mutually agreed by the parties in writing, any Order Form or Statement of Work outstanding as of the date of termination or expiration of this Agreement shall remain in effect and continue to be governed by the terms of this Agreement and its own terms until such time as such Order Form or Statement of Work is completed, expires or is otherwise terminated. Upon the termination or expiration of this Agreement, the licenses granted to Customer under Section 1.1 will terminate automatically and Customer (i) shall immediately cease using the Software and Documentation and (ii) for a period of thirty (30) days, may request a copy of the Customer Content that is in Frontline's possession in the format retained by Frontline. The following provisions of this Agreement will survive expiration or termination of this Agreement: Sections 3.3, 4, 5, 6, 7 and 9. Frontline may (without limitation of any other rights or remedies) suspend use of the Software in the event that (A) Customer is delinquent in payment of any amount due to Frontline under this Agreement (and has not cured such delinquency within five (5) days following written notice thereof to Customer), (B) Customer has breached any of the provisions of Section 1 of this Agreement, or (C) in Frontline's reasonable good faith determination, suspension of use of the Software is necessary to avoid or mitigate harm to the security of Frontline's or its customers' systems or data. Any such suspension will not constitute a termination of this Agreement.

**8. District Ordering.** Any other school district in the same state as Customer ("School District") may also purchase from Frontline a license to the Software and provision of the Services for the School District's own account on the same terms and conditions as are applicable to Customer under these Terms and Conditions (excluding any pricing terms and conditions). Each School District will be separately liable for payment for such Software and Services and its compliance with these Terms and Conditions, and neither Customer nor any School District will be liable for the acts, omissions or obligations of any other School District under these Terms and Conditions. Frontline will have no obligations to provide any Software or Services to a School District until such time as Frontline and such School District enter into an Order Form which references and is subject to these Terms and Conditions. By so doing, the School District agrees to be bound by these Terms and Conditions and for purposes of its order is considered "Customer" as that term is used in these Terms and Conditions. In the event that Customer and Frontline amend these Terms and Conditions (each an "Amendment"), any and all such Amendments will be enforceable against each School District that has executed an Order Form which references and is subject to these Terms and Conditions upon notice of such Amendment from Frontline unless Frontline has agreed in writing with School District that the Amendment, or specific provisions within the Amendment, do not apply to such School District.

**9. General.** Frontline and Customer are each independent contractors and neither Party shall be, nor represent itself to be, the franchiser, partner, broker, employee, servant, agent, or legal representative of the other Party for any purpose whatsoever. Customer may not sublicense, assign, or transfer this Agreement, or any rights and obligations under this Agreement, in whole or in part, without Frontline's prior written consent. Any attempted assignment in violation of this Section shall be void. This Agreement shall be binding upon, and inure to the benefit of, the permitted successors and assigns of each Party. Notwithstanding anything to the contrary in this Agreement, except for Customer's obligations to pay amounts due under this Agreement, neither Party will be deemed to be in default of any provision of this Agreement for any delay, error, failure, or interruption of performance due to any act of God, terrorism, war, strike, or other labor or civil disturbance, interruption of power service, interruption of communications services, problems with the Internet, act of any other person not under the control of such Party, or other similar cause. If the Customer requests to be added as an additional insured on any Frontline insurance policy, the limits of such policies shall be subject to the Limitations of Liability stated in Section 6 herein. This Agreement may be amended only by written agreement of the Parties, and any attempted amendment, including any handwritten changes on this Agreement, in violation of this Section shall be void. The waiver or failure of either Party to exercise in any respect any right provided under this Agreement shall not be deemed a waiver of such right in the future or a waiver of any other rights established under this Agreement. This Agreement does not confer any rights or remedies upon any person other than the Parties, except Frontline's licensors. When used herein, the words "includes" and "including" and their syntactical variations shall be deemed followed by the words "without limitation." This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be the same agreement.