

This Agreement will be posted on the CPS Internet website.

LICENSE AND ONLINE SUBSCRIPTION SERVICES AGREEMENT

(Gartner, Inc.)

This LICENSE AND ONLINE SUBSCRIPTION SERVICES AGREEMENT ("Agreement") is effective as of the 1st day of July, 2012 (the "Effective Date"), and is entered into by and between the Board of Education of the City of Chicago, a body politic and corporate commonly known as the Chicago Public Schools, organized and existing under the laws of the State of Illinois (the "Board" or "CPS") and Gartner, Inc., a corporation organized and existing under the laws of the State of Connecticut ("Gartner").

RECITALS

A. The Board desires that Gartner make available certain online reference products more fully described herein; and

B. Gartner has demonstrated expertise in providing such services, has represented that it has the requisite knowledge, skill, experience and other resources necessary to perform such services and is desirous of providing such services for the Board.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties hereby agree as follows:

1. **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made a part of this Agreement.
2. **Term.** This Agreement is for a term commencing July 1, 2012, and shall continue through June 30, 2013, unless terminated sooner as provided herein. By written agreement and subject to Board approval, the parties shall have one (1) option to renew for a period of twelve (12) months at Gartner's then-current pricing.
3. **License, Intellectual Property Warranty, and Services.**
 - 3.1 **License Grant.** For the Term of this Agreement, and for fees as described herein, Gartner hereby grants to the Board, on behalf of the Chicago Public Schools System, non-exclusive, non-transferable on-line access to its reference products ("Services" hereinafter), subject to Gartner's Special Terms and Conditions, which is attached and incorporated herein as Exhibit B.
 - 3.2 **Intellectual Property Warranty.** Gartner warrants with respect to the Services that (i) Gartner has the right to license the Services pursuant to the terms of this Agreement; and (ii) that Gartner hereby agrees to indemnify the Board against any claim that Services provided hereunder infringe any Copyright, trade secret right, or any other intellectual property right of any third party (an "Infringement Claim"), and shall pay any final, non-appealable judgment awarded in, or any settlement of such Infringement Claim; provided that Gartner shall have no obligation hereunder with respect to any Infringement Claim, unless the Board promptly (a) notifies Gartner thereof in writing, and (b) provides Gartner reasonable cooperation and assistance in connection with such defense as Gartner shall request. However, Gartner shall have no obligation under this section with respect to any claim of infringement based on any modification of its materials initiated by the Board, its members, employees, agents, officers and officials, or any third party or the unauthorized use of the materials.
 - 3.3 **Services.** Gartner agrees to provide the on-line reference products set forth on Exhibit A ("Services"), in accordance with the terms and conditions of this Agreement. "Services" means, collectively, the services, deliverables, duties and responsibilities described in Exhibit A of this Agreement and any and all work necessary to complete

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them or carry them out fully and to the standard of performance required in this Agreement. The Board retains final authority with respect to all Services related decisions. The Board may, from time to time, request changes in the scope of Services. Any such changes, if agreed to by Gartner, including any increase or decrease in Gartner's fees, shall be documented by a written amendment to this Agreement signed by both parties.

4. Billing and Payment Procedures; Electronic Payments; Maximum Compensation

4.1 **Billing and Payment Procedures:** All invoices must include: a valid purchase order number, itemized description of the services rendered, date the services were rendered, invoice date, and invoice amount. Invoices shall be submitted in a timely manner. The final invoice shall be submitted no later than ninety (90) days after the expiration or termination of this Agreement. If Gartner has more than one contract with the Board, separate invoices must be submitted for each contract. The Board shall process payments in its normal course of business after receipt of invoices and all supporting documentation necessary for the Board to verify the Services provided under this Agreement.

Submit original invoices to:

Chicago Public Schools
Attn: Accounts Payable
PO Box 661
Chicago, IL 60690-0661

Submit a copy to:

Chicago Public Schools
125 S. Clark St., 3rd Floor
Chicago, IL 60603
Attn: Ellen Ryske

4.2 **Electronic Payments:** Gartner agrees that, at the Board's sole discretion, the Board may make payment electronically to Gartner for any and all amounts due to Gartner pursuant to this Agreement by means of the Board's procurement charge card account. Gartner recognizes that any charge to the Board's procurement charge card that is in excess of the open remaining amount as stipulated in the applicable Purchase Order, or any charge unaccompanied by the requisite documentation and data as required by the Board, shall be deemed invalid and disputed by the Board. Gartner further recognizes that, in the absence of any supporting documentation as may be required by the Board, payments associated with disputed charges shall be rescinded by the Board and deemed not owed by the Board. Gartner agrees to comply with the rules, procedures and documentation required for electronic payment via the Board's procurement charge card as established by the Board's Department of Procurement and Contracts.

4.3 **Maximum Compensation.** Compensation for Services during the Term shall not exceed **One Hundred Thirty Three Thousand Seven Hundred Dollars and 00/100 (\$133,700.00)** with no reimbursement for expenses ("**Total Maximum Compensation**"). Compensation and payment shall be based upon actual online research and advisory subscription Services provided during the Term of the Agreement and the Board shall not be obligated to pay for any Services not in compliance with this Agreement. In the event of early termination of this Agreement, the Board shall only be obligated to pay for Services rendered up to the date of termination. In no event shall the Board be liable for any costs incurred or Services performed after the effective date of termination as provided herein. Gartner shall submit invoices referencing this Agreement with such supporting documentation as may be requested by the Board. The Board shall process payment in its normal course of business.

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5. **Standards of Performance.** Gartner must perform all Services required of it under this Agreement with that degree of skill, care and diligence normally shown by a business performing services of a scope and purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. Any review, approval, acceptance of Services or deliverables or payment for any of the Services by the Board does not relieve Gartner of its responsibility for the professional skill and care and technical accuracy of its Services and deliverables. This provision in no way limits the Board's rights against Gartner under this Agreement, at law or in equity.
6. **Non-appropriation.** Expenditures not appropriated by the Board in its current fiscal year budget are deemed to be contingent liabilities only and are subject to appropriation in subsequent fiscal year budgets. In the event no funds or insufficient funds are appropriated and budgeted in any subsequent fiscal period by the Board for performance under this Agreement, the Board shall notify Gartner and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. Payments for Services completed to the date of notification shall be made to Gartner except that no payment shall be made or due to Gartner under this Agreement beyond those amounts appropriated and budgeted by the Board to fund payments under this Agreement.
7. **Audit and Document Retention.** Gartner shall furnish the Board with such information as may be requested relative to the progress, execution and costs of the Services. Gartner shall maintain all records, correspondence, receipts, vouchers, memoranda and other data relating to the fees invoiced for Gartner's Services under this Agreement. All records referenced above shall be retained for five (5) years after completion of Services and shall be subject to inspection and audit by the Board. If Gartner subcontracts the Services, Gartner shall include in all subcontractor agreements for Services, provisions requiring subcontractors to maintain the above-described records and allowing the Board the same right to inspect and audit said records as set forth herein.
8. **Termination for Convenience.** If at any time during the Term of this Agreement, the Board determines, in its sole discretion, that the Services provided by Gartner are no longer in its best interest, the Board shall have the option to terminate this Agreement upon thirty (30) calendar days written notice to Gartner.
9. **Events of Default and Remedies.**
 - 9.1 Events of default ("Events of Default") include, but are not limited to, the following:
 - a. Any material misrepresentation by Gartner in the inducement or the performance of this Agreement.
 - b. Breach of any term, condition, representation or warranty made by Gartner in this Agreement.
 - c. Failure of Gartner to perform any of its obligations under this Agreement including, but not limited, to the following:
 - (i) Action or failure to act which negatively affects the safety and/or welfare of students or Board staff;
 - (ii) Failure to perform the Services with sufficient personnel or material to ensure the timely performance of Services;

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- (iii) Failure to timely perform Services; and
 - (iv) Discontinuance of the Services for reasons within Gartner's reasonable control.
- d. Default by Gartner under any other agreement Gartner may have or may enter into with the Board.
 - e. Assignment by Gartner for the benefit of creditors or consent by Gartner to the appointment of a trustee or receiver or the filing by or against Gartner of any petition or proceeding under any bankruptcy, insolvency or similar law.

9.2. Remedies. The occurrence of any event of default permits the Board, at the Board's sole option, to declare Gartner in default. The Chief Purchasing Officer may in her/his sole discretion give Gartner an opportunity to cure the default within a certain period of time ("Cure Period"), which period of time must not exceed 30 days unless extended by the Chief Purchasing Officer. Whether or not to declare Gartner in default is within the sole discretion of the Chief Purchasing Officer.

The Chief Purchasing Officer shall give Gartner written notice of the default either in the form of a cure notice ("Cure Notice") or, if no opportunity to cure shall be granted, a default notice ("Default Notice"). If the Chief Purchasing Officer gives Default Notice, she/he shall also indicate any present intent she/he may have to terminate this Agreement. It is understood and agreed that any such decision to terminate this Agreement in whole or in part is final and effective upon giving the notice. If the Chief Purchasing Officer decides not to terminate, this decision shall not preclude him or her from later deciding to terminate the Agreement in a later notice, which shall be final and effective upon the giving of the notice or on the date set forth in the notice, whichever is later. The Chief Purchasing Officer may give a Default Notice if Gartner fails to effect a cure within the Cure Period given in the applicable Cure Notice. When a Default Notice with intent to terminate is given as provided in this Section, Gartner must discontinue all Services, unless otherwise directed in the notice. Following the giving of notice hereunder and the expiration of any Cure Period, if no adequate cure is made, the Board may invoke any or all of the following remedies:

- a. Terminate this Agreement, in whole or in part, as to any or all of the Services yet to be performed, effective at a time specified by the Board;
- b. Suspend Services during the designated Cure Period if the default results from an action or failure to act by Gartner which affects the safety and/or welfare of students or Board staff;
- c. Seek specific performance, an injunction or any other appropriate equitable remedy;
- e. Receive from Gartner any and all damages incurred as a result or in consequence of an Event of Default;
- f. Money damages;
- g. Withhold all or part of Gartner's compensation under this Agreement that are due or future payments that may become due under this Agreement; and

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- h. Deem Gartner non-responsible in future contracts to be awarded by the Board, pursuant to the Board's Debarment Policy on Non-Responsible Persons in Procurement Transactions (08-0602-PO1), as may be amended from time to time.

If the Board considers it to be in its best interest, it may elect not to declare Gartner in default or it may elect not to terminate this Agreement. The parties acknowledge that if the Board permits Gartner to continue to provide the Services despite one or more Events of Default, Gartner is not relieved of any responsibilities, duties or obligations under this Agreement, nor shall the Board be deemed to have waived or relinquished any of the rights it has to declare an Event of Default in the future.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall be construed as a waiver of any Event of Default or acquiescence thereto, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

If the Board's election to terminate this Agreement for default under this Section is determined by a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered an early termination as described in Section 10 below (Early Termination).

- 10. **LIMITATION OF LIABILITY:** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOSS OF DATA, LOST PROFITS, LOSS OF BUSINESS OR OTHER CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES FURTHER AGREE THAT EXCEPT FOR A) LIABILITY FOR INJURY OR DAMAGE TO PERSONS OR TANGIBLE PERSONAL PROPERTY MATTERS COVERED BY GARTNER'S INDEMNIFICATION OBLIGATION AS SET FORTH HEREIN, B) LOSSES OF WHATEVER NATURE RESULTING FROM FRAUD, GROSS NEGLIGENCE, WILLFUL MISCONDUCT (INCLUDING INTENTIONAL BREACH OF THE AGREEMENT), WILLFUL MISREPRESENTATION, OR MALFEASANCE BY A PARTY C) THIRD PARTY CLAIMS FOR COPYRIGHT, TRADEMARK AND INTELLECTUAL PROPERTY INFRINGEMENT COVERED BY GARTNER'S INDEMNIFICATION OBLIGATIONS, AND D) LOSSES OF WHATEVER NATURE INCLUDING DAMAGES THAT ARE COVERED UNDER THE INSURANCE PROVISIONS OF THIS AGREEMENT, NEITHER PARTY'S LIABILITY UNDER THIS AGREEMENT WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE EXCEED THE TOTAL MAXIMUM COMPENSATION AMOUNT.

- 11. **Confidential Information, Dissemination of Information, Ownership, Survival:**

11.1 **Confidential Information.** In performance or delivery of Services hereunder to the Board, Gartner may have access to or receive certain information that is not generally known to others ("Confidential Information"). Gartner shall not use or disclose any Confidential Information and any finished or unfinished originals, documents, screens, reports, writings, procedural manuals, forms, source code, object code, work flow charts, methods, processes, data, data studies, briefs, drawings, maps, files, records, computer printouts, papers, notes, designs, equipment descriptions, and other materials prepared or generated as a result of this Agreement ("Materials") without the prior written consent of that Board employee who is authorized to give such consent. This obligation of confidence shall not apply to any information that: (1) is in the public domain at the time of its communication; (2) is independently developed by Gartner; (3) entered the public domain

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through no fault of Gartner subsequent to the Board's communication to Gartner; (4) is in Gartner's possession and free of any obligation of confidence at the time of the Board's communication to Gartner. Additionally, Gartner may disclose such information to the extent required by legal process. The Board acknowledges that Gartner is in the business of providing research and reference content and this obligation of confidence shall not apply to information obtained by Gartner's research, analysis or consulting organization from other sources. Gartner shall use at least the same standard of care in the protection of the Confidential Information of the Board as Gartner uses to protect its own confidential information, but in any event such Confidential Information shall be protected in at least a reasonable manner.

11.2 Dissemination of Information. Gartner shall not disseminate any information obtained in performance or delivery of Services and/or Materials for the Board to a third party without the prior written consent of the Board. Gartner shall not issue publicity news releases or grant press interviews during or after the performance or delivery of the Services, except as may be required by law or with the prior written consent of the Board. If Gartner is presented with a request for documents by any administrative agency or with a *subpoena duces tecum* regarding any Confidential Information and/or Materials which may be in Gartner's possession as a result of Services and/or Materials provided under this Agreement, Gartner shall promptly give notice to the Board and its General Counsel with the understanding that the Board shall have the opportunity to contest such process by any means available to it prior to submission of any documents to a court or other third party. Gartner shall not be obligated to withhold delivery of documents beyond the time ordered by a court of law or administrative agency, unless the request for production or subpoena is quashed or withdrawn, or the time to produce is otherwise extended. Gartner shall cause its personnel, staff and/or subcontractors, if any, to undertake the same obligations of confidentiality agreed to by Gartner under this Agreement.

11.3 Ownership by Board. Except for Gartner's copyrights in the content of the Services, Gartner agrees that any and all printouts or other items for classroom use created by the Board through its use of Gartner's Services under this Agreement shall exclusively be the property of the Board. As expressly provided in the Ownership and Use of the Services section of Exhibit B ("Special Terms and Conditions") of this Agreement, Board faculty may copy reasonable portions of the content [of the Services] for lesson plans, interactive whiteboards, reports, dissertations, presentations, school newspapers and for similar nonprofit educational purposes to the extent permitted by applicable law. In each case, however, Board faculty and/or students may not remove or alter any copyright, trademark, service mark or other proprietary notices or legends. All Confidential Information shall at all times be and remain the property of the Board. All of the Materials shall be delivered to the Board upon demand at any time and in any event, shall be promptly delivered to the Board upon expiration or termination of this Agreement within three (3) business days of demand. In addition, Gartner shall return the Board's data in the format requested by the Board. If any of the above items are lost or damaged while in Gartner's possession, such items shall be restored or replaced at Gartner's expense.

11.4 Ownership by Gartner. Notwithstanding the Board's ownership rights as stated in Section 11.3, and in accordance with Exhibit B, Section 3, the web-based subscription Services are owned and copyrighted by Gartner and/or its affiliates. Gartner reserves all rights to the Services not expressly granted to the Board hereunder. Title to and ownership of the intellectual property, which includes Gartner's copyrighted material, processes, diagnostic, tools, formulas, and methodologies used to create the web-based reference Subscription Services and all modifications, enhancements, upgrades, extensions, other changes to, and derivative works of Gartner's Subscription Services (collectively, the "Services") made by Gartner, shall vest solely in Gartner. The Board

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agrees that the Services will not be transferred, shared, licensed or sold by the Board to any other school district or entity under any circumstances without the prior written consent of Gartner. Gartner shall be considered the author of the Services for purposes of copyright and only Gartner shall have the right to copyright the same.

11.5 Injunctive Relief. In the event of a breach or threatened breach of this Section, Gartner acknowledges and agrees that the Board may suffer irreparable injury not compensable by money damages and would not have an adequate remedy at law. Accordingly, Gartner agrees that the Board shall be entitled to seek immediate injunctive relief to prevent or curtail any such breach, threatened or actual. The foregoing shall be in addition and without prejudice to such rights that the Board may have in equity, by law or statute.

11.6 Survival. The provisions of this Section shall survive the termination or expiration of this Agreement.

12. **Representations and Warranties of Gartner:** Gartner represents and warrants that the following shall be true and correct as of the Effective Date of this Agreement and shall continue to be true and correct during the Term of this Agreement.

12.1 Contractor's Disclosure Form. The disclosures in the Contractor's Disclosure Form or Contractor's Disclosure Form-Recertification submitted by Gartner to the Department of Procurement and Agreements are true and correct, to the best of its knowledge. Gartner shall promptly notify the Board of any material change in information set forth therein, including, but not limited to, change in ownership or control, and any such change shall be subject to Board approval which shall not be unreasonably withheld.

12.2 Licensed Professionals. Services required by law or by the Agreement to be performed by professionals shall be performed by professionals licensed to practice by the State of Illinois in the applicable professional discipline.

12.3 Financially Solvent. Gartner warrants that it is financially solvent, is able to pay all debts as they mature and is possessed of sufficient working capital to complete all Services and perform all obligations under the Agreement.

12.4 Compliance with Laws. Gartner is and shall remain in compliance with all local, State and Federal laws, ordinances, regulations and statutes relating to the Agreement and the performance of Services, including, but not limited to, the Prevailing Wage Act, 820 ILCS 130/1 et seq., the Drug-Free Workplace, the Illinois Student Records Act, the Family Education Rights and Privacy Act of 1974 ("FERPA"), otherwise known as the Buckley Amendment, the Health Insurance Portability and Accountability Act ("HIPAA"), and any others referenced in the Agreement relating to non-discrimination. Further, Gartner is and shall remain in compliance with all Board policies and rules.

12.5 Gratuities. No payment, gratuity or offer of employment was made to Gartner, any of its members if a joint venture or, to the best of Gartner's knowledge, to any subcontractors, in relation to the Agreement or as an inducement for award of the Agreement. Gartner is and shall remain in compliance with all applicable anti-kickback laws and regulations.

12.6 Ethics. No officer, agent or employee of the Board is or will be employed by Gartner or has or will have a financial interest, directly or indirectly, in the Agreement or the compensation to be paid hereunder except as may be permitted in writing by the Board's Ethics Policy (11-0525-PO2), adopted May 25, 2011, as may be amended from time to time, which policy is incorporated herein by reference as if fully set forth herein.

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12.7 **Good Standing.** Gartner is not in default or have not been deemed by the Chief Purchasing Officer to be in default under any other agreement with the Board during the five (5) year period immediately preceding the effective date of the Agreement, and have not been debarred under the Board's Debarment Policy during the three (3) year period immediately preceding the effective date of the Agreement.

12.8 **Authorization.** Gartner has taken all action necessary for the approval and execution of the Agreement, and execution by the person signing on behalf of Gartner is duly authorized by Gartner and has been made with complete and full authority to commit Gartner to all terms and conditions of the Agreement which shall constitute valid, binding obligations of Gartner.

12.9 **Freedom of Information Act.** Gartner acknowledges that this Agreement and all documents submitted to the Board related to this contract award are a matter of public record and are subject to the Illinois Freedom of Information Act (5 ILCS 140/1) and any other comparable state and federal laws and that this Agreement is subject to reporting requirements under 105 ILCS 5/10-20.44. ***Gartner further acknowledges that this Agreement shall be posted on the Board's Internet website.***

12.10 **Research Activities and Data Requests.** Gartner acknowledges and agrees that in the event Gartner seeks to conduct research activities in the Chicago Public Schools or use CPS student data for research purposes in connection with this Agreement, Gartner shall comply with the Board's Research Study and Data Policy adopted on July 28, 2010, as may be amended from time to time. Gartner acknowledges and agrees that it may not begin any research activities or obtain data for research purposes without the prior written consent of the Chief Officer Strategy, Research and Accountability or their designee. This section shall not apply to any research activity conducted by Gartner that is not in connection with this Agreement.

13. **Independent Contractor.** It is understood and agreed that the relationship of Gartner to the Board is and shall continue to be that of an independent contractor and neither Gartner nor any of Gartner's staff, agents, employees or subcontractors shall be entitled to receive Board employee benefits. It is further understood and agreed that the Board shall not be responsible for, nor incur any liability for, any State or Federal withholding or other taxes or for FICA or State unemployment insurance for Gartner, its agents, employees or subcontractors, and the payment of any such taxes incurred or due by Gartner shall be the sole responsibility of Gartner. Gartner agrees that neither Gartner nor its staff or subcontractors shall represent themselves as employees or agents of the Board. Gartner shall provide the Board with a valid taxpayer identification number as defined by the United States Internal Revenue Code, including, but not limited to, a social security number or a federal employer identification number.

14. **Indemnification.** Gartner agrees to defend, indemnify and hold harmless the Board, its members, employees, agents, officers and officials from and against liabilities, losses, penalties, damages and expenses, including costs and attorney fees, arising out of any and all claims, liens, damages, obligations, actions, suits, judgments or settlements, or causes of action, of every kind, nature and character arising or alleged to arise out of the negligent or willful acts or omissions of Gartner, its officials, agents, employees and/or subcontractors in the performance of this Agreement.

With appropriate written notification by the Board regarding any of the acts described herein, Gartner shall, at its own cost and expense, appear, defend and pay all reasonable attorney fees and, other costs and expenses arising hereunder. In addition, if any judgment shall be rendered against the Board in any such action, Gartner shall, at its own expense, satisfy and discharge such obligation of the Board. The Board shall have the

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right, at its own expense, to participate in the defense of any suit, without relieving Gartner of any of its obligations hereunder. The Board retains final approval of any and all settlements or legal strategies which involve the interest of the Board.

The indemnities set forth herein shall survive the expiration or termination of this Agreement.

15. **Non-Liability of Board Officials.** Gartner agrees that no Board member, employee, agent, officer or official shall be personally charged by Gartner, its members if a joint venture, or any subcontractors with any liability or expense under this Agreement or be held personally liable under this Agreement to Gartner, its members if a joint venture, or any subcontractors.
16. **Insurance:** Gartner, at Gartner's own expense, shall procure and maintain insurance for all operations under this Agreement, whether performed by Gartner or by subcontractors. All insurers shall be licensed by the State of Illinois and rated A-VII or better by A.M. Best or a comparable rating service. Gartner shall submit to the Board satisfactory evidence of insurance coverage prior to commencement of this Agreement. Minimum insurance requirements for operations under this Agreement are:

16.1 **Commercial General Liability Insurance (Primary and Umbrella):** Commercial General Liability Insurance or equivalent with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate for bodily injury, personal injury and property damage liability. Coverage shall include, but not be limited to: all operations, contractual liability, independent contractors, products/completed operations (for a minimum of two (2) years following completion), and defense.

The insurance company, or its representative, shall submit an insurance certificate evidencing all coverage as required hereunder and indicating the Additional Insured status as required above. The Board will not pay Gartner for any Services if satisfactory proof of insurance is not provided by Gartner prior to the performance of any Services. Gartner shall provide thirty (30) days prior written notice of material change, cancellation, or non-renewal be given to:

Risk Management
Board of Education of the City of Chicago
125 S. Clark Street, 7th Floor
Chicago, Illinois 60603

Any failure of the Board to demand or receive proof of insurance coverage shall not constitute a waiver of Gartner's obligation to obtain the required insurance. The receipt of any certificate does not constitute agreement by the Board that the insurance requirements in this Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all Contract requirements. Gartner's failure to carry or document required insurance shall constitute a breach of the Gartner's Contract with the Board. In the event Gartner fails to fulfill the insurance requirements of this Contract, the Board reserves the right to stop the Services until proper evidence of insurance is provided, or this Contract may be terminated.

Any deductibles or self-insured retentions on referenced insurance coverage must be borne by Gartner. Any insurance or self-insurance programs maintained by the Board of Education do not contribute with insurance provided by the Gartner under this Contract.

All subcontractors are subject to the same insurance requirements of Gartner unless otherwise specified in this Contract. Gartner shall require any subcontractors under this

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Contract to maintain comparable insurance naming Gartner, the Board inclusive of its members, employees and agents, and any other entity designated by the Board, as Additional Insureds. Gartner will maintain a file of subcontractor's insurance certificates evidencing compliance with these requirements.

The coverages and limits furnished by Gartner in no way limit the Gartner's liabilities and responsibilities specified within this Contract or by law. The required insurance is not limited by any limitations expressed in the indemnification language in this Contract, if any, or any limitation that might be placed on the indemnity in this Contract given as a matter of law.

Gartner agrees that insurers waive their rights of subrogation against the Board.

17. **Audit and Document Retention:** Gartner shall furnish the Board with such information as may be requested relative to the costs of the Services. Gartner shall maintain all records, correspondence, receipts, vouchers, memoranda and other data relating to the invoiced to the fees invoiced for Gartner's Services provided under this Agreement. All records referenced above shall be retained for five (5) years after completion of the Services and shall be subject to inspection and audit by the Board, which shall include the right to copy such records. If Gartner subcontracts the Services, Gartner shall include in all subcontractor agreements for Services, provisions requiring subcontractors to maintain the above-described records and allowing the Board the same right to inspect and audit said records as set forth herein.
18. **M/WBE Plan:** Gartner acknowledges that it is familiar with the requirements of the Board's Remedial Program for Minority and Women Owned Business Enterprise Participation in Goods and Services Contracts and agrees to comply with the provisions of such plan.
19. **Board Not Subject to Taxes.** The federal excise tax does not apply to the Board by virtue of Exemption Certificate No. 36-600584, and the State of Illinois sales tax does not apply to the Board by virtue of Exemption No. E9997-7109. The compensation set in the Schedule of Compensation is inclusive of all other taxes that may be levied or based on this Agreement, including without limitation sales, use, nonresident, value-added, excise, and similar taxes levied or imposed on the Services to be provided under this Agreement, but excluding taxes levied or imposed on the income or business privileges of Gartner. Gartner shall be responsible for any taxes levied or imposed upon the income or business privileges of Gartner.
21. **Notices:** All notices required under this Agreement shall be in writing and sent to the addresses and persons set forth below, or to such other addresses as may be designated by a party in writing. All notices shall be deemed received when (i) delivered personally, or (ii) sent by confirmed telex or facsimile (followed by the actual document), or (iii) one day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt. Refusal to accept delivery has the same effect as receipt.

IF TO THE BOARD:

Board of Education of the City of Chicago
Information & Technology Services
125 S. Clark St., 3rd Floor
Chicago, IL 60603
Attn: Ellen Ryske

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WITH A COPY TO: James L. Bebley
General Counsel
Law Department, 7th Floor
125 South Clark Street
Chicago, Illinois 60603

IF TO GARTNER: Gartner, Inc.
200 W. Jackson Blvd.
Chicago, IL 60606
Attn: Bob Cutler

WITH A COPY TO: Gartner, Inc.
12600 Gateway Blvd.
Ft. Myers, FL 33913
Attn: Contracts Administration Department

22. **Non-Discrimination:** It shall be an unlawful employment practice for Gartner to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, or other terms, conditions, or privileges of employment, because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, disability, marital status, parental status, military discharge status or national origin; or to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual from equal employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, disability, marital status, parental status, military discharge status or national origin. Gartner shall particularly remain in compliance at all times with: the Civil Rights Act of 1964, 42 U.S.C.A. §2000a, *et. seq.*, as amended; the Age Discrimination in Employment Act, 29 U.S.C.A. §621, *et. seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §701, *et. seq.*; as amended; the Americans with Disabilities Act, 42 U.S.C.A. §12101, *et. seq.*; the Individuals with Disabilities Education Act, 20 U.S.C.A. §1400 *et. seq.*, as amended; the IL Human Rights Act, 775 ILCS 5/1-101, *et. seq.* as amended; the IL School Code, 105 ILCS 5/1-1 *et. seq.*; the IL Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et. seq.*; and the Chicago Human Rights Ordinance, ch. 2-160 of the Municipal Code of Chicago, and all other applicable federal statutes, regulations and other laws.
23. **Entire Agreement and Amendment:** This Agreement, including all exhibits attached to it and incorporated into it, constitutes the entire agreement of the parties with respect to the matters contained herein. All attached exhibits are incorporated into and made a part of this agreement. No modification of or amendment to this Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. Any prior agreements or representations, either written or oral, relating to the subject matter of this Agreement are of no force or effect. This Agreement may be signed in counterparts.
24. **Governing Law:** This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois.

Gartner irrevocably submits itself to the original jurisdiction of those courts located in the County of Cook, State of Illinois, with regard to any controversy arising out, or relating to, or in any way concerning the execution or performance of this Agreement. Gartner agrees that service of process on the Gartner may be made, at the option of the Board, either registered or certified mail addressed to the applicable office as provided in this Agreement, by registered or certified mail addressed to the office actually maintained by

This Agreement will be posted on the CPS Internet website.

the Gartner, or by personal delivery on any officer, director, or managing or general agent of the Gartner. If any action is brought by the Gartner against the Board concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

25. **Conflict of Interest:** This Agreement is not legally binding on the Board if entered into in violation of the provisions of 105 ILCS 5/34-21.3, which restricts the employment of, or the letting of contracts to, former Board members within a one year period following expiration or other termination of their office.
26. **Indebtedness:** Gartner agrees to comply with the Board's Indebtedness Policy adopted June 26, 1996 (96-0626-PO3), as amended from time to time, which policy is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein.
27. **Ethics:** No officer, agent or employee of the Board is or shall be employed by Gartner or has or shall have a financial interest, directly, or indirectly, in this Agreement or the compensation to be paid hereunder except as may be permitted in writing by the Board's Ethics Policy adopted May 25, 2011 (11-0525-PO2), as amended from time to time, which policy is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein.
28. **Inspector General:** Each party to this Agreement hereby acknowledges that in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Board of Education of the City of Chicago has the authority to conduct certain investigations and that the Inspector General shall have access to all information and personnel necessary to conduct those investigations.
29. **Waiver:** No delay or omission by the Board to exercise any right hereunder shall be construed as a waiver of any such right and the Board reserves the right to exercise any such right from time to time as often and as may be deemed expedient.
30. **Severability:** In the event that any provision of this Agreement or the application thereof to any party or circumstance shall be finally determined by a court of proper jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law to the extent consistent with the parties' intent as expressed in this Agreement.
31. **Counterparts and Facsimiles.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one instrument. A signature delivered by facsimile or electronic means shall be considered binding for both parties.

[SIGNATURE PAGE FOLLOWS]

This Agreement will be posted on the CPS Internet website.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the duly authorized representatives as of the date first written above.

**BOARD OF EDUCATION OF
THE CITY OF CHICAGO**

GARTNER, INC.

By: David J. Vitale
David J. Vitale, President

By: _____

Signature: C. L.

Title: 2012-11-09T14:01:34-05:00
Craig Lewandowski - Contracts Specialist

Attest: Estela G. Beltran
Estela G. Beltran, Secretary

Date: 11/9/12

Date: 11/20/12

Board Report No. 12-0627-PR31; 12-0925-AR2-39

Approve as to legal form: James L. Bebley 12-1114-AR2-24

James L. Bebley
James L. Bebley, General Counsel

Attachments:

- Exhibit A - Scope of Services, Deliverables, Outcomes**
- Exhibit B - Special Terms and Conditions**

This Agreement will be posted on the CPS Internet website.

EXHIBIT A
(Gartner, Inc.)

SCOPE OF SERVICES, DELIVERABLES, OUTCOMES

Name of Project: Subscription to Online Research and Advisory Services

CPS Project Manager: Ellen Ryske; Phone: 773/553-1322; E-Mail: ejryske@cps.k12.il.us

Gartner Project Manager: Bob Cutler; Phone: 847/226-5217; E-Mail: bob.cutler@gartner.com

Term of Performance: July 1, 2012 through June 30, 2013

Board Report No. 12-0627-PR31

(I) SCOPE OF SERVICES

Provide unlimited access to a comprehensive knowledge base of Gartner research; provide a reference tool allowing access to Gartner's comprehensive database of product vendor and technology information; and provide analysts available to offer both subject matter expertise and best-practice guidance through all phases of the vendor selection process.

Service names and Levels of Access are defined in the Service descriptions. Gartner may periodically update the Service names, the Level of Access names and the deliverables for each Service. If the Board adds Services or upgrades the level of service or access, an amendment to this Service Agreement will be required.

CPS may change the named users based on its requirements, in accordance with Exhibit B hereunder.

Service Name / Deliverables	# Users	Authorized User(s)
Gartner for IT Executives http://www.gartner.com/it/sd/sd_ite_cio_20100125.pdf	1	Lachlan Tidmarsh
Gartner for IT Leaders Workgroup Essentials – Advisor http://www.gartner.com/it/sd/sd_iti_advisor_wg_essentials.pdf	1	Ed Wagner
Gartner for IT Leaders Workgroup Essentials Member Add-on (same link as above)	3	Philip DiBartolo Anthony McPhearson Ellen Ryske 3 – TBD (optional)

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(II) PAYMENT TERMS

The first billing date includes the five named users listed above.

During the Term of this Agreement, the Board may, at its option, add up to three additional "Member Add-Ons" to the Workgroup referenced above at the then-current Vendor cost, which, through September 30, 2012, is in the amount of Seven Thousand and 00/100 Dollars (\$7,000.00). The billing date will be the date the Member is provided with access, and the billing amount will be for the number of months until the end of the Term of this Agreement. The maximum cost per Add-On member will not exceed the amount of Seven Thousand and 00/100 Dollars (\$7,000.00).

<u>Billing Date</u>	
7-1-2012 – 5 users	112,700.00
Date TBD – 1 user	7,000.00
Date TBD – 1 user	7,000.00
Date TBD – 1 user	7,000.00
TOTAL:	\$133,700.00

(III) DELIVERABLES

During the Term of the Services Agreement, Services will include the following:

- a. Access to research reports
- b. Web site information for general, ad-hoc information or data requests
- c. Notifications when new research is published
- d. A dedicated relationship team

(IV) OUTCOMES

Gartner's Services will result in continued access to IT research and advisory services that will assist Board employees in making wiser and more cost-effective IT decisions.

This Agreement will be posted on the CPS Internet website.

EXHIBIT B

(Gartner, Inc.)

**SPECIAL TERMS AND CONDITIONS APPLICABLE TO RESEARCH AND
ADVISORY SERVICES TO BE PROVIDED BY GARTNER**

These Special Terms and Conditions ("Special Terms") are established to provide Research, Advisory and Analysis Subscription Services by Gartner, Inc., ("Gartner") to the Chicago Board of Education of the City of Chicago ("Board"), and constitute additional business terms between the parties in accordance with the attached License and Online Subscription Services Agreement dated as of July 1, 2012 (the "Agreement"), by and between the Board and Gartner. These Special Terms are incorporated into and made a part of the Agreement (and together the Special Terms and the Services Agreement are collectively referred to herein as the "Agreement") as if set full therein and may not be revised or amended except in accordance with the provisions of the Agreement. Terms used herein and not otherwise defined have the meaning ascribed thereto in the Agreement unless another meaning is clearly indicated by the context.

1. ***Cancellation of Services for Non-Payment and Modifications.*** In the event the Board breaches this Agreement by failing to pay for Services, or by exceeding its authorized usage rights to the Services, Gartner may deactivate individual Board User access to the Services, on ten (10) days' notice, until the breach is cured, and Board shall remain liable for all fees payable hereunder. In order to remain current and timely in its Service offerings, Gartner may make minor modifications from time to time in the content of any Service. If Gartner discontinues any Service in its entirety, the Board may, at its option, receive a substitute Service, or obtain a pro rata refund of the fees paid for the discontinued Service.

2. ***Ownership and Use of the Services.*** Gartner owns and retains all rights to the Services not expressly granted to Board. Only the individuals named in this Agreement (each a "**Licensed User**") may access the Services. Each Licensed User will be issued a unique password, which may not be shared. The Board agrees to review and comply with the *Usage Guidelines for Gartner Services* ("**Guidelines**"), which are accessible to all Licensed Users via the "Policies" section of *gartner.com*. Among other things, these Guidelines describe how Client may substitute Licensed Users, excerpt from and/or share Gartner research documents within the Board, and quote or excerpt from the Services externally. Gartner reserves all rights to the Services not expressly granted to the Board hereunder. Licensed Users may (i) print one copy of any research document, solely for their own use for the benefit of the Board; and (ii) use small excerpts of individual research documents, on a non-routine basis, in internal presentations or reports to be shared with other Board personnel. The Board's Licensed Users may not distribute copies of research documents to non-Licensed Users unless otherwise specified in the Service Description for a particular Service. Further details and guidance on how to use Gartner Services may be found in the current version of the *Usage Guidelines for Gartner Services*, posted on *gartner.com* ("**Guidelines**"). In the event of an inconsistency or conflict between this Agreement and the Guidelines, this Agreement shall take precedence.

3 ***Monitoring of Usage.*** The Board understands that Gartner periodically monitors activity on Gartner's web site, including use of the Services by individuals. If Gartner sees indications that the Services are being used in a manner that may not be in accordance with the terms of this Agreement, the Board agrees, at Gartner's request, to review its use of the Services and to provide Gartner with any and all information necessary to verify and/or validate that Board Users are using the Services in accordance with the terms of this Agreement.

4. ***DISCLAIMER OF ALL OTHER WARRANTIES.*** THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND GARTNER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES AS TO ACCURACY, COMPLETENESS OR ADEQUACY OF INFORMATION. CLIENT RECOGNIZES THE UNCERTAINTIES INHERENT IN ANY ANALYSIS OR

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INFORMATION THAT MAY BE PROVIDED AS PART OF THE SERVICES, AND ACKNOWLEDGES THAT THE SERVICES ARE NOT A SUBSTITUTE FOR ITS OWN INDEPENDENT EVALUATION AND ANALYSIS AND SHOULD NOT BE CONSIDERED A RECOMMENDATION TO PURSUE ANY COURSE OF ACTION. GARTNER SHALL NOT BE LIABLE FOR ANY ACTIONS OR DECISIONS THAT CLIENT MAY TAKE BASED ON THE SERVICES OR ANY INFORMATION OR DATA CONTAINED THEREIN. CLIENT UNDERSTANDS THAT IT ASSUMES THE ENTIRE RISK WITH RESPECT TO THE USE OF THE SERVICES.

5. Miscellaneous

(a) **Force Majeure.** Except for payment obligations, nonperformance by either party shall be excused to the extent that performance is rendered impossible by strike, acts of God, governmental acts or restrictions, failure of suppliers, acts of war or terrorism, or any other reason where failure to perform is beyond the reasonable control of the nonperforming party.

(b) **Use of Name, Trademark, and Logo.** Absent the prior written consent of the other party, neither party shall use the name, trademarks, or logo of the other in promotional materials, publicity releases, advertising, or any other similar publications or communications.

(c) **No Third Party Beneficiaries.** This Agreement is for the benefit of the parties only. No third party shall have the right to (i) rely on the Services provided by Gartner, or (ii) seek to impose liability on Gartner as a result of the Services.

(d) **Surviving Clauses.** Sections 2, 4 and 5 of this Exhibit B shall survive the termination of this Agreement.