

Board Office Use: <b>Legislative File Info.</b>	
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Enactment Number	
Enactment Date	



# Memo

**To** Board of Education

**From** Devin Dillon, PhD., Interim Superintendent  
Tara Gard, Interim Deputy Chief Talent Officer

**Board Meeting Date**

**Subject** **Ratification of ASP Services Agreement**

**Action Requested** Ratification by the Board of Education of an Application Service Provider (ASP) Services Agreement between the District and Frontline eSolutions, LLC, dba, uConfirm, Woodstock, GA, for the latter to facilitate the exchange of employment and salary data (with respect to current and former employees) to third party verifiers, including, but not limited to, lenders, background check firms, property managers, prospective employers, and social service agencies, for the period January 18, 2017, through January 17, 2020, at no cost to the District.

**Background**  
*A one paragraph explanation of the the MOU.*

The frequent need for income and employment verifications has strained the Talent Division staff’s ability to provide timely follow up to its clients; therefore, we are engaging this vendor to provide these services, at no cost to the District.

**Discussion**  
*One paragraph summary of the MOU.*

To facilitate the exchange of employment and salary data (with respect to current and former employees) to third party verifiers, including, but not limited to, lenders, background check firms, property managers, prospective employers, and social service agencies.

**Recommendation**

Ratification by the Board of Education of an Application Service Provider (ASP) Services Agreement between the District and Frontline eSolutions, LLC, dba, uConfirm, Woodstock, GA, for the latter to facilitate the exchange of employment and salary data (with respect to current and former employees) to third party verifiers, including, but not limited to, lenders, background check firms, property managers, prospective employers, and social service agencies, for the period January 18, 2017, through January 17, 2020, at no cost to the District.

**Fiscal Impact** None

**Attachments**

- ASP Services Agreement



## CONTRACT JUSTIFICATION FORM

**This Form Shall Be Submitted to the Board Office  
With *Every* Consent Agenda Contract.**

**Legislative File ID No.** 17-0156

**Department:** Talent Division

**Vendor Name:** Frontline eSolutions LLC, DBA uConfirm

**Contract Term:** Start Date: 1/18/2017 End Date: 06/30/2020

**Annual Cost:** \$ 0.00

**Approved by:** Tara Gard

**Is Vendor a local Oakland business?** Yes  No

**Why was this Vendor selected?**

Because of the inordinate amount of time being spent by staff to verify employment and salary information.

**Summarize the services this Vendor will be providing.**

Facilitate the exchange of employment and salary data (with respect to current and former employees) to third party verifiers, including, but not limited to, lenders, background check firms, property managers, prospective employers, and social service agencies.

**Was this contract competitively bid?** Yes  No

If No, answer the following:

1) How did you determine the price is competitive?

This is at no cost to the District

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$87,800 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts [requires Board resolution declaring an emergency]
- Technology** contracts
  - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$87,800 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
  - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
  - Western States Contracting Alliance Contracts (WSCA)
  - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**



**FRONTLINE ESOLUTIONS, LLC  
D/B/A UCONFIRM®  
ASP SERVICES AGREEMENT**

Client Name:	<u>Oakland Unified School District</u>	Effective Date:	<u>TBD</u>
Address:	<u>1000 Broadway Suite 680</u>	# of Employees:	<u>6,000</u>
	<u>Oakland, CA 94607</u>		

This ASP SERVICES AGREEMENT (the "Agreement"), by and between Frontline eSolutions, LLC, d/b/a uConfirm ("uConfirm"), a Georgia corporation and Oakland Unified School District (Client"), a California school district is entered into as of the above referenced date (the "Effective Date"). uConfirm and the Client agree as follows:

**1. ASP SERVICES**

uConfirm provides an online application service provider software system (the "uConfirm System") that facilitates the exchange of employment and salary verification information between employers and third party verifiers (the "ASP Services"). By entering into this Agreement, Client subscribes to the ASP Services in consideration of the fees set forth in Section 4.0 of this Agreement. Client authorizes uConfirm to transmit, in the uConfirm online format, the employment and salary data (the "Data") provided by Client with respect to its current and former employees to third party verifiers, including but not limited to lenders, background check firms, property managers, prospective employers and social service agencies. Client agrees to make reasonable efforts to refer all third party verifiers to uConfirm's ASP Services.

**2. GRANT OF RIGHTS**

2.1 Customer Rights. uConfirm grants to Client, and Client accepts, a non-assignable, nontransferable, and nonexclusive limited right to use the ASP Services solely for Client's internal use during the Term, subject to the provisions of this Agreement.

2.2 Installation. uConfirm has no responsibility for providing Client with any computer hardware or other equipment.

2.3 Reservation of Rights. Unauthorized use, resale or commercial exploitation of the ASP Services is expressly prohibited. Client shall not make the ASP Services available to any third party, except with the express written consent of uConfirm, nor create internet "links" to the ASP Services or "frame" or "mirror" any uConfirm content contained in or accessible from, the ASP Services on any other server, wireless or Internet-based device. uConfirm reserves the right, in its sole discretion and with prior notice to Client, to modify, discontinue, add, adapt, or otherwise change any design or specification of the uConfirm System, the ASP Services and/or uConfirm's policies, procedures, and requirements specified in or related hereto.

**3. TERM AND TERMINATION**

The initial term of this Agreement will be for three (3) years from the Effective Date above. Thereafter, this Agreement will automatically renew for successive one (1) year terms unless either party gives the other not less than ninety (90) days written notice of its intent not to renew.

Either party may terminate this Agreement for any reason or for no cause upon ninety (90) days written notice to the other party. However, if the Agreement is terminated for cause, the terminating party will give the other party at least thirty (30) days written notice of and the opportunity to cure the breach. A non-breaching party may terminate this Agreement immediately in the event of a breach of Sections 6.0 or 9.0 hereof.

**4. TRANSACTION FEES**

The Client agrees to the following fees for the ASP Services:

- |  |  |
|--|--|
| A. Per transaction fee paid by Client:                   | No fee (see Attachment A)                            |
| B. Per transaction fee paid by employees:                | No fee   |
| C. Per transaction fee paid by social service agencies:  | No fee   |
| D. Per transaction fee paid by commercial verifier:      | \$21.95* *   |
| E. Ongoing quarterly transaction revenue paid to Client: | 10% of Client's commercial transaction revenue (A)** |

\*The current verifier fee is subject to change during contract term (advanced notice of any change will be provided in writing to Client).

\*\*uConfirm will pay Client's commercial transaction revenue (B) within 30 days after the close of each calendar quarter.

## 5. WARRANTY

CLIENT ACKNOWLEDGES AND AGREES THAT THE ASP SERVICES ARE PROVIDED "AS IS;" UCONFIRM MAKES NO (AND HEREBY DISCLAIMS ALL) WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND WHATSOEVER, WHETHER WRITTEN OR ORAL, OR EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE ASP SERVICES OR ANY OTHER PRODUCTS OR SERVICES PROVIDED BY UCONFIRM, OR THEIR QUALITY OR RELIABILITY, OR OTHERWISE ARISING UNDER THIS ASP AGREEMENT.

## 6. OWNERSHIP AND CONFIDENTIALITY

6.1 Ownership. uConfirm owns and shall retain all right, title and interest in and to the uConfirm System and ASP Services. Client owns and shall retain all right, title and interest in and to the Data. Nothing in this Agreement shall be deemed to transfer, nor is it intended to transfer, any proprietary right, including but not limited to, any intellectual property right, of the owner in any of its property to the other party hereto or to any third party. This Section shall survive termination of this Agreement.

6.2 Nondisclosure. Client acknowledges that the uConfirm System and ASP Services represents confidential information of uConfirm and the source code to the uConfirm System underlying the ASP Services is a trade secret owned by uConfirm. uConfirm acknowledges that the Data represents confidential information and/or trade secrets of Client. Each party agrees with the other: (i) to hold the confidential information and trade secrets (collectively, "Proprietary Information") of the other in the strictest confidence, (ii) not to, directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed, or otherwise transfer the Proprietary Information to any third party, other than Third Party Verifiers as expressly agreed herein, subject to the provisions of subsection (iv) below, (iii) not to make use of the Proprietary Information other than for the permitted purposes under of this Agreement, and (iv) to disclose the Proprietary Information only to their respective representatives requiring such material for effective performance of this Agreement and who have undertaken an obligation of confidentiality and limitation of use consistent with this Agreement. Each party hereto shall institute internal operating procedures to assure limited access and use of Proprietary Information consistent with this Agreement, and shall exercise due care to monitor and ensure compliance with this Agreement. The restrictions set forth herein shall continue (i) with respect to trade secrets and any confidential information which rises to the level of a trade secret, for as long as such information continues to be a trade secret under applicable law, and (ii) with respect to confidential information, for a period of three years from the termination of this Agreement.

6.3 Disclaimer. CLIENT ACKNOWLEDGES THAT UCONFIRM TAKES REASONABLE COMMERCIAL EFFORTS TO MAINTAIN THE CONFIDENTIALITY AND SECURITY OF THE ASP SERVICES AND CLIENT'S DATA AND THAT, EXCEPT IN THE EVENT OF UCONFIRM'S OWN NEGLIGENCE AND/OR ANY DEFECT/FAILURE IN THE UCONFIRM SYSTEMS AND/OR ASP SERVICES, UCONFIRM SHALL NOT BE DEEMED IN BREACH OF THIS SECTION 6 NOR BE LIABLE TO CLIENT UNDER SECTION 9 OF THIS AGREEMENT FOR ANY BREACH OF SECURITY OR UNAUTHORIZED ACCESS BY THIRD PARTIES TO THE ASP SERVICES AND/OR CLIENT DATA.

## 7. DATA QUALITY AND PROVISION

uConfirm's ability to provide accurate Data to Third Party Verifiers is dependent upon the accuracy of the Data provided to uConfirm by Client. Therefore, Client represents and warrants that it shall provide current, complete and accurate Data as necessary for uConfirm to provide the ASP Services. Client shall use commercially reasonable efforts to provide the Data to uConfirm in the uConfirm format and correct any corrupted data files provided to uConfirm within 24 hours after uConfirm notifies Client of corrupted file. Client shall notify uConfirm of any problems in providing requested Data in a timely manner. Both parties shall cooperate to identify and resolve Data or procedural errors as soon as possible. The Client acknowledges that uConfirm transmits the Data provided by Client, as is, to the Third Party Verifier requesting such Data in the uConfirm online format and shall have no responsibility to, nor shall it, review, change, modify, amend, verify or alter the Data received from Client before transmitting it to the Third Party Verifier.

## 8. DATA PROTECTION

8.1 "Personal Data" includes any information relating to an identified or identifiable natural person; "Client Personal Data" includes any Personal Data obtained by uConfirm from Client; and "Processing" includes any operation or set of operations performed upon Personal Data, such as collection, recording, organization, storage, adaption or alteration, retrieval, accessing, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

8.2 uConfirm, including its officers, directors, employees and/or agents, shall view and Process Client Personal Data only on a need-to-know basis and only to the extent necessary to provide the services specified in the Agreement, and shall not use any Client Personal Data to populate any databases except to the extent necessary to provide the services specified in the Agreement.

8.3 uConfirm shall use reasonable technical and organizational measures to ensure the security and confidentiality of Client Personal Data in order to prevent, among other things, accidental, unauthorized or unlawful destruction, modification, disclosure, access or loss. uConfirm shall immediately inform Client of any Security Breach involving Client Personal Data, where "Security Breach" means any event involving an actual, potential or threatened compromise of the security, confidentiality or integrity of the data, including but not limited to any unauthorized access or use. uConfirm shall also provide Client with a detailed description of the Security Breach, the type of data that was the subject of the Security Breach, the identify of each affected person and any other information Client may request concerning such affected persons and the details of the breach, as soon as such information can be collected or otherwise becomes available. uConfirm agrees to take action immediately, at its own expense, to investigate the Security Breach and to identify, prevent and mitigate the effects of

any such Security Breach and to carry out any recovery necessary to remedy the impact. Client must first approve the content and any filings, communications, notices, press releases or reports related to any Security Breach ("Notices") prior to any publications or communication thereof to any third party.

8.4 Upon termination of this Agreement, for whatever reason, uConfirm shall stop the Processing of Client Personal Data, unless instructed otherwise by Client, and these undertakings shall remain in force until such time as uConfirm no longer possesses Client Personal Data.

#### **9. INDEMNIFICATION AND LIMITATION OF LIABILITY**

uConfirm and Client each agrees to indemnify, defend and hold harmless the other party and its affiliates, and their directors, officers and employees (each, an "Indemnified Party"), from and against any and all third party claims, demands, liabilities, suits, damages, expenses and costs, including reasonable attorneys' fees, incurred by the Indemnified Party arising out of or related to in whole or in part, to the indemnifying party's, or its affiliates', or its directors', officers' or employees' (i) breach of this Agreement, and/or (ii) grossly negligent or intentional wrongful acts or omissions.

Client further agrees to indemnify, defend and hold harmless uConfirm, its affiliates and their directors, officers and employees from and against any and all third party claims, demands, liabilities, suits, damages, expenses and costs, including reasonable attorneys' fees, incurred by them arising out of or related to, in whole or in part, to (a) provision of Data by uConfirm to any Third Party Verifier or (b) inaccurate, incomplete or outdated Data provided by Client hereunder.

EXCEPT IN CONNECTION WITH THE INDEMNIFICATION STATED ABOVE, IN NO EVENT SHALL DAMAGES BY EITHER PARTY HEREUNDER EXCEED THE GREATER OF (A) THE TOTAL FEES EARNED BY UCONFIRM DURING THE TWELVE MONTHS PRIOR TO THE ACT OR OCCURRENCE WHICH GIVES RISE TO THE CLAIM, OR (B) THE SUM OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000).

EXCEPT IN CONNECTION WITH THE INDEMNIFICATION ABOVE, IN NO EVENT SHALL EITHER PARTY, OR ITS AFFILIATES, THEIR DIRECTORS, OFFICERS OR EMPLOYEES, BE LIABLE FOR LOSS OF PROFITS OR FOR INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THE PERFORMANCE OF THIS AGREEMENT, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### **10. USE OF NAME LOGO**

As an option, the Client may request uConfirm to include the Client's logo on all verification reports provided to verifiers. Any other use of the Client's logo requires the Client's prior written approval. uConfirm may use Client's name in routine communications to third parties in order to inform said third parties of the use of its ASP Services by Client.

#### **11. FORCE MAJEURE**

Neither party shall be liable for failure to perform or delay in performing all or any part of its obligations under this Agreement to the extent that it is unable to perform which failure is due, directly or indirectly, to any cause or circumstance beyond the reasonable control of such party including, without limitation, acts of God, fire, flood, storms, earthquake, strike or other labor dispute. The party affected by an event of Force Majeure shall promptly notify the other party in writing. The party so affected shall take reasonable steps to resume performance with the least possible delay.

#### **12. ASSIGNMENT/MODIFICATION**

Neither party will assign this Agreement, in whole or in part, without the prior written consent of the other party, and such consent will not be unreasonably withheld. In the event assignment is necessitated by business reorganization, either party may assign this Agreement, provided that they provide the other party with written notice. This Agreement will inure to the benefit of, and be binding upon the parties hereto, together with their respective legal representatives, successors, and assigns, as permitted herein.

#### **13. ARBITRATION**

Any dispute arising under this Agreement will be subject to binding arbitration by a single Arbitrator with the American Arbitration Association (AAA), in accordance with its relevant industry rules, if any. The parties agree that this Agreement will be governed by and construed and interpreted in accordance with the laws of the State of California. The Arbitrator will have the authority to grant injunctive relief and specific performance to enforce the terms of this Agreement. Judgment on any award rendered by the Arbitrator may be entered in any Court of competent jurisdiction.

#### **14. SEVERABILITY**

If any term of this Agreement is found to be unenforceable or contrary to law, the remaining portions of this Agreement will remain in full force and effect.

**15. AGREEMENT ENTIRETY**

This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter. Both parties acknowledge that they have not been induced to enter into this Agreement by any representations or promises not specifically stated herein.

**16. FAIR CREDIT REPORTING ACT**

uConfirm will maintain adherence with the Fair Credit Reporting Act (FCRA) in providing the ASP Services with respect to the privacy and maintaining the accuracy of the data supplied by the service. The Client grants uConfirm the authority to fulfill these responsibilities, agrees to provide accurate information, correct and update inaccurate information and reinvestigate consumer complaints and acknowledges receipt of NOTICE TO FURNISHERS OF INFORMATION: OBLIGATIONS OF FURNISHERS UNDER THE FCRA (attached hereto).

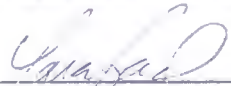
**17. REIMBURSEMENT OF TRANSACTION FEES**


uConfirm charges commercial verifiers a transaction fee to complete verifications as referenced in Section 4. In the unlikely event that a Client's current or former employee contacts uConfirm and advises that they have been charged by a verifier for the uConfirm process, uConfirm will take steps to reimburse the employee within 24 hours of the notification of the charge in an amount equal to the charge assessed the employee, provided the employee can provide uConfirm documentation or other evidence of the verifier charge and the charge to the employee by the verifier occurred within 90 days of the notification to uConfirm. The amount of the reimbursement to the employee by uConfirm will not exceed the amount of the original uConfirm transaction charge to the verifier.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives.


Client: Oakland Unified School District

Frontline eSolutions, LLC

By:   
Name: Tara Gard  
Title: Interim Deputy Chief Talent Officer  
Date: 01/18/2017

By:   
Name: Stacy Silber  
Title: Director, New Business Development  
Date: 1-9-17

Frontline eSolutions, LLC  
d/b/a uConfirm  
125 Mirramont Lake Drive  
Woodstock, GA 30189  
Phone: 866.312.8266  
Fax: 866.607.9920

**OAKLAND UNIFIED SCHOOL DISTRICT**  
Office of General Counsel  
**APPROVED FOR FORM & SUBSTANCE**  
By:   
**Attorney at Law**