

**JEFFERSON COUNTY PUBLIC SCHOOLS  
CONTRACT FOR THE PROCUREMENT OF PROFESSIONAL SERVICES**

THIS CONTRACT FOR PROCUREMENT OF PROFESSIONAL SERVICES (hereinafter "Contract") is entered into between the JEFFERSON COUNTY BOARD OF EDUCATION (hereinafter "Board"), a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 and Ipswitch, Inc. Network Management Division Education Services (hereinafter "Contractor"), with its principal place of business at 83 Hartwell Ave., Lexington, MA 02421.

WITNESSETH:

WHEREAS, the Board desires to procure the particular services of Contractor, which are more fully defined below; and

WHEREAS, Contractor has held itself out to be competent and capable of performing the services contracted for herein;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the Board and Contractor (hereinafter "Parties") agree as follows:

ARTICLE I

Entire Agreement; Amendments

This Contract is the entire agreement between the Parties and supersedes any and all agreements, representations and negotiations, either oral or written, between the Parties before the effective date of this Contract. This Contract may not be amended or modified except in writing as provided in Article VIII. This Contract is supplemented by the Board's Procurement Regulations currently in effect (hereinafter "Regulations") that are incorporated by reference into and made a part of this Contract. In the event of a conflict between any provision of this Contract and any provisions of the Regulations, the Regulations shall prevail.

ARTICLE II

Services

Contractor agrees to perform the following services (hereinafter "Services") of a quality and in a manner that is within the highest standards of Contractor's profession or business. The Services are as follows:

The Contractor Ipswitch, Inc. shall provide a 4-day on-site training (at the VanHoose Education Center) for their WhatsUp Gold and Plugins software to the Management Information Services Department on August 12, 2014 through August 15, 2014. Ipswitch, Inc. will provide training manuals and user account access. Statement Of Work is attached and incorporated herein by reference.

### ARTICLE III Compensation

The Board shall pay Contractor the total amount stated below (hereinafter "Contract Amount"). The Contract Amount shall be paid in a lump sum upon completion of the Services, unless a schedule of progress payments is stated below. The Contract Amount shall be for total performance of this Contract and includes all fees, costs and expenses incurred by Contractor including but not limited to labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs and other costs, unless otherwise stated below. To receive payment, Contractor must submit an itemized invoice or invoices. If progress payments are authorized, each invoice must specify the actual work performed. If payment of costs or expenses is authorized, receipts must be attached to the invoice.

Contract Amount:	<u>\$10,495.00</u>
Progress Payments (if not applicable, insert N/A):	<u>Upon Invoice</u>
Costs/Expenses (if not applicable insert N/A):	<u>N/A</u>
Fund Source:	<u>MI11510-0339-900XS</u>

### ARTICLE IV Term of Contract

Contractor shall begin performance of the Services on 2014, August 12 and shall complete the Services no later than 2014, August 15, unless this Contract is modified as provided in Article VIII.

### ARTICLE V Performance of Services by Contractor

The Services shall be performed by Contractor, and in no event shall Contractor subcontract with any other person to aid in the completion of the Services without the prior written approval of the Contract Administrator defined below.

Contractor shall appoint one person who shall be responsible for reporting to the Board on all Services performed under the terms of this Contract and who shall be available for consultation with the Contract Administrator.

Contractor is an independent contractor, not an employee. Contractor is responsible for the payment of all federal, state and local payroll taxes and providing unemployment insurance and workers compensation coverage to Contractor's employees. Contractor shall provide all equipment, materials and supplies necessary for the performance of the Services.

Contractor shall at all times during the term of this Contract comply with all applicable laws, regulations, rules and policies. Contractor shall obtain and keep in force all licenses, permits and certificates necessary for the performance of the Services.

Contractor agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation, including the Contractor himself, in connection with the performance

of this Contract. Contractor also agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to Contractor in connection with the performance of this Contract. This provision survives termination of this Contract.

Unless waived in writing by the Contract Administrator, Contractor shall maintain during the term of this Contract policies of primary insurance covering the following risks and in at least the following amounts: commercial general liability, including bodily injury, property damage, personal injury, products and completed operations, and contractual, \$1,000,000; and automobile liability, \$1,000,000. Contractor shall furnish to the Contract Administrator certificates of insurance evidencing this coverage and naming the Board as an additional insured. Additionally, Contractor shall maintain workers compensation coverage with limits required by law; and professional errors and omissions coverage with minimum limits of \$1,000,000. Contractor shall furnish certificates of insurance evidencing this coverage to the Contract Administrator.

## ARTICLE VI Equal Opportunity

During the performance of this Contract, Contractor agrees that Contractor shall not discriminate against any employee, applicant or subcontractor because of age, color, creed, disability, marital or parental status, national origin, race, sex, veteran status, religion, or political opinion or affiliation. If the Contract Amount is paid from federal funds, this Contract is subject to Executive Order 11246 of September 24, 1965 and in such event the Equal Opportunity Clause set forth in 41 Code of Federal Regulations 60-1.4 is hereby incorporated by reference into this Contract as if set forth in full herein.

## ARTICLE VII Prohibition of Conflicts of Interest

It shall be a breach of this Contract for Contractor to commit any act which is a violation of the provisions of Article XI of the Regulations entitled "Ethics and Standards of Conduct," or to assist or participate in or knowingly benefit from any act by any employee of the Board which is a violation of such provisions.

## ARTICLE VIII Changes

The Board and Contractor may at any time, by mutual agreement set forth in a written addendum, make changes in the definition of the Services; the scope of the Services; and the Contract Amount. The Contract Administrator and Contractor may, at any time, by mutual agreement set forth in a written addendum, make changes in the time within which the Services are to be performed; the schedule of Progress Payments; and mutual Termination of the Contract.

## ARTICLE IX Termination for Convenience of the Board

The Board may terminate this Contract in whole or in part at any time by giving written notice to Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the specified effective date. The Board shall compensate Contractor for Services satisfactorily performed through the effective date of termination.

## ARTICLE X Termination for Default

The Board may, by written notice of default to Contractor, terminate the whole or any part of this Contract, if Contractor breaches any provision of this Contract, or so fails to make progress as to endanger performance of this Contract, and in either of these circumstances, does not cure the breach or failure within a period of five (5) days after receipt of notice specifying the breach or failure. In the event of termination for default, the Board may secure the required services from another contractor. If the cost to the Board exceeds the cost of obtaining the Services under this Contract, Contractor shall pay the additional cost. The rights and remedies of the Board provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

## ARTICLE XI Disputes

Any differences or disagreements arising between the Parties concerning the rights or liabilities under this Contract, or any modifying instrument entered into under Article VIII of this Contract, shall be resolved through the procedures set out in the Regulations.

## ARTICLE XII Contractor's Work Product

Unless waived in writing by the Contract Administrator, the Board shall retain ownership in and the rights to any reports, research data, creative works, designs, recordings, graphical representations or other works of a similar nature (hereinafter "Works") produced or delivered by Contractor under this Contract. Contractor agrees that the Works are "works for hire" and Contractor assigns all right, title and interest in the Works to the Board.

Any reports, information, data, etc. given to or prepared or assembled by Contractor under this Contract shall not be made available to any individual or organization by Contractor without the prior written approval of the Board. Provided, nothing in this Article may be used to violate the provisions of any Kentucky or Federal statute or regulation which requires reporting of information.

## ARTICLE XIII Contract Administrator

The Board shall appoint a Contract Administrator for the purposes of daily administrative decision-making pertaining to the Contract. If Contractor and the Contract Administrator disagree on any circumstance or set of facts pertaining to the administration or execution of this Contract, the Board shall resolve the matter after notification by either the Contract Administrator or the Contractor in the manner prescribed by the Regulations. If the Board fails to give notice to Contractor of the appointment of a Contract Administrator, the Contract Administrator shall be the Board's Chief Financial Officer.

## ARTICLE XIV Right to Audit

The Board shall have the right to inspect and audit all accounting reports, books or records which concern the performance of the Services. Inspection shall take place during normal business

hours at Contractor's place of business. Contractor shall retain all records relating to the performance of this Contract for five (5) years after the end of the term of this Contract.

ARTICLE XV  
Miscellaneous

- A. All Articles shall be construed as read, and no limitation shall be placed on any Article by virtue of its descriptive heading.
- B. Any notices or reports by one Party to the other Party under this Contract shall be made in writing, to the address shown in the first paragraph of this Contract, or to such other address as may be designated in writing by one Party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.
- C. If any part of this Contract is held to be void, against public policy or illegal, the balance of this Contract shall continue to be valid and binding.
- D. This Contract shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky.
- E. No delay or omission by either Party in exercising any right under this Contract shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Contract.
- F. At all times during the term of this Contract, Contractor shall comply with the Family Educational Rights and Privacy Act of 1974. If Contractor has access to student records, Contractor shall limit its employees' access to those records to persons for whom access is essential to perform this Contract.
- G. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of this Contract and shall reveal any final determination of a violation by the Contractor or subcontractor of the preceding KRS Chapters.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract to be effective as of 2014, July 29.

Contractor's Social Security Number or Federal Tax ID Number: 04-3129831

JEFFERSON COUNTY BOARD OF Ipswitch, Inc.  
EDUCATION CONTRACTOR

By: \_\_\_\_\_

By: Michael Elson

Title: Donna M. Hargens, Ed.D.  
Superintendent

Title: MICHAEL ELSON  
DIRECTOR, TECHNICAL TRAINING

Michael Raison

Cabinet Member: MR

MR  
(Initials)

**Ipswitch, Inc.**  
**Network Management Division**  
**Education Services**

**Date:** July 10, 2014

**Training Services Order:**

Quote ID: 2014-131767

**Training Items Ordered:**

Description: WhatsUp Gold, Plugins and APM On-Site (4 Students) Training 4 Day  
Quantity: 1 Class

**Training Date:** August 12 through 15, 2014

**Deliver Training Services To:**

Customer: Jefferson County Public Schools  
Address: 3332 Newburg Lane  
City: Louisville  
State: Kentucky  
Zip Code: 40218

**Primary Customer Contact:**

Name: Annette Harris  
E-Mail: [annette.harris@jefferson.kyschools.us](mailto:annette.harris@jefferson.kyschools.us)  
Phone: 502-485-3540

**Primary Ipswitch Contact:**

Name: Michael Ehasz  
E-Mail: [mehasz@ipswitch.com](mailto:mehasz@ipswitch.com)  
Phone: 781-645-5525

**Training Services:**

**Assumptions:**


1. Training will be conducted at:  
3332 Newburg Lane  
Louisville, Kentucky
2. Training will be conducted on August 12 through 15, 2014, starting at 9:00 AM each day and running to approximately 4:00 PM each day

**Ipswitch Responsibilities:**

1. Provide a qualified Instructor to conduct the standard 4 Day WhatsUp Gold and Plugins Training class.
2. Provide each student with a hard copy WhatsUp Gold and Plugins Training Manual. Training Manuals may be shipped ahead of the class.
3. Provide each student with a temporary user account providing access to the remote training lab exercise environment; a.k.a. ITE (Ipswitch Training Environment).

**Customer Responsibilities:**

1. Provide a classroom with sufficient space to accommodate the expected number of students and the instructor, table space for each student's computer, a blackboard or whiteboard for instructor use, and a computer projection system for presentations and demonstrations.
2. Provide a computer for each student with internet access for each student computer and internet access for the instructor. Internet connection speed should be no less than 1 Mb/second.
3. Complete the ITE (Ipswitch Training Environment) Access Test from the classroom where training will be conducted, and provide results to Ipswitch prior to the start of class.

**AGREED BY:****Ipswitch, Inc.**By: Name: MICHAEL ENASZTitle: DIRECTOR, TECHNICAL TRAININGDate: JULY 14, 2014**Customer**By: Name: RAGHU SESHADRITitle: DIRECTOR, MISDate: 07/14/2014

## **Exhibit A**

### **General Terms and Conditions**

1. **Confidentiality.** For purposes of this Section, the term "Confidential Information" means any information disclosed by either party (the "Disclosing Party") to the other party (the "Receiving Party") in connection with this Agreement which is identified as "Confidential" or "Proprietary," or which the Receiving Party, under all of the circumstances, should reasonably know to be confidential and/or proprietary to the Disclosing Party. The Receiving Party will treat as confidential all Confidential Information received from the Disclosing Party, will not use such Confidential Information other than for the purpose for which it was disclosed in connection with this Agreement, and will not disclose such Confidential Information to any third party without the Disclosing Party's prior written consent. The Receiving Party will use the same measures to protect the Confidential Information that it takes with its own most confidential information, but in no event less than reasonable measures, to prevent the disclosure and unauthorized use of Confidential Information. Notwithstanding the above, the restrictions of this Section shall not apply to information that: (a) was independently developed by the Receiving Party without any use of the Confidential Information of the Disclosing Party; (b) becomes known to the Receiving Party, without restriction, from a third party without breach of this Agreement and who had a right to disclose it; (c) was in the public domain at the time it was disclosed or becomes in the public domain through no act or omission of the Receiving Party; (d) was rightfully known to the Receiving Party, without restriction, at the time of disclosure; or (e) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the Receiving Party will provide prompt notice thereof to the Disclosing Party and shall use its reasonable best efforts to obtain a protective order or otherwise prevent public disclosure of such information. Each Disclosing Party understands that the Receiving Party may (either currently or in the future) develop internally or receive information from other parties that may be similar to the Disclosing Party's Confidential Information. Accordingly, nothing in this Agreement shall be construed as a representation or inference that the Receiving Party will not develop products or provide services, or have products developed for it or receive services that, without violation of this Agreement, compete with the Disclosing Party's Confidential Information.

2. **Copyrighted Materials.** All materials developed or provided by Ipswitch, including but not limited to materials in written, online or presentation form, will be the sole property of Ipswitch, Ipswitch will hold all copyright rights thereto, and Customer will not be permitted to copy, reproduce or distribute the same without the prior consent of Ipswitch. Customer shall not modify or produce derivative works based on any materials developed or provided by Ipswitch, and to the extent that Customer does so notwithstanding the restriction contained in this sentence, any such modification or derivative work will be the sole property of Ipswitch and Customer hereby assigns to Ipswitch all rights to the same.

3. **Warranties.** Ipswitch warrants that it will perform Services in a professional and workmanlike manner in accordance with industry standards Ipswitch warrants that it has the right to perform the Services. EACH PARTY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE SERVICES, ANY GOODS OR SERVICES SOLD BY IPSWITCH, OR ANY OTHER MATTER RELATING HERETO.

4. **Limitation on Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE OR USE, INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY. NOTWITHSTANDING THE FOREGOING SENTENCE, THE LIMITATIONS SET FORTH IN THIS SECTION WILL NOT APPLY TO ANY CLAIMS, ACTIONS, LOSSES, LIABILITIES, DAMAGES OR COSTS WHICH (A) ARE SUBJECT TO INDEMNIFICATION, (B) INCURRED BY EITHER PARTY AS A RESULT OF THE OTHER PARTY'S FRAUD OR WILLFUL MISCONDUCT, (C) INCURRED BY EITHER PARTY AS A RESULT OF THE OTHER PARTY'S BREACH OF CONFIDENTIALITY.

**5. Exclusive Dealing.** Neither party intends, nor shall this Agreement be construed, to limit Ipswitch from entering into similar agreements with other parties, or from distributing its products and services on its own or through third parties in such manner as it may determine.

**6. Miscellaneous.**

(a) The Agreement may not be assigned or otherwise transferred by either party without the consent of the other party, except in connection with the transfer of all or substantially all of the business or assets of a party.

(b) The Agreement shall be governed by the laws of The Commonwealth of Massachusetts, excluding conflict of laws provisions. Any dispute arising out of or relating to the Agreement will be submitted to binding arbitration in Boston, Massachusetts, pursuant to the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award may be entered in any court of competent jurisdiction, provided, however that either party may seek preliminary injunctive or other equitable relief pending arbitration to prevent irreparable harm. Each party submits to the nonexclusive jurisdiction of state courts of The Commonwealth of Massachusetts or the United States District Court for the District of Massachusetts for the purposes described in this Section. The prevailing party in any arbitration or litigation shall be entitled to recover all reasonable expenses thereof, including attorney's fees in connection with such proceedings or any appeal thereof.

(c) The parties are independent contractors. Neither party shall be deemed to be an employee, agent, partner or legal representative of the other and neither shall have any right, power or authority to create any obligation or responsibility on behalf of the other.

(d) The Agreement constitutes the complete agreement between the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreement. A facsimile of a signed copy of the Agreement may be relied upon as an original. The rights and remedies of the parties will be cumulative (and not alternative).