

THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNET WEBSITE

SOFTWARE LICENSE AND SERVICES AGREEMENT
[Equal Level Inc.]

This SOFTWARE LICENSE and SERVICES AGREEMENT ("Agreement") is entered into as of the 21 day of MARCH, 2013 ("Effective Date") by and between the Board of Education of the City of Chicago, a body politic and corporate commonly known as the Chicago Public Schools (the "Board" or "CPS") and Equal Level Inc. ("Vendor").

RECITALS

A. Vendor desires to provide a software and support services to the Board, and the Board desires to purchase or license the software and support services pursuant to the terms and conditions that follow; and

B. Vendor has demonstrated that it has the requisite knowledge, skill, experience and other resources necessary to provide the software and support services to 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. Definitions:

A. "Documentation" means any and all operator's and user's manuals, training materials, guides, commentary, listings and other materials for use in conjunction with the Software. Vendor shall deliver to the Board a copy of the Documentation for each licensed user identified of the Software. The Board shall have the right, as part of the license granted herein, to make as many additional copies of the Documentation as it may deem necessary.

B. "Software" means the software identified in Exhibit A, hosted and maintained by Vendor, and accessible to the Board via the Internet.

3. Term of Agreement: This Agreement is for a term commencing on the Effective Date and terminating twelve months thereafter ("Term"), unless terminated sooner as provided herein. The parties shall have three (3) options to renew this Agreement for a period of twelve (12) months each on the same terms and conditions and the pricing detailed in Exhibit A (each a "Renewal Term").

4. Scope of Services: Vendor agrees to provide the services set forth in Exhibit A ("Services"), in accordance with the terms and conditions of this Agreement. "Services" means, collectively, the services, Software, products, deliverables, duties and responsibilities described in Exhibit A of this Agreement and any and all work necessary to complete 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 shall be documented by a written amendment to this Agreement signed by both parties and the Board's General Counsel. Vendor agrees that the terms and conditions included in the Service Level Agreement ("SLA"), which is attached hereto as Exhibit B, shall apply to the provision and use of Services provided by the Vendor.

A. Packaging, Warranty and Inspection: The following provisions shall apply if Vendor is providing any products as part of or in connection with the Services ("Products") The term "Services" as used in this Agreement shall be inclusive of any Products Vendor provides pursuant to this Agreement.

i. Packaging and Shipment, Risk of Loss: Vendor shall package and ship all Materials in a commercially reasonable manner. All shipments shall be F.O.B. destination (as specified in Exhibit A) with freight and insurance prepaid. The Board may request that shipment be made to any location that the Board designates as a Chicago Public School

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or a CPS facility. Any and all deliveries made to a Chicago Public School shall occur between the hours of 8:00 a.m. – 2:30 p.m. and the Vendor shall advise carrier of this restriction. It is understood and agreed that the Board shall have no liability for any insurance charges, and that freight charges shall be limited to those specified in this Agreement. The risk of loss and damage to Products ordered by the Board shall pass to the Board only after delivery to the destination designated by the Board. Time is of the essence to the delivery of all Products ordered hereunder.

ii. Inspection and Out-Of-Box Failures: The Board reserves the right to inspect all Products and to perform any test the Board deems necessary to adequately demonstrate that the Products meet all of the specifications, as more particularly described in Exhibit A. Products which do not conform to the specifications or that are otherwise damaged must either, at the Board's discretion, be retrieved by Vendor (at Vendor's expense) for replacement at no charge to the Board, or the Board may cancel that portion of the purchase order relating to the nonconforming Products at no charge to the Board. The warranty period for any Product replaced pursuant to this Section shall be two (2) years from the date the replaced Product is received by the Board, unless otherwise indicated in the Specifications in Exhibit A.

iii. Warranty: Vendor hereby warrants that all Products furnished hereunder shall be new and conform to the specifications in Exhibit A. The Products shall be of merchantable quality and in good working order, and shall be free from defects in material, workmanship and design for a period of three years from date of receipt of shipment unless otherwise stated in Exhibit A. The warranty shall further cover accidental damage repair or replacement of the Products for a period of three years. The Board shall have the option to require Vendor to repair or replace defective Products without charge or expense, or to reject any defective Products and obtain a full refund or credit for any payment therefore. Repaired Products, excluding out-of-box failures that are covered in Section iii, shall be warranted for a minimum period of six (6) months from completion of repairs or the remainder of the Product's original warranty, whichever is longer. Vendor shall be responsible for transportation charges for all warranty shipments. This warranty shall survive inspection, acceptance, payment and expiration or termination of this Agreement. Each warranty shall include, but is not limited to, the manufacturer's name, the school's name, the Product number, the length of the warranty, the manufacturer's contact person and the contact number. A letter containing all warranty information shall be provided when Vendor submits its invoice or the invoice will not be processed by the Board.

5. Personnel: Vendor agrees to assign and maintain during the term of this Agreement and any renewal of it, an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Services. If the Board determines, in its sole discretion that any employee, subcontractor or other person providing Services hereunder for the Vendor is not performing in accordance with the performance standards or other requirements of this Agreement, the Board shall have the right to direct the Vendor to remove that person from performing Services under this Agreement.

6. Compensation, Purchase Orders and Payment:

A. Compensation: The total maximum compensation payable to Vendor pursuant to this Agreement shall not exceed Sixty Eight Thousand Five Hundred and 00/100 Dollars (\$68,500) ("Total Maximum Compensation"). The Board shall not reimburse Vendor for any expenses. Vendor is not entitled to any payment nor is the Board obligated to pay Vendor any amount solely by virtue of entering into 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 the cost of Services performed after the effective termination or expiration date of this Agreement. Vendor shall be paid in accordance with the Payment Schedule detailed in Exhibit A and agrees to provide the Services at the prices set forth in Exhibit C ("Pricing"). If Vendor overcharges, in addition to all other remedies, the Board shall be entitled to a refund in the amount of the overcharge, plus interest at the rate of 3% per

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month from the date the overcharge was paid by the Board until the date refund is made. The Board has the right to offset any overcharge against any amounts due to Vendor under this or any other Agreement between Vendor and the Board.

B. Purchase Orders: Orders must be on the Board's Standard Purchase Order Form ("PO"). The pre-printed terms and conditions found on the PO shall apply to the extent that such terms supplement and are not inconsistent with the terms and conditions contained in this Agreement. It is understood and agreed that Vendor shall not provide any Services without a valid purchase order. If Vendor provides any Services without a valid purchase order Vendor shall not be entitled to receive any payment for such Services.

C. Payment: Vendor shall submit invoices referencing this Agreement. All invoices must include: a valid purchase order number, itemized description of the Services rendered, date the Services were rendered, 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 Vendor 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.

7. License, Implementation, Hosting, and Support:

A. License: Vendor hereby grants to the Board a non-exclusive, perpetual, worldwide, nontransferable (to a third party), license to use the Software for the Term of the Agreement. The Board shall not sell, lease, license or otherwise transfer, use or dispose of the Software except as expressly provided herein. The Software and Documentation shall at all times remain the sole and exclusive property of Vendor. The Board shall not copy or knowingly permit the copying by any third party of the Software (other than for a reasonable number of back-up copies) or distribute, market, sell, rent, lease, license, transfer, sublicense or assign to any third party any portion of the Software except as permitted under this Agreement. The Board shall not make any alterations, additions or modifications, create derivative works, decompile, disassemble or reverse engineer the Software without the prior written consent of Vendor.

B. Permissible Board Actions: Nothing in this Section shall prevent the Board, its employees and representatives from:

- i. sharing reports and data generated from the Vendor's Services with other Vendors of the Board; and
- ii. disseminating Vendor's training materials and data to the Board's Vendors who participate in Train the Trainer sessions.

C. Implementation of the Software: Vendor shall provide installation, configuration, and implementation Services for the Software so that it is accessible through the Board's computer workstations.

D. Licensed Users: Vendor shall provide a username and password for each licensed user of the Software. "Licensed Users" or "Board Users" means those schools, classrooms, or administrators, teachers, and students licensed to access the Software.

E. Software Maintenance: During the Term of this Agreement, Vendor shall be solely responsible for maintenance of the Software and its accessibility to the Board.

F. Software Support: Vendor shall provide the maintenance and support Services to the Board as described in Agreement.

G. Controlling Agreement: The Board shall not be bound by the terms and conditions contained in any clickwrap agreement, clickwrap license, clickthrough agreement, clickthrough license, end user license agreement or any other agreement or license contained or referenced in the Software or any quote provided by Vendor. Even if a Board User agrees to any agreement or license contained or referenced in the Software or a quote from the Vendor, Vendor acknowledges and agrees that those

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terms and conditions null and void and are not binding on the Board. Rather, Vendor acknowledges and agrees that the terms and conditions of this Agreement represent the entire agreement of the parties for the Services. No additional terms or conditions shall apply to the Board unless a written amendment to this Agreement is made and signed by both parties and the Board's General Counsel.

H. Hosting of the Software and Board Data: Subject to the terms and conditions of this Agreement, Vendor shall provide the Board with storage space on, and access to, a computer system with the capability of making the Software accessible by the Board through a secure online means set forth by Vendor and approved by the Board's Chief Information Officer ("CIO"), and related materials, facilities and services, in order to host the Software and the Board Data (as further described in the exhibits) and to otherwise make the Software and the Board' data accessible on demand by the Board's designated users (collectively, the "Hosting Services"). The Hosting Services shall be included in the term "Services" as that term is defined and used herein.

I. Compatibility and Data Flow: Vendor shall ensure that the Hosting Services allows data to flow properly between the Board's computer workstations and the Vendor's Software and Services. Vendor must ensure that any other resources that are provided by Vendor to the Board, incorporated by Vendor, or approved or recommended by Vendor for use by the Board in connection with the Software and Services, be fully compatible with, and must not materially and adversely affect, or be materially and adversely affected by, each other or the other hardware, software, equipment, network components, systems, services, and other resources that are owned or leased by, or licensed to, the Board (collectively, the "Board Resources"). At all times, Vendor must cooperate and work as requested with the other service providers of the Board to coordinate the development and the provision of Services with the services and systems of such other service providers. Such coordination shall include:

i. Facilitating with such other relevant service providers the timely resolution of all problems that may arise and impact the Software and Services, regardless of the actual or suspected root-cause of such problems, and using all commercially reasonable efforts to obtain and maintain the active participation, cooperation, and involvement of such other service providers as is required for such problem resolution;

ii. Providing information concerning the Software, Services, data, computing environment, and technology direction used in implementing and the Software and Services;

iii. Working with the Board's other service providers in the implementation and integration of the Software and Services with the Board Resources in the Board's environment and the integration and interfacing of the services of such other service providers with the Software and Services;

iv. Providing reasonable access to and use of the Software and Services; and

v. Performing other reasonable necessary tasks in connection with the Software and Services in order to accomplish the foregoing activities described in this section.

In the event of any dispute between the parties as to whether a particular service or function falls within the scope of services to be provided by the Board's third-party service providers (or by the Board itself), or within the scope of Software and Services provided by Vendor, such particular service or function shall be considered to be a part of the Software and Services hereunder if it is consistent with, and reasonably inferable to be within, the scope of Vendor's Services, as set forth in this Agreement, and it more reasonably would be associated with the scope of Vendor's Services than with the scope of the services to be provided by such other service providers. If any of the foregoing requires the disclosure of any proprietary information or confidential information of Vendor to any third party, such third party shall be required to enter into a reasonable confidentiality agreement with Board, with terms substantially equivalent to those of this Agreement regarding the protection of Confidential Information.

Vendor shall have no obligation under this section to ensure that the Board maintains an active internet connection. Any unavailability of the Software or Services due to the Board's lack of an internet connection, unless such lack of an internet connection is caused by Vendor or Vendor's Software or Services, shall be the sole responsibility of the Board.

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8. Standards of Performance: Vendor shall devote, and shall cause all of its staff and subcontractors, if any, to devote, such of their time, attention, best skill and judgment, knowledge and professional ability as is necessary to supply all Services effectively, efficiently, and consistent with the best interests of the Board and to the satisfaction of the Chief Purchasing Officer. Vendor shall retain and utilize sufficient staff to assure the most effective and efficient supply of Services and shall utilize, as required by law or by this Agreement, professionals licensed to practice in the State of Illinois in the applicable profession. Vendor shall use efficient business administration methods and supply the Services in the best way and in the most expeditious and economical manner consistent with the best interests of the Board, so as to assure, among other things, that the Services are supplied at a reasonable cost to the Board and that Services supplied by other entities or persons in connection with this Agreement are efficiently and cost-effectively delivered. Vendor acknowledges that, if in the course of providing Services hereunder, it is entrusted with or has access to valuable or confidential information or records of the Board, that with respect to that information, Vendor agrees to be held to the standard of care of a fiduciary. Any review, approval, acceptance of Services or deliverables or payment for any of the Services by the Board does not relieve Vendor of its responsibility for the professional skill, care, and technical accuracy of its Services and deliverables. Vendor shall remain responsible for the professional and technical accuracy of all Services, including any deliverables furnished, whether by Vendor or its subcontractors or others on its behalf.

9. Events of Default: Events of default ("Events of Default") include, but are not limited to, any of the following:

A. Any material misrepresentation by Vendor in the inducement of the Agreement or the provision of Services;

B. Breach of any agreement, representation or warranty made by Vendor in the Agreement;

C. Default by Vendor under any other agreement Vendor may have with the Board;

D. Assignment by Vendor for the benefit of creditors or consent by Vendor to the appointment of a trustee or receiver or the filing by or against Vendor of any petition or proceeding under any bankruptcy, insolvency or similar law; or

E. Failure of Vendor to supply the Services required hereunder in accordance with the terms and conditions of the Agreement, including, but not limited to, the following:

i. Action or failure to act which affects the safety or welfare of students or Board staff;

ii. Failure to perform in accordance with terms, conditions, and specifications of this Agreement;

iii. Failure to supply any portion of the Services herein at the time fixed for performance and in the manner specified herein;

iv. Failure to supply the Services with sufficient personnel and equipment or with sufficient material to ensure the supply of Services due to a reason or circumstances within Vendor's reasonable control;

v. Failure to supply the Services in a manner satisfactory to the Board, or inability to supply the Services satisfactorily as a result of insolvency or filing for bankruptcy;

vi. Failure to promptly re-supply Services that were determined by the Board to be defective or failing to meet the scope of Services within a reasonable time;

vii. Discontinuance of the supply of the Services for reasons not beyond Vendor's reasonable control; or

viii. Failure to comply with any term of this Agreement, including but not limited to, the provisions concerning insurance and nondiscrimination, and any other acts specifically and expressly stated in this Agreement constituting an event of default.

10. Remedies: The occurrence of any Event of Default which Vendor fails to cure within fifteen (15) calendar days after receipt of notice 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)

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calendar days after notice, Vendor fails to commence and continue diligent efforts to cure in the sole opinion of the Board, may permit the Board to declare Vendor in default. Whether to declare Vendor in default is within the sole discretion of the Chief Purchasing Officer. Written notification of an intention of the Chief Purchasing Officer to terminate this Agreement, in whole or in part, shall be provided and shall be final and effective upon Vendor'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:

A. The right to take over and complete the supply of Services or any part thereof, by contract or otherwise as agent for and at the cost of Vendor either directly or through others. Vendor shall be liable to the Board for any excess costs incurred by the Board. Any amount due Vendor under this Agreement or any other agreement Vendor may have with the Board may be offset against amounts claimed due by the Board;

B. The right to terminate this Agreement, in whole or in part, as to any or all of the Services yet to be supplied effective at a time specified by the Board;

C. The right to suspend the supply of Services during the fifteen (15) day cure period if the default results from Vendor's action or failure to act which affects the safety or welfare of students or Board staff;

D. The right to specific performance, an injunction or any other appropriate equitable remedy;

E. The right to receive from Vendor any and all damages incurred as a result or in consequence of an Event of Default;

F. The right to money damages; and

G. The right to use an Event of Default as a basis to deem Vendor non-responsible in future contracts to be awarded by the Board.

The Board may elect not to declare Vendor 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 permits Vendor to continue to supply the Services despite one or more Events of Default, Vendor 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.

11. Early Termination, Suspension of Product Delivery: The Board may terminate this Agreement in whole or in part, without cause upon thirty (30) days written notice.

After notice is received, Vendor must restrict its activities and those of its subcontractors, to winding down any reports, analyses, or other activities previously begun.

Vendor must include in its contracts with subcontractors and 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.

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

The Board may, upon fifteen (15) calendar day's written notice, request that Vendor suspend supplying Services in whole or part. Vendor shall promptly resume supplying Services upon written notice from the Board and upon such equitable extension of time as may be mutually agreed upon, in writing, by the Board and Vendor. Responsibility for any additional costs or expenses actually incurred by Vendor as a result of remobilization shall be determined by mutual agreement of the parties.

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12. Assignment: This Agreement shall be binding on the parties and their respective successors and assigns, provided however, that Vendor may not assign this Agreement or any obligations imposed hereunder without the prior written consent of the Board.

13. Confidential Information, Dissemination of Information, Ownership, Survival: For purposes of this Section 13 and subsections A through J, the term "Work Product" shall exclude any and all (i) third party intellectual property and (ii) pre-existing Vendor intellectual property that is delivered to the Board as part of the Services to be provided by Vendor hereunder or are imbedded in any Work Product to be delivered to the Board by Vendor hereunder.

A. Confidential Information: In performance of this Agreement, Vendor 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 ("Confidential Information"). Vendor shall not use or disclose any Confidential Information or any finished or unfinished, documents, screens, reports, writings, procedural manuals, forms, source code, object code, work flow charts, methods, processes, data, data studies, drawings, maps, files, records, computer printouts, designs, equipment descriptions, or other materials prepared or generated as a result of this Agreement ("Work Product") without the prior written consent of the Board.

B. Dissemination of Information: Vendor shall not disseminate any Confidential Information to a third party without the prior written consent of the Board. Vendor 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 Vendor is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any Confidential Information or Work Product which may be in Vendor's possession, Vendor 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. Vendor 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. Vendor shall cause its personnel, staff and subcontractors, if any, to undertake the same obligations regarding confidentiality and dissemination of information as agreed to by Vendor under this Agreement.

C. Ownership: Vendor agrees that, to the extent permitted by law, any and all Work Product shall exclusively be deemed "works for hire" within the meaning and purview of the United States Copyright Act, 17 U.S.C. 101§ et seq. To the extent any Work Product does not qualify as a "work for hire," Vendor irrevocably grants, assigns, and transfers to the Board all right, title, and interest in and to the Work Product in all media throughout the world in perpetuity and all intellectual property rights therein, free and clear of any liens, claims, or other encumbrances, to the fullest extent permitted by law. All intellectual property, Confidential Information and Work Product shall at all times be and remain the property of the Board. Vendor shall execute all documents and perform all acts that the Board may request in order to assist the Board in perfecting or protecting its rights in and to the Work Product and all intellectual property rights relating to the Work Product.

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

E. Third Party Confidential Information and Proprietary Information: Vendor agrees not to utilize, analyze, reverse engineer, or otherwise exploit any third party Confidential Information or proprietary information in performing the Services regardless of where Vendor obtained the third party Confidential Information or proprietary information (even if the third party Confidential Information or proprietary

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information was provided by the Board) unless Vendor has previously secured the appropriate authorization in writing from such third party. In accordance with the provisions of Section 18 of this Agreement, Vendor 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 Vendor or its Staff under this Agreement.

F. Return or Destruction of Confidential Information and Highly Confidential Information: Vendor shall, at the Board's option, destroy or return all Confidential Information to the Board upon demand within three (3) business days of demand. In addition, Vendor shall, at the Board's option, destroy or return all Confidential Information to the Board within three (3) days of the expiration or termination of this Agreement. In the event the Board elects to have Vendor destroy the Confidential Information, Vendor shall provide an affidavit attesting to such destruction.

G. Data Security and access within the Software: Security in the Software shall be hierarchical. Students shall only have access to their application(s) and their data only. Students shall not be able to access any other students' data or information. Teachers shall only be able to access their active classes for all products and data for students in their active classes only. School administrators shall only be able to access the grades, classes and programs in their school. Chief of Schools shall only be able to access the grades, classes and schools in their area. The Board's central office shall be able to access all grades, classes and schools in the district.

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

I. Freedom of Information Act: Vendor 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. Vendor further acknowledges that this Agreement shall be posted on the Board's internet website at <http://www.cps.edu>.

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

14. Representations and Warranties of Vendor: Vendor 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: Vendor is and shall remain in compliance with all applicable federal, state, county, and municipal, statutes, laws, ordinances, and regulations relating to this Agreement, 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, the Illinois Student Records Act, the Family Educational Rights and Privacy Act, the Protection of Pupil Rights Act and any others relating to non-discrimination. Further, Vendor is and shall remain in compliance with all Board policies and rules, including but not limited to the CPS Student Travel Policy, as may be amended from time to time. Board policies and rules are available at <http://www.cps.edu/>.

B. Good Standing: Vendor, each of its members, if a joint venture or limited liability company, and each of its subcontractors, if any, have not been deemed by the Board's 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 this Agreement, and have not been debarred under the Board's Debarment Policy during the three (3) year period immediately preceding the effective date of this Agreement;

C. Authorization: In the event Vendor is an entity other than a sole proprietorship, Vendor 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 Vendor is duly authorized by Vendor and has been made with complete and full authority to commit Vendor to all terms and conditions of this Agreement which shall constitute valid, binding obligations of Vendor;

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

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

F. Contractor's Disclosure Form: The disclosures in the Contractor's Disclosure Form (or any ratification thereof) submitted by Vendor are true and correct. Vendor shall promptly notify the Board of any material change in the 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: Vendor 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:

- fingerprint-based checks through the Illinois State Police (ISP) and the FBI;
- check of the Illinois Sex Offender Registry (IL-SOR); and
- 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.

Vendor 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 Vendor is an individual, Vendor represents and warrants that Vendor 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, Vendor 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 Vendor, all at Vendor's expense.

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

H. Research Activities and Data Requests: Vendor acknowledges and agrees that in the event Vendor seeks to conduct research activities in any Board school or use Board student data for research purposes, Vendor shall comply with the Board's Research Study and Data Policy (10-0728-PO8) adopted on July 28, 2010, as may be amended from time to time. Vendor 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 Performance Officer or their designee;

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I. Ethics: No officer, agent or employee of the Board is or will be employed by Vendor or has or will 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 may be amended from time to time, which policy is incorporated herein by reference as if fully set forth herein;

J. Intellectual Property. That in performing and delivering the Software and Services, Vendor will not violate or infringe upon any patent, copyright, trademark, trade secret or other proprietary or intellectual property right of any third party, and will not improperly use any third party's confidential information; and shall have, without encumbrance, all ownership, licensing, marketing and other rights required to furnish all materials and products that it furnishes to the Board under the Agreement and can grant or assign all rights granted or assigned to the Board pursuant to the Agreement;

K. No Legal Actions Preventing Performance. As of the Effective Date Vendor has no knowledge of any action, suit, proceeding, or material claim or investigation pending or to its knowledge threatened against it in any court, or by or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, or before any arbitrator of any kind, that, if adversely determined, would materially affect Vendor's ability to perform its obligation under the Agreement;

L. Assignment of Warranties. Vendor has the right, title, and ability to assign and shall assign to the Board any third-party warranties concerning the Software and Services provided under this Agreement from the software manufacturer to the Board;

M. Documentation Warranty. All Documentation provided to the Board from Vendor concerning the Software and Services shall be kept current with the upgrades of the Software and Services;

N. Ownership. Vendor is the owner of the Services and Software or otherwise has the right to grant to the Board the License without violating any rights of any third party, and there is currently no actual or threatened suit by any such third party based on an alleged violation of such right by Vendor;

O. Business Requirements. Vendor is fully aware of the Board's requirements and intended uses for the Software, including any set forth in the exhibits, and the Software shall satisfy such requirements in all material respects, is fit for such intended uses and will operate on the Board's computer workstations;

P. Software Performance. During the Term of the Agreement, the Software shall (i) be free from defects in material and workmanship under normal use and remain in good working order, and (ii) function properly and in conformity with the warranties herein and in accordance with this Agreement and with the description, specifications and Documentation on the Board computer workstations and system software including updates or new releases to such hardware, system software and other software, and interface with other programs as required, and the Documentation shall completely and accurately reflect the operation of the Software. Vendor shall promptly correct any failure of the Software to perform in accordance with the current published specifications and Documentation, but in no case shall the failure be fixed in less than five (5) business days;

Q. Free of Computer Viruses. Vendor shall use commercially reasonable best efforts to ensure that the Software is free of Computer Viruses. Vendor shall also maintain a master copy of the appropriate versions of the Software, free of computer viruses;

R. Not Alter Program. Vendor shall not, directly or through a third party, knowingly remove, alter, change or interface with the Software or any other program for the purpose of preventing the Board from utilizing the Software or any other program;

S. No Disabling Code. Vendor shall not knowingly cause any disabling code to be incorporated into Software;

T. Prohibited Acts: Within the three (3) years prior to the effective date of this Agreement, Vendor or any of its members if a joint venture or a limited liability company, or any of its or their respective officers, directors, shareholders, members, managers, other officials, agents or employees (i) have not been convicted of bribery or attempting to bribe a public officer or employee of any public entity and (ii) have

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not been convicted of agreeing or colluding among contractors or prospective contractors in restraint of trade, including bid-rigging or bid-rotating, as those terms are defined under the Illinois Criminal Code; and

U. **Warranty of Title:** The Services are free and clear from all liens, contracts, chattel mortgages or other encumbrances; that Vendor has the lawful right to dispose of and sell the Services and that Vendor shall warrant and defend its title against all claims.

All warranties will survive inspection, acceptance payment and expiration or termination of this Agreement. Nothing in the foregoing warranties will be construed to limit any other rights or remedies available to the Board under the law and the Agreement.

15. Independent Contractor: It is understood and agreed that the relationship of Vendor to the Board is and shall continue to be that of an independent contractor and neither Vendor nor any of Vendor's Staff 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 Vendor, its agents, employees or subcontractors, and the payment of any such taxes incurred or due by Vendor shall be the sole responsibility of Vendor. Vendor agrees that neither Vendor, nor its Staff shall represent themselves as employees or agents of the Board. Vendor 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.

16. Indemnification: Vendor agrees to indemnify and hold harmless the Board, its members, employees, agents, officers and officials, from and against any and all liabilities, taxes, tax penalties, interest, losses, penalties, damages and expenses of every kind, nature and character, including without limitation, costs and attorney fees, arising out of, or relating to, any and all claims, liens, damages, obligations, actions, suits, judgments, settlements or causes of action of every kind, nature and character, in connection with or arising out of the acts or omissions of Vendor or its Staff under this Agreement.

In addition, Vendor will indemnify, hold harmless, and defend the Board from any claim, demand, cause of action, debt or liability (including reasonable attorneys' fees and expenses) that the Services infringes, misappropriates, or otherwise violates any intellectual property (patent, copyright, trade secret or trademark) rights of a third party.

Vendor 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, Vendor 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 Vendor 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 Vendor, after receiving notice of any such proceeding, fails to promptly begin the defense of such claim or action, the Board may (without further notice to Vendor) retain counsel and undertake the defense, compromise or settlement of such claim or action at the expense of Vendor, subject to the right of Vendor 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 Vendor and Vendor 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 Vendor was conducting the defense.

To the extent permissible by law, Vendor 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 Vendor 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 *Kofecki 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.

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17. Non-Liability of Board Officials: Vendor agrees that no Board member, employee, agent, officer or official shall be personally charged by Vendor, its members if a joint venture or any subcontractors with any liability or expense under the Agreement or be held personally liable under the Agreement to Vendor, its members if a joint venture or any subcontractors.

18. 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 amounts to be paid to Vendor hereunder are 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 Vendor. Vendor shall be responsible for any taxes levied or imposed upon the income or business privileges of Vendor.

19. Insurance: Vendor, at its own expense, shall procure and maintain insurance covering all operations under this Agreement, whether performed by Vendor 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. Vendor shall submit to the Board satisfactory evidence of insurance coverage and upon request, shall promptly provide a certified copy of any applicable policy of insurance. Minimum insurance requirements include the coverage set forth below and any additional coverage which may be specified by the Board:

A. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance affording workers' compensation benefits for all employees as required by law and Employers' Liability Insurance covering all employees who are to provide Services under this Agreement with limits of not less than Five Hundred Thousand Dollars (\$500,000.00) per occurrence. The workers' compensation policy must contain a waiver of subrogation clause.

B. **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.

C. **Automobile Liability Insurance.** Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with Services to be performed, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.

D. **Umbrella/Excess Liability Insurance.** Umbrella or Excess Liability Insurance with limits not less than Two Million Dollars (\$2,000,000.00) per occurrence, which will provide additional limits for employers' general and automobile liability insurance and shall cover the Board and its employees, subject to that of the primary coverage.

E. **Additional Insured.** Vendor shall have its General and Automobile Liability Insurance policies endorsed to provide that "the Board of Education of the City of Chicago, a body politic and corporate, and its members, employees and agents, and any other entity as may be designated by the Board are named as additional insured on a primary basis without recourse or right of contribution from the Board".

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 Vendor for any Services if satisfactory proof of insurance is not provided by Vendor prior to the performance of any Services. The Certificate must 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**

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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 Vendor'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 Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. Vendor's failure to carry or document required insurance shall constitute a breach of the Vendor's Agreement with the Board. In the event Vendor fails to fulfill the insurance requirements of this Agreement, the Board reserves the right to stop the Services until proper evidence of insurance is provided, or this Agreement may be terminated.

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

All subcontractors are subject to the same insurance requirements of Vendor unless otherwise specified in this Agreement. The Vendor shall require any subcontractors under this Agreement to maintain comparable insurance naming the Vendor, the Board inclusive of its members, employees and agents, and any other entity designated by the Board, as Additional Insureds. The Vendor will maintain a file of subcontractor's insurance certificates evidencing compliance with these requirements.

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

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

Vendor must register with the insurance certificate monitoring company designated by the Board and must maintain a current insurance certificate on file during the entire time of providing services to the Board. The initial certificate monitoring company designated by Board is identified below. Vendor must register and pay the annual monitoring fee to the insurance certificate monitoring company prior to performing services for the Board. The initial annual monitoring fee is currently Twelve 00/100 Dollars (\$12.00) per year, but is subject to change.

Each year, Vendor will be notified 30 to 45 days prior to the expiration date of their required insurance coverage (highlighted on their latest submitted insurance certificate on file) that they must submit an updated insurance certificate with the insurance certificate monitoring company. Insurance certificate submissions and related annual fees are required to be made online at the dedicated website established by the certificate monitoring company identified below. Questions on submissions and payment options should be directed to the certificate monitoring company.

Certificate Monitoring Company:
Topiary Communications Inc.
676 N. LaSalle - Suite 230
Chicago, IL 60654
Phone - (312) 494-5709
Email - dans@topiarycomm.net

Website for online registration, insurance certificate submissions and annual fee payments: URL - <http://www.cpsVendorcert.com>.

20. Audit and Document Retention:

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A. Audit: Vendor shall furnish the Board with such information as may be requested relative to the progress, execution and costs of supplying the Services. Vendor shall permit and cooperate in a periodic audit by Board staff or Board-appointed auditors for compliance by Vendor with this Agreement. Failure of Vendor to comply in full and cooperate with the requests of the Board or its agents shall give the Board, in addition to all other rights and remedies hereunder, the right to charge Vendor for the cost of such audit.

B. Document Retention: Vendor shall maintain all records, correspondence, receipts, vouchers, memoranda and other data relating to Vendor's supplying the Services under this Agreement. All records referenced above shall be retained for six (6) years after delivery of the Services and shall be subject to inspection and audit by the Board. Vendor shall include in all subcontractor contracts for the 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.

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: Department of Procurement and Contracts
Chicago Public Schools
125 South Clark Street, 10th Floor
Chicago, IL 60603
Attn: Ravi Mangipudi

Copy to: James L. Bebley General Counsel
125 South Clark Street, Suite 700
Chicago, IL 60603
Fax: 773.553.1701

IF TO VENDOR: Equal Level Inc
1 Research Court, Suite 450
Rockville, MD 20850
Attn: Orville Bailey

22. Right of Entry: Vendor, and any of its Staff supplying Services shall be permitted to enter upon a school site in connection with the supply of the Services hereunder, subject to the terms and conditions contained herein and those rules established by the Board. Vendor shall provide advance notice to the Board whenever applicable, of any such intended entry. Consent to enter upon a school site given by the Board shall not create, nor be deemed to imply, the creation of any additional responsibilities on the part of the Board. Vendor shall use, and shall cause each of its Staff to use, the highest degree of care when entering upon any property owned by the Board in connection with the supply of the Services. In the case of any property owned by the Board, or property owned by and leased from the Board, Vendor shall comply and shall cause each of its Staff, to comply with any and all instructions and requirements of Board or authorized Board representative for the use of such property. Any and all claims, suits or judgments, costs, or expenses, including, but not limited to, reasonable attorneys fees, arising from, by reason of, or in connection with any such entries shall be treated in accordance with the applicable terms and conditions of this Agreement including without limitation the indemnification provisions contained in this Agreement.

23. Non-Discrimination: It shall be an unlawful employment practice for Vendor 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

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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. At all times, Vendor shall remain in compliance with, but not limited to: 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.

24. 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 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.

25. Governing Law: This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois. Vendor 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. Vendor agrees that service of process on Vendor may be made, at the option of the Board, by either registered or certified mail to the address and to the person set forth in the Notice Provision of this Agreement, to such other address or person as may be designated by Vendor in writing, to the office actually maintained by Vendor or by personal delivery on any officer, director or managing or general agent of Vendor. If any action is brought by Vendor against the Board concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

26. Continuing Obligation To Perform: In the event of any dispute between Vendor and the Board, Vendor shall expeditiously and diligently proceed with the performance of all of 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.

27. 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.

28. Indebtedness: Vendor agrees to comply with the Board's Indebtedness Policy (96-0626-PO3) as may be amended from time to time, which is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein.

29. Inspector General: Each party to this Agreement hereby acknowledges that in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Chicago Board of Education 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.

30. 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 and as often as may be deemed expedient.

31. Survival Severability: All express warranties, representations and indemnifications made or given in this Agreement shall survive the supply of Services by Vendor or the termination of this Agreement for any reason. In the event that any one or more of the provisions contained herein will for any reason be held to be unenforceable or illegal, such provision will be severed; and the entire Agreement will not fail, but the balance of this Agreement will continue in full force and effect. In such

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event, the parties agree to negotiate in good faith a substitute enforceable and legal provision that most nearly effects the intent of the parties in entering into this Agreement.

32. Debarment Policy. Vendor acknowledges that, in supplying Services for the Board, Vendor shall not utilize any firms that have been debarred from doing business with the Board under the Board's Debarment Policy and Procedures, 08-1217-PO1, as amended from time to time. If Vendor has engaged any firm to supply Services that is later debarred, Vendor shall sever its relationship with that firm with respect to supplying Services to the Board.

33. 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.

34. 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 to follow]

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

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

By: 
Sebastien De Longeaux
Chief Procurement Officer

Date: 03/27/2013

CPOR: 13-0215-CPOR-1557

Approved as to Legal Form 

By: 
James L. Bebley, General Counsel

EQUAL LEVEL INC.

By: Orville A Bailey
Signature: Orville A Bailey

Title: CEO

Date: 3/21/2013

Attachments:

Exhibit A: Scope of Services

Exhibit B: Service Level Agreement

Exhibit C: Pricing

EXHIBIT A
SCOPE OF SERVICES

Name of Project: CPS E-Marketplace Solution

CPS Project Manager: Ravi Mangipudi Phone: 773/553-2287 E-Mail: rsmangipudi1@cps.edu

Consultant's Project Manager: Orville Bailey Phone: 301-421-1917 E-Mail: obailey@equallevel.com

Term Start: Effective Date Term End: Twelve months thereafter

This Scope of Services will be conducted pursuant to the terms and conditions of that Software License and Services Agreement ("Agreement") by and between Equal Level Inc. ("Vendor") and The Board of Education of the City of Chicago (the "Board"), commonly known as The Chicago Public Schools ("CPS"). Defined terms used in this Scope of Services will have the same meanings as those ascribed to such terms in the Agreement.

1. SCOPE OF SERVICES:

Vendor will implement a simple and easy-to-use e-marketplace that will allow CPS to drive contract compliance. The marketplace will provide easy platforms for suppliers to build punchouts efficiently and effectively. Vendor will deliver Amazon like shopping experiences to all CPS users that, in turn, will reduce the amount of time spent by CPS in searching contracted items and in placing orders. CPS' goal is to bring increased visibility to all external spend using punchouts and hosted catalogs.

In addition, the Vendor will deliver a self-service portal for CPS suppliers to rapidly develop and deploy punchouts. Vendor will provide the following support staff as part of the implementation of this eMarketplace solution

Ira Golden – Project Manager
Bryan Way – Project Manager
Eddie Potocko – CTO

The e-marketplace solution will offer the below functionality:

1. Vendor will enable the ability for a connection with Oracle iProcurement using the Oracle Exchange connection type. The vendor and CPS will work together to ensure that any existing transactional functionality surrounding Oracle Purchasing / iProcurement is successfully integrated with the CPS eMarketplace solution.
 - o A Successful integration will not only allow users shop and return carts (initiate shopping session from Oracle iProcurement in the front end and return shopping cart items to Oracle iProcurement in the backend – currently use cXML standards) but also ensures that the shopping cart information flows consistently throughout the process of approving purchase orders.
2. Migrate existing punchouts onto the new e-marketplace as a one-stop shopping place
3. Ability to search items on search connector compatible punchout sites without the user having to search directly on the punchout site and the ability to search and compare search results across search connector compatible punchouts and catalogs
 - o Non-compatible punchouts / catalogs include configuration items, sites with no available search functionality such as browse sites, sites with significant performance related issues, and others as discussed and approved by CPS
4. Ability to bring visibility to CPS contracts through the marketplace (search vendors and their contracts)

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5. Ability for CPS suppliers to build punchouts within days using Magento software at no charge to both suppliers and CPS. Magento is a third party open source software and Vendor will provide a customized version of this software for CPS at no cost.
 - o Automate vendor onboarding and management of supplier information through hosted catalogs
 - o Ability for CPS supplier to contract with the Vendor to build and maintain a punchout site on their behalf (see Exhibit C for pricing)
6. Facilitate punchout capabilities with mapping of 5 digit NIGP codes for all CPS vendors
7. Conduct vendor fairs to promote punchout setup and configuration with selected vendors
8. Ability to perform price audits and alert buyers when price changes on contracted items
9. Ability to provide content maintenance support to vendors
 - o Content will be first published in a staging environment and upon approval by the buyer or CPS administrator, the content will be published to the production environment
10. Ability to provide analytics on shopping behavior for various punchouts and items
11. Provide intelligent search results based on the search criterion – most relevant and price
12. Ability to filter, compare, and manage shopping carts specific to CPS users
13. Ability to provide custom forms (free form input capacity) for simple professional service related items with CPS approved vendor lists

2. DELIVERABLES:

Deliverables	Delivery Date / Milestone	Expected Outcome
Develop detailed project implementation plan including vendor fairs	3/25/2013	Approved implementation plan and dates for vendor fairs
Develop platforms and transition to bring additional vendors on punchout (include training materials and platform) – no charge punchouts	4/12/2013	Self-service punchout platform for suppliers
Create CPS custom e-marketplace and migrate existing punchouts / catalogs with successful integration to CPS Oracle iProcurement system to ensure CPS can support the delivery of approved purchase orders via EDI and email	4/12/2013	Go-live of new marketplace with current CPS punchouts
Complete foundation building blocks for successful and rapid deployment of supplier punchouts, and train necessary CPS personnel (IT, admins, and buyers) to transition the use of marketplace for hosting and management of supplier content with workflow approvals (workflow approvals are done on content placed on staging environment prior to publishing in production environment) <ul style="list-style-type: none"> • Vendor to provide these training sessions (online) to cover the use and administration of the marketplace 	4/19/2013	CPS employees ready to support marketplace
Conduct upto three vendor fairs over two days (all day workshops as detailed in Exhibit C) to train suppliers and deploy punchouts real-time (target at least 20 punch outs for each session). Expenses related to hosting these vendor fairs such as conference rooms, supplies, projectors etc. will be	1 st vendor fair by 4/19/2013 & 2 nd vendor fair by 5/15/2013	Additional punchouts for CPS selected vendors

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provided by CPS.		
Develop reports and dashboards for CPS administrators on shopping data intelligence (done through securing google analytics environment and ensuring CPS administrators are trained to use the same)	4/12/2013	Approved reports / dashboard
Transition to enable additional punchouts / self-supported hosted catalogs for CPS approved vendors through Magento software with preset templates	On-going (post go-live)	Target 70% spend on e-marketplace
Support to enable punchouts / hosted catalogs as approved by CPS Additional online vendor fairs may be conducted as needed to promote the eMarketplace solution	On-going (post go-live)	Target 100% spend on e-marketplace
Successfully support and maintain the CPS e-marketplace for on-going contract period. Maintenance and support will include upgrades, bug fixes, telephone support, and support for enabling punchouts for CPS suppliers	Contract end date	

*Any changes to the delivery dates must be approved by CPS Project Manager.

3. COMPENSATION AND PAYMENT SCHEDULE:

The total maximum compensation payable to the Vendor under this Agreement shall not exceed Sixty Eight Thousand Five Hundred and 00/100 Dollars (\$68,500.00), inclusive of all reimbursable expenses, if any. Compensation will be delivered based on delivering the four (4) milestones below on the following payment schedule (\$6,000.00 after completion of A, B, and C as part of the implementation plan, and the remaining \$62,500.00 will be paid on an annual basis in advance to the vendor to ensure successful support and maintenance of the eMarketplace solution. Any credits received as part of non-compliance for service level metrics (Availability and Problem Response Time) will be reconciled during the quarterly performance reviews.

- A. Fully developed CPS e-Marketplace with seamless integration to Oracle IProcurement to ensure all existing processes including EDI work fine and migrated existing punchouts / catalogs to the marketplace
- B. Completed foundation building blocks for successful and rapid deployment of supplier punchouts, and trained all CPS personnel (IT, admins, and buyers) to transition the use of marketplace for hosting and management of supplier content
- C. Conducted at least two vendor fairs (all day workshops) to train suppliers and deploy punchouts real-time (target at least 20 punch outs for each session)
- D. Successfully supported and maintained the CPS e-marketplace for 12 months

The total maximum compensation for any renewal period shall not exceed Sixty Two Thousand Five Hundred and 00/100 Dollars (\$62,500). The payments will be made in advance on an annual basis (per 12 months) to ensure successful maintenance and support on the solution provided. Any credits received as part of non-compliance for service level metrics (Availability and Problem Response Time) will be reconciled with CPS during the quarterly performance reviews.

In case of an early termination as described in section 11 above, the vendor will credit CPS any balance subscription amount (\$62,500 paid annually) for the remainder of the contract term, excepting the \$6,000

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paid for the implementation of the project during the 1st year of the contract.

4. OUTCOMES: *Below are the outcomes expected from the implementation of this solution:*

- Successful implementation of CPS eMarketplace solution migrating all existing punchouts / catalogs
- Self-Service platform with templates, instructions, and training materials to rapidly create and deploy punchouts for CPS suppliers
- Vendor fairs as agreed with CPS project manager to train and build punchouts for approved CPS vendors (dates to be finalized)
- On-going support and maintenance of the marketplace to meet the needs for the district to bring intelligence
- Reports and dashboards to deliver shopping data intelligence to CPS administrators

5. PRICING/RATES: See attached Exhibit C.

THIS AGREEMENT WILL BE POSTED ON THE CPS INTERNET WEBSITE

EXHIBIT B- Service Level Agreement ("SLA")

The following Service Level terms and conditions shall apply to the provision and use of Services provided by the Vendor. This Service Level Agreement provides for minimum levels of service by Equal Level with respect to CPS's access to and use of the Service in connection with the CPS Marketplace as contemplated by the Agreement entered into by CPS and Equal Level.

Service Uptime

"Uptime" means that the Service (including the CPS Marketplace) is fully accessible and functional as contemplated by the Agreement, excluding:

1. schedule maintenance, as more fully described in the "Schedule Maintenance" section below,
2. problems caused by delays or failures in performance resulting from acts of God, strikes, lockouts, riots, acts of war and terrorism, embargoes, unanticipated changes in governmental regulations, epidemics, fire, communication line failures, power failures, earthquakes, other disasters, or any other reason where failure to perform is beyond the control of, and not caused by, Equal Level or its vendors or suppliers (each, an event of "Force Majeure"),
3. problems caused by misconduct of CPS or end users of the Service, and
4. problems caused by unavoidable service impairments due to changes in the Service, which have been ordered by CPS, or have become mandatory because of regulatory or legal demands.

Total Monthly Hours means the number of days in the month multiplied by 24 hours a day, excluding the four (4) exceptions defined in the "Uptime" above.

Uptime Available is calculated by the following equation:

$$\text{Uptime Available} = \frac{\text{Uptime}}{\text{Total Monthly Hours}} \times 100$$

Uptime Service Level Credits

Equal Level guarantees Uptime Available at least 99.5% of the time in a given month, excluding "Scheduled Maintenance" (as defined below). In the event Uptime falls below 99.5%, the Vendor will refund the Board according to the schedule below, a portion of the quarterly fee charged for the quarter during which such loss of service occurred:

Schedule Maintenance

To continuously improve the performance and stability of the Service, maintenance is performed as necessary or beneficial to optimize performance of the Service. Scheduled maintenance shall not exceed 6 weekday hours per month and shall not commence before 8:00 p.m. Pacific time and shall not conclude after 6:00 a.m. Eastern Time. Equal Level shall provide CPS with at least 5 days prior notice of such scheduled unavailability or maintenance. Typical maintenance updates will be done on weekends.

Uptime Available	Credit
>99.0% but <=99.5%	5%
>98.0% but <=99.0%	10%
>95.0% but <=98.0%	15%
>90.0% but <=95.0%	25%
<90.0%	2.5% credited for every 1% of lost Availability

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Help Desk and Technical Support

CPS will have access to technical and help desk support for the most recent release and the last prior release of the Service. CPS will reasonably cooperate with Equal Level in testing, determining and verifying that a Service availability or performance violation has occurred.

E-mail and Internet Support

CPS will access to 24 hour e-mail and Internet support for general support related to clarification of functions and features of the Service, clarification of the documentation, guidance in the operation of the Service, and suggestion related to Service configuration.

Telephone Support

Service problems may be reported directly by telephone by contacting the Equal Level help desk at 888.327-1133 between the hours of 8:00 a.m. to 8:00 p.m., Eastern Time, Monday through Friday, excluding the following Equal Level observed holidays New Years, Memorial Day, July 4th, Labor Day, Thanksgiving, Christmas Eve, Christmas, New Years Eve, ("**Normal Support Hours**").

CPS will also have access to the help desk support team outside of Normal Support Hours for urgent support by calling 888.327.1133. THIS NUMBER IS FOR URGENT SUPPORT ONLY AND SHOULD ONLY BE USED FOR CRITICAL FAILURE OF SOFTWARE AND/OR SOFTWARE SERVICE PROBLEMS THAT CANNOT BE RESOLVED WITHIN THE NORMAL SUPPORT HOURS. Equal Level will resolve all support issues as expeditiously as possible, subject to the requirements of this Service Level Warranty.

Backup and Disaster Recovery

Equal Level's solution is delivered entirely on-demand at the Amazon Web Services ("**AWS**") data center. AWS is a Statement on Auditing Standards No. 70 (SAS70) Type II Audit data center. SAS70 certifies that a service organization has had an in-depth audit of its controls (including control objectives and control activities), which in the case of AWS relates to operational performance and security to safeguard customer data.

The CPS Marketplace environment is delivered using the Amazon Elastic Computing Cloud ("**EC2**"). Amazon EC2 is a web service that provides resizable compute capacity in the cloud. The database will be stored on Amazon Elastic Block Store ("**EBS**") attached to the CPS instance running at EC2. Amazon EBS provides high availability, and reliability off-instance storage volumes that persists independently from the life of an instance.

The data backup and disaster recovery process guarantees the full recovery of all data to provide business continuity. Full backups of the database are made daily to Amazon S3 (Simple Storage Service) which is rated at 99.999999999 % Durability.

The backup system specification includes:

- Interval: daily
- Quota: 10 GB
- Storage duration: 1 week
- maximum amount of available backups: 7

By performing daily backups, data can be quickly restored and business activities quickly resumed, after a data loss situation. The data recovery procedure involves obtaining the latest backup set (only backup set is required) and attaching it to the CPS instance running on EC2. Data recovery is targeted at less than four (4) hours.

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Problem Escalation and Response Procedures

If CPS determines that a problem exists with the performance or availability of the Service, CPS shall have the right to assign one of the following problem impact levels and Equal Level shall use commercially reasonable efforts to respond to and correct any such problem in accordance with the response and problem resolution times set forth below:

A "**Severity Level 1**" problem is a critical problem having a serious or material effect on the performance of the Service, the CPS Marketplace, or CPS's business, operations, or reputation.

A "**Severity Level 2**" problem is a major problem having a major or a substantial effect on the performance of the Service or any problem which may adversely impact the functionality or availability of one or more features of the CPS Marketplace.

A "**Severity Level 3**" problem is a minor problem identified with negligible or no direct or immediate impact on the performance of the Service (including the CPS Marketplace) and which can be corrected during regularly scheduled maintenance, support, or when Updates are implemented by Equal Level.

Severity Level	Problem Response and Resolution Time
1	<p>Response: within thirty (30) minutes of notification during the hours of 8:00 a.m. to 8:00 p.m. Eastern Standard Time ("Normal Business Hours").</p> <p>Resolution: Equal Level shall correct the problem within twenty four (24) hours of such notification or otherwise develop and implement a suitable temporary workaround, acceptable to CPS and continue to use commercially reasonable efforts deploying dedicated and qualified personnel on a 24/7 basis, providing CPS with continuous reports regarding its progress, until such problem is fixed.</p>
2	<p>Response: within two (2) hours of notification during Normal Business Hours.</p> <p>Resolution: within sixty (60) hours of notification.</p>
3	<p>Response: within twenty four (24) hours of notification during Normal Business Hours.</p> <p>Resolution: Equal Level shall provide correction, resolution, or other preventive measures during the next regularly scheduled routine maintenance window or implement other corrective procedures as soon as is reasonably practicable.</p>

Escalation path for Problem Response

After CPS reports any problem to Equal Level, the appropriate first point of contact for escalations is Equal Level's named account and/or support representative Ira Golden. CPS will send all severity level 1 and 2 problem requests to support@equallevel.com so that time and completeness of support request can be logged.

The service level metric for Problem Response Time is 95% of the time measured on a quarterly basis

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Penalty for non-compliance of Problem Response Time:

If the Problem Response Time of the services for any quarter is below the guaranteed level, the Vendor will refund the Board according to the schedule below, a portion of the quarterly fee charged for the quarter during which such loss of service occurred:

Problem Response time	% of the Quarterly fee credited
>93.0% but <95.0%	3%
>90.0% but <=93.0%	5%
<90.0 %	7%

e-Marketplace Pricing

<p>CPS e-Marketplace solution:</p>	<p>\$62,500 per year (includes maintenance) Separate creation of CPS e-marketplace environment, setup and configuration; including custom branding—CPS logos, colors, and navigation layout. Includes full administration with catalog price verification, cart level reporting, and UNSPSC to NIGP mapping for items returning to iProcurement.</p> <p>Includes all U.S. Communities approved contracts and all existing “Core” CPS punch-out and static catalogs (not to exceed 25 catalogs). EQL will develop and deploy search connector APIs to all appropriate Core punch-out sites.</p> <p>Includes up to 15 addition non-Core punch-out or static catalogs. EQL will develop and deploy search connector APIs to all appropriate non-Core punch-out sites.</p> <p>Includes unlimited supplier managed Magento* punch-out e-commerce sites (EQL provides hosting and Initial setup)</p>
<p>Implementation services</p>	<p>\$6,000 one time Includes set-up, standard implementation, creation of a punch-out connection to Oracle, and two online training workshops, a two-day on site supplier fair (see Appendix B agenda and requirements). A detailed project plan will be developed for the implementation of the standard e-marketplace satisfying the requirements listed in the RFQ.</p>
<p>Additional professional services</p>	<p>\$150 per hour Any additional requirements beyond the detailed project plan are to be approved in advance by CPS as part of a separate project plan and subject</p>

equallevel

B2B e-Commerce in the Cloud

	to a \$150 hourly professional services labor rate.
EQL managed Magento punch-out sites (EQL provides hosting and initial setup at no charge)	Supplier pays, see Appendix A
Additional Non-Core punch-out and static catalogs:	Catalog 16+ \$0.0 per catalog/year

Appendix A

**Equal Level Commerce
Supplier Subscription & Support Schedule**

	Buyer Sponsored*	100 SKUs	500 SKUs	1,000 SKUs	10,000 SKUs
Punch-out Storefront	No charge	\$750 per year	\$1,060 per year	\$1,250 per year	\$1,800 per year
Ongoing Catalog Updates (no charge for initial load)	\$250 per load	\$250 per load	\$250 per load	\$250 per load	\$250 per load
Standard UI Customization	\$225	\$225	\$225	\$225	\$225
OCI Punch-out Adapter	Included	Included	Included	Included	Included
cXML Punch-out Adapter	Included	Included	Included	Included	Included
Additional Buyer Accounts	No charge	\$375 per	\$525 per	\$625 per	\$900 per
General Support (FAQs, Support Materials)	No charge	No charge	No charge	No charge	No charge
Premium Support** (per ticket)	\$45	\$45	\$45	\$45	\$45

* A buy-side only limit of Equal Level
 ** A ticket counts up to 30 minutes of support for non bug related requests.
 Tickets can be purchased in bundles of 10 for \$350 and are valid for 12 months.

Appendix B

Supplier Conference Outline

<p>Objectives:</p>	<ul style="list-style-type: none"> • Present the CPS e-procurement strategy • Explain the role of the supplier • Demonstrate the e-marketplace • Review the participation requirements • Demonstrate an actual EQL Commerce punch-out setup • Address questions and concerns
<p>Agenda:</p>	<ul style="list-style-type: none"> • Introduction to CPS e-procurement project (15 min) • EQL introductions and overview of e-procurement (30 min) • Demonstration of CPS e-marketplace (25 min) • Supplier information portal & implementation (20 min) • Overview EQL Magento punch-out program & case study (30 min) • e-Commerce readiness survey (20 min) • Q&A • Next steps & timeline
<p>Logistics:</p>	<p><u>Requirements</u></p> <ul style="list-style-type: none"> • Access to Internet connection • Large projection screen • Seating for up to 50 suppliers (EQL will provide pens and notepads) • Coffee, juice, and water • Optional --donuts in the AM and cookies in the PM • 3 sessions over two days <ul style="list-style-type: none"> ○ Day 1, 8:30 – 11:30 AM and 1:00 – 4:00 PM ○ Day 2, 8:30 – 11:30 AM • Portions of the session can be taped on Day 2 and made available on the CPS website

