



LICENSING AGREEMENT

This Licensing Agreement ("**Agreement**") is entered into on this 20th day of September, 2012 (the "**Effective Date**"), by and between Triumph Learning, LLC, a Delaware limited liability company ("**Licensor**"), having an address at 136 Madison Avenue, 7th Floor, New York NY 10016, and the Board of Education of the City of Chicago, a body politic and corporate, commonly known as the "Chicago Public Schools" ("**Licensee**" or "**Board**"), having an address at 125 S. Clark Avenue, 11th Floor, Chicago, IL 60603.

1. License: Grant and Scope; Fees.

A. Licensor hereby grants Licensee non-exclusive, non-transferable one-time usage and reproduction rights to a PS&E Day 2 Science Practice Assessment derived the Prairie State Exam Coach, ACT and ISBE Science, Exit Level (91IL), which shall be comprised of (i) a cover Page, (ii) Forty-Five (45) questions and (iii) a correlated answer key (the "**Licensed Materials**"). Licensor shall deliver the Licensed Materials in an electronic PDF file format to Linda Abdul of Licensee no later than September 21, 2012.

B. Licensee shall have the right to reproduce up to thirty thousand (30,000) copies of the Licensed Materials for use by Licensee's students and their teachers (the "**Authorized Users**") in an overall assessment program.

C. In exchange for the right to reproduce Licensed Materials, Licensee shall pay Licensor forty-five thousand dollars (\$45,000) for the Term (defined below) or Renewal Term (defined below), as the case may be, payable in accordance with Section 4 below.

2. Restrictions on Use.

By accepting the terms of this Agreement, Licensee shall not knowingly permit anyone other than the Authorized Users use of the Licensed Materials and agrees to take reasonable measures to ensure that persons or entities other than the Authorized Users shall have access to the Licensed Materials. Licensee agrees to use the Licensed Materials only as explicitly provided for in this Agreement.

Licensee agrees not to modify or create a derivative work of the Licensed Material; *however*, Licensee may reformat Licensed Material including removing headings or titles that are inconsistent with Licensee's intended use. Licensee may not remove, obscure or modify any copyright or other notices included in the Licensed Materials. Licensee may not use the Licensed Materials for commercial purposes, including but not limited to the sale of Licensed Materials or bulk reproduction or distribution of the Licensed Materials in any form beyond that which is set forth in this Agreement.

Licensee acknowledges that (i) the Licensed Materials and its derivative parts constitute valuable assets of Licensor and (ii) Licensor owns the exclusive proprietary right and interest in and to the Licensed Materials. The parties hereto hereby agree and acknowledge that no transfer of any intellectual property or other ownership in the Licensed Materials except as explicitly provided herein is intended by this Agreement.

3. **Term.** The term of this Agreement and the License shall commence on the Effective Date and continue in full force and effect with respect to the Licensed Materials until June 30, 2013 ("Term"). The parties hereto shall have three (3) options to renew this Agreement for periods of one (1)-year each (each a "Renewal Term") under the same terms and conditions contained in this Agreement. Any such renewal shall be evidenced in writing and signed by both parties and the Board's General Counsel.

4. **Billing and Payment Procedures; Electronic Payments.**

A. **Billing and Payment Procedures.** Licensor shall be paid upon receipt of a sufficient invoice after delivery to the Board of the Licensed Materials in electronic PDF file. All invoices must include: a valid purchase order number, itemized description of the services rendered and/or materials delivered (as applicable), date the services were rendered (as applicable), date the materials were delivered, 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 Licensor 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 materials to be licensed to Licensee 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
Office of Student Assessment
125 South Clark Street, 11th Floor
Chicago, IL 60603
Attn: Linda Abdul

B. **Electronic Payments.** Licensor agrees that, at the Board's sole discretion, the Board may make payment electronically to Licensor for any and all amounts due to Licensor pursuant to this Agreement by means of the Board's procurement charge card account. Licensor 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. Licensor 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. Licensor 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.

5. **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 Licensor 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. No payment shall be made or due to Licensor under this Agreement beyond those amounts appropriated and budgeted by the Board to fund payments under this Agreement.

6. **Events of Default and Remedies.**

A. **Events of Default.** "Events of Default" include the following:

- i. Any material misrepresentation by Licensor in the inducement or the performance of this Agreement.
- ii. Breach of any term, condition, representation or warranty made by Licensor in this Agreement.
- iii. Failure of the Licensor to perform any of its obligations under this Agreement including, but not limited, to action or failure to act which negatively affects the safety and/or welfare of students or Board staff;
- iv. Default by Licensor under any other agreement Licensor may have or may enter into with the Board.
- v. Assignment by Licensor for the benefit of creditors or consent by Licensor to the appointment of a trustee or receiver or the filing by or against Licensor of any petition or proceeding under any bankruptcy, insolvency or similar law.
- vi. Failure of Licensee to comply with Section 2.

B. **Remedies.** The occurrence of any Event of Default which Licensor or Licensee (as the case may be) fails to cure within fifteen (15) calendar days after receipt of notice thereof given in accordance with the terms of this Agreement and specifying the Event of Default or which, if such Event of Default cannot be reasonably cured within fifteen (15) calendar days after notice, Licensor or Licensee (as the case may be) fails to commence and continue diligent efforts to cure in the sole opinion of Licensor or Licensee (as the case may be), may permit Licensor or Licensee (as the case may be) to declare the other party hereto in default.

Whether to declare Licensor in default is within the sole discretion of the Chief Procurement Officer. Written notification of an intention of the Chief Procurement Officer to terminate this Agreement, in whole or in part, shall be provided and shall be final and effective upon Licensor's receipt of such notice. Upon the giving of such notice as provided in this Agreement, the Board may invoke any or all of the following remedies

- i. The right to specific performance, an injunction or any other appropriate equitable remedy;
- ii. The right to receive from Licensor any and all damages incurred as a result or in consequence of an Event of Default;
- iii. The right to money damages;
- iv. The right to withhold all or part of Licensor's compensation under this Agreement; and
- v. The right to use an Event of Default as a basis to deem Licensor non-responsible in future contracts to be awarded by the Board.

The Board may elect not to declare Licensor in default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the Board and that if the Board elects to not terminate this Agreement, despite one or more Events of Default, Licensor shall in no way be relieved of any responsibilities, duties or obligations under this Agreement nor shall the Board waive or relinquish any of its rights under this Agreement, at law, equity or statute.

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 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 pursuant the Early Termination provision below.

7. Early Termination. In addition to termination under Sections 5 (Non-appropriation) and 6(B) (Remedies) of this Agreement, the Board may terminate this Agreement at any time by a notice to the Licensor in accordance with the provision of Section 15 (Notices). The effective date of termination shall be the date the notice is received by Licensor or the date stated in the notice, whichever is later.

Licensor must include in its contracts with subcontractors an early termination provision in form and substance equivalent to this early termination provision to prevent claims against the Board arising from termination of subcontracts after the early termination of this Agreement.

Licensor shall not be entitled to make any early termination claims against the Board resulting from any subcontractor's claims against Licensor or the Board to the extent inconsistent with this provision.

8. **Assignment.** This Agreement shall be binding on the parties and their respective successors and assigns, provided however, that neither party may assign this Agreement or any obligations imposed hereunder without the prior written consent of the other party.

9. **Confidential Information, Dissemination of Information, Ownership, Survival.**

A. **Confidential Information.** In granting the Board the license under this Agreement, Licensors may have access to or receive certain information that is not generally known to others, such as employee, volunteer, student, or teacher data including, but not limited to name, address, student identification number, social security number, phone number, email address, gender, date of birth, ethnicity, race, foster care status, disabilities, school, grade, grade point average, standardized test scores, ISAT scores, assessment data, after school activities, highest grade completed, discipline history, criminal history, free or reduced lunch qualifications, housing status, income, household income or payroll information (such information, "**Confidential Information**"). Licensors shall not use or disclose any Confidential Information without the prior written consent of the Board. Licensors shall use at least the same standard of care in the protection of the Confidential Information of the Board as Licensors use to protect its own confidential information, but in any event such Confidential Information shall be protected in at least a commercially reasonable manner.

B. **Dissemination of Information.** Licensors shall not disseminate any Confidential Information to a third party without the prior written consent of the Board. Licensors shall not issue publicity news releases or grant press interviews related to this Agreement, except as may be required by law or with the prior written consent of the Board. If Licensors are presented with a request for documents by any administrative agency or with a *subpoena duces tecum* regarding any Confidential Information which may be in Licensors' possession, Licensors shall immediately 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. Licensors 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. Licensors shall cause its personnel, staff and subcontractors, if any, to undertake the same obligations regarding confidentiality and dissemination of information as agreed to by Licensors under this Agreement.

C. **Ownership.** All Licensors intellectual property shall at all times be and remain the property of Licensors. All Board intellectual property and Confidential Information shall at all times be and remain the property of the Board.

D. **Use of Confidential Information.** Licensors warrants and represents that it shall not use the Confidential Information for any purpose, including but not limited to any research project whether internal or external to Licensors. Any use of the Confidential Information not specifically contemplated in this Agreement shall be considered a material breach of this Agreement.

E. **Third Party Confidential Information and Proprietary Information.** Licensors has not utilized, analyzed, reverse engineered, or otherwise exploited any third party Confidential

Information or proprietary information in respect of the Licensed Materials regardless of where Licensor obtained the third party Confidential Information or proprietary information (even if the third party Confidential Information or proprietary information was provided by the Board) unless Licensor has previously secured the appropriate authorization in writing from such third party. Licensor hereby agrees to indemnify and hold harmless the Board against any and all claims related to third party Confidential Information and proprietary information in connection with or arising out of the acts or omissions of Licensor or its staff under this Agreement.

F. Return or Destruction of Confidential Information. Licensor shall, upon the request of the Board, or if no request is made, upon the termination or expiration of this Agreement, cease using and return or at the option of the Board, destroy, all Confidential Information furnished by the Board or collected by Licensor in performance under this Agreement. Licensor shall comply with the on demand to return or destruct all Confidential Information within three (3) business days of demand. In the event the Board elects to have Licensor destroy the Confidential Information Licensor shall confirm by written affidavit to the Board that Licensor has complied with the Board's request to destroy such items.

G. Staff and Subcontractors. Licensor agrees to cause its personnel, staff and subcontractors, if any, to undertake the same obligations of confidentiality and ownership agreed to herein by Licensor.

H. Freedom of Information Act. Licensor 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. Licensor further acknowledges that this Agreement shall be posted on the Board's Internet website at www.cps.edu.

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

10. Representations and Warranties of Licensor. Licensor 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.

A. Compliance with Laws. Licensor is and shall remain in compliance with all applicable federal, state, county, and municipal, statutes, laws, ordinances, and regulations relating to this Agreement in effect now or later and as amended from time to time, including but not limited to the Prevailing Wage Act, 820 ILCS 130/1 et seq., the Drug-Free Workplace Act, the Illinois Student Records Act, the Family Educational Rights and Privacy Act ("FERPA"), and any others relating to non-discrimination. Further, Licensor is and shall remain in compliance with all Board policies and rules. Board policies and rules are available at <http://www.cps.edu/>.

B. Good Standing. Licensor is not in default and has not been deemed by the Board to be in default under any other Agreement with the Board during the five (5)-year period immediately preceding the effective date of this Agreement.

C. Authorization. In the event Licensor is an entity other than a sole proprietorship, Licensor represents that it has taken all action necessary for the approval and execution of this Agreement, and execution by the person signing on behalf of Licensor is duly authorized by Licensor and has been made with complete and full authority to commit Licensor to all terms and conditions of this Agreement which shall constitute valid, binding obligations of Licensor. A signature delivered by facsimile or electronic means will be considered binding for both parties.

D. Financially Solvent. Licensor warrants that it is financially solvent, is able to pay all debts as they mature and is possessed of sufficient working capital to perform its obligations under this Agreement.

E. Gratuities. No payment, gratuity or offer of employment was made by or to Licensor in relation to this Agreement or as an inducement for award of this Agreement.

F. Contractor's Disclosure Form. The disclosures in the Contractor Disclosure Form, previously submitted by Licensor, are true and correct. Licensor shall promptly notify Board in writing 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.

G. Background Investigations and Criminal Background Investigations. Consultant represents and warrants that, at its own cost and expense, it shall have a complete fingerprint-based criminal history records check ("**Records Check**") conducted on any and all employees, agents and subcontractors ("**Staff**") who may have direct, regular contact with CPS students under this Agreement in accordance with the Illinois School Code (§105 ILCS 5/34-18.5); the *Sex Offender and Child Murderer Community Notification Law*, created under Illinois Public Act 94-219, eff. August 2005; and the *Child Murderer Violent Offender Against Youth Notification Law*, created under Public Act 94-945. Such complete Records Check consists of the following:

- i. fingerprint-based checks through the Illinois State Police (ISP) and the FBI,
- ii. check of the Illinois Sex Offender Registry (IL-SOR), and
- iii. check of the Violent Offender Against Youth Registry (see below).

The purpose of the Records Check is to confirm that none of these persons have been convicted of any of the criminal or drug offenses enumerated in subsection (c) of §105 ILCS 5/34-18.5 or any offenses enumerated under the *Sex Offender and Child Murderer Community Notification Law*, or the *Child Murderer Violent Offender Against Youth Notification Law*, or have been convicted within the past seven (7) years of any other felony under the laws of Illinois or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in the State of Illinois, would have been punishable as a felony under the laws of Illinois.

Consultant understands and agrees that it shall not allow any of its employees or subcontractors to have direct regular contact with a CPS student until a Records Check has been conducted for such person and the results of the Records Check satisfies the requirements of

§105 ILCS 34-18.5 and the requirements of the Acts and Laws referenced in the preceding paragraph, as amended from time to time.

If Consultant is an individual, Consultant represents and warrants that Consultant is in compliance with Section 5/34-18.5 of the Illinois School Code as from time to time amended, and has never been convicted of the offenses enumerated therein. Further, Consultant agrees to submit to the above procedure regarding background investigations and to fully cooperate and provide the Board with all necessary information in order for the Board to perform all such above checks on Consultant, all at Consultant's expense.

It is understood and agreed that Consultant's non-compliance with this Section 10(G) will constitute a material breach of this Contract, and the Board also will have the right to withhold payments due hereunder until Consultant remedies such non-compliance to the Board's reasonable satisfaction, or take any other action or remedy available under this Contract or by law.

11. Indemnification. Licensor 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 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 the Licensor, its officials, agents and employees and subcontractors in the performance of this Agreement. This includes, but is not limited to, the unauthorized use of any trade secrets, U.S. patent or copyright infringement.

Licensor shall, at its own cost and expense, appear, defend and pay all attorney fees and, other costs and expenses arising hereunder. In addition, if any judgment shall be rendered against the Board in any such action, the Licensor shall, at its own expense, satisfy and discharge such obligation of the Board. The Board shall have the right, at its own expense, to participate in the defense of any suit, without relieving the Licensor 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.

However, if Licensor, after receiving notice of any such proceeding, fails to immediately begin the defense of such claim or action, the Board may (without further notice to Licensor) retain counsel and undertake the defense, compromise, or settlement of such claim or action at the expense of Licensor, subject to the right of Licensor to assume the defense of such claim or action at any time prior to settlement, compromise or final determination thereof. The cost and expense of counsel retained by the Board in these circumstances shall be borne by Licensor and Licensor shall be bound by, and shall pay the amount of, any settlement, compromise, final determination or judgment reached while the Board was represented by counsel retained by the Board pursuant to this paragraph, or while Licensor was conducting the defense.

To the extent permissible by law, Provider waives any limits to the amount of its obligations to defend, indemnify, hold harmless, or contribute to any sums due under any losses, including any claim by any employee of Provider that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as

Kotecki v. Cyclops Welding Corporation, 146 Ill. 2nd 155 (1991)). The Board, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, any other statute or judicial decision

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

12. Non-Liability of Board Officials. Licensor agrees that no Board member, employee, agent, officer or official shall be personally charged by Licensor, 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 Licensor, its members if a joint venture, or any subcontractors.

13. 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 License Fee 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 in connection with the Licensor is granting under this Agreement, but excluding taxes levied or imposed on the income or business privileges of the Licensor. The Licensor shall be responsible for any taxes levied or imposed upon the income or business privileges of the Licensor.

14. M/WBE Program. Licensor 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 Agreements and agrees to comply with the provisions of such program.

15. 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:

Office of Assessment
125 South Clark Street, 10th Floor
Chicago, IL 60603
Attn: Linda Abdul

Copy to:

General Counsel
125 South Clark Street, Suite 700
Chicago, IL 60603
Fax: (773) 553-1701

IF TO LICENSOR:

Triumph Learning, LLC
136 Madison Avenue, 7th Floor
New York, NY 10016
Attn: Bonnie Louque, Senior Vice President of Sales

16. **Non-Discrimination.** It shall be an unlawful employment practice for Licensor or any of its subcontractors 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. Licensor 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 Illinois Human Rights Act, 775 ILCS 5/1-101, *et. seq.* as amended; the Illinois School Code, 105 ILCS 5/1-1 *et. seq.*; the Illinois 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.

17. **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 is of no force or effect.

18. **Governing Law.** This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois. Licensor 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. Licensor agrees that service of process on the Licensor may be made, at the option of the Board, by either registered or certified mail addressed to the office identified in Section 15 (Notices) above, by registered or certified mail addressed to the office actually maintained by the Licensor, or by personal delivery on any officer, director, or managing or general agent of the Licensor. If any action is brought by the Licensor against the Board concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

19. **Continuing Obligation to Perform.** In the event of any dispute between Licensor and Board, Licensor shall expeditiously and diligently proceed with the performance of all its obligations under this Agreement with a reservation of all rights and remedies it may have under or pursuant to this Agreement at law or in equity.

20. **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.

21. **Indebtedness.** The Licenser 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.

22. **Ethics.** No officer, agent or employee of the Board is or shall be employed by the Licenser 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.

23. **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.

24. **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.

25. **Force Majeure.** Neither party shall incur any liability for any failure to perform or delay in performing, any of its obligations contained in this Agreement, where such failure or delay is caused by fire, flood, natural disaster, act of God, riots, wars, act of government, strikes or labor disputes, or any other act or condition beyond the reasonable control of the party in question.

26. **Severability.** The parties hereto agree that the provisions of this Agreement are severable and should any of the provisions be deemed invalid, then only that provision should fail, and the remainder of this Agreement shall be in full force in effect.

27. **Counterparts.** This Agreement may be executed in one or more original, facsimile or electronic counterparts, each of which shall constitute an original, but all of which taken together shall constitute but one instrument.

[Signature pages follow.]

THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNET WEBSITE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

LICENSOR:

TRIUMPH LEARNING, LLC

By: Bonnie Louque
Name: Bonnie Louque
Title: Senior Vice President of Sales

LICENSEE:

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

By: Sebastien De Longeaux
Name: Sebastien De Longeaux
Title: Chief Procurement Officer

Approved as to legal form: KNN

By: James L. Bebley
Name: James L. Bebley
Title: General Counsel