

This Agreement will be posted on the CPS Internet website.

SOFTWARE AND SERVICES AGREEMENT
[Language Testing International, Inc.]

This SOFTWARE AND SERVICES AGREEMENT ("**Agreement**") is entered into by and between the Board of Education of the City of Chicago, a body politic and corporate commonly known as the Chicago Public Schools (the "**Board**" or "**CPS**") and Language Testing International, Inc. ("**Vendor**" or "**LTI**").

RECITALS

A. Vendor desires to provide 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 February 23, 2015 ("**Effective Date**") and terminating on February 22, 2016 ("**Term**"), unless terminated sooner as provided herein. The parties do not have any options to renew.

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, including any increase or decrease in Vendor's fees shall be documented by a written amendment to this Agreement signed by both parties and the Board's General Counsel.

5. Personnel: Vendor must 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 after discussion with Vendor.

6. Compensation, Purchase Orders and Payment:

A. Compensation: Compensation for Services during the Term shall be payable in accordance with Section 3 (Pricing/Rates) of Exhibit A. The total maximum compensation for the Services to be provided by Vendor during the Term of this Agreement, inclusive of any and all reimbursable expenses specifically identified herein, shall not exceed Seventy Thousand One Hundred Twenty Five Dollars (\$70,125) ("**Total**")

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Maximum Compensation"), without the prior approval of the members of the Board and a written amendment to this Agreement. It is understood and agreed that the Total Maximum Compensation amount referenced hereinabove is a 'not-to-exceed amount' and is not a guaranteed payment. Compensation shall be based on actual Services performed during the Term of this Agreement and the Board shall not be obligated to pay for any Services or deliverables not in compliance with this Agreement. In the event the Agreement is terminated early, the Board shall only be obligated to pay the fees incurred up to the effective date of termination and Vendor shall promptly refund to the Board any payments received for Services and deliverables not provided.

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. Billing and Payment Procedures: All invoices must be submitted electronically via email in PDF format to cpsinvoice@cps.edu. Each email may only contain one invoice and must include your Vendor name and the CPS Purchase Order number. All invoices must include:

- Vendor name and payment address
- Unique invoice number (determined by Vendor)
- Valid purchase order number (only one PO number may be referenced on each invoice)
- Invoice date
- Itemized description of the services rendered and/or goods delivered
- Date the services were provided and/or goods were delivered to CPS
- Detailed pricing information such as quantities, unit prices, discount, and final net amount due

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 accordance with the Local Government Prompt Payment Act [50 ILCS 505/1 *et seq.*]. The Board reserves the right to request additional information and supporting documentation necessary for the Board to verify the Services provided under this Agreement.

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

7. License, Implementation, Hosting, and Support:

A. License: Vendor hereby grants to the Board a non-exclusive, worldwide, nontransferable royalty-free (except for fees specified in this Agreement) 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.

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B. Intellectual Property Warranty: Vendor warrants with respect to the Services that (i) Vendor has the right to license the Services pursuant to the terms of this Agreement; and (ii) that Vendor hereby agrees to indemnify the Board against any claim that Services provided hereunder infringe any U.S. Patent, Copyright or trade secret right of any third party (an "Infringement Claim"), and shall pay any final, non-appealable judgment awarded in, or any settlement of such Infringement Claim.

C. 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.

D. 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.

E. Licensed Users: Vendor shall provide Test IDs 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. If the number of Licensed Users is not fixed by Exhibit A, then the number of Licensed Users shall be identified in the applicable PO(s).

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

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

H. 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 terms and conditions are 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.

I. 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 Confidential Information and to otherwise make the Software and the Board's 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.

J. 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

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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.

8. Standards of Performance: Vendor must perform all Services required of it under this Agreement with that degree of skill, care and diligence normally shown by a vendor performing services of a scope and purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. Vendor must ensure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed as required by law. 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 and confidential information and 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. This provision in no way limits the Board's rights against the Vendor under this Agreement, at law or in equity. 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. 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 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

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Agreement beyond those amounts appropriated and budgeted by the Board to fund payments under this Agreement.

10. 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.

11. Remedies: The occurrence of any Event of Default which Vendor fails to cure within fifteen (15) calendar days (or such other period as the Board's Chief Procurement Officer ("CPO") may authorize in writing) 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 CPO. Written notification of an intention of the CPO 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 or on the date set forth in the notice, whichever is later. When a notice of an intention to terminate is given as provided in this Section, Vendor must discontinue all Services, unless otherwise directed in the notice, and must deliver to the Board all materials prepared or created in the performance of this Agreement, whether completed or in-process. 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 complete the supply of Services or any part thereof, by contract and at the cost of Vendor through a replacement vendor identified by Vendor and approved by the Board. 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 in exercising this remedy;

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- 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;
- 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 and/or seek debarment of the Vendor pursuant to the Board's Debarment Policy on Non-Responsible Persons in Procurement Transactions (08-1217-PO1), as may be amended from time to time.

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, nor shall the Board be deemed to have waived or relinquished any of the rights it has to declare an Event of Default in the future.

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

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

12. Early Termination, Suspension of Services: The Board may terminate this Agreement in whole or in part, without cause, at any time, by a notice in writing from the Board to Vendor in accordance with the notice provisions herein. The effective date of termination shall be thirty (30) calendar days from the date the notice is received or the date stated in the notice, whichever is later.

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. Payment for any Services actually and satisfactorily performed before the effective date of the termination is on the same basis as set forth herein in the provision regarding compensation and payment.

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 thirty (30) 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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13. Turnover of Documents and Records: Upon demand of the Board after termination of this Agreement for any reason or the expiration of this Agreement by its terms, Vendor shall turn over to the Board or its designee within ten (10) days of demand, all materials, supplies, equipment owned or purchased by the Board, completed or partially completed work product or analyses, data, computer disks, documents and any other information relating in any way to this Agreement or the performance or furnishing of Services, except that Vendor may keep a copy of such information for its own records.

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

15. Confidential Information, Dissemination of Information, Ownership, Survival: For purposes of this Section 15 and subsections A through N, the term "Work Product," as defined below, 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 ("Confidential Information"). Vendor acknowledges that Confidential Information includes, but is not limited to, proprietary information, copyrighted material, educational records, student data, employee data, information relating to health records, and other information of personal nature. 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 a commercially reasonable standard of care in the protection of the Confidential Information of the Board.

B. Transmitting and Storing Confidential Information: Vendor shall:

i. When mailing physical copies of Confidential Information, send the Confidential Information in a tamper-proof, labeled container, with a tracking number and a delivery confirmation receipt;

ii. Only mail Confidential Information on electronic media, such as CDs, DVDs, electronic tape, etc., if the Confidential Information is encrypted. Encryption must utilize the Advanced Encryption Standard ("AES") algorithm with a key of 256 bits or greater ("Encrypt"). The Confidential Information shall only be mailed in accordance with the provisions of Section i, above;

iii. Encrypt all Confidential Information prior to transmitting it electronically. Vendor shall not transmit any unencrypted 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 Confidential Information with the Encrypted Confidential Information;

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

vi. Encrypt any 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 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. Additionally, any laptop or computer that contains 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.

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C. Dissemination of Information: Vendor shall not disseminate any Confidential Information to a third party without 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.

D. 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. All intellectual property and Work Product shall be delivered to the Board within three (3) business days of demand and in any event, shall be promptly delivered to the Board upon expiration or termination of this Agreement. In addition, Vendor shall return the Board's data in the format requested by the Board. If any of the above items are lost or damaged while in Vendor's possession, such items shall be restored or replaced at Vendor's expense.

E. Press Releases; Publicity; Board Intellectual Property: Vendor shall not issue publicity news releases, grant press interviews, or use any intellectual property belonging to the Board, including but not limited to the CPS logo or the logos of any schools, during or after the performance or the delivery of Services, nor may Vendor photograph or film within any CPS school or facility without the express written consent of an authorized representative of the Board.

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

G. 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.

H. Unauthorized Access: If Vendor has knowledge of any unauthorized access and/or use of shared Confidential Information, it shall: (i) notify the Board immediately, which in no event shall be longer than twenty four (24) hours from the Vendor receiving notice of the unauthorized access and use; (ii) take prompt and appropriate action to prevent further unauthorized access or use; (iii) cooperate with the Board and any government authorities with respect to the investigation and mitigation of any such unauthorized access and use, including the discharge of the Board's duties under the law; and (iv) take such other actions as the Board may reasonably direct to remedy such unauthorized access and use, including, if required under any federal or state law, providing notification to the affected persons. Vendor shall bear the losses and expenses (including attorneys' fees) associated with a breach of Confidential Information including, without limitation, any costs: (1) of providing notices of a data breach to affected persons, and to regulatory bodies; and (2) of remedying and otherwise mitigating any potential damage or harm of the data breach, including, without limitation, establishing call centers and providing credit monitoring or credit restoration services, as requested by the Board. The

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Vendor shall include the Unauthorized Access provision in any and all agreements they execute with subcontractors under this Agreement.

I. 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 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, as defined below, under this Agreement.

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

K. Data Security and access within the Software: Only the CPS Project Manager shall be able to access the data on the secure client site.

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 effective date of this Agreement and shall continue to be true and correct during the Term of this Agreement:

A. Licensed Professionals: Vendor is appropriately licensed under Illinois law to perform Services required under this Agreement and shall perform no Services for which a professional license is required by law and for which Vendor, its employees, agents, or subcontractors, as applicable, are not appropriately licensed;

B. 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 and the performance of Services in effect now or later and as amended from time to time, including but not limited to the Drug-Free Workplace Act, the Illinois School Student Records Act, the Family Educational Rights and Privacy Act, the Protection of Pupil Rights Amendment 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/>;

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

D. 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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E. **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;

F. **Gratuities:** No payment, gratuity, or offer of employment was made to or by Vendor in relation to this Agreement or as an inducement for award of this Agreement;

G. **Contractor's Disclosure Form:** The disclosures in the Contractor's Disclosure Form, previously submitted by Vendor, are true and correct. Vendor shall promptly notify the Board in writing 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;

H. **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, daily 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 daily 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.

I. **Research Activities and Data Requests:** Vendor acknowledges and agrees that it does not have the authority to conduct research activities in the Chicago Public Schools or use Confidential Information for research purposes pursuant to this Agreement. 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-PO9) 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 Accountability Officer or his/her designee;

J. **Ethics:** No officer, agent or employee of the Board is or shall be employed by Vendor or has or shall have a financial interest, directly or indirectly, in this Agreement or the compensation to be paid hereunder

This Agreement will be posted on the CPS Internet website.

except as may be permitted in writing by the Board's Code of Ethics 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;

K. 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;

L. 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;

M. 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;

N. 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;

O. 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;

P. 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;

Q. 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 more than five (5) business days;

R. 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;

S. 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 or preventing the Board from utilizing the Software or any other program;

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

U. 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

V. 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.

This Agreement will be posted on the CPS Internet website.

All warranties will survive inspection, acceptance of 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 employees shall be entitled to receive Board employee benefits. Vendor is the common law employer of the individuals who perform services for the Board. As an independent contractor, Vendor agrees to be responsible for the payment of all taxes and withholdings specified by law which may be due in regard to compensation paid by the Board. To the extent that the Vendor is subject to taxes under Section 4980H of the Internal Revenue Code, the Vendor shall be solely responsible for paying such taxes. Vendor agrees that neither Vendor, nor its employees, staff or subcontractors 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: (i) Vendor's violation of privacy laws, rules or regulations; (ii) infringement or misappropriation of any U.S. patent, copyright, trade secret, trademark or other proprietary right of any third party related to this Agreement and Software; (iii) Vendor's violation of any laws, rules or regulations related to the Vendor's employees, agents, other service providers, or subcontractors; (iv) breach of any of the confidentiality provisions in Section 15 of this Agreement by Vendor, its agents, or subcontractors; and (v) acts or omissions of fraud, bad faith, gross negligence or willful misconduct of Vendor, its officers, agents, employees and subcontractors in the performance of this Agreement or the Services. In the event that the Board is determined to be liable for taxes under Section 4980H of the Internal Revenue Code as a result of its use of the Vendor's employees under this Agreement, the Vendor shall indemnify the Board for any such liability.

As promptly as practicable after the Board has knowledge of any claim for which it will seek indemnification under this Section, the Board shall notify the Vendor in writing in as much detail as possible as to the existence and nature of the claim, but the failure to so notify shall not relieve the Vendor from any liability that it may otherwise have to the Board except to the extent that the Vendor is materially prejudiced or forfeits any substantive rights or defenses as a result of the failure. 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 immediately 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 *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2nd 155 (1991)). The Board, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, any other statute or judicial decision.

This Agreement will be posted on the CPS Internet website.

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. 36-600584, and the State of Illinois sales tax does not apply to the Board by virtue of Exemption No. E9997-7109-06. 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.

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. Vendor shall submit to the Board satisfactory evidence of insurance coverage prior to the supply of any Services 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 and 00/100 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 and 00/100 Dollars (\$1,000,000.00) per occurrence, and Two Million and 00/100 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 premises and operations; Services/completed operations (for a minimum of two (2) years following completion); independent contractors; defense; and contractual liability.

C. **Umbrella/Excess Liability Insurance:** Umbrella or Excess Liability Insurance with limits of not less than Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence, which will provide additional limits for employer's commercial general and automobile liability insurance and shall cover the Board and its employees, subject to that of the primary coverage.

D. **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 and 00/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.

E. **Cyber Liability Insurance:** If the Board's Confidential Information is kept on any computers or other electronic devices, Vendor shall carry coverage for damages arising from a failure of computer security, or wrongful release of private information including expenses for notification as required by local, state or federal guidelines. Limit of liability should be at least Two Million and 00/100 Dollars (\$2,000,000.00) per claim and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Any retroactive date or prior acts exclusion must predate both the date of this agreement and any earlier commencement of any services. If coverage is on a "claims made basis", a five (5) year extended reporting provision must be included. Cyber liability coverage may be included in the technology errors and omissions.

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."

This Agreement will be posted on the CPS Internet website.

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 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
42 West Madison
Chicago, IL 60602

The Board will not pay Vendor for any Services if satisfactory proof of insurance is not provided before the supply of any Services.

All subcontractors are subject to the same insurance requirements of Vendor unless otherwise specified in this Agreement. Vendor shall require any subcontractors under this Agreement to maintain comparable insurance 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 reserves the right to stop the supply of 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, if any, or any limitation placed on the indemnity in this Agreement given as a matter of law.

Vendor must register with the insurance certificate monitoring company designated by the Board stated below, and must maintain a current insurance certificate on file during the entire time of providing services to the Board. Vendor must register and pay the initial 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>

This Agreement will be posted on the CPS Internet website.

22. Audit and Records Retention:

A. Audit: Vendor shall permit and cooperate in good faith in any audits by the Board, including its Department of Procurement and Contracts, or its agents for compliance by the Vendor with this Agreement. Vendor shall furnish the Board with such information, supporting documentation and reports as may be requested relative to the progress, execution and costs of supplying the Services and compliance with applicable MBE/WBE requirements. 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. Records Retention: Vendor shall retain all records relating to Vendor's Services under this Agreement for five (5) years after the termination or expiration of this Agreement and such records shall be subject to inspection and audit by the Board. If any audit, litigation or other action involving the records is being conducted or has not been resolved, all applicable records must be retained until the proceeding is closed. As used in this clause "records" includes correspondence (including emails), receipts, vouchers, memoranda and other data, regardless of type and regardless of whether such items are in written form, electronic, digital, or in any other form. Vendor shall require all of its subcontractors to maintain the above-described records and allow 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. Any notice involving non-performance or termination shall be sent by hand delivery or recognized overnight courier. All other notices may also be sent by facsimile or email, confirmed by mail. All notices shall be deemed to have been given when received, if hand delivered; when transmitted, if transmitted by facsimile or email; upon confirmation of delivery, if sent by recognized overnight courier; and upon receipt if mailed. Refusal to accept delivery has the same effect as receipt.

IF TO THE BOARD: Office of Language and Cultural Education
42 West Madison
Chicago, IL 60602
Attn: Traci Thibodeaux
Fax: 773/553-1931
Email: tethibodeaux1@cps.edu

Copy to: Board of Education of the City of Chicago
General Counsel
One North Dearborn Street, 9th Floor
Chicago, IL 60602
Fax: 773.553.1701

IF TO VENDOR: Language Testing International
445 Hamilton Avenue, Suite 1104
White Plains, NY 10601
Attn: Tineica Johnson
Fax: _____
Email: tineica.johnson@languagetesting.com

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 and the subject school principal. Vendor shall provide advance notice to the Board whenever applicable, of any such intended entry. Consent to enter upon a 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 officers, employees and agents to use, the highest degree of care when entering upon any property owned by the Board in connection with the supply of the Services. Any and all claims, suits or judgments, costs, or expenses, including, but not limited to,

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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, national origin, religion, sex, gender identity/expression, sexual orientation, age or disability; 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, national origin, religion, sex, gender identity/expression, sexual orientation, age or disability. Vendor shall particularly remain in compliance at all times with: the Civil Rights Act of 1964, 42 U.S.C.A. §2000a, *et seq.*, as amended; the Age Discrimination in Employment Act, 29 U.S.C.A. §621, *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §701, *et seq.* as amended; the Americans with Disabilities Act, 42 U.S.C.A. §12101, *et seq.*; the Individuals with Disabilities Education Act, 20 U.S.C.A. §1400 *et seq.*, as amended; the IL Human Rights Act, 775 ILCS 5/1-101, *et seq.* as amended; the IL School Code, 105 ILCS 5/1-1 *et seq.*; the IL Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.*; and the Chicago Human Rights Ordinance, ch. 2-160 of the Municipal Code of Chicago, and all other applicable federal statutes, regulations and other laws. Nothing in this paragraph is intended nor shall be construed to create a private right of action against the Board or any of its employees. Furthermore, no part of this paragraph shall be construed to create contractual or other rights or expectations for the Vendor's employees or the Vendor's subcontractors' employees.

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 office set forth in the notice provision of this Agreement, by registered or certified mail 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.

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 adopted June 26, 1996 (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 if 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 Board of Education of the City of Chicago has the authority to conduct certain investigations and that the Inspector General shall have access to all information and personnel necessary to conduct those investigations.

This Agreement will be posted on the CPS Internet website.

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*" which is incorporated by reference as if fully set forth herein.

34. 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, the Agreement shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable; and the entire Agreement will not fail, but the balance of this Agreement will continue in full force and effect; provided, however, that if any such provision may be made enforceable by limitation thereof, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.

35. 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.

36. Debarment and Suspension: Vendor certifies that it, each of its joint venture members if a joint venture, and each of its subcontractors, if any, is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency or any unit of State or local government. 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, 08-1217-PO1, as amended from time to time.

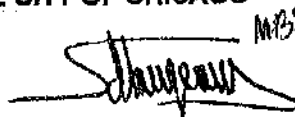
37. Counterparts and Facsimiles: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one instrument. A signature delivered by facsimile or electronic means shall be considered binding for both parties.

[Signature page to follow.]

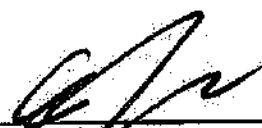
This Agreement will be posted on the CPS Internet website.

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

THE BOARD OF EDUCATION
OF THE CITY OF CHICAGO

By:  ^{MBS}
Sébastien de Longeaux
Chief Procurement Officer

LANGUAGE TESTING INTERNATIONAL,
INC.

By: 
Name: Jin Kim
Title: CFO

Attest: _____

Title: _____

Approved as to legal form: AN


James L. Bebley, General Counsel

NPRC: 15-0123-PRC1

Attachment:

Exhibit A: Scope of Services

**EXHIBIT A
SCOPE OF SERVICES**

Name of Project: CPS State Seal of Biliteracy Field Test

CPS Project Manager: Traci Thibodeaux Phone: 773/553-2024 E-Mail: tethibodeaux1@cps.edu

Vendor's Project Manager: Tineica Johnson Phone: 914/207-2032 E-Mail: tineica.johnson@language-testing.com

Term: February 23, 2015 through February 22, 2016

This Scope of Services will be conducted pursuant to the terms and conditions of that Software and Services Agreement ("**Agreement**") dated February 23, 2015 by and between Language Testing International, Inc. ("**Vendor**" or "**LTI**") and 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**"). 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:

LTI will provide the Assessment of Performance toward Proficiency in Languages ("**AAPPL**") online measure in form B ("**AAPPL Measure**") to CPS students to determine the language proficiency of students in order to qualify for the State Seal of Biliteracy ("**SSB**"). The AAPPL Measure is designed and developed by the American Council on the Teaching of Foreign Languages ("**ACTFL**") and scored by ACTFL Certified Raters ("**ACTFL Certified Raters**"). CPS will administer the AAPPL Measure to junior and senior CPS students who are English Learners ("**English Learners**"), students enrolled in World Language courses ("**World Language Students**"), and other students who may be able to demonstrate proficiency in a foreign language. The AAPPL Measure will be administered in up to 18 high schools as part of CPS's SSB field test.

The AAPPL Measure is a performance-based assessment of standards-based language learning across the three modes of communication (interpersonal, interpretive, and presentational) as defined by the World-Readiness Standards for Learning Languages ("**World-Readiness Standards for Learning Languages**"). LTI will provide the AAPPL Measure in six languages: Arabic, Chinese, French, German, Russian, and Spanish. The AAPPL Measure assesses four domains of communication: 1) interpersonal listening/speaking, 2) interpretive reading, 3) interpretive listening, and 4) presentational writing in an online format. The AAPPL Measure assesses performance and the language that learners have learned and practiced within a classroom setting, providing evidence that points toward a learner's proficiency level.

The AAPPL Measure scores range on an ACTFL scale of N-1 (novice low) through A-9 (advanced high). There are two forms of the AAPPL: form A and form B. Form A measures within the novice-intermediate range on the ACTFL scale and form B measures within the intermediate-advanced range. LTI will only provide the form B AAPPL. Each reading passage, listening text, speaking/listening task, or writing prompt in the AAPPL Measure is aligned with the features and demands of a major level on the ACTFL scale. For example, in the case of the interpretive reading or interpretive listening test, the language presented to the student embodies features of language observed at a particular level, and in the case of the presentational and interpersonal modes, the tasks elicit language from the student that should have such features.

LTI will provide CPS with a secure client site that will be enabled and authorized to deliver up to 4,250 AAPPL Measure test identification numbers ("**Test IDs**"). The Test IDs will allow each student to log onto LTI's online testing system and take the AAPPL Measure in their selected language. The CPS Project Manager will determine the exact number of Test IDs needed for each language and will communicate that information to LTI. After retrieving the Tests IDs from the secure client site, the CPS Project Manager will communicate the Test IDs along with the corresponding student number to participating schools.

Within 2-3 weeks following the submission of the AAPPL Measures, LTI will provide an official ACTFL certificate of proficiency, which is a detailed score report of each student's proficiency in the language tested ("**Score Report**"). The Score Report will include proficiency levels for all four domains and will be provided to CPS in individual PDF reports on the secure client site. Within 2-3 weeks following the submission of the AAPPL Measure, LTI will also provide the scores for all students who take the AAPPL Measure to CPS in a consolidated

Excel file ("**Consolidated Score Report**"). The Consolidated Score Report will include Test IDs and all four proficiency levels for each test domain. It will be provided in Excel format and transmitted through a secure FTP site, which will allow CPS to link the Test IDs and proficiency levels to student numbers.

2. DELIVERABLES:

- **LTI Project Manager** – LTI must provide a project manager to assist with implementation and service issues.
- **Test IDs** – LTI must provide up to 4,250 Test IDs on the secure client site, as requested by the CPS Project Manager.
- **Score Reports** – Within 2-3 weeks following the submission of the AAPPL Measures, LTI must provide a Score Report detailing each student's proficiency in the language tested. The Score Report will include proficiency levels for all four domains and will be provided to CPS in individual PDF reports on the secure client site.
- **Consolidated Score Report** – Within 2-3 weeks following the submission of the AAPPL Measures, LTI must provide a Consolidated Score Report. The Consolidated Score Report must include Test IDs, and all four proficiency levels for each test domain. It will be provided in Excel format and transmitted through a secure FTP site. The Consolidated Score Report will be provided at the same time as the Score Reports.

3. PRICING/RATES:

LTI shall provide a maximum of 4,250 Test IDs for AAPPL Measures at a rate of \$16.50 per Test ID. The total maximum cost will not exceed \$70,125. LTI will be paid 80% of the total cost for the number of requested Test IDs as detailed in the first invoice. The total maximum cost for the first invoice will not exceed \$56,100. LTI will be paid the remaining 20% of the total cost for the number of requested Test IDs upon receipt of the second invoice detailing that all Score Reports as well as a Consolidated Score Report were provided to CPS. The total maximum cost for the second invoice will not exceed \$14,025.

4. OUTCOMES:

By administering the AAPPL Measure to juniors and seniors who are English Learners, World Language Students, and other students who may be able to demonstrate proficiency in a foreign language, CPS will determine language proficiency in order to qualify for the SSB.