

WAKE COUNTY PUBLIC SCHOOL SYSTEM
Contract Routing Form

Person to Call for Pick up: Marsha Host-Brown

Phone: 919-854-1734

Subject of Contract: Contract with Public Consulting Group, Inc.

Board Action: required

if required committee _____ Date: _____

Board Meeting Date: June 19, 2012

History of Contract: On March 31, 2010, WCPSS entered into a 27 month contract with PCG to address an electronic format to develop, enter, and monitor IEP, PEP, LEP plans, 504, and SST. Costs for FY 2011-2012 not to exceed \$1,090,000.00. This contract reflects pricing for hosted student plans and documents (currently 86,118 plans and 396,118 documents), serving 62,076 unique students. Specific activities and development are listed in attachment A. WCPSS has negotiated a contract to reflect two years of pricing. Contract year 2012-2013 is not to exceed \$965,000.00. Contract year 2013-2014 is not to exceed \$885.00.00.

Items of Special Note: _____

PLEASE INITIAL AND DATE THIS FORM AFTER YOU HAVE REVIEWED AND APPROVED THE ATTACHED CONTRACT:

	<u>Initial</u>	<u>Date</u>
Administrator	<u>KWB</u>	<u>5/14/12</u> ^{with 5/15/12}
Leadership Team Supervisor	<u>[Signature]</u>	<u>5/17/2012</u>
Chief Officer, Deputy or Area Superintendent	_____	_____
Risk Management	<u>CMG</u>	<u>5/21/12</u>
Accounting, Certification of Funds	* _____	_____
Finance Officer* (signature required)	<u>[Signature]</u>	<u>5/21/12</u>
Chief Business Officer	<u>ON</u>	<u>5/21/12</u>
School Board Attorney (as required)	_____	_____

Budget Code: 08.5210.306.311.0136.0815.000 \$325,000.00

Budget Code: 01.5330.069.311.0154.0820.000 \$115,000.00

Budget Code: 08.6110.305.311.0349.0820.000 \$525,000.00

Comments:

* Purchase order will be requested July 1, 2012. Funding for each component is assigned to the related department.

Entered on System _____ Initial _____

Form 1950 (2006)

"This instrument has been pre-audited in the manner required by the School Budget and Fiscal Control Act." G.S. 115C-441(a).

Handwritten: KH 5/18/12

Stamp: WAKE COUNTY PUBLIC SCHOOLS

Stamp: MAY 22 2012

**Contract for Services
Public Consulting Group, Inc.
Longitudinal Electronic Data Management System
Wake County Public School System**

This LICENSE AGREEMENT, including the Attachments **A, B, and C** (collectively this “**Agreement**”) is entered into as of the 1st day of July, 2012 (“the Effective Date”) by and between **Public Consulting Group, Inc.** (hereinafter “**PCG**”), **440 South Church St., Suite 850, Charlotte, North Carolina 28202** and the **Wake County Public School System** (hereinafter “**WCPSS**”), a North Carolina school system.

WHEREAS, **PCG** desires to provide an Internet-based, **PCG**-owned Longitudinal Electronic Data Management System (hereinafter “**PCG EASI**”) for administrators, teachers, and clinicians to assist with the reporting requirements established pursuant to the Individuals with Disabilities Act of 1997 (PL 105-17) (“**IDEA**”), as well as compliance with North Carolina state laws and regulations for Individualized Education Plans, Personalized Education Plans, Limited English Proficiency Plans, 504 Plans, and Rt/IA Plans. **PCG** desires to grant to **WCPSS** a license to access its related proprietary systems;

WHEREAS, **WCPSS** desires to provide components of the **PCG EASI** to its school and administrative employees, contractors, and authorized users for their use in preparing Individualized Educational Plans (IEP), Personalized Education Plans (PEP), Limited English Proficiency Plans (LEP), Section 504 Plans, and Response to Intervention/Intervention Alignment Plans (RtI/IA) as required under North Carolina state and federal laws and regulations.

NOW, THEREFORE, for and in consideration of the mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS.** In addition to the terms defined elsewhere in this Agreement, terms appearing in initial capital letters shall have the following meanings:
 - 1.1. “**Annual Fee**” means the renewable license fee that is to be paid by **WCPSS** to **PCG** pursuant to Attachment B.
 - 1.2. “**Confidential Information**” means information designated or treated as confidential by either party, or which under the circumstances surrounding disclosure should in good faith be treated as confidential, including, without limitation, (a) computer programs, electronic codes, algorithms, know-how, formulas, processes, ideas, data, inventions (whether or not patentable or registerable under patent, copyright or similar statutes), schematics, teaching and development techniques, trade secrets, improvements, research projects or code, (b) information about costs, profits, markets, sales, and lists of customers or clients, (c) technical, business, financial and product development plans, forecasts, marketing or strategic plans, (d) employee personnel files and compensation information; and (e) discoveries, developments, designs, improvements, in each

case, regardless of the form of communication, including extracts or summaries. “Confidential Information” also specifically includes the PCG EASI and any third party information disclosed to either party under obligations of confidentiality, and the identity of or any medical, financial or personal information pertaining to anyone within the organization. Notwithstanding the foregoing, however, “Confidential Information” does not include information that (i) was rightfully in possession or known to the receiving party without any obligation of confidentiality prior to receiving it from the disclosing party; (ii) is, or subsequently becomes, legally and publically available without breach of this Agreement; (iii) is rightfully obtained by the receiving party from a source other than the disclosing party without any obligation of confidentiality; or (iv) is disclosed by the receiving party under a valid order of a court or government agency, provided that the receiving party provides prior written notice to the disclosing party of such obligation and the opportunity to oppose such disclosure.

- 1.3. **“Documentation”** means all available technical information, training materials and those instructions in printed or electronic media, manuals and diagrams pertaining to the Service.
- 1.4. **“PCG EASI”** is an acronym for Public Consulting Group Longitudinal Electronic Data Management System and includes (i) all the Internet-based services identified in **Attachment B** attached to this Agreement, (ii) all New Releases, Updates, and Upgrades applicable to the foregoing and generally released by **PCG** and (iii) the Documentation developed by **PCG** for distribution and use in combination with the foregoing. The PCG EASI includes trademarked services, including, but limited to, all versions and releases of EasyIEP™, EasyPEP™, and EdPlan™.
- 1.5. **“EasyIEP™”** means (i) the Internet-based services identified in **Attachment B** attached to this Agreement, (ii) all New Releases, Updates, and Upgrades applicable to the foregoing and generally released by **PCG** and (iii) the Documentation developed by **PCG** for distribution and use in combination with the foregoing.
- 1.6. **“EasyPEP™”** means (i) the Internet-based services identified in **Attachment B** attached to this Agreement, (ii) all New Releases, Updates, and Upgrades applicable to the foregoing and generally released by **PCG** and (iii) the Documentation developed by **PCG** for distribution and use in combination with the foregoing.
- 1.7. **“EdPlan™”** means (i) the Internet-based services identified in **Attachment B** attached to this Agreement, (ii) all New Releases, Updates, and Upgrades applicable to the foregoing and generally released by **PCG** and (iii) the Documentation developed by **PCG** for distribution and use in combination with the foregoing.
- 1.8. **“Intellectual Property Rights”**: means patent rights, copyrights (including, but not limited to, copyrights in audiovisual works and applicable Moral Rights), trade secret rights, trademark rights and any other intellectual property rights recognized by the law of each applicable jurisdiction in which licenses for the PCG EASI and other relevant services are marketed and licensed by **PCG**.

- 1.9. **“Moral Rights”** means any right to claim authorship of a work, any right to object to any distortion or other modification of a work, and any similar right, existing under the law of any country in the world, or under any treaty.
- 1.10 **“New Releases”** means any new revision of the PCG EASI and its included services that includes significant enhancements which add new features to the PCG EASI.
2. 1.11 **“Permitted Use”** means use of the PCG EASI services by employees, contractors and others affiliated with or authorized by the WCPSS for the WCPSS own internal use only.
- 1.12 **“WCPSS User”** means any employee, contractor, and/or authorized user of the WCPSS who will be granted access to the PCG EASI services.
- 1.13 **“WCPSS User Support and Maintenance”** means the support services to be provided to WCPSS with respect to the Services specified by this agreement.
- 1.14 **“Term”** means collectively and individually the Initial Term and Renewal Terms as defined in Section 12.
- 1.15 **“Trademarks”** means all trademarks, trade names, service marks, logos, now owned and hereinafter acquired by either party, and all other trademarks, trade names, service marks and logos identifying or used in connection with their product or service offerings, whether or not registered under the laws of a particular jurisdiction of the Territory.
- 1.16 **“Updates”** means any new revisions and/or modifications required to be made to the PCG EASI Services and/or Documentation in order to correct operational errors.
- 1.17 **“Upgrades”** means any new revisions of the PCG EASI that includes corrections and minor modifications to existing features.

2. Terms

- 2.1 **Initial Term.** The initial term of the provision of services by PCG to WCPSS the **“Initial Term”**) will commence on July 1, 2012 and shall end on June 30, 2013. Initial term of contract covers services and fee schedule per Attachment B.
- 2.2 **Renewal Term.** Following the FY 2013, this Agreement may be renewed by WCPSS for successive one-year terms (each a **“Renewal Term”**) by notice to PCG at least thirty (30) days prior to the end of the Initial Term or then-current Renewal Term, as the case may be, of WCPSS’s election to renew this Agreement. Renewal term beginning July 1, 2013 through June 30, 2014 covers services and fee schedule per Attachment B. Either party may terminate the Agreement by notice to the other party at least thirty (30) days prior to the end of the Initial Term or then-current Renewal Term, as the case may be.
- 2.3 **Appropriation.** Each Term is subject to appropriation.

2.4 Grant of Rights

- a. **Grant of License for PCG EASI Service.** Subject to the terms and provisions of this Agreement and WCPSS’ performance of all its obligations under this Agreement, PCG hereby grants to WCPSS, and WCPSS hereby accepts, a non-exclusive, non-transferable, right and

license, during the Terms only, to access via the Internet and use, to the extent reasonably necessary, the PCG EASI Service.

b. Grant of License for Documentation. PCG hereby grants to WCPSS, and WCPSS accepts, a non-exclusive, royalty-free license under PCG's copyrights in PCG's Documentation, during the Term only;

i. To incorporate PCG's documentation, in whole or in part, into other written materials prepared by or for WCPSS with respect to the PCG EASI Service; and

ii. To reproduce and distribute modified and original versions of PCG's Documentation, in hard copy or in an on-line format, as part of WCPSS' Documentation for the PCG EASI Service, and, if such WCPSS' Documentation is in an on-line format, allow the WCPSS Users to make print copies of the same.

c. Restrictions on License Grant.

i. WCPSS shall not use or grant to any person or entity the right to use the PCG EASI Service, except to authorized WCPSS Users. WCPSS shall not distribute, market, or sublicense the PCG EASI Service and WCPSS Users shall not distribute, market, or sublicense the PCG EASI Service.

ii. WCPSS shall ensure that appropriate proprietary notices indicating PCG's Intellectual Property Rights in the PCG EASI Service and related Documentation are placed on all copies of written materials distributed by WCPSS relating to thereto. Documentation that is delivered to the U.S. Government will include an appropriate restrictive rights legend.

iii. WCPSS shall not distribute or knowingly permit distribution of PCG EASI documentation or Intellectual Property to an individual or organization that is not part of the WCPSS or an authorized WCPSS User.

iv. WCPSS shall not transfer or permit access to the PCG EASI Service to any third party or permit any WCPSS User to transfer or allow access the PCG EASI Service to any unauthorized person; and,

v. WCPSS shall not decompile, disassemble or otherwise attempt to reverse engineer the PCG EASI or any portion thereof and will not permit any WCPSS User to decompile, disassemble or otherwise attempt to reverse engineer the PCG EASI or any portion thereof.

d. Reservations of Rights.

i. Subject to the license rights granted to WCPSS by this Agreement, all right, title and interest in and to PCG EASI, including the Intellectual Property Rights and technology inherent to PCG EASI are, and at all times will, remain, the sole and exclusive property of PCG. No right to use, print, copy, distribute, integrate or display the PCG EASI in whole or in part, is granted in this Agreement,

except as is explicitly provided in this Agreement. Nothing contained in this Agreement will directly or indirectly be construed to assign or grant to **WCPSS** any right, title, or interest in or to **PCG's** Intellectual Property Rights or other rights in and to the **PCG EASI** or **PCG's** Trademarks.

- ii. **PCG** will hold in escrow the source-code for **PCG EASI** with a third party agent, who will hold the source-code in trust for the parties, to be released to **WCPSS** in the event that the **PCG** is unable to continue its services permanently or for an unknown period due to events such as bankruptcy or the dissolution of the business. It is the responsibility of **PCG** to keep the software versions in escrow up-to-date. The escrow will hold all major versions of the source code.
- iii. Except as expressly authorized by this Agreement, **WCPSS** shall not use, display, copy, distribute, modify or sublicense the **PCG EASI**. In addition, **WCPSS** shall not modify, transfer, rent, lease, reverse engineer, decompile or disassemble the **PCG EASI**. **PCG** reserves the rights not expressly granted to **WCPSS** by this Agreement. **WCPSS** will not alter, remove modify or suppress any confidentiality legends or proprietary notices placed on or contained with the **PCG EASI** and expressly agrees not to circumvent, or knowingly permit third parties to circumvent, any security or other protections within the **PCG EASI**.

3. Access to the PCG EASI.

3.1 Internet Access. **PCG** will provide access to the **PCG EASI** to **WCPSS** via a private account accessed through the Internet, from which **WCPSS** will be capable of using the Services as permitted by this Agreement. **PCG** will not provide the Internet connectivity to **WCPSS**; and obtaining and maintaining such connectivity will be the sole responsibility of **WCPSS**. **PCG** will, as soon as practicable, provide **WCPSS** with advance notice of each New Release, Upgrade, or Update, and provide notice whether such New Release, Upgrade, or Update will be provided via the Internet.

4. Training. Training will be provided in accordance with agreed upon timelines, schedules and components as reflected for the **PCG EASI**.

4.1 Training. **PCG** will provide training sessions with multiple levels designed to provide a variety of methods including videos, on-line and live teacher/administrator training. The goal of the live training is to train a group of "trainers" who will then return to their schools and train the majority of the **WCPSS** Users. Training will be provided in sessions to accommodate no more than 25 trainees at one particular time. **PCG** will also provide "Administrator" training to show designated staff how to access data, run reports, etc. Additional

trainings of WCPSS staff as requested by an authorized representative of the WCPSS may be contracted at an agreed upon rate.

4.2 Training Schedule. Training will be scheduled based upon individual section needs within the parameters of specific section training allocations.

4.3 Live Training. Live training will consist of two types: (i) Administrative and (ii) Teacher of Record. Each training session will consist of lecture, demonstration and hands-on practice.

4.4 Video Training. Video training will be provided for Teacher of Record. These trainings will provide lecture and demonstration.

4.5 On-line Training. On-line training will consist of two types: (i) Administrative and (ii) Teacher of Record. These trainings will provide lecture and demonstration.

5. Payments. In consideration of the licenses granted by PCG to the WCPSS under this Agreement, WCPSS shall pay PCG as outlined in the table in **Attachment B**.

5.1 Interest. PCG shall submit invoices for payment of the amount owed. WCPSS will process payments to PCG within forty-five (45) days of submission of the invoice. Invoices shall be sent to **WCPSS ACCOUNTS PAYABLE DEPARTMENT**, 110 Corning Road, Cary, North Carolina, 27518 for review and approval.

5.2 Contract Funding. It is understood and agreed upon between PCG and WCPSS that WCPSS' payment obligation under this Agreement is contingent upon the availability of appropriated funds from which payment for Agreement purposes can be made. In the event that such funds are not available, or are reasonably anticipated to be not available at any time during the term of the Agreement, WCPSS shall notify PCG immediately and PCG may elect to discontinue service by notice to WCPSS. In no event shall WCPSS be excused from payment for services delivered.

5.3 Travel. Travel is the sole responsibility of PCG.

6. WARRANTIES.

6.1 Power and Authority. Each party represents and warrants that it has the sufficient rights and authority to enter into this Agreement and that this Agreement violates no previous agreement between each party and any third parties.

6.2 Limited Warranty. PCG represents and warrants that it has the right to license the PCG EASI, including, but not limited to EasyIEP™, EasyPEP™, and EdPlan™ as specified by this Agreement, and that the use of the PCG EASI contemplated in this Agreement does not infringe upon, violate, or constitute a misappropriation of any copyright, trademark, trade secret, or any other proprietary right of any third party. Further, PCG represents and warrants that, during the ninety (90) day period following the initial installation of the PCG EASI hereunder, and

during the ninety (90) day period following the installation of each Update, Upgrade, and New Release hereunder, the PCG EASI will operate in accordance with the applicable Documentation, provided that the PCG EASI is operated in compliance with such Documentation. Under no circumstances will PCG be responsible for WCPSS' hardware, software, browsers, or Internet connections that provide access to the PCG EASI. PCG shall use reasonable efforts to maintain the PCG EASI and to correct any problems that may arise with the use of the PCG EASI.

6.3 DISCLAIMER. PCG SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, WITH RESPECT TO PCG EASI PRODUCTS OR ANY OTHER GOODS OR SERVICES PROVIDED BY PCG, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. PROPRIETARY RIGHTS; PROTECTIONS OF CONFIDENTIAL INFORMATION

7.1 Ownership. WCPSS acknowledges that PCG owns the PCG EASI, that the PCG EASI is not generally published, and that the PCG EASI embodies the Confidential Information of PCG. All right, title, and interest in and to the PCG EASI, including, without limitation, all copyrights, trade secret rights, and other intellectual property rights pertaining in and to the PCG EASI shall remain vested in PCG and its third-party licensors. PCG acknowledges that WCPSS owns all of the data inputted by each WCPSS User for purposes of creating any service plans in the PCG EASI and any and all reports produced as a result of using the PCG EASI. PCG may not use, share, sell or otherwise give any WCPSS data (including de-identified data) to any third party unless permission is granted in writing by an authorized agent of WCPSS.

7.2 Confidentiality Obligations. Each party agrees that: (i) neither party will disclose to any third party any of the other party's Confidential Information except to the receiving party's employees and contractors with a need to know and who have agreed in writing to confidentiality obligations substantially the same as those set forth herein; (ii) each party will use the same degree of care it uses to maintain the confidentiality of its own information of similar importance in its possession or control, but in no event less than a reasonable degree of care; and (iii) neither party will use or authorize the use of Confidential Information for any purpose other than to fulfill such party's obligations hereunder. Each party agrees that neither party will disclose to any third party any of the terms of this Agreement, which will be treated as Confidential Information, except to the receiving party's employees, contractors, and advisors with a need to know and who have agreed in writing to confidentiality obligations substantially the same as those set forth herein, and neither party will use the terms of this Agreement for any purpose other

than to fulfill such party's obligations under this Agreement, except as either party is otherwise required by law.

7.3 Injunctive Relief. Each party acknowledges that the other party's Confidential Information contains trade secrets of such other party, the disclosure of which would cause substantial harm to such other party that could not be remedied by the payment of damages alone. Accordingly, such other party will be entitled to seek preliminary and permanent injunctive relief and other equitable relief for any breach of this Section 8.

7.4 WCPSS Duties. WCPSS will take reasonable steps to protect the web-based services provided pursuant to this Agreement from unauthorized access, copying, dissemination, and disclosure, and from other unauthorized use, and will report promptly to PCG any such use of which WCPSS becomes aware. WCPSS shall be responsible for the quality, integrity, and accuracy of all data entered and used in connection with the services provided under this Agreement, including all deletions of such data by WCPSS Users.

7.5 PCG Duties. PCG will take reasonable steps to protect the data that WCPSS enters as part of its use of the services provided pursuant to this Agreement. PCG will use technical, administrative, and physical safeguards to protect against unintentional loss and against unauthorized access, destruction, misuse, modification, and disclosure. Although no computer system or information can ever be fully protected against every possible hazard, PCG is committed to providing reasonable and appropriate security controls to protect information against foreseeable hazards. PCG recognizes that WCPSS data is the property of WCPSS. Upon contract termination, or at WCPSS' request, PCG will provide all data to WCPSS, including all database tables and a description of the table structure. PCG will report promptly to WCPSS any unauthorized access, copying, dissemination, and disclosure, and other unauthorized use it becomes aware.

PCG will have in place partner agreements that ensure that any agency, including a subcontractor, with physical or logical access to WCPSS data, or to whom it provides WCPSS data agrees to implement administrative, physical, and technical safeguards that are commercially reasonable and appropriate to protect WCPSS data.

8. PCG agrees to erase, destroy, or render unreadable all devices containing WCPSS data that are required to be turned into a vendor for replacement, sold, or otherwise disposed of by, e.g. hard drives. PCG further agrees that upon termination of this contract it shall erase, destroy, and render unreadable all other WCPSS data (with the possible exception of comingled back-up media) and certify in writing that these actions have been completed within 30 days of the termination of this contract.

8.1 Third Party Infringement. PCG reserves the sole and exclusive right at its discretion to assert claims against third parties for infringement or misappropriation of its Intellectual Property Rights in services provided pursuant to this Agreement.

9. PRODUCT MARKING.

9.1 Ownership of PCG Trademarks. WCPSS acknowledges that PCG is and shall remain the owner of all right, title, and interest in and to each of PCG's Trademarks in any form or embodiment thereof, and is also the owner of all goodwill associated with PCG's Trademarks. All goodwill generated by WCPSS use of the PCG EASI with respect to PCG's Trademarks shall inure exclusively to the benefit of PCG.

9.2 Infringements. WCPSS shall promptly notify PCG of any third-party infringements of any of the PCG Trademarks used in connection with the PCG EASI, or any act of unfair competition by third parties relating to the PCG Trademarks, within a reasonable time of WCPSS' knowledge of such infringements or acts.

10. INDEMNIFICATION.

10.1 PCG Indemnification Obligations. PCG shall defend, indemnify, and hold harmless WCPSS from and against any suit, proceeding, assertion, damage, cost, liability, and expense (including court costs and reasonable attorneys' fees) incurred as a result of claims by a third party against WCPSS or its affiliates, employees, or agents arising from or connected with a claim, related to this Agreement, that any PCG EASI Service infringes any valid patent, copyright, trade secret, or other intellectual property right under the laws of the United States, provided that WCPSS promptly notifies PCG, in writing, of the suit, claim, or proceeding, or threat of suit, claim, or proceeding, and provides PCG with reasonable assistance for the defense of the suit, claim, or proceeding. PCG will have sole control of the defense of any claim and all negotiations for settlement or compromise.

10.2 WCPSS Indemnification Obligations. WCPSS shall defend, indemnify, and hold harmless PCG from and against any suit, proceeding, assertion, damage, cost, liability, and expense (including court costs and reasonable attorneys' fees) incurred as a result of claims of WCPSS or third parties against PCG or its affiliates, licensors, suppliers, officers, directors, employees, or agents arising from or connected with WCPSS' misuse of the PCG EASI, unauthorized modification of the PCG EASI, or unauthorized combination of PCG EASI with any hardware, software, products, data, or other materials not specified or provided by PCG, provided that PCG promptly notifies WCPSS, in writing, of the suit, claim, or proceeding, or threat of suit, claim, or proceeding, and provides WCPSS with reasonable assistance for the defense of the suit, claim, or proceeding. WCPSS will have sole control of the defense of any claim and all negotiations for settlement or compromise.

11. LIMITATION OF LIABILITY.

11.1 UNDER NO CIRCUMSTANCES WILL EITHER PARTY (OR ITS SUPPLIERS, AS APPLICABLE) HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OR COSTS (INCLUDING ATTORNEYS' FEES) RESULTING FROM ANY

CLAIM (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR PRODUCTS LIABILITY) REGARDING THIS AGREEMENT OR RESULTING FROM THE USE OF INABILITY TO USE, OR PERFORMANCE OR NONPERFORMANCE OF , THE PCG EASI SERVICE, REGARDLESS OF WHETHER THE PARTIES (OR THEIR SUPPLIERS, AS APPLICABLE) HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2 IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT OR OTHERWISE, REGARDLESS OF THE FORM OF CLAIM OR ACTION, IN AN AMOUNT THAT EXCEEDS THREE TIMES THE FEES PAID BY WCPSS TO PCG HEREUNDER.

11.3 Failure to Essential Purpose. The parties have agreed that the limitations specified in Section 12 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

12. TERMINATION.

12.1 Cooperative Purchasing. The terms and conditions of this Agreement may be extended to any other school district or other entity to permit those other entities to contract with PCG for the goods or services set forth in this Agreement, subject to the mutual agreement for PCG and the other entity, which may include different payment terms. WCPSS assumes no authority, liability, or obligation to PCG or to any other entity with respect to any such resulting contract.

12.2 Termination. Notwithstanding the provisions of Section 12.2 above, either party may terminate this Agreement on or after the twentieth (20) day after each party gives the other party written notice of a material breach by such other party of any obligation hereunder, unless such breach is cured within twentieth (20) days following the breaching party's receipt of such written notice.

12.3 Effect of Termination. Upon termination or expiration of this Agreement (i) all licenses granted to WCPSS by PCG will terminate and (ii) all End User access to the web-based services provided pursuant to this Agreement will terminate except as set forth in Section 3.4.2. In such event under Section 3.4.2, WCPSS will have access to the escrowed source-code. Neither this provision nor anything else in this Agreement shall operate to excuse WCPSS from payment for services delivered.

12.4 No Damages for Termination. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR DAMAGES OF ANY KIND, INCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS, ON ACCOUNT OF THE TERMINATION OR EXPIRATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS. EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO RECEIVE COMPENSATION OR REPARATIONS ON TERMINATION OR EXPIRATION OF THIS AGREEMENT UNDER THE LAW OF THE TERRITORY OR OTHERWISE, OTHER THAN AS EXPRESSLY PROVIDED IN THIS

AGREEMENT. Neither party will be liable to the other on account of termination or expiration of this Agreement for reimbursement or damages for the loss of goodwill, prospective profits or anticipated income, or on account of any expenditures, investments, leases or commitments made by either party or for any other reason whatsoever based upon or growing out of such termination or expiration.

13. Nonexclusive Remedy. Except as otherwise specified in this Agreement, the exercise by either party of any remedy under this Agreement is without prejudice to its other remedies under this Agreement or otherwise.

14. Compliance with Laws. Each party agrees to comply with all applicable laws, rules, and regulations in connection with its activities under this Agreement.

15. General.

15.1 Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns, provided however; that neither party may assign this Agreement, in whole or part, without the other party's written consent. Any attempt to assign this Agreement without such consent will be null and void. A change of control of a party, or the sale of the business or of the applicable business unit, will not be deemed an assignment.

15.2 Governing Law. This Agreement is governed by the laws of the State of North Carolina, without regard to its conflict of law provisions.

15.3 Severability. If any provision of this Agreement is found invalid or unenforceable by a court or other tribunal of competent jurisdiction, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in full force and effect.

15.4 Force Majeure. Neither party will be responsible for any failure to perform due to caused beyond its reasonable contract (each a "Force of Majeure"), including, but not limited to , acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, or fuel crises, provided that each party gives prompt written notice thereof to the other party. The time for performance will be extended for a period equal to the duration of the Force Majeure, but in no event longer than thirty (30) days.

15.5 Equitable Relief. Each party acknowledges that any breach of its obligations under this Agreement with respect to the proprietary rights or confidential information of the other party will cause such other party irreparable injury for which monetary damages are inadequate, and therefore such other party will be entitled to see equitable relief in addition to all other remedies available to it at law.

15.6 Notices. All notices under this Agreement will be deemed given when delivered personally, sent by certified or registered mail, return receipt requested, or nationally recognized express courier, to the address shown below the signature blocks of this Agreement or as may otherwise be specified by with party to the other in accordance with this section.

- 15.7 Independent Contractors.** The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.
- 15.8 Waiver.** No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights.
- 15.9 Entire Agreement.** This Agreement and its exhibits are the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.
- 15.10 Survival.** The provisions of this Agreement which by their nature would continue beyond the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.
- 15.11 Headings.** The various headings and subheadings in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.
- 15.12 Nonexclusive Agreement.** WCPSS acknowledges that PCG may enter into similar agreements with other persons, organizations or entities.
- 15.13 Scope of Services.** The parties to this Agreement may expand the scope of this Agreement to include other products or services as offered by PCG and to specify rates of payment for such products or services, by means of amendments to this Agreement signed by each party. Such Amendments may take the form attached as an additional Attachment.
- 16. Insurance.** PCG agrees to maintain \$1,000,000 in general liability and other appropriate insurance, as well as Workers Compensation in the required statutory amount, for all employees participating in the provision of services under this Agreement. Certificates of such insurance shall be furnished by PCG to WCPSS and shall contain the provision that WCPSS be given 10 days' written notice of any intent to cancel or terminate by either PCG or the insuring company. Failure to furnish insurance certificates or maintain such insurance shall be a default under this Agreement and shall be grounds for immediate termination of this Agreement.
- 17. Taxes.** The Provider shall pay all federal, state and FICA taxes for all employees participating in the provision of services under this Agreement.
- 18. Monitoring and Auditing.** The Provider shall cooperate with WCPSS, or with any other person or agency as directed by WCPSS, in monitoring, auditing, or investigating activities related to this Contract. The Provider shall permit WCPSS to evaluate all activities conducted under this contract as dictated by WCPSS. The Provider shall provide auditors retained by WCPSS with access to any records and files related to the provision of services under this Contract. WCPSS agrees that its

auditors will maintain the confidentiality of any trade secrets of Provider accessed during an audit conducted under this Contract.

19. Lunsford Act/Criminal Background Checks. PCG shall conduct at its own expense sexual offender registry checks on each of its employees, agents, ownership personnel, or contractors who will engage in any service on or delivery of goods to school system property or at a school-system sponsored event (“contractual personnel”). The checks shall include at a minimum checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry (“the Registries”). For PCGs convenience only, all of the required registry checks may be completed at no cost by accessing the North Carolina Sex Offender Registry website at <http://sexoffender.ncdoj.gov/>. PCG shall provide certification on the Sexual Offender Registry Check Certification Form (**Attachment C**) that the registry checks were conducted on each of its contractual personnel providing services or delivering goods under this Agreement prior to the commencement of such services or the delivery of such goods. PCG shall conduct a current initial check of the registries (a check done more than 30 days prior to the date of this Agreement shall not satisfy this contractual obligation). In addition, PCG agrees to conduct the registry checks and provide a supplemental certification form before any additional contractual personnel are used to deliver goods or provide services pursuant to this Agreement. PCG further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Agreement. PCG shall not assign any individual to deliver goods or provide services pursuant to this Agreement if said individual appears on any of the listed registries. PCG agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each contractual personnel, and agrees to provide such records and documents to the school system upon request. PCG specifically acknowledges that the school system retains the right to audit these records to ensure compliance with this section at any time in the school system’s sole discretion. Failure to comply with the terms of this provision shall be grounds for immediate termination of the Agreement. In addition, the school system may conduct additional criminal records checks at the school system’s expense. If the school system exercises this right to conduct additional criminal records checks, PCG agrees to provide within seven (7) days of request the full name, date of birth, state of residency for the past ten years, and any additional information requested by the school system for all contractual personnel who may deliver goods or perform services under this Agreement. PCG further agrees that it has an ongoing obligation to provide the school system with the name of any new contractual personnel who may deliver goods or provide services under the Agreement. WCPSS reserves the right to prohibit any contractual personnel of PCG from delivering goods or providing services under this Agreement if WCPSS determines, in its sole discretion, that such contractual personnel may pose a threat to the safety or well-being of students, school personnel or others.

20. Indemnification. Provider shall indemnify, defend and hold harmless WCPSS, its

agents, and employees, from and against all claims, actions, demands, costs, damages, losses and/or expenses of any kind whatsoever, in whole or in part, resulting from or connected with any acts under this Contract or from the omission or commission of any act, lawful or unlawful, by Provider, its agents and/or employees, including but not limited to court costs and attorney's fees incurred by Provider in connection with the defense of said matters.

- 21. Relationship of Parties.** The Provider shall be an Independent Contractor of WCPSS and nothing herein shall be construed as creating a partnership or joint venture; nor shall any employee of the Provider be construed as an employee, agent or principal of WCPSS.
- 22. Compliance with Applicable Laws.** Provider shall comply with all applicable laws and regulations in providing services under this Contract. Provider represents that it is aware of and in compliance with the Immigration Reform and Control Act, and that it will collect properly verified I-9 forms from each employee providing services under this contract. Provider shall not employ any individuals to provide services to WCPSS who are not authorized by federal law to work in the United States.
- 23. Assignment.** The Provider shall not assign, subcontract, or otherwise transfer any interest in this contract without the prior written approval of WCPSS.
- 24. Contract Modifications.** This contract may be amended only by written amendments duly executed by and between WCPSS and the Provider.
- 25. North Carolina Law.** North Carolina law will govern the interpretation and construction of the Contract.
- 26. Entire Agreement.** This Contract constitutes and expresses the entire agreement and understanding between the parties concerning the subject matter of this contract. This document, the purchase order, if any, used in connection herewith and any other document incorporated in this Contract by reference (Appendices A and B and Attachment 1) supersede all prior and contemporaneous discussions, promises, representations, agreements and understandings relative to the subject matter of this contract.
- 27. Severability.** If any provision of this Contract shall be declared invalid or unenforceable, the remainder of the Contract shall continue in full force and effect.
- 28. Applicable WCPSS Policies.** PCG acknowledges that the Wake County Board of Education has adopted policies governing conduct on District property and agrees to abide by any and all relevant WCPSS policies while on District property. PCG acknowledges that it has received copies of and will abide by the following Wake County Board of Education policies:
 - Policy 2302: Weapons Prohibited on School Property
 - Policy 2305: Code of Ethics and Standard of Conduct
 - Policy 2306: Drug and Alcohol Testing of Commercial Motor Vehicle Operators
 - Policy 2308: Tobacco-Free Environment

Policy 2321: Conduct of Employees Toward Students
Policy 3012: Prohibited Conduct on School Property and at School Events

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

PUBLIC CONSULTING GROUP, INC.

200 S. Tryon Street Suite 600
Charlotte, NC 28202

By: _____
Signature Date

William Mosakowski, President

WAKE COUNTY PUBLIC SCHOOL SYSTEM

5625 Dillard Drive
Cary, NC 27518

By: _____
Signature Date

Kevin Hill, Chair
Wake County Public Schools Board of Education

Attachment A
PCG Longitudinal Electronic Data Management System
SERVICE AND COST

All information contained in this Attachment for WCPSS is CONFIDENTIAL and may not be copied or shared without the express written consent of PCG.

Service

System Overview

PCG will work with WCPSS to continue development and provide maintenance of an Internet-based, comprehensive tool to assist administrators and instructional personnel who manage and develop IEPs, LEPs, PEPs, 504 Plans, and RtI/IA Plans. PCG and WCPSS implemented the first three of these systems (IEPs, LEPs, and PEPs) in FY11 and FY12 School Years. Implementation for RtI Plans will occur in early FY13 and will include system configuration and data interface, development updates, system testing, roll out, training, and ongoing support and development. Maintenance includes hosting of all aspects of EASi and individual system design changes.

PCG will continue to maintain and support EasyFAX™ into the comprehensive EASI. The EasyFAX™ service will enable WCPSS to convert paper student records into electronic documents in the pdf format, and to store those documents in PCG EASI system on the appropriate student document pages, through the use of School District's telefax machine. PCG will provide the EasyFAX™ service at all times except during regularly scheduled system maintenance and unforeseen outages. PCG will provide instructions for use, cover sheet templates, and a toll-free telefax number exclusive to WCPSS.

Additionally, PCG will continue Advanced Reporting functionality within the EASI. Advanced Reporting is a special feature of the PCG EASI which allows users to run existing reports and to create and modify reports in order to address specific data collection needs. The technology can be used to support the gathering of data necessary for the state required Child Count as well as other reporting needs.

During the FY 2013-2014 renewal term, the parties contemplate that PCG will provide continuing services and improvements to already established systems, including:

- EasyIEPT™ (inclusive of LEP and 504)
- EasyPEPT™
- RtI Academic - Tier 3
- Advanced Reporting/Headcount
- EasyFAX™ / Paperclip

As part of this engagement, PCG is providing to WCPSS a bank of 1,200 development hours which are and have been available to WCPSS for the duration of the entire

engagement, from July 1, 2012 through June 30, 2014. WCPSS may purchase additional development hours if desired at a rate of \$120 per hour.

Documents

WCPSS agrees to use the set of documents recommended by the State of North Carolina and/or federal guidelines. These documents include, but are not limited to Individualized Education Program (IEP), Individualized Service Plans, Limited English Proficiency Plans (LEP), 504 Plans, RtI/IA Plans, and Personalized Education Plans (PEP).

Documents will utilize information in the PCG EASI comprehensive database. Therefore, WCPSS information (such as name, address, phone, etc.) will automatically be placed into the documents for greater efficiency.

The documents created under the comprehensive PCG EASI will be configured to fully comply with state requirements. WCPSS will have input in the customization of the system and can use the “bank” of development hours toward customizing the various plans according to district and state standards.

Reports

WCPSS agrees to use the following set of standard reports to facilitate information gathering and support pricing economies of scale. These reports shall include, but are not limited to:

- Service Log
- Mailing Label
- Missing Student Data
- Active Student List (PDF)
- Projected/Missed IEP Meetings
- Projected/Missed Eligibility Meetings
- Recent Logins
- User List
- Student Missing Data
- Hours Logged per User
- Usage Report
- Compliance Summary
- IEP History Report
- Finalized IEP Count
- Child Count
- EC Basic
- State Accommodation Data
- CIPP Monitoring Data (Indicators 7, 11, 12)

As part of the service under the Agreement, PCG will continue access to the Advanced Reporting service. Advanced Reporting, as detailed in the System Overview, above, is a supplemental feature of the PCG EASI that allows users to run existing reports, and to

create and modify other reports in order to address specific special education student data needs. PCG agrees to continue the Advanced Reporting service for the FY13 and FY14 school years. The following reporting options shall be available:

- Management and Compliance Reports
- Child Count Reporting
- State Exit Report
- Other reports developed under 2011-2012 contract

Additionally, other customized reports can be generated through the use of hours in the development bank.

Training

PCG will continue to assist WCPSS in training. Training will be provided in groups according to their roles. PCG will provide a variety of training methods including videos, on-line Webex, and live teacher/administrator training.

Operations

PCG will continue to provide the PCG EASI as a complete service. WCPSS is not required to purchase or install any software on their computers with the exception of an Internet browser and Adobe's Acrobat Reader® (both are provided at no cost by PCG).

Server Hardware

PCG will provide an appropriate server(s) for the WCPSS at no additional cost.

Server Software

PCG will provide all server and database software for the WCPSS at no additional cost.

Server Administration

PCG will provide all server administration including database back up, system account management, system security, and system maintenance.

Server Internet Connection

PCG will provide the connection to the Internet at an appropriate speed to carry the WCPSS traffic at no additional cost.

WCPSS is responsible for providing the following:

1. Connection to the Internet for their Users.
2. Computer hardware for their Users.
3. Browser software and browser software configuration.
4. Installation and configuration of the Adobe's Acrobat Reader®
5. Site for training with an appropriately configured computer for each trainee and one additional computer for the trainer.

Interface to WCPSS Database(s)

PCG will provide an interface to the WCPSS Database(s) at such time as a specification for the interface(s) can be developed. Once the database interface specification is completed, PCG will develop, test, and make the interface operational.

On-Going User Support

PCG will provide a multi-faceted network of Tier II and above support at no additional charge. This section reflects the generally proposed structure and can be refined specifically and further developed to best suit the project roll out.

Tier Support Options	Description
First Tier	All first-tier calls are submitted to the WCPSS Helpdesk and assigned an incident number.
Second Tier	If the nature of the call is business process related, the call will be assigned to the appropriate WCPSS business owner.
Third Tier	If the call cannot be answered by the First or Second Level Support Staff, PCG provides toll free telephone and email support.

Toll-free telephone support will be during the hours of 8:30am to 5:30pm Monday-Friday via a toll free number (1.866.327.9437). Email support will be provided via the email links on EASI Message Board page.

In addition, PCG will provide a “live” database of frequently asked questions and answers that will be available to all WCPSS users. This database will be up-dated frequently to remain relevant and current.

New Versions and Releases

PCG will provide all new core versions and releases of web-based services provided pursuant to this contract to WCPSS at no additional cost to the school system. Any additional training required as a result of new core version or release will also be at no additional charge.

Attachment B

Pricing

PCG is providing WCPSS a **Longitudinal Electronic Data Management System** that encompasses a fixed pricing scheme for 24 months. The table below details that pricing structure:

PCG EASI Service	Year 1 July 2012 – June 2013	Year 2 July 2013- June 2014
1. IEP/Advanced Reporting/EasyFAX	\$325,000	\$325,000
2. PEP	\$115,000	\$115,000
3. LEP	\$90,000	\$70,000
4. 504 Preparation	\$80,000	\$60,000
5. RtI/IA Plans Preparation	\$340,000	\$300,000
Additional Cost for paperclip	\$15,000	\$15,000
Project Total	\$965,000	885,000
<u>Invoice Schedule:</u> Payment will be due within forty-five (45) days of receipt by WCPSS.	Invoice 1 - September 15, 2012: \$482,500 ~ Invoice 2 - April 15, 2013: \$482,500	September 15, 2013: \$442,500 ~ April 15, 2014: \$442,500

Attachment C
Sexual Offender Registry Check Certification Form

PLEASE SUBMIT THIS FORM TO YOUR SCHOOL SYSTEM CONTACT PERSON WITH RESPECT TO THIS AGREEMENT

Check the appropriate box to indicate the type of check:

- Initial
- Supplemental
- Annual

I, _____ (insert name), _____ (insert title) of _____ (insert company name) hereby certify that I have performed all of the required sexual offender registry checks required under this Agreement for all contractual personnel (employees, agents, ownership personnel, or contractors) who may be used to deliver goods or provide services under this Agreement, including the North Carolina Sex Offender and Public Protection Registration Program, the North Carolina Sexually Violent Predator Registration Program, and the National Sex Offender Registry. I further certify that none of the individuals listed below appears on any of the above-named registries and that I will not assign any individual to deliver goods or perform services under this Agreement if said individual appears on any of the sex offender registries. I agree to maintain all records and documents associated with these registry checks, and that I will provide such records and documents to the school system upon request. I specifically acknowledge that the school system retains the right to audit these records to ensure compliance with this section at any time in the school system's sole discretion. I acknowledge that I am required to perform these checks and provide this certification form before any work is performed under the Agreement (initial check), any time additional contractual personnel may perform work under the Agreement (supplemental check), and at each anniversary date of the Agreement (annual check).

Contractual Personnel Names

Job Title

- | | | |
|----|-------|-------|
| 1. | _____ | _____ |
| 2. | _____ | _____ |
| 3. | _____ | _____ |
| 4. | _____ | _____ |
| 5. | _____ | _____ |
| 6. | _____ | _____ |
| 7. | _____ | _____ |

8. _____

9. _____

10. _____

I attest that the forgoing information is true and accurate to the best of my knowledge.

_____ (print name)

_____ (signature)

_____ (title)

_____ (date)