

This Agreement will be posted on the CPS Internet website.

SOFTWARE AND SERVICES AGREEMENT

[Avant Assessment, LLC]

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 Avant Assessment, LLC ("Vendor" or "Avant").

RECITALS

A. 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.

B. 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

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 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 necessary.

B. "**Software**" means the software used to administer the Vendor's language assessment, which is 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 March 1, 2017 ("**Effective Date**") and terminating on February 28, 2018 ("**Term**"), unless terminated sooner as provided herein, with two (2) options to renew the Agreement for periods of one (1) year each under the same terms and conditions as the original Agreement (each a "**Renewal Term**").

4. **Scope of Services:** Vendor agrees to provide the services set forth in **Exhibit A** ("**Services**"), in accordance with the terms and conditions of this Agreement. "Services" means, collectively, the services, Software, products, deliverables, duties and responsibilities described in **Exhibit A** of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement. The Board retains final authority with respect to all Services related decisions. The Board may, from time to time, request changes in the Scope of Services. Any such changes, 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.

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6. Compensation, Purchase Orders and Payment:

A. Compensation: Compensation for Services during the Term shall be payable in accordance with Section III (Pricing/Rates) of **Exhibit A**. The total maximum compensation for the Services to be provided by Vendor during the Term of this Agreement shall not exceed Thirty One Thousand Two Hundred Dollars (\$31,200) ("**Total Maximum Compensation**"), without the prior approval of the Board and a written amendment to this Agreement. There shall not be any reimbursement for expenses. 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.

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7. License, Implementation, 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.

B. Permissible Board Actions: Nothing in this Section shall prevent the Board, its employees and representatives from sharing reports and data generated from the Vendor's Services with other vendors of the Board.

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

D. Licensed Users: Vendor shall provide 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).

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

F. Controlling Agreement: The Board and the Board Users 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.

G. Compatibility and Data Flow: Vendor shall ensure that the Services allows data to flow properly between the Board's systems and software 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

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such problems, and using all commercially reasonable efforts to obtain and maintain the active participation, cooperation, and involvement of such other service providers as is required for such problem resolution;

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

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

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

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

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

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

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

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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 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

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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;

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.

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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.

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, Survival: In the performance of the Agreement, Vendor may have access to or receive certain information that is not generally known to others ("Confidential Information"). Such Confidential Information may include, but is not limited to proprietary information, student data as further defined below, employee data, contractor data, unpublished school information, CPS financial information, and CPS business plans. It is understood and agreed that Confidential Information also includes proprietary or confidential information of third parties provided by the Board to Vendor. Confidential Information will not include information that is: (i) or becomes part of the public domain through no fault of Vendor; (ii) made available to Vendor by an independent third party having the legal right to make such disclosure; and (iii) information that can be established and documented by Vendor to have been independently developed or obtained by Vendor without violating the confidentiality obligations of this Agreement and any other agreements with the Board.

A. **Student Data:** "Student Data" means any data, metadata, information, or other materials of any nature recorded in any form whatsoever, that is generated, disclosed, transmitted, created, or provided by the Board, either directly or through its students, employees, agents, and subcontractors. This includes all information that is used, created, or generated through the Board's use of the Services and that is directly related to a CPS student. For purposes of this Agreement, Student Data shall still be considered Confidential Information; additional requirements regarding Student Data specifically are described below.

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B. De-identified Data: "De-identified Data" will have all direct and indirect personal identifiers removed including but not limited to persistent unique identifiers, name, ID numbers, date of birth, demographic information, location information, and school ID ("De-identified Data"). Vendor agrees not to attempt to re-identify De-identified Data. For the purposes of this Agreement, De-identified Data will still be considered Confidential Information and treated as such unless expressly provided otherwise in this Agreement.

C. Use of Confidential Information: Vendor shall:

i. Only use Confidential Information for the sole purpose of delivering the Services to the Board hereunder, and shall not disclose the Confidential Information except to those of its officers, agents, employees, and subcontractors who have a need to access the Confidential Information for said purpose. Notwithstanding the foregoing, as described in the Compliance with Laws Section, it is understood and agreed that the protection of Student Data shall be subject to the special requirements of the Family Educational Rights and Privacy Act ("FERPA") and the Illinois School Student Records Act ("ISSRA").

ii. Not copy or reproduce in any manner whatsoever the Confidential Information of the Board for any purpose outside the terms of this Agreement without the prior written consent of the Board.

D. Transmitting and Storing Confidential Information: When transmitting and storing Confidential Information, Vendor shall use commercially reasonable best efforts, but at a minimum with no less protection than Vendor uses to protect its own confidential information. When transmitting and storing Confidential Information that is personally identifiable ("Personally Identifiable Confidential Information"), which includes but is not limited to Student Data, Vendor shall:

- i. When mailing physical copies of Personally Identifiable Confidential Information, send the Personally Identifiable Confidential Information in a tamper-proof, labeled container, with a tracking number and a delivery confirmation receipt;
- ii. Only electronically transmit, mail, or store Personally Identifiable Confidential Information on electronic media, such as CDs, DVDs, electronic tape, flash drives, 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"). Any media containing Personally Identifiable Confidential Information shall only be mailed in accordance with the provisions of Section 15(D)(i)(1) above;
- iii. Not send, via mail or electronically, any password or other information sufficient to allow decryption of Personally Identifiable Confidential Information with the Encrypted Confidential Information;
- iv. Keep all physical copies (paper, portable or removable electronic media, or other physical representations) of Personally Identifiable Confidential Information under lock and key, or otherwise have sufficient physical access control measures to prevent unauthorized access. Vendor shall not leave Personally Identifiable Confidential Information unsecured and unattended at any time;
- v. Password protect any desktop, laptop or any other device that contains Personally Identifiable Confidential Information. Additionally, any desktop or laptop that contains Personally Identifiable Confidential Information shall have its full hard drive Encrypted. Vendor shall not leave any desktop, laptop, or any other device unattended without enabling a screen-lock or otherwise blocking access to the desktop, laptop, or other device. Vendor

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shall ensure that no password or other information sufficient to access a desktop, laptop, or other device containing Personally Identifiable Confidential Information is attached to or located near the desktop, laptop, or other device at any time.

- vi. Store Personally Identifiable Confidential Information on a proprietary file server that is: (i) based in the continental United States; and (ii) not shared by other entities including, but not limited to, other departments of Vendor. Vendor shall ensure the security of the Personally Identifiable Confidential Information stored on the server by employing adequate security measures to prevent unauthorized access to that information. These measures include policies, procedures, and technical elements relating to data access controls. In addition, Vendor shall use standard security protocols and mechanisms to protect the exchange and transmission of Personally Identifiable Confidential Information.

E. 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 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.

F. 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.

G. 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.

H. Unauthorized Access: If Vendor has knowledge of any unauthorized access, use or disclosure 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, use or disclosure; (ii) take prompt and appropriate action to prevent further unauthorized access, use or disclosure; (iii) cooperate with the Board and any government authorities with respect to the investigation and mitigation of any such unauthorized access, use or disclosure, 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, use or disclosure, 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 Vendor shall include the Unauthorized Access provision in any and all agreements they execute with subcontractors under this Agreement.

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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 19 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 destroy or return all Confidential Information provided by the Board to the Board within five (5) business days of demand, or if no demand is made, it shall destroy or return all Confidential Information to the Board within five (5) days of the expiration or termination of this Agreement unless Vendor receives permission in writing from the Board's Director of Performance Data and Policy or his/her designee that Vendor may retain certain Confidential Information for a specific period of time. Upon Vendor's submission of its final invoice, Vendor shall provide an affidavit attesting to the destruction or return of all Confidential Information, in the form attached hereto as Exhibit B ("Certificate of Destruction"). The Board retains the right to withhold final payment until the Board receives of a Certificate of Destruction from Vendor.

K. Additional Obligations Regarding Treatment of Student Data: In addition to the above stated obligations for the treatment and handling of Confidential Information, Vendor shall abide by the following obligations when handling Student Data:

i. Student Data Use. Vendor shall not use Student Data, including persistent unique identifiers, data created or gathered by Vendor's site, Services, and Software, to amass a profile about a CPS student or otherwise identify a CPS student except in furtherance of specific school purposes as may be agreed upon in writing between the Board and Vendor. Vendor will use Student Data only for the purpose of fulfilling its duties and performing Services under this Agreement, and for improving Services under this Agreement in a way that does not otherwise violate the terms of this Agreement regarding the treatment of Confidential Information.

ii. Student Data Collection. Vendor will collect only Student Data necessary to fulfill its duties as outlined in this Agreement.

iii. Marketing and Advertising. Vendor shall not advertise or market to students or their parents when the advertising is based upon any Student Data that Vendor has acquired because of the use of that Vendor's site, Services, or Software. Advertising or marketing may be directed to a school or Board only if the student information underlying the marketing and/or advertising is properly de-identified.

iv. Student Data Mining. Vendor is prohibited from mining Student Data for any purposes other than those agreed to by the parties. Student Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited.

v. Student Data Transfer or Destruction. Vendor will ensure that all Student Data in its possession and in the possession of any subcontractors, or agents to whom Vendor may have transferred Student Data, are destroyed or transferred to the Board under the direction of the Board when Student Data is no longer needed for its specified purpose.

vi. Rights and License in and to Student Data. Parties agree that all rights, including all intellectual property rights associated with such Student Data, shall remain the exclusive property of the Board. Nothing in this Agreement is meant and nothing shall be interpreted to mean that the Board releases any ownership or control of Student Data to which Vendor may have access during the performance of the Services under this Agreement. Student Data shall remain the property of and under the control of the

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Board throughout the Term of this Agreement, including any Renewal Terms. Vendor has a limited, nonexclusive license solely for the purpose of performing its obligations as outlined under the Agreement. This Agreement does not give Vendor any rights, implied or otherwise, to Student Data, content, or intellectual property, except as expressly stated in the Agreement. Vendor does not have the right to sell or trade Student Data.

vii. **Sale of Student Data.** Vendor is prohibited from selling, trading, or otherwise transferring Student Data to any third parties, except with the express written prior consent of the authorized Board representative and approval of the Board's General Counsel. This prohibition does not apply to the purchase, merger, or other type of acquisition of Vendor by another entity approved by the Board in accordance with the Assignment Section of this Agreement, provided that Vendor or successor entity continues to be subject to the provisions of this Agreement with respect to previously acquired Student Data.

viii. **Use of De-Identified Data.** Vendor may use De-Identified Data within Vendor's site, Software, other sites, services, or applications owned by Vendor for product development, research, or other purposes to develop and improve educational sites, services, or applications. Vendor may use De-Identified Data to demonstrate the effectiveness of Vendor's products or services, including in its marketing, provided that Vendor's marketing shall not identify or suggest that the Board or any of its students, employees, agents, or subcontractors approve of, recommend, vouch for, or otherwise positively advance the use of Vendor's sites, services, or applications without the prior written consent of the individual identified and the Board's Chief Communications Officer.

ix. **Access.** Any Student Data held by Vendor will be made available to the Board upon request of the Board. The identity of all persons having access to Student Data through Vendor will be documented and access will be logged.

x. **Security Controls.** Vendor will store and process Student Data in accordance with the industry best practices. This includes appropriate administrative, physical, and technical safeguards to secure Student Data from unauthorized access, disclosure, and use. All data must be secured in transit using https/TLS 1.0+, or secure FTP services. Vendor is required to specify any Personally Identifiable Information (PII) collected or used by its Services and Software. In addition, Vendor must maintain industry recognized security practices to establish secure application(s), network, and infrastructure architectures. Industry certifications, such as International Organization for Standardization (ISO), SysTrust, Cloud Security Alliance (CSA) STAR Certification, or WebTrust security for SaaS environments are recommended.

xi. Such safeguards shall be no less rigorous than accepted industry practices, including specifically the NIST 800-53r4 moderate level, International Organization for Standardization's standards ISO/IEC 27001:2005 (Information Security Management Systems – Requirements), and ISO-IEC 27002:2005 (Code of Practice for International Security Management). Vendor shall ensure that the manner in which Student Data is collected, accessed, used, stored, processed, disposed of and disclosed complies with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement. Vendor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Vendor will also have a written incident response plan, to include prompt notification of the Board in the event of a security or privacy incident, as well as best practices for responding to a breach of Student Data security practices. Vendor agrees to share its incident response plan upon request.

xii. Vendor shall assure that all Student Data that is transmitted between the Board's access points and Vendor's ultimate server, will use Board-approved encryption of no less rigor than NIST-validated DES standards.

xiii. **Security Safeguards:** Vendor agrees to provide the following additional safeguards:

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1. Include component and system level fault tolerance and redundancy in system design.
2. Encrypt user passwords in any data storage location and obfuscate password entry fields in any entry interface controlled by the discloser.
3. Encrypt Student Data at-rest and in-transit.
4. Authentication of users at login with a 128-bit or higher encryption algorithm.
5. Secure transmission of login credentials.
6. Automatic password change routine.
7. Trace user system access via a combination of system logs and Google Analytics.
8. Secure (encrypt) the audit trails and system generated logs and ensure that they are stored in locations that are inaccessible to automated content discovery software.
9. Conduct or undergo system level testing whenever new functionalities are added to the system to reconfirm system security measures are retained and functional, and that interaction with the Board systems is not degraded or compromised.
10. Employ an in-line intrusion protection system that inspects incoming data transmissions.
11. Ensure that Student Data is stored in privately addressed network devices that have no direct interaction with public networks.
12. Provide a documented disaster recovery plan that includes the following elements:
 - a. Available recovery times.
 - b. Conduct 24x7 system monitoring that is capable of detecting potential outages.
 - c. Plans for file-level, database and server recovery after a component/system failure, damage or compromise.
 - d. Substantial geographical separation between data centers hosting production, backup and redundant system elements.
 - e. Include recovery/mitigation procedures for all managed sites, including subcontractors, agents, and other recipients.
 - f. Include provisions for at least the following events:
 - i. Fire
 - ii. Natural disaster
 - iii. Sabotage

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- iv. Accidental human error
 - v. Flooding
 - vi. Equipment failure
 - vii. Application/database failure
 - viii. Other unlikely events
- g. No less than annual testing of the disaster recovery plan (at least parts that affect Student Data) with results of the test made available to the Board, as well as information about, and schedule for, the correction of deficiencies identified in the test.
13. Prevention of hostile or unauthorized intrusion.
14. Screening of employees who may be given access to Student Data to assure that any employees who are in violation of the statutes referenced in the Criminal History Records Search Section in the Agreement do not have access to Student Data. Vendor shall provide the security measures taken to ensure that said employees do not have access to Student Data.
15. Backup of all Student Data at least once every twenty-four (24) hours.
16. Perform content snapshots at least daily and retain for at least ninety (90) days.
- xiv. **Data Security Manager:** Vendor shall provide the Board with the name and contact information for an individual who shall serve as the Board's primary security contact and who shall be available to assist the Board twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Student Data-related security breach. The designated contact shall respond to any Board inquiries within two (2) hours.
- L. **Data Security and Access Rights within the Software:** Security and access rights in the Software shall be hierarchical. CPS shall determine who has access to specific categories of data. For instance, a student taking the assessment shall have access only to his/her assessment and his/her data. Students shall not be able to access any other student's data or information. The Board's Chief Information Technology Officer shall make the final determination on who has access to what information within the Software and any rules that may apply to the access of such information.
- M. **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.
- N. **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>.

This Agreement will be posted on the CPS Internet website.

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

16. Intellectual Property:

- A. Intellectual Property Defined. Intellectual Property shall mean all trademarks, trade dress, copyrights and other intellectual property rights in the materials used in the performance of Services under this Agreement.
- B. Board's Intellectual Property. Vendor agrees that all Confidential Information, as well as any intellectual property arising therefrom, shall at all times be and remain the property of the Board. Any intellectual property or other documents and materials created by the Board in connection with the Services ("**Board Materials**") shall be and remain the property of the Board. Board Materials 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. 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 intellectual property rights as defined in this Section. Upon written agreement between the parties, Vendor may be licensed to use the Board's intellectual property for specifically defined uses and terms.
- C. Vendor's Intellectual Property. All intellectual property possessed by Vendor prior to, created in, or concurrently with the performance of Services under this Agreement shall be and remain at all times "Vendor's intellectual property", provided that no Confidential Information is used or disclosed in Vendor's intellectual property. In the event that any Confidential Information is used or disclosed in any intellectual property, the Board shall have full and exclusive ownership rights to such intellectual property. Other than as may be expressly stated elsewhere in this Agreement, Vendor grants to the Board a perpetual, royalty-free (other than the fees identified in this Agreement), non-transferable license to use such of Vendor's intellectual property as may be necessary for the receipt and use of Services through the Term of this Agreement, including any Renewal Terms.
- D. Third Party Intellectual Property. Vendor represents and warrants to the Board that Vendor, in connection with providing the Services, will not infringe on any presently existing United States patent, copyright, trademark, service mark, trade secret and/or other confidentiality or proprietary right of any person or other third party.
- E. Survival. The obligations set forth in this Section shall survive the termination or expiration of this Agreement.

17. 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 applicable Board policies and

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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;

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 conducted on all employees, agents, volunteers and subcontractors who may have contact with CPS students (individually and collectively "**Staff**") in accordance with the Illinois School Code (105 ILCS 5/34-18.5); the Sex Offender and Child Murderer Community Notification Law (730 ILCS 152/101 et seq.); and the Murderer and Violent Offender Against Youth Registration Act (730 ILCS 154/1 et seq.) ("**Records Check**"). It is understood and acknowledged that contact via text messages, live chats, emails or through any other means shall be considered "contact" for the purposes of this Section. A complete Records Check includes the following:

- i. Fingerprint-based checks through the Illinois State Police and the FBI;
- ii. A check of the Illinois Sex Offender Registry; and
- iii. A check of the Violent Offender Against Youth Database.

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 Murderer and Violent Offender Against Youth Registration Act, 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 shall not allow any of its Staff to have contact with a CPS student until a Records Check has been conducted for that person and the results of the Records Check satisfy the requirements of 105 ILCS 5/34-18.5 and the requirements of all other Acts and Laws referenced in this Section, as may be

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amended. Within fifteen (15) business days before any Staff has contact with any CPS students and on or before the Agreement's anniversary date(s) during the Term and any Renewal Term, Vendor shall submit a written report to CPS's Chief Officer of Safety & Security and/or its Deputy Chief of Network Security ("**CPS Safety Officer**"). The report shall include at least the following information:

- i. the specific method of completing the Records Check;
- ii. the names of each Staff member who satisfactorily passed the Records Check within the quarter before s/he has any contact with a CPS student; and
- iii. the procedure to update each Staff member's Records Check through the Term of the Agreement, including any Renewal Terms (intervals between each Staff member's updates shall not be less than annually).

On a quarterly basis thereafter, Vendor shall: (i) periodically check the Illinois Violent Offender Against Youth Registry and the Illinois Sex Offender Registry for each Staff member who has contact with students and shall immediately remove any Staff member who may be identified on either registry; (ii) provide a written report to CPS's Safety Officer listing the names of all new Staff members who have contact with CPS students and certifying that Records Checks were satisfactorily completed for those individuals before s/he had any contact with CPS students; and (iii) provide any other information requested by the Board.

If Vendor fails to comply with this Section, in whole or in part, then, in addition to the Remedies set forth in this Agreement, the Board may exercise additional remedies, including but not limited to: (i) withholding payments due under this Agreement and any others that Vendor may have with the Board; or (ii) immediately terminating this Agreement, in whole or in part, without any further obligation by the Board of any kind."

I. Research Activities and Data Requests: Vendor shall not conduct research in the Chicago Public Schools or use Confidential Information for research purposes. 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 Director of School Quality Measurement 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 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

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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 systems and 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 malicious code, malware, Trojan horses, ransomware, worms, and other computer viruses. Vendor shall also maintain a master copy of the appropriate versions of the Software, free of malicious code, malware, Trojan horses, ransomware, worms, and other 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. Debarment and Suspension: Vendor certifies to the best of its knowledge and belief, after due inquiry, that:

- i. it, its principals, and its subcontractors providing Services under this Agreement are not barred from contracting with any unit of state or local government as a

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result of violation of either Section 33E-3 (bid-rigging) or Section 33E-4 (bid rotating) of the Illinois Criminal Code (720 ILCS 5/33A *et seq.*);

- ii. it, its principals, and its subcontractors providing Services under this Agreement are 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; and
- iii. it, its principals, and its subcontractors providing Services under this Agreement have not violated the rules, regulations, or laws of any federal, state, or local government unit or agency.

"Principals" for the purposes of this certification means officers, directors, owners, partners, persons having primary management or supervisory responsibilities within a business entity; and, if a joint venture is involved, each joint venture member and the principals of each such member.

W. 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.

X. Continued Disclosure Requirement: If at any time during the Term of this Agreement or during any Renewal Terms Vendor becomes aware of any change in the circumstances that makes the representations and warranties stated above no longer true, Vendor must immediately disclose such change to the Board in accordance with the Notice provision of this Agreement.

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.

18. 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.

19. Indemnification: Vendor agrees to defend, indemnify and hold harmless the Board, its members, employees, agents, officers and officials from and against liabilities, losses, penalties, damages and expenses, including reasonable costs and attorney fees, arising out of all claims, liens, damages, obligations, actions, suits, judgments or settlements, or causes of action, of every kind, nature and character arising or alleged to arise out of the acts or omissions of the Vendor, its officers, agents, employees and subcontractors in the performance of this Agreement. This includes, but is not limited to, the unauthorized use of any trade secrets, patent infringement, or trademark or copyright violation. 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.

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

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action, the 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 the 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. 2d 155 (1991)). The Board, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, any other statute or judicial decision.

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

20. 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.

21. 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.

22. 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,

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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. Professional Liability / Errors and Omissions: When any professionals perform Services in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions in conjunction with the professional services must be maintained with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) each claim. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with or precede start of Services under this Agreement. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years following completion of professional services

F. Additional Insured: Vendor shall have its Commercial General Liability Insurance, Umbrella, Professional, 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 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
riskmanagement@cps.edu

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

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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>

23. 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.

This Agreement will be posted on the CPS Internet website.

24. 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: Board of Education of the City of Chicago
Office of Language and Cultural Education
42 West Madison
Chicago, IL 60602
Attn: Chief of the Office of Language and Cultural Education
Fax: (773) 553-1931

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: Avant Assessment, LLC
940 Willamette Street, Suite 530
Eugene, OR 97401
Attn: Nicole Hines
Email: nicolehines@avantassessment.com

25. Minimum Wage: Vendor must comply with the City of Chicago Minimum Wage Ordinance (01-24), as may be amended, and the Board's Minimum Wage Resolution (14-1217-RS2) and any applicable regulations issued by the Board's CPO. The Board's resolution adopts Chicago Mayoral Executive Order 2014-1. As of December 17, 2014 the minimum wage to be paid pursuant to the Resolution is \$13.00 per hour (the "Minimum Wage"). A copy of the Mayoral Order may be downloaded from the Chicago City Clerk's website at: <http://chicityclerk.com/wp-content/uploads/2014/09/Executive-Order-No.-2014-1.pdf>; the Board's Resolution may be downloaded from the Chicago Public School's website at: http://www.cpsboe.org/content/actions/2014_12/14-1217-RS2.pdf. In the event of any discrepancy between the summary below and the Resolution and Order, the Resolution and Order shall control.

Vendor must: (i) pay its employees no less than the Minimum Wage for work performed under the Agreement; and (ii) require any subcontractors, sublicensees, or subtenants, to pay their employees no less than the Minimum Wage for work performed under the Agreement.

The Minimum Wage must be paid to: 1) All employees regularly performing work on property owned or controlled by the Board or at a Board jobsite and 2) All employees whose regular work entails performing a service for the Board under a Board contract.

Beginning on July 1, 2015, and every July 1 thereafter, the Minimum Wage shall increase in proportion to the increase, if any, in the Consumer Price Index for All Urban Consumers most recently published by the Bureau of Labor Statistics of the United States Department of Labor, and shall remain in effect until any subsequent adjustment is made. On or before June 1, 2015, and on or before every June 1 thereafter, the City of Chicago may issue bulletins announcing adjustments to the Minimum Wage for the upcoming year.

The Minimum Wage is not required to be paid to employees whose work is performed in general support of Vendor's operations, does not directly relate to the services provided to the Board under the Agreement, and is included in the contract price as overhead, unless that employee's regularly assigned work location is on property owned or controlled by the Board.

This Agreement will be posted on the CPS Internet website.

The term 'employee' as used herein does not include persons subject to subsection 4(a)(2), subsection 4(a)(3), subsection 4(d), subsection 4(e), or Section 6 of the Illinois Minimum Wage Law, 820 ILCS 105/1 et seq., in force as of the date of this Agreement or as amended. Nevertheless, the Minimum Wage is required to be paid to those workers described in subsections 4(a)(2)(A) and 4(a)(2)(B) of the Illinois Minimum Wage Law.

The Minimum Wage is not required to be paid to employees subject to a collective bargaining agreement that provides for different wages than those required by the Board's Resolution, if that collective bargaining agreement was in force prior to December 17, 2014 or if that collective bargaining agreement clearly and specifically waives the requirements of the Resolution.

If the payment of a prevailing wage is required and the prevailing wage is higher than the Minimum Wage, then the Vendor must pay the prevailing wage.

26. 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, 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.

27. 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.

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

This Agreement will be posted on the CPS Internet website.

29. 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.

30. 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.

31. Transition Services: Vendor will provide to the Board and/or to the service provider selected by the Board ("successor service provider") assistance reasonably requested by the Board to effect the orderly transition of the Services, in whole or in part, to the Board or to successor service provider(s) pursuant to a mutually agreed-upon transition plan (such assistance shall be known as the "Transition Services") for a period of three (3) months following the termination or expiration of this Agreement, in whole or in part. The Transition Services shall be provided at no additional cost and may include: (a) developing a plan for the orderly transition of the terminated services from Vendor to the Board or successor service provider(s); (b) if required, transferring any CPS data to the successor service provider(s); (c) using commercially reasonable efforts to assist the Board in acquiring any necessary rights to legally and physically access and use any third-party technologies, documentation, or other property then being used by Vendor in connection with the Services; (d) using commercially reasonable efforts to make available to the Board, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Vendor in connection with the Services; and (e) such other activities upon which the parties may agree. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section shall survive expiration or termination of this Agreement

32. 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.

33. 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.

34. 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.

35. 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.

This Agreement will be posted on the CPS Internet website.

36. 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.

37. 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.

38. 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.

39. 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 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

AVANT ASSESSMENT, LLC

By: Jose Alfonso De Hoyos Acosta
Jose Alfonso De Hoyos-Acosta, Chief
Administration Officer, as designee for the
Chief Procurement Officer

By: John Harkanson

Name: JOHN HARKANSON

Title: VP, FINANCE

Attest: [Signature]

Title: VP, SALES

Approved as to legal form: [Signature]
Ronald L. Marmer
Ronald L. Marmer, General Counsel

CPOR: 17-0328-CPOR-1827

Attachment:

- Exhibit A: Scope of Services
- Exhibit B: Certificate of Destruction

EXHIBIT A
SCOPE OF SERVICES

CPS Chief Officer: Jorge Macias
E-Mail: jamacias@cps.edu

Phone: 773-553-2404

Vendor's Project Manager: Nicole Hines
E-Mail: nicolehines@avantassessment.com

Phone: 608-501-4090

This Scope of Services shall be conducted pursuant to the terms and conditions of the Software and Services Agreement ("**Agreement**") dated as of the **Effective Date** by and between Avant Assessment, LLC ("**Vendor**" or "**Avant**") and the Board of Education of the City of Chicago, commonly known as Chicago Public Schools (the "**Board**" or "**CPS**"). Defined terms used in this Scope of Services shall have the same meanings as those ascribed to such terms in the Agreement.

I. SCOPE OF SERVICES

The Vendor will provide an online language assessment measure to CPS students at the elementary and high school level to determine the language proficiency of students in order to qualify for the Seal of Biliteracy ("**SSB**"). CPS will administer the Vendor's language assessment to 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 Vendor's language assessment will be administered district-wide during the Spring of 2017 as part of the CPS SSB project.

The Vendor's language assessment will be a performance based-evaluation of standards-based language learning. The Vendor's language assessment will measure four domains of communication: 1) interpersonal listening/speaking, 2) interpretive reading, 3) interpretive listening, and 4) presentational writing in an online format. The Vendor's language assessment will measure 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 Vendor will provide CPS with a secure client site that will be enabled and authorized to deliver up to 2,400 language assessment tests to CPS students (the "**Tests**"). The CPS Chief Officer will determine the exact number of Tests needed for each language and will communicate that information to the Vendor. Each CPS student will log onto the Vendor's testing system and take the Vendor's Test on their selected language.

II. DELIVERABLES

- A. **Score Reports:** Within 2-3 weeks following CPS's administration of the Vendor's language assessment, the Vendor will provide an official 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.
- B. **Consolidated Score Report:** Within 2-3 weeks following CPS's administration of the Vendor's language assessment, the Vendor will also provide the scores for all students who take the language assessment to CPS in a consolidated Excel file ("**Consolidated Score Report**"). The Consolidated Score Report will include all four proficiency levels for each test domain. It will be provided in an Excel format and transmitted through a secure FTP site, which will allow CPS to link the Tests and proficiency levels to student numbers.

III. PRICING/RATES

Vendor shall provide a maximum of 2,400 Tests at a rate of \$13.00 per Test. The total maximum compensation will not exceed \$31,200 ("**Total Maximum Compensation**"). 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 Tests purchased by the Board during the Term of this Agreement and the Board shall not be obligated to pay for any Tests not in compliance with this Agreement.

During the Term of this Agreement, Vendor shall be paid in two installments. Vendor will be paid 80% of the total cost for the number of requested Tests as detailed in the first invoice. The total maximum compensation for the first invoice will not exceed \$24,960. The first invoice shall not be issued by the Vendor until after CPS has administered the Vendor's language assessment.

Vendor will be paid the remaining 20% of the total cost for the number of requested Tests upon receipt of the second invoice detailing that all Score Reports as well as a Consolidated Score Report were provided to the CPS Chief Officer. The total maximum compensation for the second invoice will not exceed \$6,240.

IV. OUTCOMES

By administering the Vendor's language assessment to students, CPS will be able to determine which CPS students qualify for the SSB.

The SSB is a recognition given to high school seniors who have studied and can exhibit the ability to communicate in two or more languages (including English) by their senior year of high school. The SSB is highlighted on high school diplomas and serves as a statement of accomplishment for college admission and for future employment.

Additionally, administration of Vendor's language assessment is consistent with CPS's priorities toward promoting multilingualism, biliteracy, and inter-cultural flexibility as key contributors to students' success in college, career and life.