

This Agreement will be posted on the CPS Internet website.

PRODUCTS AND SERVICES AGREEMENT

[NCS Pearson, Inc.]

This **PRODUCTS AND SERVICES AGREEMENT** ("Agreement") is entered into as of May 1, 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 NCS Pearson, Inc. ("Vendor" or "Pearson"), individually a "Party", collectively the "Parties".

RECITALS

A. Vendor desires to provide certain products and services to the Board, and the Board desires to purchase such products or 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 products and 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:

- 2.1 **"Licensed Use(s)"** means the following:
 - a. Process, score and report a Test for an individual examinee; and
 - b. Reproduce a machine scannable answer document for use solely with its Territory.
- 2.2 **"Scoring Site"** means Licensee's above address.
- 2.3 **"Test"** means the commercially published English version of the Stanford Achievement Test Series, Tenth Edition Abbreviated, Form A, Grades 3, 6, and 8 (Stanford 10 Abbreviated) and Stanford Achievement Test Series, Tenth Edition, Form H, Grade 8 (Stanford 10) Test(s) booklets, to be purchased from Pearson.
- 2.4 **"Answer Document(s)"** means the following: a scannable version of the Test answer document from the Stanford Achievement Test Series, Tenth Edition Abbreviated, Form A, Grades 3, 6, and 8 and Stanford Achievement Test Series, Tenth Edition, Form H, Grade 8, developed by Licensee.
- 2.5 **"Test IP"** means that portion of the Test consisting of normative tables and their related elements including, without limitation, item-objective relationships, tables, published answers, scoring rules, statistical algorithms, technical conversions and any other similar normative elements prepared for purposes of scoring, analyzing and reporting Test results, but not including the narrative reports and the Rasch Item Parameters System (the included elements collectively the "Test Norms"); Scoring Key(s); scales; raw scoring tables, or instructions; item weights; profiles; standard-score conversion tables; reference-sample norming tables; reporting formats; and related materials created, prepared, devised, and combined for the administration, scoring, reporting, and analysis of the Test, together with all revisions and derivative works of the Test, and includes words, numbers, letters, or other verbal or numerical symbols of indicia and the combinations and compilations of the foregoing, used to express or represent concepts, relationships, facts or other information in any language format or medium now or hereafter known or developed.
- 2.6 **"Test Scoring Program"** means a single application created by the Board using the Test Norms and/or Test IP pursuant to this License, and for the sole purpose of scoring and analyzing the Test as part of the Licensed Use. Prior to use as a part of the Licensed Use, the Board shall conduct quality assurance programs designed to assure that the Test Scoring Program is operating properly. The Test Scoring Program will reside at the office of Licensee and will be destroyed (and certified to Pearson that it has been destroyed) by Licensee when the Agreement expires or terminates.

2.7 **"Territory"** means Chicago Public School District, Chicago, Illinois.

3. **Term of Agreement:** This Agreement is for a term commencing on the Effective Date and shall terminate April 30, 2014 ("Term"), unless terminated sooner as provided herein.

4. **Scope of Services:** Vendor agrees to provide the products and services set forth in **Exhibit A** ("Products" and "Services"), in accordance with the terms and conditions of this Agreement and the license agreement, which the Board agrees to abide by for the reproduction and scanning and scoring of Pre-existing Vendor IP, herein attached and incorporated as **Exhibit B**. "Services" means, collectively, the services, 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 the Parties and the Board's General Counsel. Vendor agrees to provide the Products and Services at the prices set forth in **Exhibit A**, and the Board agrees to abide by the terms of this Agreement for the reproduction of answer documents and local scoring and reporting of Pre-existing Vendor IP.

5. **Order of Precedence:** Unless otherwise agreed, documents will apply in the following descending order of precedence:

- A. The sections of this Agreement (excluding Exhibits);
- B. **Exhibit A** Scope of Services;
- C. **Exhibit B** Licensing Terms;

In case of conflict, the above order of precedence shall apply.

6. **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.

7. Compensation, Purchase Orders and Payment:

A. **Compensation:** The total maximum compensation payable to Vendor pursuant to this Agreement shall not exceed sixty-four thousand and 00/100 (\$64,000) ("Total Maximum Compensation"), with no reimbursement for 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 and Products delivered up to the date of termination. In no event shall the Board be liable for the cost of Services performed or Products delivered, after the effective termination or expiration date of this Agreement.

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 Products or Services without a valid purchase order. If Vendor

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provides any Products or Services without a valid purchase order Vendor shall not be entitled to receive any payment for such Products or Services.

C. **Payment:** Vendor shall be paid in accordance with Section 3 of Exhibit A. Vendor shall submit invoices referencing this Agreement. All invoices must include: a valid purchase order number, itemized description of the Products delivered or Services rendered, date the Products were delivered or 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 Products or Services provided under this Agreement.

8. Packaging, Warranty and Inspection:

A. **Packaging and Shipment; Risk of Loss:** Vendor shall package and ship all Products in a commercially reasonable manner. All shipments shall be F.O.B. destination (as indicated on the PO or some other notification from Board) with freight prepaid. Vendor shall purchase insurance to cover the shipping period. It is understood and agreed that the Board shall have no liability for any shipping or insurance charges. The Board may adjust the purchase order or shipping destination any time up to five (5) business days prior to shipment. 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. If Vendor fails to deliver the Products within twenty calendar (20) days of Vendor's receipt of a PO, the Board may, at the Board's sole discretion, either (a) grant Vendor additional time as mutually agreed upon in writing or (b) terminate the applicable PO following which the Board will have no liability or obligations regarding such PO;

B. **Warranty:** Vendor hereby warrants that all Products furnished hereunder shall be new and conform to the specifications in Exhibit A. The warranty shall further cover accidental damage or replacement of the Products. 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; and

C. **Inspection and Out-Of-Box Failures:** The Board reserves the right to inspect all Products upon delivery 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. For any such returned Products, the Board shall either debit or offset from Vendor the cost of such Product plus freight, or receive a refund for such, at Board's discretion.

9. **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 Products and Services effectively, efficiently, and consistent with the best interests of the Board and to the satisfaction of the Chief Procurement Officer. Vendor shall retain and utilize sufficient staff to assure the most effective and efficient supply of the Products and 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 Products and 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 Products and Services are supplied at a reasonable cost to the Board and that Products and Services supplied by other entities or persons in connection with this Agreement are efficiently and cost-effectively delivered. Any review, approval, acceptance of the Products or Services or payment for any of the Products or Services by the Board does not relieve Vendor of its responsibility for the professional skill, care, and technical accuracy of its Products and Services. 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.

10. **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 Vendor and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. Payments for Products delivered or Services completed to the date of notification shall be made to Vendor except that no payment shall be made or due to Vendor under this Agreement beyond those amounts appropriated and budgeted by the Board to fund payments under this Agreement.

11. **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 the Products or 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 Products or 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 Products or Services herein at the time fixed for performance and in the manner specified herein;

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

v. Failure to supply the Products or Services in a manner satisfactory to the Board;

vi. Failure to promptly re-supply Products or 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 Products or 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.

12. **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) 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 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 Vendor's receipt of such notice.

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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 Products or 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 Products or Services yet to be supplied effective at a time specified by the Board;

C. The right to suspend the supply of Products or 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;

G. The right to withhold all or part of Vendor's compensation under this Agreement; and

H. 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 Products or 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.

13. 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. No costs incurred after the effective date of the termination are allowed.

Vendor 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.

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 Products or Services in whole or part. Vendor shall promptly resume supplying Products and 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.

14. 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 which will not be unreasonably withheld.

15. Confidential Information, Dissemination of Information, Ownership, Survival: For purposes of this Section 15 and subsections A through K, the term "Work Product" shall exclude any and all (i) third party intellectual property and (ii) Pre-existing Vendor IP (defined below) that is delivered to the Board as part of the Products or 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, the Parties may have access to or receive certain information, including trade secret information that is not generally known to others ("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. Vendor shall use at least the same standard of care in the protection of the Confidential Information of the Board as Vendor uses to protect its own confidential information, but in any event such Confidential Information shall be protected in at least a commercially reasonable manner. Confidential Information shall not include information:

- i. that is or becomes publicly available through no fault of the other Party;
- ii. that is disclosed with the prior written consent of such Party;
- iii. that is disclosed pursuant to a court order or other legal compulsion; or
- iv. that is independently developed without use of the other Party's Confidential Information.

Confidential Information may be (but is not required to be) marked as Confidential Information or trade secrets by the disclosing Party.

B. **Highly Confidential Information:** "Highly Confidential Information" means 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. In performance of this Agreement, Vendor may have access to or receive Highly Confidential Information. Vendor shall not use or disclose any Highly Confidential information without the prior written consent of the Board.

C. **Transmitting and Storing Highly Confidential Information:** Vendor shall:

- i. When mailing physical copies of Highly Confidential Information, send the Highly Confidential Information in a tamper-proof, labeled container, with a tracking number and a delivery confirmation receipt;
- ii. Only mail Highly Confidential Information on electronic media, such as CDs, DVDs, electronic tape, etc., if the Highly Confidential Information is encrypted. Encryption must utilize the Advanced Encryption Standard ("AES") algorithm with a key of 256 bits or greater ("Encrypt"). The Highly Confidential Information shall only be mailed in accordance with the provisions of Section I, above;
- iii. Encrypt all Highly Confidential Information prior to transmitting it electronically. Vendor shall not transmit any unencrypted Highly Confidential Information via email, blackberry, blackjack, instant messages or any other unencrypted protocols;
- iv. Not send any password or other information sufficient to allow decryption of Highly Confidential Information with the Encrypted Highly Confidential Information;

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v. Keep all physical copies (paper or other physical representations) of Highly Confidential Information under lock and key, or otherwise have sufficient physical access control measures to prevent unauthorized access. Vendor shall not leave Highly Confidential Information unsecured and unattended at any time;

vi. Encrypt any Highly Confidential Information stored on electronic media, such as CDs, DVDs, tape, flash drives, etc. Further, such electronic media shall be kept locked, or otherwise have sufficient physical access control measures to prevent unauthorized access. Vendor shall not leave Highly Confidential Information in any electronic format unsecured and unattended at any time;

vii. Vendor shall password protect any laptop or computer that contains Confidential Information or Highly Confidential Information. Additionally, any laptop or computer that contains Highly Confidential Information shall have its full hard drive Encrypted. Vendor shall not leave any laptop or computer unattended without enabling a screen-lock or otherwise blocking access to the laptop or computer. Vendor shall ensure that no password or other information sufficient to access a laptop or computer containing Hardware Confidential Information is attached or located near the laptop or computer at any time.

D. Dissemination of Information: Vendor shall not disseminate any Confidential Information or Highly 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, Highly 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.

E. 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, Highly 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.

F. Pre-existing IP: "Pre-existing IP" means all intellectual property rights and interests related to the Tests or Test Norms, including, without limitation: (i) all copyrights and copyrightable subject matter, including any and all worldwide applications, registrations, renewals and extensions thereof and all rights of reproduction and publication, rights to create derivative works and all of the rights incident to copyright ownership; (ii) all trade secrets and Vendor Confidential Information, all technology, ideas, know-how and proprietary processes and formulae; (iii) all inventions, designs, models, mask works, patents and pending patent applications; (iv) all trademarks and pending trademark applications applicable to the Test(s); and (v) all causes of action heretofore and hereafter accrued in favor of the owner of such intellectual property rights for infringement of any one or all of the aforesaid intellectual property rights. Notwithstanding anything written above, Pre-existing IP does not include any rights relating to any student data (student responses) collected by the Board as part of the Licensed Use.

G. Vendor Ownership:

A. Proprietary Rights with Respect to the Test(s) and Test(s) IP: The Board agrees that all Intellectual Property Rights in the Test(s) and Test(s) IP will be and remain in Pearson and its licensors. No ownership rights in and to the Test(s) and Test(s) IP are transferred to Licensee under this Agreement.

B. Proprietary Rights in the Results of the Licensed Use: Subject to Pearson and/or Pearson's licensors' proprietary rights in and to the Test IP, and subject further to the terms and conditions of this Agreement, Pearson agrees that Licensee will own all intellectual property and proprietary rights in and to the results of the Licensed Use.

H. Proprietary Rights in the Test Scoring Program: The Board hereby assigns, transfers and conveys to Pearson and/or its licensors and shall, in the future, transfer, convey, grant and assign to the Pearson and/or its licensors, irrevocably and absolutely all right, title and interest, including all Intellectual Property Rights in the Test Scoring Program free and clear of any encumbrance, security, interest, claims or rights of the Board or any other persons whatsoever. The Board warrants and agrees that it shall execute such additional documents and perform such additional acts as may be necessary or appropriate to enable Pearson or its licensors to perfect or protect the proprietary rights in the Test Scoring Program.

I. Use of Confidential Information and Highly Confidential Information: Vendor warrants and represents that it shall not use the Confidential Information, Highly 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, Highly Confidential Information, or any Work Product not specifically contemplated in this Agreement shall be considered a material breach of this Agreement.

J. 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 providing the Products or Services regardless of where Vendor 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 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.

K. Return or Destruction of Confidential Information and Highly Confidential Information: Vendor shall, at the Board's option, destroy or return all Confidential Information and Highly 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 and Highly 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 and Highly Confidential Information, Vendor shall provide an affidavit attesting to such destruction.

L. 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.

M. 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>.

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

16. Representations and Warranties of Vendor: Vendor represents and warrants that the following shall be true and correct as of the

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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, 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 Procurement 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;

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 Products and 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 Contract, 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 Contract 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 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;

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 (11-0525-PO2), adopted May 25, 2011, as may be amended from time to time, which policy is incorporated herein by reference as if fully set forth herein;

J. Intellectual Property: That in performing and delivering the Products and Services, Vendor will not knowingly 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. Business Requirements: Vendor is fully aware of the Board's requirements and intended uses for the Products and Services, including any set forth in the exhibits, and Vendor represents and warrants that the Products and Services shall satisfy such requirements in all material respects and is fit for such intended uses;

M. 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 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

N. Warranty of Title: The Products and 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 Products and

This Agreement will be posted on the CPS Internet website.

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.

17. 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.

18. 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 Products or 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.

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

19. 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.

20. Board Not Subject to Taxes: The federal excise tax does not apply to the Board by virtue of Exemption Certificate No. 36-600594, 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 Products or 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.

21. Insurance Requirements: 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 and policies shall not contain non-standard exclusions. Vendor shall submit to the Board satisfactory evidence of insurance coverage prior to the supply of any Products or Services and upon request, shall promptly provide a certified copy of any applicable policy of insurance. Minimum insurance requirements are:

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 Vendor's employees, with limits of not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) per occurrence. The workers' compensation policy shall contain a waiver of subrogation clause;

B. **Commercial General Liability Insurance:** Commercial General Liability Insurance or equivalent with limits of not less than Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence, combined single limit for bodily injury, personal injury and property damage liability coverage, which shall include the following: all premises and operations; Services/completed operations (for a minimum of two (2) years following completion); explosion; collapse; independent contractors; separation of insureds; defense; and contractual liability. The Board shall be named as an additional insured, on a primary non-contributory basis, for any liability arising directly or indirectly from the supply of the Products or Services;

C. **Professional Errors and Omissions:** Professional errors and omissions insurance coverage in the amount of at least Two Millions and 00/100 Dollars (\$2,000,000) covering contractor and its employees. If insurance is on a claims-made basis, coverage must be in place for a minimum of three (3) years beyond the termination of this Agreement;

D. **Umbrella/Excess Liability Insurance:** Umbrella or Excess Liability Insurance with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence, which will provide additional limits for Commercial General Liability Insurance and Automobile Liability Insurance;

E. **Automobile Liability Insurance:** Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with any Agreement, with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage; and

F. **Additional Insured:** Vendor shall have its Commercial General Liability Insurance 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 Certificate must provide sixty (60) days prior written notice of material change, cancellation, or non-renewal be given to:

Risk Management
Board of Education of the City of Chicago
125 South Clark Street, 7th Floor
Chicago IL 60603

The Board will not pay Vendor for any Products or Services if satisfactory proof of insurance is not provided before the supply of any Products or Services. The Board reserves the right to modify, delete, alter, or change insurance requirements at any time.

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Vendor shall require any subcontractors under this Agreement to maintain insurance at the same levels described above and naming Vendor, the Board inclusive of its members, employees and agents, and any other entity designated by the Board as additional insureds. Vendor will maintain a file of subcontractor's insurance certificates evidencing compliance with these requirements.

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 Vendor's agreement with the Board. In the event Vendor fails to fulfill the insurance requirements of this Agreement, the Board retains the right to stop the supply of Products or Services until proper evidence of insurance is provided, or the Board may terminate this Agreement.

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 Vendor under this Agreement. Vendor agrees that insurers waive their rights of subrogation against the Board.

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

22. Audit and Document Retention:

A. Audit: Vendor shall furnish the Board with such information as may be requested relative to the progress, execution and costs of supplying the Products and 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 Products and Services under this Agreement. All records referenced above shall be retained for six (6) years after delivery of the Products or Services and shall be subject to inspection and audit by the Board. Vendor shall include in all subcontractor contracts for the Products or 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.

23. 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: Sophia Kamberos
Chicago Public Schools
125 South Clark Street
Chicago, IL 60603
Fax: (773) 553-1224

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

IF TO VENDOR: NCS Pearson
2510 N. Dodge St.
Iowa City, IA 52245
Attn: Bobbi Jenks

24. 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.

25. 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 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. §821, 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.

26. Entire Agreement and Amendment: This Agreement, including all exhibits attached to it and incorporated into it, constitutes the entire agreement of the parties with respect to the matters contained herein. All attached exhibits are incorporated into and made a part of this Agreement. No modification of or amendment to this Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. Any prior agreements or representations, either written or oral, relating to the subject matter of this Agreement are of no force or effect.

27. 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.

This Agreement will be posted on the CPS Internet website.

28. 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.

29. 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.

30. Indebtedness: Vendor agrees to comply with the Board's Indebtedness Policy (98-0628-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.

31. 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.

32. 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.

33. M/WBE Program: Vendor acknowledges that it is familiar with the requirements of the Board's Remedial Program for Minority and Women Owned Business Enterprise Participation in Goods and Services Contracts and agrees to comply with the provisions of such program.

34. Survival Severability: All express warranties, representations and indemnifications made or given in this Agreement shall survive the supply of Products or 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 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.

35. Uniform Commercial Code: In the absence of a governing provision under this Agreement or should any provision of this Agreement be construed by a court of competent jurisdiction as vague, unenforceable or illegal and the parties are unable to agree on a substitute enforceable and legal provision, the corresponding provision of the Uniform Commercial Code, Article 2, shall apply.


36. Joint and Several Liability: If Vendor, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof); then, and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by Vendor shall be the joint and several obligation or undertaking of each such individual or other legal entity.

37. Debarment Policy. Vendor acknowledges that, in supplying Products and 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 Products or Services that is later debarred, Vendor shall sever its relationship with that firm with respect to supplying the Products and Services to the Board.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the latest date signed below.

BOARD OF EDUCATION OF THE
CITY OF CHICAGO

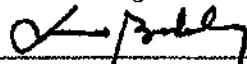
By:


Sébastien De Longeaux
Chief Procurement Officer

Date:

06/03/13

Approved as to Legal Form: SR


James L. Bebley, General Counsel

NCS PEARSON, INC.

By:


Name: JOHN E. HANSON

Title:

PROGRAM DIRECTOR
Date: 5/28/13

Attachments:

Exhibit A: Scope of Services

Exhibit B: Test and Test Norm Licensing Terms and Conditions

This Agreement will be posted on the CPS Internet website.

EXHIBIT A

SCOPE OF SERVICES

Name of Project: Early Reporting of SAT – 10 Data

CPS Project Manager: Claudinette Swartz Phone: 773/553-1161, E-Mail: cmswartz@cps.edu

Vendor's Project Manager: Paul Rice or John Hanson, E-Mail: paul.rice@pearson.com,
john.hanson@pearson.com

This Scope of Services will be conducted pursuant to the terms and conditions of that Products and Services Agreement ("Agreement") by and between NCS Pearson, 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 AND DELIVERABLES:** Per Illinois Code of Schools, 105 ILCS 5/2-3.64, CPS is mandated to administer the ISAT to all 3rd through 8th grade students. As part of the CPS Promotion Policy (Board Policy 09-1028-P02), ISAT scores are required to determine a student's promotion status. The SAT10 is a subset of the ISAT that is taken in the spring and is used to determine by the end of May whether a student is required to attend Summer School. In order to have those scores in time to determine which students have not met promotion requirements, Vendor will provide CPS student results (data) that contains "NRT" information from the SAT-10 on a secure ftp site on/or before May 17, 2013. The file will be provided to Linda Abdul from the Board's Department of Student Assessment, with the necessary log-in information.

The Board will then identify the number of students for administration of the SAT-10. In the course of administering such tests, during the Term, Vendor grants to the Board, a license to use Pre-existing Vendor IP, Test, Test IP and Answer Documents, on the terms and conditions stated in this Agreement, not to exceed the needs of 6843 students.

2. **COST/PAYMENT:** Vendor shall invoice the Board upon delivery of the SAT10 extract results for \$64,000.
3. **REPORTING:** The Board will report the total number of reproductions of Tests and Answer Document(s) and the number of students identified for administration of the SAT-10 (as stated above) not later than 30 days following the end of each three (3) month period ending on the last day of March, June, September, and December each year (if applicable) during the Term in a comprehensive and easily understood format.

This Agreement will be posted on the CPS Internet website.

EXHIBIT B

TEST AND TEST NORM LICENSING TERMS

- 1 Term of License. The Board's limited license granted hereunder will begin on the date this Agreement is signed by Vendor and will expire at the end of the Term or any Renewal Periods, unless otherwise terminated in accordance with the termination provisions of this Agreement. The terms and conditions of the Agreement will apply in full force and effect for the duration of the Term. Termination during the Term will not relieve the minimum license fee or any fees for usage during the Term. This License (defined below) shall not automatically renew and may be extended only by written agreement executed by both parties. Extensions will not be unreasonably withheld.
- 2 Grant of License.
 - 2.1 Vendor hereby grants to Board a limited, non-exclusive, non-transferable license within the Territory, for the Board's sole use in offering its services ("License"). The License permits the Board to:
 - 2.1.1 Copy the entire content of Pearson-published answer sheet (ISBNs) Form A: P3 – 015-8778-286; I3 – 015-8778-316; Adv.2 – 015-8778-332 Form H: Adv. 2 – 015-8778-332 in the exact order and form as they appear as published by Vendor into a scannable format to create the Answer Document;
 - 2.1.2 Reproduce the Answer Document, including large print or Braille versions, as required by law, as part of the Licensed Use;
 - 2.1.3 Load the normative data acquired under previous license dated June 1, 2009;
 - 2.1.4 Create a Test Scoring Program using the Test Norms in the processing, scoring, and reporting of Test results in its Territory.
 - 2.1.5 The Board shall send the Vendor one (1) copy of the Answer Document and the score report for the Test.
 - 2.1.6 Score the Test using the Test Scoring Program (each such processing and scoring of a Test for an individual examinee considered a use); and
 - 2.1.7 Prepare, generate, score, analyze results, print, and distribute reports within its Territory as part of the Licensed Use;
3. Limitation on License Grant. Notwithstanding the foregoing, the License grant is limited as follows:
 - 3.1 This License does not include the right to use the Test items, create or publish any derivative norms, interpolated norms, or other derivative works, or to create new Test items or customize or revise the Test in any manner, or to use, publish, or reproduce the Scoring Key or any element thereof for any purpose or in any manner except as expressly provided for in this Agreement;
 - 3.2 No other use or distribution of the Test Scoring Program except as stated herein is authorized; and
 - 3.3 The Board is obligated to, and hereby certifies that it will, permanently remove (or have permanently removed) Vendor's Test IP within five (5) days of completion of the last scoring of the Test, which date shall not be later than January 5, 2014.
- 4 Proprietary Rights.
 - 4.1 Proprietary Rights with Respect to the Test(s) and Test(s) IP. The Board agrees that all Intellectual Property Rights in the Test(s) and Test(s) IP will be and remain in Vendor and its licensors. No ownership rights in and to the Test(s) and Test(s) IP are transferred to Board under this Agreement.
 - 4.2 Proprietary Rights in the Results of the Licensed Use. Subject to Vendor and/or Vendor's licensors' proprietary rights in and to the Test IP, and subject further to the terms and conditions of this Agreement, Vendor agrees that Board will own all intellectual property and proprietary rights in and to the results of the Licensed Use.

This Agreement will be posted on the CPS Internet website.

4.3 Proprietary Rights in the Test Scoring Program. Board hereby assigns, transfers and conveys to Vendor and/or its licensors and shall, in the future, transfer, convey, grant and assign to the Vendor and/or its licensors, irrevocably and absolutely all right, title and interest, including all Intellectual Property Rights in the Test Scoring Program free and clear of any encumbrance, security, interest, claims or rights of Board or any other persons whatsoever.

- 5 Limitations on Exercise of Proprietary Rights.** Board agrees to the following limitations in this Section 5 on its exercise of proprietary rights in and to the Test(s), Test(s) IP and Test Scoring Program, except with the express written authorization of Vendor.

- 5.1** Board agrees not to assign, license, or otherwise transfer to another in any way any rights to reproduce, publish, distribute, create derivative works of, or otherwise exercise proprietary rights in and to the Test(s), Test(s) IP, or Test Scoring Program without the express written agreement of Vendor.
- 5.2** Board agrees not to copy the Test, Test IP, or Test Scoring Program or create any derivative works of the Test, Test IP, or Test Scoring Program or any normative data created as a result of this License, except as expressly permitted by the Agreement.
- 5.3** Board agrees to cease all exercise of licensed rights in and to the Test, Test IP, and Test Scoring Program (including, but not limited to, all rights of reproduction, publication and distribution) upon any termination or expiration of the Term.
- 5.4** The limitations of this Section will not apply to any materials or intellectual property contained in the Test Scoring Program which are not based on, or derived from the Test materials, items and intellectual property licensed by Vendor hereunder, and do not copy or incorporate any parts of the Test materials, items and/or intellectual property licensed by Vendor hereunder.

- 6 Proprietary Notices.** The Board agrees to include the following proprietary, copyright, and trademark notices on the Test, Test IP and/or any other document derived from or incorporating any part of the Test or Test IP whether fixed in a written, electronic, or other storage format in the Board's possession or control in both English and French:

6.1 Trademark Notice:

Pearson is a trademark in the U.S. and/or other countries, of Pearson Education, Inc. or its affiliate(s).

6.2 Copyright Notice for Answer Document:

Stanford Achievement Test Series, Tenth Edition – Abbreviated Battery. Copyright © 2003 NCS Pearson, Inc. Adapted and reproduced with permission. All rights reserved.

Stanford Achievement Test Series, Tenth Edition. Copyright © 2003 NCS Pearson, Inc. Adapted and reproduced with permission. All rights reserved.

5.3 Legend to be displayed on any reproduction, including scoring reports, of the Test Norms in connection with the processing, scoring, and reporting of Test scores:

THE NORMATIVE INFORMATION USED TO PREPARE THIS REPORT FROM THE STANFORD ACHIEVEMENT TEST SERIES, TENTH EDITION (STANFORD 10). Copyright © 2003 NCS Pearson, Inc. Used by Chicago Public Schools, only as provided under license, which expires December 31, 2013.

- 7 Limitation of Liability.** EXCEPT AS STATED OTHERWISE IN THIS AGREEMENT, VENDOR WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, OR FOR ANY LOST BUSINESS, LOST PROFITS OR LOST SAVINGS ARISING OUT OF THIS AGREEMENT, EVEN IF ADVISED OF SUCH DAMAGES. EXCEPT AS STATED OTHERWISE IN THIS AGREEMENT, VENDOR SHALL HAVE NO RESPONSIBILITY FOR THE RESULTS OBTAINED THROUGH BOARD'S USE OF THE TEST(S) OR TEST SCORING PROGRAM.