

# 13

## AMENDMENT TO CONTRACT FOR THE PROCUREMENT OF PROFESSIONAL SERVICES

THIS AMENDMENT TO CONTRACT FOR THE PROCUREMENT OF PROFESSIONAL SERVICES (hereinafter "Amendment") is entered by and between the Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools (hereinafter "JCPS") with its principal place of business located at 3332 Newburg Road, Louisville, Kentucky 40218, and Frontline Technologies Group LLC dba Frontline Education with its principal place of business located at 1400 Atwater Drive, Malvern, PA 19355 (hereinafter "Contractor").

WHEREAS, The Parties have entered into a Contract for the Procurement of Professional Services between JCPS and Contractor dated September 30, 2020 under which Contractor agreed to provide Frontline Electronic Health Record and School Nursing Management System (the "Contract"); and

WHEREAS, the Contractor and JCPS wish to extend the duration of the Contract for an additional year and add additional services within the Frontline Electronic Health Record and School Nursing Management System; and

WHEREAS, this additional service period and additional services require payment of an additional \$175,649.75;

THEREFORE, the Parties wish to amend the Contract to alter the total cost.

This Amendment hereby amends and replaces the Contract Amount within Article III Compensation. The Contract Amount shall read:

\$178,149.80 in year one

\$175,649.75 in year two

This Amendment hereby amends Article IV Term of Contract. The termination date of "September 29, 2021" shall be stricken from the Contract and replaced with "September 29, 2022."

All other provisions of the Contract shall remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the dates below to be effective as of September 28, 2021.

**Jefferson County Public Schools:**

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

Dr. Martin A. Pollio

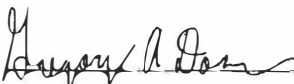
Superintendent

Date:

\_\_\_\_\_

**Frontline Technologies Group LLC dba**

**Frontline Education:**

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

Gregory A Doran

CFO

Date:

10/4/2021

\_\_\_\_\_

**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 Frontline Technologies Group LLC dba Frontline Education (hereinafter "Contractor"), with its principal place of business at 1400 Atwater Drive, Malvern, PA 19355.

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:

Contractor shall provide software licenses for Frontline Electronic Health Record and School Nursing Management System. Frontline Customer Order Form, Master Services Agreement, and Statement of Work are attached and incorporated herein by reference. In the event of a conflict between the terms of this Contract and the Frontline Customer Order Form, Master Services Agreement, or Statement of Work, this Contract shall govern.

Contractor agrees that they will not operate a motor vehicle in the performance of this Contract. The Contract Administrator hereby waives the insurance requirement for automobile liability insurance. If during the terms of this Contract, Contractor is not required by Kentucky law to maintain workers compensation

insurance, then the Contract Administrator hereby waives the requirement for workers compensation insurance contained in Article V. All other provisions of Article V shall remain the same.

### 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:	\$178,149.80
Progress Payments (if not applicable, insert N/A):	N/A
Costs/Expenses (if not applicable insert N/A):	N/A
Fund Source:	Louisville Metro Public Health & Wellness grant

### ARTICLE IV Term of Contract

Contractor shall begin performance of the Services on September 30, 2020 and shall complete the Services no later than September 29, 2021, 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. Board acknowledges and accepts that Contractor uses AWS as a vendor hosting service provider.

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 race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions. 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. In the event of termination for convenience, the Board shall not be entitled to refund of any payments made under this Contract.

## 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. If this Contract requires Contractor and/or any employees of Contractor access to school grounds on a regularly scheduled and continuing basis for the purpose of providing services directly to a student or students, all individuals performing such services under this Contract are required to submit per KRS 160.380 to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating no administrative findings of child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
- H. 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 September 30, 2020.

Contractor's Social Security Number or Federal Tax ID Number:

JEFFERSON COUNTY BOARD OF  
EDUCATION

By: M. A. Pollio

Title: Martin A. Pollio, Ed.D.  
Superintendent

Frontline Technologies Group LLC dba  
Frontline Education  
CONTRACTOR

By: Gregory A. Doran

Title: Gregory A. Doran  
CFO

Cabinet Member: Dr. Carmen Coleman

CC

(Initials)



Jefferson County Public Schools  
**NONCOMPETITIVE NEGOTIATION  
DETERMINATION AND FINDING**

1. An emergency exists which will cause public harm as a result of the delay in competitive procedures (Only the Superintendent shall declare an emergency.) —

State the date the emergency was declared by the superintendent: \_\_\_\_\_

2. There is a single source for the items within a reasonable geographic area —

Explain why the vendor is a single source: \_\_\_\_\_

3. The contract is for the services of a licensed professional, education specialist, technician, or an artist —

State the type of service: Education Specialist: Software License

4. The contract is for the purchase of perishable items purchased on a weekly or more frequent basis —

State the item(s): NA

5. The contract is for proprietary item(s) for resale: This can include the buying or selling of item(s) by students when it is part of the educational experience —

State the type(s) of item(s): NA

6. The contract is for replacement parts when the need cannot be reasonably anticipated and stockpiling is not feasible —

State the item(s): NA

7. The contract or purchase is for expenditures made on authorized trips outside the boundaries of Jefferson County Public Schools —

State the location: NA

8. The contract is for a sale of supplies at reduced prices that will afford Jefferson County Public Schools a savings (Purchase must be approved by Director of Purchasing) —

Explain the logic: NA

9. The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids —

State the items: NA

**I have determined that, pursuant to K.R.S. 45A. 380, the above item(s) should be obtained by the Noncompetitive Negotiation Methods since competition is not feasible.**

Eva Stone

Print name of person making Determination

Manager District Health

School or Department

Eva Stone

Signature of person making Determination

9.18.20

Date

Frontline Technologies Group LLC dba Frontline Education

Name of Contractor (Contractor Signature Not Required)

Q-39920

Requisition Number

Explanation of Noncompetitive Negotiation Methods can be found under K.R.S. 45A.380 and on page 15 in the Procurement Regulations





**Exhibit A Frontline Customer Order Form**  
Q-39920

1400 Atwater Drive Malvern, PA 19355

09/17/2020

Customer:	Order Form Details:
Jefferson County Schools P.O. Box 34020 Louisville, Kentucky, 40232-4020 United States <b>Contact:</b> Eva Stone <b>Title:</b> District Health Manager <b>Phone:</b> 502-485-3387 <b>Email:</b> eva.stone@jefferson.kyschools.us	<b>Pricing Expiration:</b> 10/01/2020 <b>Quote Currency:</b> USD <b>Account Manager:</b> Brian Caldicott  <b>Startup Cost Billing Terms:</b> One-Time, Invoiced after signing <b>Subscription Billing Frequency:</b> Annual <b>Sale Type:</b> New <b>Initial Term:</b> 9/30/2020 – 9/29/2021

Pricing Overview	Amount
<b>One-Time Fees</b>	<b>\$10,625.00</b>
<b>Annual Recurring Fees</b>	<b>\$167,524.80</b>

One-Time Fees Itemized Description	Quantity	Amount (each)	Amount
Frontline Implementation	1	\$6,375.00	\$6,375.00
EHR & School Nursing Management Virtual End User Training	1	\$4,250.00	\$4,250.00

Annual Recurring Fees Itemized Description	Start Date	End Date	Amount
EHR & School Nursing Management Subscription, unlimited usage for internal employees	9/30/2020	9/29/2021	\$167,524.80



1400 Atwater Drive Malvern, PA 19355

09/17/2020

#### Additional Order Form Information

#### 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, Customer 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

#### Professional Services Information

Customer has one year from date of Customer's signature of this Order to utilize any Professional Services described in this Order. The Professional Services expire thereafter with no credit or refund due to Customer.



1400 Atwater Drive Malvern, PA 19355

09/17/2020

Invoicing Schedule	Due Date	Amount
<b>Invoice: One Time</b>	<b>Upon Signing</b>	<b>\$10,625.00 + applicable sales tax</b>
Frontline Implementation		\$6,375.00
EHR & School Nursing Management Virtual End User Training		\$4,250.00
<b>Invoice: Annual</b>	<b>10/30/2020</b>	<b>\$167,524.80 + applicable sales tax</b>
EHR & School Nursing Management Subscription, unlimited usage for internal employees		\$167,524.80



## MASTER SERVICES AGREEMENT

This Master Services Agreement is effective September 30, 2020 (the “**Effective Date**”), between Frontline Technologies Group LLC dba Frontline Education, a Delaware limited liability company (“**Frontline**”), and Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky (“**Client**”).

As used in this Master Services Agreement: (a) The term “**Order Form**” means a document agreed to and executed by each of Frontline and Client that references this Master Services Agreement and identifies certain software applications or certain services to be provided to Client; and (b) the term “**Statement of Work**” means a document agreed to and executed by each of Frontline and Client that references this Master Services Agreement and identifies certain services to be provided. All Order Forms and Statements of Work shall be deemed part of and subject to this Master Services Agreement. Any preprinted or other terms contained on Client’s purchase order or ordering documentation shall not apply to this Agreement and are specifically rejected by Frontline. The term “**Agreement**” means this Master Services Agreement, together with all Order Forms and Statements of Work.

Each party states that the individual signing this Agreement has the authority to bind it to this Agreement. To place orders subject to this Agreement, at least one Order Form 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 applications identified on the applicable Order Forms (collectively, “**Software**”) and the professional or other services identified on the applicable Order Forms or Statements of Work (collectively, “**Services**”), and any other software, products or services provided by Frontline pursuant to this Agreement. 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) regarding the Software and Services, and by entering into this Agreement the parties terminate all such agreements. In the event of a conflict between the provisions of the Terms and Conditions and the provisions of any Statement of Work, Order Form, or Order Form Terms and Conditions, the provisions of the Statement of Work, Order Form, or Order Form Terms and Conditions, as applicable, shall govern, but only with respect to the Software and Services stated in that particular Statement of Work, Order Form, or Order Form Terms and Conditions.

In consideration of the foregoing and the covenants the parties agree to the following:

### 1. **Software and Services**

1.1. **Software.** Subject to the terms and conditions of this Agreement, Frontline grants Client, during the Term, a non-exclusive, non-transferable right to access and use the Software (or license to install and use the Software), and the technical manuals, instructions, training materials, and other documentation that accompany the Software, as amended from time-to-time (collectively, the “**Documentation**”) solely for internal use by its then-current employees, contractors, agents, representatives, and where applicable, by any agency listed in the Order Form (each, an “**Agency**”) and its employees, contractors, agents, and representatives, and other end users authorized to use the Software on Client’s behalf (collectively, “**Authorized Users**”) in the ordinary course of Client’s, or such Agency’s, business. Frontline further grants Client the right, during the Term, to make a reasonable number of copies of any applicable Documentation solely for Client’s internal business purposes.





1.2. **Services.** Frontline agrees to use commercially reasonable effort to provide the Services in accordance with the applicable Order Forms or Statements of Work and any then-current Frontline policies.

1.3. **Restrictions.** Client shall not, directly or indirectly, and Client shall require all Authorized Users to not, (a) except as expressly allowed in this Agreement, transfer, assign, export, sublicense, distribute, or otherwise provide the Software or any work product, deliverables, or other materials provided by Frontline in connection with the Services or otherwise (collectively, “**Work Product**”), or its rights or licenses, to any other person, organization, or entity, including through rental, timesharing, service bureau, subscription, hosting, or outsourcing the Software; (b) copy, modify, or create any derivative version of the Software or Work Product; (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 suppliers’ proprietary rights; (d) de-compile, decrypt, reverse engineer, disassemble, or otherwise reduce to human-readable form the Software or Work Product; (e) use the Software, Work Product, or Documentation to create a competitive product; or (f) use the Software in a manner that circumvents or interferes with the operation of the technological measures that control access to the Software. Without limiting the foregoing, Client 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 Client. Frontline has the right (but not the obligation) to monitor Client’s and its Authorized Users’ use of the Software to confirm their compliance with the terms of this Agreement.

1.4. **Proprietary Rights.** All rights, title, and interest to the Software, Work Product, and Documentation are expressly reserved and retained by Frontline or its suppliers, including any service, program or other application that is designed to integrate and be used with the Software, whether or not owned by Frontline, and all improvements, modifications, derivative works, and intellectual property rights in any of the foregoing. Nothing in this Agreement conveys title to, or ownership of, the Software, Work Product, or Documentation to Client. Except for the rights and licenses expressly granted in this Agreement, Frontline grants no other rights or licenses, whether by implication, estoppel, or otherwise.

1.5. **Authorized Users.** The total number of Authorized Users is limited to the numerical or category limitations, if any, stated in the applicable Order Forms. Client agrees that, depending on the specific Software provided by Frontline to Client or the category of Authorized User, Authorized Users may have different access and usage rights to the Software. Client shall ensure that Authorized Users comply with the terms and conditions of this Agreement and any acts or omissions of such Authorized Users will be deemed acts or omissions of Client for which Client agrees to be responsible on a joint and several basis. Client is solely responsible for approving and provisioning any and all usernames and passwords assigned to or adopted by Client’s Authorized Users in connection with use of the Software. Client is solely responsible for all activities that occur as a result of the use of individual usernames and passwords. Client will notify Frontline promptly of any unauthorized use of usernames and passwords, or any other unauthorized access or use of the Software, Work Product, or Documentation, or any other breach of security known to Client. Client will not authorize, enable, or permit access to or use of the Software by any individual or entity (including other school districts) other than an Authorized User.

1.6. **Software Administrator; Maintenance Windows.** Unless expressly agreed otherwise by the



parties, at all times Client must have an employee who has obtained the Software administrator certification training from Frontline and who is certified by Frontline as a Software administrator, if applicable, or an employee who is sufficiently trained or experienced in the use of the Software to act as the software administrator (“**Software Administrator**”). If Client’s Software Administrator ceases to serve as such, Client shall promptly provide written notice to Frontline and have another employee obtain Frontline Software Administrator certification and be designated as a Software Administrator, at Client’s expense. Frontline shall provide Client with assistance regarding the use of the Software during Frontline’s normal business hours (Eastern Time), Monday through Friday. Such assistance shall be provided only to Client’s Software Administrator. Frontline may perform system maintenance or software updates periodically upon advanced notice to Client. However, due to exigent circumstances, Frontline may, at times, need to perform maintenance without the ability to provide advance notice.

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

1.8. **Client’s Statement Regarding Client Content.** Client states that it is the owner of the Client Content (including evaluation frameworks and rubrics uploaded into the Software and any other content or data made available to Frontline), or Client has notified and obtained informed consent from the owner of the Client Content and all other necessary persons (including parents, students, teachers, interns, aides, principals, other administrative personnel, and classroom visitors), for Client and Frontline to use the Client Content as contemplated under this Agreement, and has taken all other actions that may be necessary to ensure that Client’s and its Authorized Users’ use of the Software and Services, and any



related materials provided or produced in connection with such use, complies with all applicable laws and regulations as well as school and district policies.

1.9. **Integration.** Client may, at Client's direction and with or without Frontline's assistance, integrate or otherwise use the Software in connection with certain third-party courseware, training, services, software, 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. Client acknowledges and agrees that (a) Frontline is authorized to provide or permit access to the Client Content to the third party providers of such 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 Client Content provided in connection with such Third-party Materials, including a third-party's storage, use, or misuse of the Client Content; or (iii) Client's uninterrupted access to Third-party Materials. Client understands that the use of the Software may involve the transmission of the Client Content over the Internet and other networks, only part of which may be owned or operated by Frontline, and that Frontline takes no responsibility for Client Content that is lost, altered, intercepted, or stored without Client's authorization during the transmission of any Client Content across networks or parts of networks not owned or operated by Frontline. If Client engages Frontline to assist in Client's integration or use of the Software with Third-party Materials, Client authorizes Frontline to access and use such Third-party Materials in connection with such assistance and Client states that it has the rights necessary to grant such authorization. Client agrees to be bound by the terms, conditions, and restrictions of the applicable third-party agreements that govern the use of such Third-party Materials.

1.10. **Hosting.** Unless an Order Form explicitly provides that particular Software will be made available by Frontline for download and installation on Client's computers, the Software will be hosted by an authorized vendor or subcontractor (the "**Hosting Service Provider**") that has been engaged by Frontline and shall only be accessed by Client from its computers and devices via websites of Frontline. The Hosting Service Provider is an independent third party not controlled by Frontline.

1.11. **Client Responsibilities.** Client agrees that (a) Client shall have sole responsibility for administering access security to the Software for its Authorized Users; (b) Client shall review any output resulting from its use of the Software and confirm that such output is correct; and (c) if Client uses the Software for reimbursement or payment from Medicaid or other government agencies, Frontline shall have no responsibility, and Client shall have sole responsibility, to submit information and claims for such reimbursement or payment. Frontline does not warrant that the Software, or the results derived therefrom, will meet Client's requirements, or that the operation of the Software will be uninterrupted or error-free. Client is solely responsible for obtaining and maintaining, at its own expense, all hardware, software, and services needed to access and use the Software, including any and all servers, computers, and Internet access services. In connection with the performance of the Services, Client 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, and exercise its rights, under and in accordance with the terms and conditions of this Agreement.

1.12. **FERPA Designation.** *If an Order Form is for Software for which Frontline accesses, stores, or otherwise processes student PII or PHI, Client designates Frontline as a "School Official" with "Legitimate*





*Educational Interests” (as those terms are defined under the Family Educational Rights and Privacy Act of 1974 (“FERPA”)) in such PII and PHI for purposes of providing the Software to Client, and Frontline agrees to abide by the limitations and requirements imposed by FERPA on School Officials. Client acknowledges that: (i) the Software and Services are services or functions for which Client would otherwise use Client’s own employees; (ii) Frontline is under Client’s direct control with respect to Frontline’s access to and use of PII and PHI; and (iii) Frontline is subject to the requirements of 34 C.F.R. 99.33(a) with respect to Frontline’s access to and use of PII and PHI.*

**2. Invoicing and Payment.** All fees and charges will be stated in the applicable Order Forms and Statements of Work. If applicable, the Startup Cost stated on the Order Form will be invoiced to Client by Frontline upon execution of the applicable Order Form. Startup Costs are priced with the assumption that implementation of the Software will be completed within 120 days after signing. Frontline reserves the right to charge Client additional service fees for added project costs due to Client-caused delays occurring after the 120-day implementation period. The Annual Subscription stated on the Order Form will be invoiced to Client by Frontline based on the Subscription Start Date stated in the Order Form unless otherwise stated in the Order Form. If no Subscription Start Date is stated in the Order Form, the Subscription Start Date shall be defined as 30 days after Client’s signature of the applicable Order Form. Except as otherwise provided in the applicable Order Form, Frontline shall invoice Client in U.S. Dollars and Client shall pay all fees, charges, and expenses within 30 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. Unless the Order Form states otherwise, Frontline reserves the right to increase any of the fees for any Renewal Term by providing notice of such increase to Client at least 60 days prior to the start of such Renewal Term. All charges under this Agreement are exclusive of, and Client is solely responsible for, any applicable taxes, duties, fees, and other assessments of whatever nature imposed by governmental authorities, except for any tax based on Frontline’s income. Without limiting the foregoing, Client 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 Client 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. If the parties agree that Frontline’s personnel are to travel to Client’s facility or otherwise in connection with any of the Services, Client shall be responsible for the reasonable costs of transportation, lodging, meals and the like for Frontline’s personnel.

**3. Warranties and Disclaimers.**

**3.1. Mutual.** Each party states that such party’s execution, delivery, and performance of this Agreement (a) has 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. Client states on behalf of itself and all of its Authorized Users that it has the full legal right to provide the Client Content and that the Client Content will not (a) infringe, misappropriate, or violate any intellectual property, privacy, publicity, or personality rights of any person or entity including as a result of failure to obtain consent to provide Personal Data or other 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 and Services Warranties.** Frontline states 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 warranties will not apply to any non-conformance of the Software, Work Product, or Services due to (A) Client's failure to permit the installation or implementation of any update, upgrade, or release provided by Frontline, (B) Client's negligence, abuse, misapplication, or misuse of the Software (including Client's failure to operate the Software in accordance with Documentation), (C) Client's modification of the Software not approved in writing by Frontline, or (D) Client's use or operation of the Software with any technology (including any software, hardware, firmware, system, or network) not approved in writing by Frontline. In the event of any breach of the foregoing warranties, reported to and verified by Frontline, Frontline will use commercially reasonable efforts to correct such non-conformance. Client's sole remedy for Frontline's breach of any of the foregoing warranties is limited to the replacement, repair, or refund, at Frontline's option, of defective Software or Work Product or re-performance of the affected Services. Notwithstanding the foregoing, any Third-party Materials shall be subject only to the terms and any warranties provided by the applicable third party and not to any of the foregoing warranties.

**3.3. Disclaimers.** *Except as expressly provided in Section 3.3, to the maximum extent permitted by applicable law, Frontline and its suppliers expressly disclaim all warranties, whether express, implied, or statutory, as to any aspect of the Software, Work Product, Services, or other materials provided by Frontline, including warranties of merchantability and fitness for a particular purpose. Frontline and its suppliers do not warrant that the Software, Work Product, Services, or other materials provided by Frontline will be uninterrupted or error-free; nor does Frontline make any warranty as to the results that may be obtained from use of the Software, Work Product, Services, or other materials provided by Frontline.*

#### **4. Confidential Information; Privacy.**

**4.1 Confidential Information.** During the Term and for two 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 written information that is marked or otherwise indicated as confidential or proprietary, or, in the case of information that is disclosed orally or written information that is not so marked, by notifying the other party in writing of the proprietary and confidential nature of the information within 10 days after disclosure. Notwithstanding the foregoing, (a) Confidential Information of Frontline includes the Software, Documentation, Services, Work Product, and the terms of this Agreement; and (b) Confidential Information of Client includes Personal Data contained within any Client Content. Confidential Information does not include information which (a) was known to the receiving party free from any duty or obligation of confidentiality or generally in the public domain before disclosure; (b) becomes generally 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 use of or reference to Confidential Information. Aggregated data that does not contain Personal Data generated by Frontline or its suppliers in connection with Client's and its Authorized Users' use of the Software and Services will be the 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 receiving party 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 Data Security.** Frontline will utilize commercially reasonable administrative, technical, and physical measures designed to maintain the confidentiality and security of Personal Data submitted by Client into the Software or otherwise provided to Frontline. Client 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.

**4.3 California Consumer Privacy Act.** For Clients covered by the California Consumer Protection Act (CCPA), Client states that Frontline is a Service Provider to Client with respect to the Personal Information. Frontline shall not (a) Sell Personal Information or (b) retain, use, or disclose any Personal Information for any purpose other than for the specific purpose of providing the Software and Services, including retaining, using, or disclosing Personal Information for a Commercial Purpose. For the avoidance of doubt, the foregoing prohibits Frontline from retaining, using, or disclosing Personal Information outside of its direct business relationship with Client. Frontline certifies that it understands the obligations under this Section and will comply with them. Frontline may use aggregated, anonymized, or Deidentified Personal Information; provided, however, that such use shall be permitted only to the extent that any such data constitutes Aggregate Consumer Information or has been Deidentified and Frontline complies with all requirements applicable under the CCPA. For purposes of this Section only, the terms Aggregate Consumer Information, Commercial Purpose, Deidentified, Personal Information, Sell, and Service Provider shall have the meanings specified in the CCPA.

**5. Feedback.** If Client provides Frontline with any comments, bug reports, feedback, or suggestions related to the Software, Work Product, Services, or Documentation ("**Feedback**"), Client hereby assigns to Frontline all of Client's rights in such Feedback and agrees that Frontline shall have the right to use and fully exploit such Feedback and related information in any manner it deems appropriate.

**6. Indemnification.** To the maximum extent permitted by applicable law, Client shall indemnify Frontline and its officers, directors, employees, and agents and hold them harmless from all claims, liabilities, expenses, and losses (including attorneys' fees and expenses) arising from or related to any breach by Client of this Agreement, including failure to obtain consent to provide Personal Data.

**7. Limitations of Liability.** *Other than the fees, charges and expenses payable under this Agreement, to the maximum extent permitted by applicable law, in no event shall either party (and in the case of Frontline, its suppliers) be liable to the other party or any third party for indirect, incidental, special, consequential, or punitive damages, whether foreseeable or unforeseeable, 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 in this Agreement to the contrary, to the maximum extent permitted by applicable law, in no event shall Frontline's (or its suppliers') 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 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 under this Agreement reflect these disclaimers and limitations.*

## **8. Term and Termination.**

**8.1. Term.** The term of this Agreement will commence on the Effective Date and, unless earlier terminated in accordance with this Agreement, continue until such time that there are no valid Order Forms in effect (the "**Term**"). The initial term of each Order Form under this Agreement shall (a) begin on the Subscription Start Date listed in such Order Form and (b) continue for one year or such other period as provided in such Order Form (the "**Order Form Initial Term**") unless earlier terminated in accordance with this Agreement, and, to the extent permitted by applicable law, will automatically renew for successive one-year terms thereafter (each, a "**Renewal Term**"), subject to fee increases for Renewal Terms in accordance with Section 2 above, unless one party notifies the other party of non-renewal in writing at least 30 days prior to the end of the current Order Form Initial Term or Renewal Term.

**8.2. Termination.** Either party may terminate this Agreement in the event that the other party materially breaches this Agreement and does not cure such breach within 30 days after its receipt of written notice of such breach.

**8.3. Effects of Termination.** 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 Statement 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 rights and licenses granted to Client under Section 1.1 will terminate automatically and Client (a) shall immediately cease using the Software, Work Product, and Documentation; (b) shall immediately and permanently delete all components of the Software and Work Product (including, for clarity, all ancillary components such as an associated SQL database) from all computers and devices (including all laptops, notebooks, workstations, servers, memory, or storage devices, etc.) in Client's possession or under Client's control, such that the Software and Work Product will not be available to any person after the date of termination or expiration unless read-only access has been elected in Order Form; (c) shall, within three business days after receipt of Frontline's written request, cause an officer of Client to certify in writing that Client has complied with subsections (a) and (b) above and deliver such certification to Frontline; and (d) for a period of 30 days, may request a copy of the Client Content that is in Frontline's possession in the format retained by Frontline. After the 30-day period, Frontline may, unless legally prohibited, delete all of Client's data in its



systems or otherwise in its possession or control (except for such data that is contained in routine backups). The following provisions of this Agreement will survive expiration or termination: Sections 1.3, 1.4, 3.3, 4, 5, 6, 7, 8.3, and 10. Frontline may (without limitation of any other rights or remedies) suspend Client's and its Authorized Users' use of the Software in the event that (A) Client is delinquent in payment of any amount due to Frontline under this Agreement (and has not cured such delinquency within five days following written notice to Client), (B) Client 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 any of its clients' systems or data. Any such suspension will not constitute a termination of this Agreement.

**9. District Ordering.** Any other school district in the same state as Client ("**School District**") may also purchase from Frontline a license or subscription 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 Client under this Agreement (excluding Client's Order Forms and Statements of Work). Each School District will be separately liable for payment for such Software and Services and its compliance with this Agreement, and neither Client nor School District will be liable for the acts, omissions, or obligations of any other School District under this Agreement. 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 this Agreement. By so doing, the School District agrees to be bound by this Agreement and for purposes of its order is considered "Client" as that term is used in this Agreement. In the event that Client and Frontline amend this Agreement (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 this Agreement 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.

**10. General.**

**10.1. Independent Contractors.** Frontline and Client 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.

**10.2. Assignment.** Client 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.

**10.3. Force Majeure.** Notwithstanding anything to the contrary in this Agreement, except for Client'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, or act of any other person not under the control of such party.

**10.4. Injunctive Relief.** Client acknowledges and agrees that (a) a breach or threatened breach by Client



of any of its obligations under Section 1.1, Section 1.3, or Section 4.1 of this Agreement would give rise to irreparable harm to Frontline for which monetary damages would not be an adequate remedy, and (b) if a breach or a threatened breach of any such obligation occurs, Frontline will, in addition to any and all other rights and remedies available under law or equity, be entitled to equitable relief, including a temporary restraining order, an injunction, and any other relief that may be available from a court of competent jurisdiction, without any requirement to (i) post a bond or other security, or (ii) prove actual damages or that monetary damages will not afford an adequate remedy. Client agrees not to oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Section.

10.5. **Amendment.** 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.

10.6. **No Waiver.** 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.

10.7. **Severability.** If any provision of this Agreement is held invalid, illegal, or incapable of being enforced, by reason of any rule of law, administrative order, judicial decision, or public policy, all other conditions and provisions of this Agreement shall, nevertheless, remain in full force and effect, and no covenant or provision shall be deemed dependent upon any other covenant or provision unless so expressed herein.

10.8. **Exclusive Jurisdiction; Venue.** The parties understand and agree that the state and federal courts located in the State where the Client maintains its principal place of business shall have exclusive jurisdiction with regard to any litigation relating to this Agreement, and that venue shall be proper in such State and any federal court whose judicial district encompasses such State.

10.9. **Construction.** This Agreement does not confer any rights or remedies upon any person other than the parties, except Frontline's suppliers. When used herein, the words "includes" and "including" and their syntactical variations shall be deemed followed by the words "without limitation."

10.10. **Counterparts.** 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.

Each of the parties has caused its authorized representative to execute this Agreement as of the Effective Date.



<b>FRONTLINE TECHNOLOGIES GROUP LLC</b> dba Frontline Education	<b>JEFFERSON COUNTY BOARD OF EDUCATION</b>
Signature: <u></u>	Signature: _____
Name: <u>Gregory A. Doran</u>	Name: _____
Title: <u>CFO</u>	Title: _____
Address: 1400 Atwater Drive Malvern, PA 19355	Address: _____ _____
Email: <u>SalesContracts@FrontlineEd.com</u>	Email: _____
Date: <u>September 17, 2020</u>	Date: _____