

VENDOR CONTRACT
(Software and Services)

THIS VENDOR CONTRACT FOR SOFTWARE AND SERVICES ("this Contract") is made as of the date written below between FRONTLINE TECHNOLOGIES GROUP LLC d/b/a FRONTLINE EDUCATION (the "Vendor") on behalf of itself and its subsidiaries and affiliates including esped.com Incorporated, and the EL PASO INDEPENDENT SCHOOL DISTRICT (the "District"). For and in consideration of the mutual covenants herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. **Term.**

1.1 **Term.** The term of this Contract shall be for a period from August 1, 2024 through June 30, 2025, unless earlier terminated in accordance with this Contract.

1.2 **Non-Appropriation.** In the event that the Contract is awarded for a term greater than one year or extending beyond the District's current budget period, it will be subject to approval at the commencement of each of the District's budget years. Vendor agrees that the District has the continuing right to terminate this Contract without notice at the end of a District budget period in which funds for this Contract are not appropriated. In such event the Contract may be terminated as soon as practicable after the event of non-appropriation or upon 30-days' prior written notice whichever provides the longest notice.

2. **Cancellation/Termination.** This Contract may be terminated as follows: (a) by either party in the event of material breach of this Contract by the other party which continues more than thirty (30) days after written notice of default from the non-breaching party to the breaching party; or (b) by the District at its option: (i) if Vendor becomes insolvent, files or has filed against it a petition in bankruptcy, proposes or accomplishes any dissolution, liquidation, composition, financial reorganization or recapitalization with creditors; (ii) if a receiver, trustee, custodian, or similar agent is appointed or takes possession of any property or business of Vendor; (iii) if, at the expiration of each District budget period occurring during the term of this Contract, funds for this Contract are not appropriated as provided in Section 1.2 above; or (iv) with or without cause upon sixty days prior written notice from the District to Vendor. In the event of early termination of the Contract for any reason, the total compensation which may be claimed by Vendor under this Contract shall be limited [subject to other limitations in this Contract or applicable law] to the payment for the conforming Software and/or Services timely provided by the date of termination.

3. **Right to Assurance.** Whenever the District in good faith has reason to question the Vendor's intent to perform, the District may demand that the Vendor give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within ten (10) business days, the District may treat this failure as an anticipatory repudiation of the Contract.

4. **Remedies.** In the event of default of this Contract by Vendor, the District shall have all of, and may exercise one or more of, the following rights and remedies: (a) the right to recover damages; (b) the right to seek injunctive relief; (c) the right to seek declaratory relief; (d) the right to terminate this Contract as provided herein; and (e) any of its rights and remedies in law or equity. In no event shall District's action of terminating this Contract, whether for cause or otherwise, be deemed an election of District's remedies, nor shall such termination limit, in any way, at law or at equity, District's right to seek damages from or otherwise pursue Vendor for any default hereunder or other action.

5. **Force Majeure.** If by reason of Force Majeure (i.e. acts of God, strikes, lockouts, or other industrial disturbances, etc.), either party hereto shall be rendered unable, wholly or in part, to carry out its obligations under this Contract, then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the Party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the

continuance of the inability then claimed, except as hereafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

6. **Software and Services to Be Delivered.**

6.1 **Intentionally Deleted.**

6.2 **Delivery of Software and Services and Standard of Care.**

A. **Delivery.** Vendor agrees to provide the Software, as well as the Services, listed and described in Exhibit "A" (respectively, the "Software" and the "Services", and collectively, the "Software and Services").

B. **Standard of Care.** If the Services are performed by a non-professional Vendor, Vendor represents, covenants, and warrants that it will devote its good faith, best efforts in provision of the Services and will provide the Services with reasonable care and skill and in a good and workmanlike manner. If the Services are considered Professional Services, the Vendor further represents, covenants and warrants that it will provide the Services using the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in the same local. Services will be provided in a manner consistent with industry standards and will conform to the required specifications set out herein, and shall be delivered in compliance with all applicable laws, rules, regulations, procedures and consistent with industry standards.

6.3 **Warranties for Software and Services.**

A. **Intentionally Deleted.**

B. **Intentionally Deleted.**

C. **Safety Warranty and Provision of Material Safety Data Sheets.** The Software supplied to the District under this Contract shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act ("OSHA") of 1970. In the event the Software do not conform to OSHA standards, the District will be permitted to refuse or return the non-conforming Software for correction or replacement at the Vendor's expense. Where Software to be delivered under this Contract require the maintenance of Material Safety Data Sheets ("MSDS"), a copy of the relevant MSDS will be made available to the District's representative prior to delivery of the relevant Software.

6.4 **No Warranties by District.** No review, consent, or approval by the District of any documents prepared by Vendor shall constitute a representation or warranty by the District of the legality, suitability, or quality of the same or content thereof.

6.5 **Reservation of Rights.** The District reserves the right to use its own staff or any other third-party to provide the same or similar Software and/or Services to the Software and/or Services described herein.

7. **Tax Exemption.** The District is exempt from Federal Excise, State or City Sales Tax under State Law and such obligations are included in the price under this Contract. The District will furnish a tax exemption certificate, if required.

8. **Invoicing and Payment.** Compensation to Vendor is set forth on Exhibit "B", attached hereto and incorporated herein. Except as otherwise provided in Exhibit "B", Vendor shall invoice the District on or before the thirtieth (30th) day of each month, for the portions of the Software delivered and accepted and/or Services performed during the preceding month at rates set forth on Exhibit "B". Reimbursable Expenses are included in the hourly rate or not to exceed pricing for Services unless specifically excluded. If excluded, Reimbursable Expenses will be itemized separately and documented by receipts for invoicing purposes. Invoices for Software and/or Services shall not include Federal Excise, State or City Sales Tax for which an Independent School District is exempt under State Law. The District shall furnish a tax

exemption certificate, if required. The aggregate compensation from the District to Vendor for the Software and/or Services shall not exceed the maximum figures stated in Exhibit "B". Vendor shall not be entitled to receive payments or amounts under the Contract in excess of the amounts appropriated for the then-current budget period of the District. The District shall make payment to the Vendor for amounts determined to be properly due, not later than thirty (30) days after its receipt of the Vendor's invoice or as required by the Texas Prompt Payment Act (Chapter 2251 of the Texas Government Code) or its successor. The maximum interest rate on any past due payments by the District to Vendor shall be limited to the rate provided by Section 2251.025 of the Texas Government Code or its successor. The District shall not be required to make any payments to Vendor at any time Vendor is in default under this Contract.

9. **Confidential/Proprietary Information.**

9.1 **Confidential Information/Materials.** During the term of this Agreement, 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 Vendor shall include the Software, and (b) Confidential Information of the District shall include Personal Data regarding the District's users provided in connection with the Software and Services. Confidential Information does not include information which: (i) was known to the receiving Party or in the public domain before disclosure; (ii) 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; (iii) was received from a third party under no duty or obligation of confidentiality to the disclosing Party; or (iv) was independently developed by the receiving Party without reference to Confidential Information, or (v) with respect to Confidential Information of Vendor, information that is not protected from disclosure under the Texas Public Information Act. 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 Vendor. 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 (if permitted by law) 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. Vendor further agrees that, if it receives information or records concerning any student, it shall not disclose the same, except as permitted by the Family Educational Rights and Privacy Act a/k/a FERPA and, for records provided for the purpose of Medicaid billing and reimbursement, as permitted by the Health Insurance Portability and Accountability Act (HIPAA). Vendor further shall take all steps necessary to prevent disclosure of Confidential Information of the District by any other person or entity under its control, during the term of this Contract and at all times thereafter, without the prior written consent of the District.

9.2 **Intentionally Deleted.**

10. **Vendor Records and Retention.** On an annual basis and otherwise as agreed by the parties, the District or its authorized representative shall be afforded reasonable access to and be permitted to inspect and copy the Vendor's records relating to this Contract. Unless records are provided to the District, the Vendor shall preserve all such records for a period of six (6) years, after the District makes final payment and all other pending matters are closed, or for such longer period as may be required by law, after final payment under this Contract, including any extension thereof. To the extent that the requirements of 2 CFR § 200.333 apply to the Contract, financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award, must be retained for the Vendor for only the period required by 2 CFR § 200.333 and the six (6) year requirement of this provision shall apply to all

other documents. If no federal funds are expended by the District for the Contract, the six (6) year retention requirement provided herein will apply.

11. Intentionally Deleted.

12. Indemnification.

12.1 Intentionally Deleted.

12.2 Indemnification. Vendor shall **INDEMNIFY, DEFEND, AND HOLD HARMLESS** the District, its elected officials, employees, officers, and representatives harmless from and against any and all third-party liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) directly or indirectly arising from: (a) infringement of any patent, copyright or similar property right including, but not limited to, misappropriation of trade secrets and any infringement by Vendor and its employees and consultants, in connection with any license provided, any deliverable or any Service furnished hereunder, and used by either the District or Vendor within the scope of this Contract (unless said infringement results directly from Vendor's compliance with District's written standards or specifications); and/or (b) any failure to properly perform any of the Services, **EXCEPT** to the extent caused by the gross negligence or intentional misconduct of the District.

12.3 Intentionally Deleted.

12.4 Indemnity Survival. The provisions of this Section 12 are solely for the benefit of the parties hereto, and not intended to create or grant any rights, contractual or otherwise, to any other person or entity and the obligations herein shall survive the termination or expiration of this Contract.

13. Limitations of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER 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 OR SERVICES. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL VENDOR'S TOTAL LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER BASED ON INDEMNIFICATION, WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EXCEED THREE TIMES THE TOTAL AMOUNT OF COMPENSATION DUE IN EXHIBIT "B". IN NO EVENT SHALL THE DISTRICT'S TOTAL LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER BASED ON INDEMNIFICATION, WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EXCEED THE THREE TIMES THE COMPENSATION DUE IN EXHIBIT "B". 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.

13. Work On School District Campuses.

13.1 Notice Before Entry During School Hours and Decorum on District Campuses. Vendor acknowledges that the Work may be performed in connection with an educational facility that is currently occupied and in use. It is imperative that Vendor's deliveries and/or performance of services not interfere with, interrupt, disturb, or disrupt District's normal operations or facilities. During school hours, when entry is not made on an emergency basis, Vendor shall notify the District in advance and arrange an escort for Vendor's representative.

13.2 Compliance with Campus Rules. Vendor agrees to and shall comply with all rules, regulations and requirements of the District and the school campus on which work is to be performed, and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of District. Vendor recognizes that the ongoing school activities in proximity with its onsite activities shall result in

the need for prompt and effective coordination of its Services with those involved in the ongoing utilization of the premises. The Vendor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Vendor shall be responsible for the actions of its employees and its Vendors. The Vendor recognizes that the site is a public-school campus, and will prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the site and shall require adequate dress of the Vendor's forces consistent with the nature of the work being performed.

14. **Criminal Background Checks.** Vendor shall comply at its sole expense with the requirements of Section 22.0834 of the Texas Education Code, "Criminal History Record Information Review of Certain Contract Employees," any applicable rule(s) adopted by the Texas Commissioner of Education, District Board Policy CH (Legal) and (Local), and other policies and administrative requirements relating to or arising from such statute and rule(s); shall ensure that no covered employee of Vendor or of any subcontractor [if authorized] with a disqualifying criminal history performs services under the award at or for the District; and shall timely provide written certifications thereunder in such form and substance as requested by the District. Vendor understands that any failure to comply with the requirements of this section may be grounds for termination of its Contract with the District.

15. **Relationship.** **This Contract does not constitute a joint venture or partnership of any kind between the parties hereto. In addition, the parties expressly understand and agree that the provision of Software and/or Services are and shall be considered independent contractor work performed by Vendor, using Vendor's own talents, contacts, tools, vehicles, and equipment, and that nothing in this Contract in any way creates an express or implied contract of employment between the District and Vendor. Vendor is not and shall not be an employee of the District for any purpose. Vendor is exclusively responsible for all administrative matters relating to its status hereunder or the Software and/or Services, including without limitation, travel, lodging, and other expenses, any withholding and payment of all federal, state and local income taxes, FICA, FUTA, or other employment-related taxes, workers' compensation insurance, fringe benefit programs, or other benefits of any kind. Vendor represents that it is an independent contractor providing Software and/or Services for hire similar to the Software and/or Services to the general public, that it has full authority and capacity to enter into this Contract and provide the Software and/or Services, and that execution or performance of this Contract by Vendor shall not violate any other agreement or covenant or any law.**

16. **Federal Edgar Provisions.** Vendor acknowledges in the event federal funds are utilized to fund the Software and/or Services delivered under the Contract, Vendor will abide by all applicable federal laws, rules, and regulations, executive orders, and policies, procedures and directives applicable to the Contract, including but not limited to the following:

16.1 **Contractual Remedies.** Vendor agrees that it will comply with all administrative, contractual, legal remedies sanctions and penalties for violation or breach which are included in this Contract

16.2 **Wage and Hour Requirements.** To the extent that this Contract involves the employment of mechanics or laborers, Vendor agrees to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5), which requires Vendor to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. This provision will not apply to the District's purchases from Vendor of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

16.3 **Clean Air Act and EPA.** Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401 -7671q) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387) and agrees to promptly notify the District of any violation.

16.4 Debarment and Suspension. Vendor has certified that neither the Vendor nor its principals were listed on the government-wide exclusions in the System for Award Management ("SAM"), that neither the Vendor nor its principals are debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549 at the time this Contract was executed. Vendor further agrees on behalf of itself and its principals, to immediately provide written notification to the District if, at any time following execution of this Contract, Vendor or one of its principals learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, or if Vendor or one of its principals is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. Failure to notify the District of erroneous information within five (5) business days of change in circumstances shall be grounds for immediate termination, but termination of Vendor shall not be an election of remedy by the District.

16.5 Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352. Vendor confirms its certification to the District that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of Vendor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. Vendor further certifies that if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Vendor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Vendor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., providing administrative remedies for false statements, apply to this certification and disclosure, and that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Finally, Vendor agrees that it will require that the language of this certification be included in the award documents for all lower-tier contractors it hires, and that it will ensure that all subcontractors make the same certification in connection with work done under the Contract. The certification in this Section is a material representation of fact upon which the District has placed its reliance.

16.6 Compliance with Mandatory Provisions of State Energy Conservation Plan. Vendor shall comply with the all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201), if any.

16.7 Compliance with Solid Waste Disposal Act. If the District purchased the same item or items from the Vendor under this Contract, which were purchased by the District during the preceding fiscal year, and the prior purchase exceeded \$10,000, Vendor agrees that it will comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, where applicable, and that it will provide information and certifications required by the District confirming estimates and otherwise evidencing such compliance.

16.8 Equal Employment Opportunity Clause. Vendor represents, warrants and certifies that, during the performance of the Contract:

A. it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination;

B. it will, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin;

C. it will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Vendor's legal duty to furnish information;

D. it will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

E. it will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor;

F. it will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders;

G. in the event of Vendor's non-compliance with the nondiscrimination clauses of the Contract or with any of such rules, regulations, or orders, the Contract may be canceled, terminated or suspended in whole or in part and the Vendor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law; and

H. it will include the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Vendor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Vendor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of

such direction, the Vendor may request the United States to enter into such litigation to protect its interests.

16.9 Termination for Convenience. Notwithstanding any provision to the contrary contained in this Contract if federal funds are used to fund the purchase represented by this Contract, the District, reserves the right to terminate this Contract for convenience. In such event, the District agrees, that it will be responsible, all legitimate charges with respect to periods prior to the termination.

17. Miscellaneous.

17.1 Assignment/Delegation. Without the prior written consent of the other party or as expressly provided herein, no party shall have right or power to assign this Contract in whole or in part, or to delegate or sub-contract any duties hereunder in whole or part; provided, however, that consent to any subcontracting or delegation shall not be unreasonably withheld or delayed and no consent shall be required in the event of a sale of all or substantially all of Vendor's assets so long as written notice thereof is immediately given to the District upon such sale. Any attempted assignment or delegation by Vendor shall be wholly void and ineffective for all purposes unless made in the conformity with this paragraph.

17.2 Governing Law and Venue. **THIS CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND IS PERFORMABLE IN EL PASO COUNTY, TEXAS.**

17.3 No Waiver of Immunity. The District reserves, and does not waive, its rights of sovereign/governmental immunity and similar rights, immunities and rights of its officials and employees, under the Texas Tort Claims Act. Nothing herein shall be a consent to suit.

17.4 No Third-Party Beneficiaries. This Contract, and every provision thereof, shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. No term or provision of this Contract shall benefit or obligate any person or entity not a party to it. The parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release or other consideration under this Contract.

17.5 Context. Wherever the context shall require, the singular shall include the plural, and the male gender shall include the female gender and the neuter, and vice versa.

17.6 Intentionally Deleted.

17.7 Waiver. No waiver, change, modification or discharge by either party hereto of any provision of this Contract shall be deemed to have been made or shall be effective, unless expressed in writing and signed by the party to be charged. A waiver by either party of a breach of any of the terms, conditions, covenants or guarantees of this Contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this Contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

17.8 Severability. Any provision, or part thereof, of this Contract held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Contract and the effect thereof shall be confined to the provision, or part thereof, so held to be invalid or unenforceable.

17.9 Time of Essence. Time is of the essence with respect to Vendor's obligations hereunder.

17.10 Public Records. Records relating to this Contract may be subject to disclosure pursuant to the Texas Public Information Act f/k/a Open Records Act, Section 552.001 et. seq. of the Texas Government

Code. To the extent any of the Software and/or Services under this Contract involve the exchange or creation of Public Information as defined by such Act, the Vendor shall make any such information, not otherwise exempted from disclosure under such Act, available in writing and electronically in Microsoft Word, Microsoft Excel and or Adobe Acrobat.

17.11 Notices. All notices to a party under this Contract shall be provided by certified mail, return receipt requested, to the address set forth for the respective party beneath its signature block in this Contract, or such other address as later provided by a party through written notice to the other party.

17.12 Advertising. Neither party shall advertise or publish, without the other party's prior consent, the fact that the parties have entered into this Contract, except to the extent necessary to comply with open meetings provisions or with the Texas Public Information Act.

17.13 Right to Audit and Records Access. The District, or its authorized representative (including Texas Education Agency and the Comptroller General), shall be given reasonable access to records and rights to perform audits by The District's own personnel and/or an outside firm of consultants/auditors, in order to investigate the District's claims administration and Services, and evaluate the performance of the Vendor. The Vendor agrees to provide full cooperation during this process. Performance of these functions shall be conducted with proper notification per customary industry standards. Vendor agrees to maintain all required records seven (7) years after the District makes final payment and all other pending matters are closed.

17.14 Israel Certification. Pursuant to Texas Government Code Chapter 2271, if this Contract is valued at \$100,000 or more and if the Vendor has at least ten (10) full time employees, then the Vendor represents and warrants to the District that the Vendor does not boycott Israel and will not boycott Israel during the term of this Contract. Vendor means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. Vendor does not include a sole proprietorship.

17.15 Firearms Certification. Pursuant to Texas Government Code Chapter 2274, if this Contract is valued at \$100,000 or more and if the Vendor has at least ten (10) full time employees, then the Vendor represents, warrants and covenants to the District that the Vendor: (a) does not have any practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate against a firearm entity or firearm trade association during the term of this Contract. For purposes of this provision, the terms "firearm entity", "firearm trade association" and "discriminate against a firearm entity or a firearm trade association" shall have the same meaning as set forth in Government Code Section 2274.001 et. seq. Vendor means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. Vendor does not include a sole proprietorship.

17.16 Energy Company Certification. Pursuant to Texas Government Chapter 2274, if this Contract is valued at \$100,000 or more and if the Vendor has at least ten (10) full time employees, then the Vendor represents, warrants, and covenants to the District that the Vendor, within the meaning of Texas Government Code Section 809.001, (a) does not boycott energy companies; and (b) will not boycott energy companies during the term of this Contract.

17.17. Software. Subject to the terms and conditions set forth in this Contract (including any Exhibits hereto and/or Statement of Work), Vendor hereby grants District a non-exclusive, nontransferable license to use the software identified in this Contract ("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 end users in the ordinary course of District's business. Vendor shall provide any professional or other services set forth in an Order Form ("Services"). All rights, title and interest to the Software and any work product, deliverables or other materials provided by Vendor ("Work Product") are expressly reserved and retained by Vendor 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 Vendor, and all improvements, modifications and intellectual property rights therein. District shall not, and District shall require any end users to not (i) 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 District or for District); (ii) attempt to create any derivative version thereof; (iii) remove or modify any marking or notice on or displayed through the Software, Work Product or Documentation, including those related to Vendor's or its licensors' proprietary rights in and to the Software, Work Product or Documentation, as applicable; or (iv) de-compile, decrypt, reverse engineer, disassemble, or otherwise reduce same to human-readable form. Without limiting the foregoing, District may not sublicense, outsource or otherwise grant access to the Software to any third-party vendor without Vendor's prior written consent, including any third party host of the Software for District.

17.18 Software Warranties. Vendor 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. In the event of a nonconformance of the Software, Work Product or Services, reported to and verified by Vendor, Vendor will make commercially reasonable efforts to correct such non-conformance. District's sole remedy is limited to the replacement, repair, or refund, at Vendor's option, of defective Software or Work Product or reperformance of the Services. Notwithstanding the foregoing, any third-party materials shall be subject only to such third party terms and any warranties therein.

17.19 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, VENDOR 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.

17.20 Entire Contract/Modification. **THIS CONTRACT, INCLUDING ALL EXHIBITS AND ADDENDA, IS THE FINAL, COMPLETE, AND ENTIRE CONTRACT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER AND SUPERSEDES ALL PRIOR COMMUNICATIONS, ORAL OR WRITTEN, BETWEEN THE PARTIES RELATING TO MATTERS HEREIN. THIS CONTRACT MAY BE MODIFIED OR RESCINDED ONLY BY A WRITTEN INSTRUMENT SIGNED BY BOTH PARTIES TO THE CONTRACT BY AND THROUGH THEIR DULY AUTHORIZED AGENTS. Changes to this Contract may only be made by mutual written agreement of the parties, which must contain the authorized signature of the District's Superintendent or the President of the District's Board of Trustees. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term**

used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. In the event of any conflict between the General Terms and Conditions of the Contract attached to the solicitation document, the terms of this Contract shall control.

EXECUTED as of the ____ day of _____, 2024.

EL PASO INDEPENDENT SCHOOL
DISTRICT

By: _____
Diana I. Sayavedra, Superintendent

APPROVED AS TO FORM



By: _____
Jeanne Spence, General Counsel for District

ADDRESS FOR NOTICE:

El Paso Independent School District
Attn: Superintendent
6531 Boeing Drive
El Paso, Texas 79925

With Copy to:
General Counsel
El Paso Independent School District
6531 Boeing Drive
El Paso, Texas 79925

VENDOR: FRONTLINE TECHNOLOGIES
GROUP LLC d/b/a FRONTLINE
EDUCATION

By: _____
William O'Shea, Chief Financial Officer

ADDRESS FOR NOTICE

1400 Atwater Drive
Malvern, PA 19355

EXHIBIT “A”
Software and Services

Scope of Services:

Place(s) of Provision of Services: District-wide

Date(s)/Period of Provision of Services: August 1, 2024 through June 30, 2025

Description of Services:

Instructional Materials Management Subscription:

Vendor will provide District with an Instruction Materials Management Subscription, with unlimited usage for internal employees, to be used District-wide to inventory and track all textbooks. Vendor’s Instructional Materials Management license will provide tracking and management of print and digital instructional materials in a cloud-based system built specifically for District. The Instructional Material Management license will provide inventory needs to order, distribute, and audit textbook/materials.

Also included is annual Software Maintenance renewal Instructional Material Management for Software Upgrades and toll-free technical support for TIP Web-IM software, District-wide (District offices and all campuses).

In addition, Services include:

- Full comprehensive continuation of the licensing subscription.
- Remote tech support (including unlimited toll-free phone support).
- Tech support hours of 7:30 am CST-6:00 pm CST.
- All software hosting service/cloud hosting/redundant back-up of data.
- All software upgrades/updates and maintenance.

Frontline Data & Analytics, powered by Forecast5:

Vendor will also provide District with Frontline Data & Analytics, powered by Forecast5, which includes, but is not limited to, the following:

- **Budget Management Analytics Subscription - powered by Forecast5, usage for up to 5 employees**
 - Budget Management Analytics is an all-inclusive software for multi-year budgeting and projecting and has the ability to do monthly reporting and analyzing of your detailed financial activity throughout the current budget period. This program also helps upload detailed expenses and revenues for processing, analysis and reporting on a monthly and/or quarterly basis and project and analyze current year financial data based on monthly historical trends. In addition, this software provides key indicators for year-end budget variances of revenues, expenditures and fund balances.
- **Comparative Analytics Subscription – powered by Forecast5, usage for up to 5 employees**
 - Comparative Analytics is a software used to analyze local compensation/benefits trends. This program provides a view of revenue and expenditure trends by fund, function, and other detail levels. This software assists in identifying relative performance against benchmark peers and leverages prebuilt data sets and

analytics. In addition, it assists in evaluating staffing ratios and FTE trends by position against peers and comparing testing and achievement results by location.

- **Financial Planning Analytics Subscription - powered by Forecast5, usage for up to 5 employees**
 - The Financial Planning Analytics Premium Reports is a reporting package to automate the financial section of the budget book for a school district. This includes a HTML report for each school in the district including cost by function report by school, Student population statistics, student teacher ratios, staffing FTE's and Performance reporting. The report also includes an excel report linked to the Financial Planning Analytics service with 8 years of financial information meeting the Meritorious Budget requirements from ASBO INTL.
- **Comparative Analytics - powered by Forecast5 - 1 Additional User**
 - The additional Comparative Analytics User License provides access to an additional user.
- **Financial Planning Analytics – Premium Reports**
 - The Financial Planning Analytics Premium Reports is a reporting package to automate the financial section of the budget book for a school district. This includes a HTML report for each school in the district including cost by function report by school, Student population statistics, student teacher ratios, staffing FTE's and Performance reporting. The report also includes an excel report linked to the Financial Planning Analytics service with 8 years of financial information meeting the Meritorious Budget requirements from ASBO INTL.

Deliverables:

Report or Other Deliverable	Expected Delivery Date
Instructional Materials Management:	
Technical Support	As needed during Fiscal Year
Webcast Refresher Training	As needed during Fiscal Year

EXHIBIT "B"
Compensation

Compensation [mark/complete one or more as applicable]:

N/A \$_____ (Lump Sum/Fixed Price)

N/A Payable at completion.

N/A Quarterly Payments of \$_____ beginning _____.

N/A Payable as follows:

\$_____ on _____

\$_____ on _____

\$_____ on _____

N/A \$_____ per _____, (with a not to exceed cap of \$_____)

N/A \$_____ per hour, (with not to exceed cap of \$_____, based on rates below)
payable monthly based upon hours and types of Services provided and documented in invoice.

X Other [please explain]: District will pay \$54,307.67 for Instructional Materials Management Subscription with unlimited usage for internal employees within 30 days after receipt of invoice. District will also pay \$54,894.90 for Frontline Data & Analytics, powered by Forecast5 within 30 days after receipt of invoice. The amounts paid for the Software and Services provided by Vendor to District include the following:

Description	Amount
Instructional Materials Management Subscription, unlimited usage for internal employees	\$54,307.67
Budget Management Analytics Subscription - powered by Forecast5, usage for up to 5 employees	\$12,422.74
Comparative Analytics Subscription – powered by Forecast5, usage for up to 5 employees	\$16,563.64
Financial Planning Analytics Subscription - powered by Forecast5, usage for up to 5 employees	\$16,846.51
Comparative Analytics - powered by Forecast5 - 1 Additional User	\$780.67
Financial Planning Analytics – Premium Reports	\$8,281.34

Expenses: [Description]: _____ N/A

Total Compensation for Services Permitted under this Contract: \$109,202.57.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE EFFECTIVENESS OF THIS CONTRACT IS CONDITIONED UPON THE COMPENSATION FOR THE INITIAL

TERM BEING PROPERLY AND FULLY BUDGETED BY THE DISTRICT BOARD OF TRUSTEES IN THE 2024-2025 FISCAL YEAR BUDGET, WITH APPROVAL BY THE DISTRICT BOARD OF TRUSTEES AS APPLICABLE. FAILURE OF THIS CONDITION PRECEDENT TO BE MET, THIS CONTRACT IS VOID.

ADDITIONALLY, FOR THE TERM OF THIS CONTRACT, THIS CONTRACT IS CONTINGENT UPON ITS UNDERLYING PROCUREMENTS (EDUCATION SERVICE CENTER REGION 19 ALLIED STATES COOPERATIVE RFP #24-7490) BEING VALID FOR THE ENTIRE CONTRACT AND HAVING THE BENEFIT OF BETTER PRICING AS AVAILABLE DURING THE CONTRACT TERM.