

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

SERVICES AGREEMENT

(Amplify Education, Inc.)

Science Kits Sole Source

This Services Agreement (“**Agreement**”) is effective as of September 1, 2023 (“**Effective Date**”) and 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 Amplify Education, Inc., a corporation authorized to do business in Illinois, with principal offices located at 55 W. WASHINGTON, BROOKLYN, NY 11201 (the “**Vendor**”). The Board and Vendor may be referred to herein individually as a “**Party**” or collectively as the “**Parties**.”

RECITALS

- A. Vendor was selected on a non-competitive basis pursuant to Board Rule 7-6. This item was presented to the Board's Single/Sole Source Committee on April 4, 2023 and approved by the Chief Procurement Officer; and
- B. The Board desires that Vendor provide research evaluation services for the FY23 Full Service Community Schools Grant Award more fully described herein; and
- C. Vendor has represented that it has the requisite knowledge, skill, experience and other resources necessary to perform such Services and is desirous of providing such Services to the Board; and
- D. The Parties now wish to execute this Agreement that defines the nature of their relationship, establishes pricing, and describes the manner in which services and products will be furnished by Vendor.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein as though fully set forth herein, and for good and valuable consideration, the parties agree as follows:

I. GENERAL TERMS & CONDITIONS

- 1. **Term of the Agreement.** The term of this agreement shall commence on September 1, 2023 and shall end August 31, 2025. This agreement shall automatically renew for two (2) successive periods of one (1) year each. Each Renewal Term shall be the Board's option. The Board can elect, with or without cause, to not exercise any Renewal Term by notifying the Vendor in writing prior to the expiration of the active term. This notice of non-renewal will be effective upon the conclusion of the active term. Both the Term and any Renewal Term are subject to earlier termination as otherwise provided for by this Agreement.
- 2. **Scope of Products and Services.** Vendor agrees to provide the Products and Services as described in this Agreement, including the Scope of Products & Services that is attached and incorporated into this Agreement as Exhibit A (“**Scope**”).
 - 2.1. **Products:** “**Products**” means, collectively, any goods, hardware, software, documentation, licenses, updates, components, equipment, or accessories as further described in this Agreement, including but not limited to the Scope of Products and Services that is attached and incorporated to the Agreement as Exhibit A, that are identified as Products available for purchase under this Agreement or that one would consider within the meaning of the product as understood in the applicable industry or field of education.

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- 2.2.** Services: "**Services**" means, collectively, the services, deliverables, duties and responsibilities described in this Agreement including the Scope of Products and Services that is attached and incorporated into this Agreement as Exhibit A 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 decisions related to the Services. The Board may, from time to time, request changes in the Scope of Products & Services. Any such changes, including but not limited to any increase or decrease in Provider's compensation, shall be in accordance with the Change Management Process described in this Agreement and may require documentation by a written amendment to this Agreement signed by the authorized representatives of both parties and the Board's General Counsel.
- 2.3.** Quantity: The Board assumes no obligation hereunder to purchase any quantity of Products and Services other than those identified on a purchase order issued by the Board.
- 2.4.** Packaging, Shipment, Risk of Loss. Provider shall package and ship all Products, goods, supplies, or other materials provided as part of the Agreement (collectively "Materials") in a commercially reasonable manner. All shipments shall be F.O.B. destination (as indicated on the Board's Purchase Order or some other written notification) with freight and insurance prepaid. The Board may request that shipment may be made to any location that the Board designates as a Chicago Public School or CPS facility. Any and all deliveries made to a Chicago Public School shall occur between the hours of 8:00 AM - 2:30 PM, and Provider shall advise carrier of this restriction. It is understood and agreed that the Board shall have no liability for any insurance charges not incorporated in the prices quoted, and that freight charges shall be limited to those specified in the Agreement. The Board may adjust Purchase Order shipping destination any time up to ten (10) business days prior to shipment. The risk of loss and damage to Materials ordered by the Board shall pass to the Board only after delivery to the destination designated by the Board. Time is of the essence to the delivery of all Materials ordered hereunder.
- 2.5.** Uniform Commercial Code: In the absence of a governing provision under the Agreement or should any provision of the Agreement be construed by a court of competent jurisdiction as vague, the corresponding provision of the Uniform Commercial Code, Article 2, shall apply.

3. Compensation, Purchase Orders and Payment.

- 3.1.** Compensation: Maximum Compensation Amount. Provider shall be paid in accordance with the fees and costs set forth in the Schedule of Compensation attached and incorporated as part of this Agreement as Exhibit B. The maximum compensation payable to Vendor in for Products and Services during the Term shall not exceed the aggregate amount set forth in the authorizing Board Resolution as referenced on the signature page of the Agreement (the "**Maximum Compensation Amount**"), as may be amended. It is understood and agreed that the Maximum Compensation Amount is a 'not-to-exceed amount' and is not a guaranteed payment. Compensation shall be based on actual Products and Services provided during the Term of this Agreement according to the pricing provided in the Pricing Lists, and the Board shall not be obligated to pay for any Products and Services or other deliverables not in compliance with this Agreement. No expenses shall be reimbursed under 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 Provider shall promptly refund to the Board any payment received for Products, Services and deliverables not provided.

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It is understood and agreed that the Maximum Compensation Amount referenced hereinabove is a 'not-to-exceed amount' and is not a guaranteed payment.

- 3.2. Purchase Orders.** Any purchases by the Board of Products and Services covered by this Agreement will be completed by submitting an order on the Board's Standard Purchase Order Form ("PO"). The 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. The terms in this Agreement shall supersede and prevail in the event of a conflict between it and those contained in the PO. Under no circumstances shall Provider provide any Products and Services without a valid PO.
- 3.3. 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 the Vendor's 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 Products delivered
 - Date the Services were provided and Products 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 the 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 Products and Services provided under the Agreement.

- 4. Personnel.** Personnel assigned to perform Provider's obligations under this Agreement will have experience, training, and expertise equal to personnel with similar responsibilities in the business in which Provider is engaged and will have sufficient knowledge of the Board's practices and areas of expertise to enable them to perform their duties and responsibilities under this Agreement. If the Board believes that any employee, subcontractor or other person providing Products and Services hereunder is not performing in accordance with the performance standards or other requirements of this Agreement, the Board shall have the right to request that Vendor remove any personnel assigned to the Board's account, and the Parties will attempt to resolve the Board's concerns on a mutually agreeable basis. If the Parties have not been able to resolve the Board's concerns within fifteen (15) business days of receipt of written notice of requested removal from the Board, Vendor will remove such personnel from the Board's account and provide replacement(s) in a timely manner.. In the event that the Board has concerns that an individual poses a risk to the safety or welfare of the Board's students or staff, Provider agrees that such personnel shall be removed from the Board's account immediately and shall have no further contact with the Board's employees, agents, and students.
- 4.1. Removal and Reassignment:** Provider agrees to remove any of its staff or subcontractor's staff from performing Services if the Board, in its sole discretion, believes that such individual is not performing acceptably or is endangering the safety or welfare of any CPS student. Provider further agrees to bear any costs associated with the removal of such person.
- 4.2. Account Management:** Provider must provide a single point of contact (Account

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Manager) who is assigned to oversee and manage the day-to-day activities of this relationship with the Board as well as overall management of the customer service issues and reporting. Provider shall also be required to have periodic meetings with the Department of Procurement personnel for reasonable contract review meetings as well as an annual review at a time determined by the Department of Procurement. Provider must support the Board with an appropriate number of personnel to meet the Board's needs.

- 4.3. Subcontractor Employee Screening and Monitoring Process:** If Provider plans to subcontract the Services outlined in the Agreement to a third party, Provider must submit its subcontractor's employee screening and monitoring process for Board approval prior to final contract approval.
- 5. Standards of Performance.** Provider shall devote, and shall cause all of its employees, agents and subcontractors, if any, to devote, such of their time, attention, best skill and judgment, knowledge and professional ability as is necessary to supply all Products and Services effectively, efficiently, and consistent with the best interests of the Board and to the satisfaction of the Board's Chief Officer of Teaching & Learning or his/her designee. Provider shall retain and utilize sufficient staff to assure the most effective and efficient supply of Services and shall utilize, as required by law or by this Agreement, professionals licensed to practice in the State of Illinois in the applicable profession. Provider shall use efficient business administration methods and perform the Services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and in an expeditious and economical manner consistent with the best interests of the Board, so as to assure, among other things, that the Services are performed 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. Provider acknowledges that, if in the course of providing Services hereunder, it is entrusted with or has access to valuable or confidential information or records of the Board, that with respect to that information, Provider 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 Provider of its responsibility for the professional skill, care, and technical accuracy of its Services and deliverables. Provider shall remain responsible for the professional and technical accuracy of all Services, including any deliverables furnished, whether by Provider or its subcontractors or others on its behalf.
- 6. Change Management Process.** During the Term of this Agreement or any Renewal Term, **the** parties may determine that change(s) to the Agreement is necessary. In such an event, the parties shall determine if the proposed change amounts to a material revision as described in this Section before determining how that change will be documented.
- 6.1. Material Revision.** A "material revision" includes (i) increasing the cost of the Products and Services to be provided during the Term of this Agreement, or any Renewal Term; (ii) removal of Products and Services from the Pricing Lists; (iii) addition of Products and Services to the Pricing Lists; (iv) extending the time of performance of Services beyond the time period approved by the Board; or (v) change or modification to the legal terms and conditions in this Agreement; or (vi) any other shift of the risks and liabilities between the parties. A material revision requires a written amendment to the Agreement approved by the Chief Procurement Officer, or in some instances, the Board, and the Board's General Counsel and the authorized representative for Provider.
- 6.2. Statements of Work: Change Orders.** If the proposed change does not amount to a material revision as defined above, the Board's Chief Officer of Teaching and Learning or his/her designee and Provider's authorized representative shall agree in writing to additional Statements of Work or Change Order, as appropriate, before the change takes effect. All Statements of Work and Change Orders shall contain a detailed written description of the change in the Services and any associated price change; be dated and

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signed by the authorized representatives of both parties; and include any applicable deliverables, milestones, or deadlines. Any Services provided pursuant to a Statement of Work or Change Order will be subject to and comply with the terms of this Agreement. The Board shall deem any Statement of Work or Change Order to be null and void, in whole or in part, to the extent that it constitutes a material revision without the proper agreement and approval as set forth in this Agreement.

7. **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 the Agreement, the Board shall notify Vendor and the 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 the Agreement are exhausted. Payments for Products and Services completed to the date of notification shall be made to Vendor except that no payment shall be made or due to Vendor under the Agreement beyond those amounts appropriated and budgeted by the Board to fund payments under the Agreement.

8. **Termination, Suspension of Services, Events of Default, Remedies, and Turnover of Documents.**

- 8.1. **Early Termination.** The Board may terminate this Agreement in whole or in part, without cause at any time upon thirty (30) days' written notice. After notice is received, Provider 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. Provider 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. Provider shall not be entitled to make any early termination claims against the Board resulting from any subcontractor's claims against Provider or the Board to the extent inconsistent with this provision.

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

- 8.3. **Events of Default.** Events of default ("**Events of Default**") include, but are not limited to, the following:

- A. Any action or failure to act by Vendor which affects the safety and/or welfare of students or Board staff.
- B. Any material misrepresentation by Vendor in the inducement or the performance of the Agreement.
- C. Breach of any term, condition, representation or warranty made by Vendor in the Agreement.
- D. Default by Vendor under any other agreement Vendor may presently have or may enter into with the Board.

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- E. 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 that is not dismissed within sixty (60) days of the date of its filing.
- F. Failure of Vendor to perform any of its obligations under the Agreement, including, but not limited to, the following:
 - i. Failure to perform any portion of the Services or deliver Products in the manner specified in the Agreement.
 - ii. Failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the timely performance of the Services and delivery of Products.
 - iii. Failure to promptly re-perform or re-deliver within a reasonable time and at no cost to the Board, Services or Products that were determined by the Board to be incomplete or unsatisfactory.
 - iv. Discontinuance of the Products or Services for reasons within Vendor's reasonable control.
 - v. Failure to comply with any term of the Agreement, including but not limited to, the provisions concerning insurance, nondiscrimination, and any other acts specifically and expressly stated in the Agreement constituting an Event of Default.
 - vi. Failure to meet MBE/WBE project participation goals.

8.4. Remedies. The Board in its sole discretion may declare Provider in default if Provider commits an Event of Default. The Chief Procurement Officer will give Provider an opportunity to cure the default within a certain period of time, to be not less than 30 calendar days (the "Cure Period"). The Chief Procurement Officer shall give Provider written notice of the default in the form of a cure notice ("Cure Notice"). If the Board determines, in its sole discretion, that a Cure Period would cause harm to the Board, including its employees and students, it may give a default notice ("Default Notice") without an opportunity to cure.

The Chief Procurement Officer may give a Default Notice after a Cure Notice if: (1) Provider fails to effect a cure within the Cure Period given in the applicable Cure Notice, or (2) if the Event of Default cannot be reasonably cured within said Cure Period, Provider fails to commence and continue diligent efforts to cure in the sole opinion of the Board.

A written Default Notice shall be final and effective termination of the Agreement, in whole or in part as specified by the Board, upon Provider's receipt of such notice or on the date set forth in the notice, whichever is later. When a Default Notice is given, Provider must discontinue all Products and Services unless otherwise specifically directed in the notice.

Upon the occurrence of an Event of Default, the Board may invoke any or all of the following remedies:

- A. The right to take over and complete the supply of Products and Services or any part thereof, by contract or otherwise as agent for and at the cost of Provider either directly or through others. Provider shall be liable to the Board for any excess costs incurred by the Board. Any amount due Provider under this Agreement or any other agreement Provider may have with the Board may be offset against amounts claimed due by the Board;
- B. The right to terminate this Agreement, in whole or in part, as to any or all of the Products and Services yet to be supplied effective at a time specified by the

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- Board;
- C. The right to suspend the supply of Products and Services during the Cure Period if the default results from Provider's action or failure to act which affects the safety or welfare of students or Board staff. In the event that the performance of Services or delivery of Products is resumed, Provider shall not be entitled to seek reimbursement from the Board for any additional costs and expenses incurred as a result of the remobilization;
 - D. The right to specific performance, an injunction or any other appropriate equitable remedy;
 - E. The right to receive from Provider 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 Provider's compensation under this Agreement; and
 - H. The right to use an Event of Default as a basis to deem Provider non-responsible in future contracts to be awarded by the Board.

The Board may elect not to declare Provider in default or to terminate this Agreement. If the Chief Procurement Officer decides not to terminate, then she or he may decide at any time thereafter to terminate the Agreement, in whole or in part, in a subsequent Default Notice. The parties acknowledge that this provision is solely for the benefit of the Board and that if the Board permits Provider to continue to supply the Products and Services despite one or more Events of Default, Provider shall in no way be relieved of any responsibilities, duties or obligations under this Agreement nor shall the Board waive or relinquish any of its rights under this Agreement, at law, equity or statute.

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

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

- 8.5. Turnover of Documents and Records.** Upon demand of the Board after termination of the Agreement for any reason or the expiration of the Agreement by its terms, Provider shall turn over to the Board or its designee within five (5) 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 Products and Services, except that Provider may keep a copy of such information for its own records. In the event Provider retains a copy for its own records, it shall continue to abide by the terms of this Agreement, specifically those regarding the use of such information. In the event the Board elects to have Provider destroy materials, Provider shall provide an affidavit attesting to such destruction.

- 9. Binding Nature and Assignment.** This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns, provided, however, that Provider may not assign this Agreement or any obligations imposed hereunder without the prior written consent of the Board, which consent shall not be unreasonably withheld.

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- 10. Intellectual Property; Ownership:** Any and all Confidential Information provided by the Board, as defined in the Confidentiality Section of this Agreement, shall at all times be and remain the property of the Board. Any and all intellectual property, including but not limited to any trademarks, trade dress, copyrights, patents, and any other protectable intellectual property rights, developed by the Board shall at all times be and remain the property of the Board. The Board acknowledges and agrees that all intellectual property developed by Provider and all finished or unfinished, documents, screens, reports, writings, procedural manuals, forms, source code, object code, work flow charts, methods, processes, drawings, maps, files, records, computer printouts, designs or other materials prepared in the performance of the Scope of Products and Services ("Work Product") shall at all times be and remain the property of Provider, provided that such Work Product does not include, rely upon or disclose CPS Confidential Information. In the event that any CPS Confidential Information is included in, relied upon, or disclosed in any Work Product, such Work Product shall be the property of the Board. Provider shall execute all documents and perform all acts that the Board may request in order to assist the Board in perfecting or protecting its rights in and to the Board's intellectual property, such Work Product that includes, relies upon, or discloses CPS Confidential Information and all intellectual property rights relating to the Work Product. Otherwise, Provider shall grant to the Board a non-exclusive, royalty-free, irrevocable, perpetual license to perform, display or use Provider's intellectual property, including but not limited to all other Work Product created hereunder, as may be necessary to receive the Products and Services and use the data generated from those Products and Services.
- 11. Representations and Warranties of Vendor.** Vendor represents and warrants that the following shall be true and correct as of the effective date of the Agreement and shall continue to be true and correct during the Term of the Agreement and any Renewal Terms.
- 11.1. Licensed Professionals.** Vendor is appropriately licensed under Illinois law to perform Services required under the 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.
- 11.2. 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 the 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 Family Educational Rights and Privacy Act ("**FERPA**"), the Protection of Pupil Rights Amendment ("**PPRA**"), the Illinois School Student Records Act ("**ISSRA**"), the Student Online Personal Protection Act ("**SOPPA**"), the Children's Online Privacy Protection Act ("**COPPA**"), and any others relating to non-discrimination and as applicable. Further, Vendor is and shall remain in compliance with all applicable Board policies and rules. Board policies and rules are available at <http://www.cps.edu>. In addition, Vendor shall comply with any governmental regulations, requirements and guidelines and Board guidelines, policies, and rules in effect now or later, and as amended from time to time related to COVID-19, including without limitation all reporting requirements and requirements or recommendations regarding face coverings and social distancing.
- 11.3. Good Standing.** Vendor is not in default and has not been deemed by the Board to be in default under any other contract with the Board during the five (5) year period immediately preceding the effective date of the Agreement.
- 11.4. Authorization.** If Vendor is an entity other than a sole proprietorship, Vendor represents that it has taken all action necessary for the approval and execution of the 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

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conditions of the Agreement which shall constitute valid, binding obligations of Vendor.

- 11.5.** 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 complete all Services and perform all obligations under the Agreement.
- 11.6.** Gratuities. No payment, gratuity or offer of employment was made by or to Vendor in relation to the Agreement or as an inducement for award of the Agreement.
- 11.7.** Contractor's Disclosure Form. The disclosures in the Contractor Disclosure Form, previously submitted by Vendor, are true and correct. Vendor shall promptly notify Board in writing of any material change in information set forth therein, including but not limited to change in ownership or control, and any such change shall be subject to Board approval which shall not be unreasonably withheld.
- 11.8.** Third Parties' Intellectual Property: In performing and delivering the Products and Services under this Agreement, Provider shall 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. Provider 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 this Agreement.
- 11.9.** Assignment of Warranties. Vendor has the right, title and ability to assign and shall assign to the Board any third-party warranties concerning the Services provided under the Agreement to the Board.
- 11.10.** Business Requirements: Provider is fully aware of the Board's requirements and intended uses for the Products and Services, including any set forth in the exhibits, and the Products and Services shall satisfy such requirements in all material respects, is fit for such intended uses, and will operate on Provider's supported hardware/operating system platforms.
- 11.11.** No Legal Action Preventing Performance. As of the Effective Date, Provider has no knowledge of any action, suit, proceeding, or material claim or investigation pending or to its knowledge threatened against it in any court, or by or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, or before any arbitrator of any kind, that, if adversely determined, would materially affect Provider's ability to perform its obligations under this Agreement.
- 11.12.** Free of Computer Viruses. Vendor shall use commercially reasonable best efforts to ensure that the Services, including but not limited to any software used in the performance of the Services, do not introduce or transfer any malicious code, malware, Trojan horses, ransomware, worms or other computer viruses into the Board's network, systems, and computers.
- 11.13.** Warranty of Title: The Products and Services are free and clear from all liens, contracts, chattel mortgages or other encumbrances. Provider has the lawful right to dispose of and sell the Products and Services, and Provider shall warrant and defend its title against all claims.
- 11.14.** Prohibited Acts. Within the three (3) years prior to the effective date of the Agreement, Vendor or any of its members if a joint venture or a limited liability company, or any of its

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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.

- 11.15. Debarment and Suspension.** Vendor certifies, to the best of its knowledge and belief, after due inquiry, that:
- A. It, its principals, or its subcontractors providing Services under the Agreement are not barred from contracting with any unit of state or local government as a result of violation of either Section 33E-3 (bid-rigging) or 33E-4 (bid rotating) of the Illinois Criminal Code (720 ILCS 5/33E).
 - B. It, its principals, or its subcontractors providing Services under the 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.
 - C. It, its principals, or its subcontractors providing Services under the 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.

In performing any obligations of the Agreement, Vendor shall not utilize any organizations that the Board has debarred from doing business with CPS pursuant to the Board’s Debarment Policy (19-0626-PO1), as may be amended.

- 11.16. Continued Disclosure Requirement.** If at any time during the Term of the 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.
- 11.17. Survival.** All representations and warranties will survive inspection, acceptance, payment and expiration or termination of this Agreement. Nothing in the foregoing representations and warranties will be construed to limit any other rights or remedies available to the Board under the law and the Agreement.

- 12. Background Check.** Vendor shall comply with the following requirements and such other procedures as may be determined necessary by the Board from time to time for each employee, agent, volunteer or subcontractor who may have contact with a CPS student as a result of the Agreement (individually and collectively “**Staff**”) (“**Background Check**”). For purposes of this Section, contact via text messages, live chats, emails, any other digital or online media, telephone, in person, or through any other means shall be considered “contact”. Vendor shall not allow any Staff to have contact with students until Vendor has confirmed with the Board that each respective Staff has successfully completed the Background Check in accordance with the following requirements:

- 12.1. Do Not Hire List.** The Board will perform a check of eligibility of each Staff who may have contact with a CPS student pursuant to the Agreement by checking the Board’s “Do Not Hire” (“**DNH**”) records (“**DNH Check**”). The Board will utilize the same DNH Check process that the Board uses for its own prospective staff. Staff with a DNH designation shall not provide Services hereunder.

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12.2. Criminal History Records Check. Vendor shall, at its own cost and expense, have a complete fingerprint-based criminal history records check conducted on each Staff who may have contact with a CPS student pursuant to the Agreement through the process established by the Board, including using the Board's contracted vendor for conducting such checks, and otherwise in accordance with the Illinois School Code (105 ILCS 5/34-18.5), which refers to and incorporates 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.) (collectively "**Criminal History Records Check**"). A complete Criminal History Records Check includes the following:

- A. Fingerprint-based checks through the Illinois State Police and the Federal Bureau of Investigation.
- B. A check of the Illinois Sex Offender Registry and the Nationwide Sex Offender Registry.
- C. A check of the Illinois State Police Murderer and Violent Offender Against Youth Registry.

The results of each Criminal History Records Check shall be adjudicated by the Board. Staff shall not have contact with CPS students prior to successfully completing the Criminal History Records Check. When the Board determines that any Staff has not passed a Criminal History Records Check, such Staff shall not access any Board facility and shall not have contact with any CPS student hereunder.

12.3. Department of Children and Family Services Check. At Vendor's cost and expense, the Board shall have the right to check Staff who may have contact with a CPS student pursuant to the Agreement for indicated reports of child abuse and/or neglect with the Illinois Department of Children and Family Services ("**DCFS**") State Automated Child Welfare Information System (or a comparable determination of child abuse or neglect by a government agency in another jurisdiction) for each Staff ("**DCFS Check**"). Vendor shall follow the directives and processes of the Board for initiating any DCFS Check, and the results of each DCFS Check shall be adjudicated by the Board. Staff determined by the Board not to have passed a DCFS Check shall not access any Board facility and shall not have contact with any CPS student hereunder.

12.4. Background Check Representations and Warranties. With respect to each Background Check, Vendor further represents and warrants that Vendor shall:

- A. Utilize the process established by the Board for completing each Background Check and immediately initiate all action, as directed by the Board, to have such Background Check performed.
- B. Obtain from each of its prospective and current Staff and provide to the Board a signed copy of any release and consent required to conduct the Background Check in the form determined by, and as directed by the Board.
- C. Confirm with the Board's Chief of Safety and Security that each respective Staff has successfully completed the Background Check through the process established by the Board and complied with the Board's directives regarding the results of each Background Check before any contact with a CPS student may occur.
- D. When contact with a CPS student may occur, not allow any Staff to provide Services until a DNH Check, Criminal History Records Check, and DCFS Check have been completed by the Board and the results of the Background Check satisfy for the Board, at a minimum, 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 amended.
- E. Comply with and require compliance of all Staff with directives from the Board relating to any updates to any Background Check (which updates shall be received

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and adjudicated by the Board) and provide any other information requested by the Board necessary for the performance of the Background Check and its update process.

- F. Immediately remove from any contact with any CPS student pursuant to the Agreement and otherwise terminate access for any Staff determined by the Board not to have passed a Background Check or update for any matters arising after an initial Background Check.

- 12.5. Allocation of Costs and Liquidated Damages.** Vendor is obligated to cause the Background Check to be performed for all Staff who may have contact with any CPS student pursuant to the Agreement, and Vendor shall be responsible for the costs of such Background Check. Whether or not Vendor allocates the costs to its subcontractors shall not affect Vendor's obligations in this Section.

If Vendor fails to comply with this Section, in whole or in part, then, in addition to the Remedies set forth in the Agreement, the Board may exercise additional remedies, including but not limited to: (i) withholding payments due under the Agreement, and any other agreement Vendor may have or enter into with the Board until Vendor remedies such non-compliance to the Board's reasonable satisfaction; (ii) immediately terminating the Agreement without any further obligation by the Board of any kind (other than payment for Services previously rendered pursuant to the terms herein); (iii) seeking liquidated damages; (iv) or taking any other action or remedy available under the Agreement or by law.

Liquidated damages shall be calculated as \$5,000.00 per breach of this Section, which, for purposes of clarity, for the aggregate calculation of liquidated damages, will include each instance of contact with CPS students by Staff as a separate breach. It is understood and agreed that Vendor's non-compliance with this Section shall constitute a material breach of the Agreement.

- 13. Research Activities and Data Requests.** Vendor shall not conduct research in the Chicago Public Schools or use CPS student data for research purposes. In the event Vendor seeks to conduct research in the Chicago Public Schools or use CPS student data for research purposes in connection with the Agreement or for any other purposes, Vendor shall comply with the Board's External Research Study and Data Policy adopted December 11, 2019 (19-1211-PO3), 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 and Research, or as otherwise provided in the Policy.
- 14. Use of Board's Network.** If at any time, Provider has access to the Board's computer network, Provider warrants that it is and shall remain in compliance with the Board's Information Security Policy adopted September 25, 2013 (13-0925-POI), as amended, and the Board's Acceptable Use of the CPS Network and Computer Resources Policy, adopted July 22, 2009 (09-0722-PO3), as amended, during the term of the Agreement and any renewals thereof.
- 15. Independent Contractor.** It is understood and agreed that the relationship of Provider to the Board is and shall continue to be that of an independent contractor and neither Provider nor any of Provider's employees shall be entitled to receive Board employee benefits. Provider is the common law employer of the individuals who perform Services for the Board. As an independent contractor, Provider 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 Provider is subject to taxes under Section 4980H of the Internal Revenue Code, Provider shall be solely responsible for paying such taxes. Provider agrees that neither Provider nor its employees, agents, and subcontractors shall represent themselves as employees or agents of

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the Board. Provider 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 federal employer identification number.

- 16. Indemnification.** Provider agrees to defend, indemnify, and hold harmless the Board, its members, employees, agents, officers and officials from and against liabilities, losses, penalties, damages, and expenses, including costs and attorney fees, arising out of all claims, liens, damages, obligations, actions, suits, judgments or settlements, or causes of action, of every kind, nature, and character (collectively "Claims") arising or alleged to arise out of the acts or omissions of Provider, its officials, agents and employees and subcontractors in the performance of this Agreement. The foregoing obligation extends to and is intended to encompass any and all Claims that the Products and Services infringe, misappropriate, or otherwise violate any confidentiality, proprietary, or intellectual property rights of a third party.

Furthermore, 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 Provider's employees under this Agreement, Provider shall indemnify the Board for any such liability. And, in the event of unauthorized access, use, or disclosure of the Board's Confidential Information arising or alleged to arise from the acts or omissions of Provider, its employees, agents, and subcontractors, in addition to the obligations provided in this Section, Provider shall cover any costs or fees associated with (i) providing notices of data breach to affected persons and to regulatory bodies and (ii) remedying and otherwise mitigating any potential damages or harm from the data breach, including but not limited to call centers and providing credit monitoring or credit restoration services as may be requested by the Board.

Provider shall, at its own cost and expense, appear, defend and pay all attorney fees and other costs and expenses arising hereunder. In addition, if any judgment shall be rendered against the Board in any such action, Provider 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 Provider 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 Provider, 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 Provider) retain counsel and undertake the defense, compromise, or settlement of such claim or action at the expense of Provider, subject to the right of Provider 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 Provider and Provider 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 Provider was conducting the defense.

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

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

- 17. Non-liability of Board Officials.** Vendor agrees that no Board member, employee, agent, officer or official shall be personally charged by Vendor, its members if a joint venture, or any

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subcontractors with any liability or expense under the Agreement or be held personally liable under the Agreement to Vendor, its members if a joint venture, or any subcontractors.

- 18. Board Not Subject to Taxes.** The federal excise tax does not apply to the Board, and the State of Illinois sales tax does not apply to the Board by virtue of Exemption No. E9997-7109. The amounts to be paid to Provider hereunder are inclusive of all other taxes that may be levied or based on this Agreement, including without limitation, sales, use, nonresident, value-added, excise, and similar taxes levied or imposed on the Products and Services, but excluding taxes levied or imposed on the income or business privileges of Provider, which remain the responsibility of Provider.
- 19. Audit and Records Retention.** Provider shall permit and cooperate in good faith in any audits by the Board, including its Department of Procurement, or its agents for compliance by Provider with this Agreement. Provider will furnish the Board with such information as may be requested relative to the progress, execution and costs of the Products and Services. Provider will maintain all records under the Agreement. As used in this Section, "records" shall include all correspondence, receipts, vouchers, memoranda, and other data, regardless of type or medium (including emails or other electronically stored data) relating to this Agreement and Provider's performance of the Products and Services. All records referenced above will be retained for at least five (5) years after the expiration or termination of this Agreement and 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 that proceeding is closed. Provider will include, in all of its subcontractor agreements for Products and Services, provisions requiring subcontractors to maintain the above-described records and allowing the Board and/or its contractors the same right to inspect and audit said records as set forth herein.
- 20. Freedom of Information Act.** Vendor acknowledges that the Agreement and all documents submitted to the Board related to the 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 the Agreement is subject to reporting requirements under 105 ILCS 5/10-20.44. Vendor further acknowledges that the Agreement shall be posted on the Board's Internet website.
- 21. MBE/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*" ("**Remedial Plan**"), which is available on the Board's website at <https://policy.cps.edu/download.aspx?ID=153> and is incorporated as if fully set forth herein. (Please see extension: https://www.cpsboe.org/content/actions/2021_12/21-1215-RS1.pdf). Vendor agrees to adhere to the minimum participation goals and to all other applicable MBE/WBE requirements as set forth in the program. Vendor agrees to submit such documentation in connection with the program as may be requested by the Board.

Vendor and its subcontractors shall provide all required compliance data with respect to the Remedial Plan via the Board's electronic system available at <http://cps.diversitycompliance.com>. Vendor and its subcontractors shall be responsible for responding to any requests for data or information by the noted response due dates, and shall check the electronic system on a regular basis to manage contact information and contract records. Vendor shall also be responsible for ensuring that all subcontractors have completed all requested items with complete and accurate information and that their contact information is current.

- 22. Right of Entry.** Provider and any of its officers, employees, subcontractors or agents, performing Services hereunder shall be permitted to enter upon Board property in connection with the performance of the Services hereunder, subject to the terms and conditions contained herein and those rules established by the Board and the subject school principal. Provider shall

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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. Provider 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 Services. In the case of any property owned by the Board, or property owned by and leased from the Board, Provider will comply and will cause each of its officers, employees, and agents to comply with any and all instructions and requirements for the use of such property, any licenses for which being hereby incorporated by reference. Any and all claims, suits or judgments, costs, or expenses, including reasonable attorney fees, arising from, by reason of, or in connection with any such entries shall be treated in accordance with the applicable terms and conditions of this Agreement, including without limitation, the indemnification provisions contained in this Agreement.

- 23. Non-Discrimination.** It shall be an unlawful employment practice for Vendor or any of its subcontractors to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, or other terms, conditions, or privileges of employment, because of such individual's race, color, 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.*; 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.*; the Americans with Disabilities Act, 42 U.S.C.A. § 12101, *et seq.*; the Illinois Human Rights Act, 775 ILCS 5/1-101, *et seq.*; the Illinois School Code, 105 ILCS 5/1-1 *et seq.*; the Illinois Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.*; the Individuals with Disabilities Education Act (IDEA) 20 U.S.C.A. § 1400 *et seq.*; and, the Chicago Human Rights Ordinance, ch. 2-160 of the Municipal Code of Chicago, all as may be amended and all other applicable federal, state, and municipal statutes, regulations, ordinances 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.
- 24. Wage Requirements.** In the performance of this Agreement, Vendor must comply with the City of Chicago Minimum Wage Ordinance (01-24), as amended, available at: https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2639765; the Board's Minimum Wage Resolution (14-1217-RS2), available at https://www.cpsboe.org/content/actions/2014_12/14-1217-RS2.pdf; which adopts Chicago Mayoral Executive Order 2014-1, available at: https://chicityclerk.s3.amazonaws.com/s3fs-public/document_uploads/executive-order/2014/Executive-Order-No-2014-1.pdf; and, any applicable regulations issued by the Board's CPO.

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 as determined by the City of Chicago ("**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.

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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. It is also not required to be paid by employers that are 501(c)(3) not-for-profits.

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 the 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 Vendor must pay the prevailing wage.

- 25. Joint and Several Liability.** In the event that Provider, 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 Provider shall be the joint and several obligation or undertaking of each such individual or other legal entity.
- 26. Survival/Severability.** All express representations or indemnifications made or given in this Agreement shall survive the completion of Services or the termination of this Agreement for any reason. If any provision or part of this Agreement is held to be unenforceable, the Agreement shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable, and in all other respects the Agreement shall remain 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.
- 27. Counterparts and Electronic Signatures.** The 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.
- 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. In the event of a conflict between the terms of this Agreement and any other

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documents, including but not limited to any terms and conditions that may be attached to the use of any electronic media provided by Provider, the terms of this Agreement shall supersede and prevail.

- 29. Controlling Agreement.** Provider shall not request any CPS staff including school principals, administrative staff or other CPS employee to sign any form, memorandum of understanding or any other agreement for the delivery of the Products or Services except for those documents specifically approved by the Board under this Agreement. Additionally, the Board and its users shall not be bound by the terms and conditions contained in any clickwrap/clickthrough agreement or license, end user license or any other agreement or license contained or referenced in the products or service or any quote provided by Provider. Even if a CPS staff or Board user agrees to any agreement or license contained or referenced in the products or services or a quote from Provider, Provider acknowledges and agrees that those terms and conditions are null and void and are not binding on the Board. Provider acknowledges and agrees that the terms and conditions of this Agreement represent the entire agreement of the parties for the Products and Services. No additional terms or conditions shall apply to the Board unless a written amendment to this Agreement is made and signed by the authorized representatives of both parties and approved by the Board's General Counsel.
- 30. Governing Law.** This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois. Provider 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. Provider agrees that service of process on Provider may be made, at the option of the Board, by either registered or certified mail in accordance with the Notice Section of this Agreement. If any action is brought by Provider against the Board concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.
- 31. Continuing Obligation to Perform.** In the event of any dispute between Vendor and Board, Vendor shall expeditiously and diligently proceed with the performance of all its obligations under the Agreement with a reservation of all rights and remedies it may have under or pursuant to the Agreement at law or in equity.
- 32. Conflict of Interest.** The 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 amended from time to time, which policy is hereby incorporated by reference into and made a part of the Agreement as fully set forth herein.
- 34. 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 the 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 amended from time to time, which policy is hereby incorporated by reference into and made a part of the Agreement as fully set forth herein.
- 35. Inspector General.** Each party to the 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. It shall be the duty of every contractor, subcontractor, agent or licensee of the Board, and every applicant for certification of eligibility for a Board contract or program, to cooperate with the inspector general

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in any inquiry undertaken related to the Agreement. Assurance of compliance with this requirement by the contractor’s employees, agents or subcontractors shall be the responsibility of the contractor. Failure to cooperate as required may result in monetary and/or other penalties.

- 36. Waiver. No delay or omission by the Board to exercise any right hereunder shall be construed as a waiver of any such right and the Board reserves the right to exercise any such right from time to time as often and as may be deemed expedient.

II. SPECIFIC TERMS & CONDITIONS

- 1. Warranty of Services. Provider has carefully examined and analyzed the provisions of this Agreement and can and will perform, or cause the Services to be performed in strict accordance with the provisions and requirements of this Agreement. The Services will be performed by its employees, agents, and subcontractors in a timely, professional and workmanlike manner, in accordance with all applicable industry and professional standards. Such Services will be in compliance with all applicable laws, rules, regulations or orders. Provider shall assure that all Services performed as described in the Scope of Products and Services shall carry a minimum warranty of ninety (90) days after the Board's acceptance of the completion of such activities. If the Board notifies Provider or if Provider becomes aware, of any nonperformance, error or defect covered by the foregoing warranties Provider will, at its own expense, promptly (but in no event later than seven (7) days after written notification by the Board) correct such non-performance, error or defect. Any repair or replacement of Services or any portions thereof will be automatically warranted as provided herein. If the non-performance, error or defect cannot be corrected in the Board's determination, Provider shall promptly refund amounts paid related to that portion of Services not in compliance. Provider will assign to the Board any third party warranties that Provider receives in connection with any Services provided under this Agreement.
- 2. Charter School Participation. Charter schools which receive funding from the Board shall be eligible to purchase Services pursuant to the terms and conditions of the Agreement and, if such charter schools are authorized by their governing bodies to execute such purchases, by issuing their own purchase order(s) to Vendor. The Board shall not be responsible for payment of any amounts owed by charter schools. The Board assumes no authority, liability or obligation on behalf of any charter school.
- 3. Notices. All notices, requests, consents, approvals, acknowledgements and waivers under this Agreement will be in writing and delivered to the applicable party, addressed to the designee for notification purposes set forth below:

If to the Board: Board of Education of City of Chicago
Office of Curriculum, Instruction, and Digital Learning
42 W. Madison Street
Chicago, Illinois 60602

With a copy to: Board of Education of City of Chicago
Attention: General Counsel
One North Dearborn, 9th Floor
Chicago, Illinois 60602
Facsimile: (773) 553-1701

If to Vendor: Amplify Education, Inc.
55 Washington Street, Suite 800
Attention: Office of the General Counsel
Email: legal@amplify.com

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All notices shall be deemed received when (i) delivered personally, or (ii) sent by facsimile or email as shown by the transmitting device, or (iii) one day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt. Refusal to accept delivery has the same effect as receipt.

4. Transitions.

4.1. Transition at Effective Date of Agreement. Upon commencement of the Agreement, Vendor shall familiarize itself with and prepare to transition to Board's existing programs and current System requirements and procedures that are pertinent to Vendor's programs and performance of Vendor's Services. Vendor shall familiarize itself with ongoing Curriculum, Instruction, and Digital Learning program activities, facilities, operations, equipment, materials, supplies, and other such matters that may be pertinent to the performance of Vendor's Services. Vendor shall fully cooperate with other Board contractors, subcontractors and assigns and shall carefully plan and perform its own work to accommodate the work of other Board contractors. Vendor shall not intentionally commit or permit any act which will interfere with the performance of work by any other Board contractors.

4.2. Transition at Termination/Expiration of Agreement. Upon expiration or early termination of this Agreement, Vendor shall take all actions necessary to accomplish a complete and timely transition from Vendor to Board, or to any replacement service providers designated by Board (collectively "**New Provider**"), without material impact on the Services or any other services provided by third parties. Vendor shall provide Board and New Provider with all information regarding the Services that is needed for the transition. Vendor shall provide for the prompt and orderly conclusion of all work, as Board may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition. Vendor shall provide any additional transition services as Board requests in writing for a period of up to one year after the termination or expiration of this Agreement, on a time and materials basis, at a rate to be mutually agreed between Board and Vendor. Vendor shall further ensure that all data, records, and Confidential Information generated in the course of performance is returned to the Board in accordance with the terms of the Agreement.

5. **Marketplace.** The Board utilizes an eProcurement system referred to as "Marketplace" for electronic order placement of goods and services via a hosted eCatalog. At the Board's sole discretion, the Board may eliminate use of an eProcurement system or determine that certain services or goods may not be made available for purchase by the Board through an eProcurement system. Access to Marketplace is for internal CPS use only. CPS Schools, Networks and Departments may use Marketplace to place an order/purchase. Once the purchase is made through the Marketplace a Purchase Order ("PO") will be sent to Vendor electronically through the CPS iSupplier portal.

Vendor shall have the option of making its Products and Services available through Marketplace; however Vendor is not required to utilize Marketplace. Orders and purchases must still be placed utilizing approved POs. The Marketplace is a supplemental tool for the Board's benefit and efficiency and is not to be used in lieu of the process for placing orders or obtaining services as otherwise provided in this Agreement. Use of the Marketplace by Vendor may result in greater visibility of Vendor's Products and Services to CPS Schools, Networks and Departments. If Vendor chooses to use Marketplace, Vendor is responsible for entering the description of the Products and Services and associated pricing into the Marketplace and must maintain its own catalog(s).

The information entered into the Marketplace by Vendor must be in conformity with the terms of the Agreement. The initial Vendor information entered into Marketplace must be approved by an

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authorized representative of Board, or otherwise in accordance with Board's then-current procedures. Prior to making any changes to the Marketplace, Vendor must first submit the proposed modification or amendment to the Board Project Manager identified in the Scope of Products & Services for review and approval, which approval must be documented by a written amendment signed by the authorized representatives of both Parties in accordance with the terms of the Agreement. Any addition, deletion, change, modification or substitution of Services in Marketplace that is not made in compliance with the Agreement shall be void.

Vendor may not include on the CPS Marketplace any hyperlinks to any external site. Vendor recognizes that any deviation in the description of Products and Services entered in the Marketplace by Vendor from the Products and Services described herein that results in an order being placed will result in that order being deemed invalid by the Board and the associated cost not owed by the Board.

III. PRODUCT TERMS

1. **Inspection and Out-of-Box Failures:** The Board reserves the right to inspect all Products upon delivery and to perform any test the Board deems necessary to adequately demonstrate that the Products meet all of the specifications as more particularly described in the Scope of Products and Services attached and incorporated into the Agreement ("Specifications"). Final inspection resulting in acceptance or rejection of the Products will be made as soon as practicable and within sixty (60) school days of receipt (unless otherwise agreed between the parties), but failure to inspect shall not be construed as a waiver by the Board of its rights to reject Products or to claim reimbursement or damages for such Product that are later found to be defective or not in conformance with the Specifications, provided that such defect or non-conformance would not have been reasonably apparent during such inspection. Products that do not conform to the Specifications or that are otherwise damaged must either, at the Board's election, be retrieved by Provider (at Provider's expense) for replacement at no charge to the Board, or the Board may cancel that portion of the purchase order relating to non-conforming Products at no charge to the Board. For any such returned Products, the Board shall either debit or offset from Provider the cost of such Product plus freight, or receive a refund for such, at Board's election.
2. **Supply of Products.** Upon installation (or delivery, as the case may be), other than as may be set forth herein, all Products will become the sole property of the Board. Vendor will supply the Products in a safe, thorough and timely manner. All Products will be supplied in accordance with the terms and provisions of this Agreement and to the satisfaction of the Board's CPO.
3. **Products Compliance.** All Products shall comply with any applicable local, state and federal health and safety standards.
4. **Warranty for Products:** Provider warrants that all Products furnished under the Agreement shall be new and conform to the Specifications set forth herein. The Products shall be of merchantable quality and in good working order, and shall be free from defects in material, workmanship, and design for a minimum period of five (5) years from the date of receipt of shipment for non-consumable print materials used under normal and reasonable classroom conditions. Kits and the Materials within Kits must be free from defects in material and workmanship when subjected to normal and intended usage for the period of time set forth in the product's specifications, documentation or package inserts. In the absence of any documented warranty period, the minimum warranty period for Kits and the Materials within Kits shall be one (1) year from the date of receipt of shipment. All other Products and Materials shall have a warranty period of a minimum of ninety (90) days from date of receipt of shipment. The Board shall have the option to require Provider to repair or replace a defective Product without charge or expense or to reject any defective Products and obtain a full refund or credit for any payment therefore. Repaired Products shall be warranted for the same period of time as provided for the original Product. Provider shall be responsible for the transportation charges for all warranty shipments.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

II. General Terms and Conditions

This warranty shall survive inspection, acceptance, payment and expiration or termination of the Agreement.

5. **Restocking Fees:** There shall be no restocking fees permitted for any Products or Materials returned to Provider.
6. **Products Availability and Successor Models.** If Vendor or a manufacturer/supplier cancels or discontinues a Product during the Term of the Agreement or any Renewal Term, Vendor must notify the Board of any such manufacturer's discontinuation or cancellation within five (5) business days of Vendor's knowledge of said discontinuation or cancellation. In such an event, Vendor shall work with the Board's authorized representative to find an equivalent, acceptable product that maintains or reduces cost and, to the extent commercially possible, maintains or improves specifications as determined by the Board's authorized representative ("Successor Model"). Seed devices of the proposed Successor Models must be made available to the Board's Project Manager, the Chief Information Officer if software or technology is involved, and the Chief Procurement Officer ("CPO") for their review and approval prior to substitution. Products must be replaced with an equivalent model that meets any specification of the original item specified in the Agreement. If not a material revision, any agreement to replace a Product in the Agreement must be documented in writing in accordance with the Change Management Process section. The absence of a written agreement documenting acceptance of the replacement product shall mean that any purchases of the replacement product shall be null and void.
7. **Product Recall.** In accordance with the notice provisions set forth herein, Vendor shall notify the Board within forty-eight (48) hours of Vendor's receipt of any manufacturer or government issued recalls on Products purchased by the Board pursuant to the Agreement. All Products purchased by the Board subject to a recall shall be replaced at no cost to the Board by Vendor with the same make and model Product within ten (10) business days of Vendor notifying the Board of the recall. If the same make and model is not available due to the recall, then Vendor shall provide a product comparable to the recalled Products in terms of quality and price. Acceptance of the comparable Product shall be at the sole discretion of the CPO. If the CPO rejects in writing the comparable product, Vendor shall remove all the recalled Products from the Board sites and provide a full refund for each recalled product within ten (10) business days of such written rejection (or, if a life safety issue is involved, such removal shall occur within two [2] business days of Vendor's notice of recall or otherwise as may be requested by Board). Replacement of the recalled Products shall include delivery of the same make and model Products or the comparable Products (if accepted) to the sites where the recalled Products are located and removal of the recalled Products at no cost to the Board. Vendor shall remove all recalled Products from Board property at the time the replacement Products are delivered.
8. **Product Change Management.** CPS must be notified of all post go-live changes to the Products, which include changes to functionality, the introduction of additional applications, and major platform upgrades. CPS must also be notified of all planned changes, expansion, or reduction to data elements or data management procedures and shall not make such changes without the prior written consent of the Board which shall not be unreasonably withheld. Change notifications shall be sent to a designated CPS email address and must primarily list the change description and the planned date of change. All notifications should be provided at a minimum one (1) week before any change takes effect. For changes that require adjustments to the CPS environment or involve any system integrations, Vendor shall require written approval from CPS prior to any go-live changes and shall not make any changes without the prior written approval of CPS.

IV. DATA SECURITY & CONFIDENTIALITY TERMS

1. **Definitions.**

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

I. Data Security & Confidentiality Terms

- 1.1. **Confidential Information.** In the performance of the Agreement, Vendor may have access to or receive certain information that is not generally known to others (“**Confidential Information**” or “**CPS Data**”). Such Confidential Information may include, but is not limited to: Student-Generated Content (hereinafter defined), Student Data as further defined below, employee data, technical data and specifications, software, ideas, budget figures, operational details, unpublished school information, CPS financial information, access control and/or system logs, 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.
 - 1.2. **Student Data.** “Student Data” means any data, metadata, information, records, or other materials of any nature recorded in any form whatsoever, that is generated, disclosed, maintained by, transmitted, created, or provided by the Board, either directly or through its students, employees, agents, and subcontractors, and all information used, created, maintained or generated through the use of any technology, including but not limited to the Products (as defined in this Agreement and including without limitation Software) by the Board, its employees, agents, subcontractors, students, parents or legal guardians of any CPS students relating to a CPS student. For purposes of this Agreement, Student Data is Confidential Information hereunder; additional requirements regarding Student Data specifically are described below.
 - 1.3. **De-Identified Data.** De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, persistent unique identifiers, name, ID numbers, date of birth, demographic information, location information, and school ID. 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.
 - 1.4. **Student Generated Content.** The term “Student-Generated Content” means materials or content created by a student in the Services including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, and videos.
- 2. Use of Confidential Information.** Vendor shall only use Confidential Information for the sole purpose of providing Services to the Board and shall not disclose the Confidential Information except to those of its directors, officers, agents, servants, employees, and contractors who have a need to access the Confidential Information in order to perform the Services set forth in the Agreement. Vendor is prohibited from sharing Student Data with any contractors or third parties without executing a Student Data exhibit to be incorporated into a written agreement between the Parties. Vendor shall not copy or otherwise reproduce in any manner whatsoever the Confidential Information for any purposes outside the terms of the Agreement without the prior written consent of the Board, except where required for its own internal use solely to deliver the Services under this Agreement and strictly in accordance with the terms of this Agreement. Vendor shall use at least the same standard of care in the protection of Confidential Information as Vendor uses to protect its own confidential information, but in any event, such Confidential Information shall be protected in at least a commercially reasonable manner and in compliance with all applicable laws. Notwithstanding the foregoing, it is understood and agreed that such protection of the Confidential Information may be subject to the special requirements set forth in the Family Educational Rights and Privacy Act (“**FERPA**”), the Protection of Pupil Rights

*THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE***I. Data Security & Confidentiality Terms**

Amendment (“**PPRA**”), the Illinois School Student Records Act (“**ISSRA**”), the Student Online Personal Protection Act (“**SOPPA**”) and the Children’s Online Privacy Protection Act (“**COPPA**”).

- 3. Handling of Confidential Information.** Vendor shall protect against the unauthorized access, use, or disclosure of Confidential Information by employing security measures when handling Confidential Information that are no less protective as those used to protect Vendor’s own confidential information and at least as secure as the following. When handling Confidential Information, which may include but is not limited to Student Data, Vendor shall:
- A. When mailing physical copies of Confidential Information, send the Confidential Information in a tamper-proof, labeled container, with a tracking number and a delivery confirmation receipt. Vendor shall not send with encrypted Confidential Information, via mail or electronically, any password or other information sufficient to allow decryption.
 - B. Not store any Confidential Information on portable or removable electronic media, such as CDs, DVDs, electronic tape, flash drives, etc.
 - C. Not leave Confidential Information in any medium unsecured and unattended at any time.
 - D. Keep all physical copies (paper, portable or removable electronic media, or other physical representations) of Confidential Information under lock and key, or otherwise have sufficient physical access control measures to prevent unauthorized access.
 - E. Password protect any laptop or other electronic device that contains Confidential Information. Additionally, any laptop or other electronic device that contains Confidential Information shall have its full hard drive encrypted with an encryption key of no less than 256 bits. Vendor shall not leave any laptop or other electronic device unattended without enabling a screen-lock or otherwise blocking access to the laptop or other electronic device. Vendor shall ensure that no password or other information sufficient to access a laptop or electronic device containing Confidential Information is attached to or located near the laptop or other electronic device at any time.
 - F. Secure the Confidential Information stored on its systems, including but not limited to any servers, by employing adequate security measures to prevent unauthorized access to, disclosure and use of that information. These measures include appropriate administrative, physical, and technical safeguards, policies, procedures, and technical elements relating to data access controls. All Confidential Information must be secured in transit using secure FTP services or https/TLS 1.0+. Vendor must maintain industry recognized security practices to establish secure application(s), network, and infrastructure architectures.
 - G. Ensure that the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed within Vendor’s Services and supporting enterprise complies with applicable data protection and privacy laws, as well as the terms and conditions of the Agreement.
 - H. 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 Confidential Information security practices. Vendor agrees to share its incident response plan upon request.
 - I. Assure that its systems, Products and Services include at least the following safeguards:
 - 1. Include component and system level fault tolerance and redundancy in system

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

I. Data Security & Confidentiality Terms

- 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 Confidential Information at rest and in transit.
 4. Authentication of users at logins with a 256-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 prevention system that inspects incoming data transmissions.
 11. Prevention of hostile and unauthorized intrusion.
 12. Backup of all Confidential Information at least once every twenty-four (24) hours. Perform content snapshots at least daily and retain for at least ninety (90) days.
- J. Confidential Information shall be stored, backed up, and served only on servers located in the continental United States. Vendor's network where Confidential Information may be stored shall have an in-line intrusion prevention system that inspects incoming data transmissions. Vendor shall have a documented disaster recovery plan for the electronic systems where Confidential Information may be stored. Data stored in cloud-based systems must be protected in the same manner as local data as described throughout the Agreement.
4. **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 as a result of Services and/or Materials provided under the Agreement, 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.
 5. **Press Releases; Publicity.** Vendor shall not issue publicity news releases, grant press interviews, or use any Confidential Information or Board intellectual property (as defined below), including but not limited to the CPS logo or the logos of any schools, during or after the performance or delivery of Products and Services without the prior express written consent of the Board's Chief Communications Officer or its designee. Furthermore, Vendor may not photograph or film or cause others to photograph or film within any CPS school or facility without the prior express written consent of the Board's Chief Communications Officer or its designee.
 6. **Return or Destruction of Confidential Information.** Vendor shall return all Confidential Information to the Board within thirty (30) calendar days of expiration or termination of the Agreement. Confidential Information shall be returned to the Board in a secured, consumable format as directed by the Board, such as .csv or SQL file. Upon return of all Confidential Information, Vendor shall provide an affidavit attesting to destruction of all copies in Vendor's

*THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE***I. Data Security & Confidentiality Terms**

possession. Vendor shall delete a specific student's Student Data upon the written request of the Board. In the event that Vendor is permitted to retain certain Confidential Information, provided such permission is granted in writing by the Board, such information shall be protected and handled in accordance with the terms of this Agreement for as long as Vendor is permitted to retain such Confidential Information.

7. **Unauthorized Access, Use or Disclosure of Confidential Information.** If Vendor has knowledge of any unauthorized access, use, and/or disclosure of Confidential Information, it shall: (i) notify the Board immediately, which in no event shall be longer than twenty-four hours from 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 Vendor's obligations regarding Confidential Information as set forth in this Agreement, 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. Vendor shall include this provision in any and all agreements it executes with subcontractors performing Services or providing Products under this Agreement.

8. **Student Data Prohibition; Compliance with the SOPPA and FERPA.** Vendor is strictly prohibited from using any software, online or cloud platform outside of the CPS Google Platform, including but not limited to any educational technology (Ed Tech) and other student engagement or learning enrichment platforms, in connection with the Products Vendor will be offering and providing to CPS under this Agreement.

Further, the Board will not provide Vendor with any information or data, nor shall Vendor collect any such information or data, which may reasonably be subject to SOPPA or FERPA, or classified as 'sensitive' under any law or regulation related to data privacy.

9. **Volunteers, Employees, Agents, and Subcontractors.** Vendor agrees to provide its volunteers, employees, agents, and subcontractors only such Confidential Information that is necessary for the delivery of Products and the performance of Services pursuant to this Agreement and to cause its employees, agents, and subcontractors to undertake the same obligations as agreed to herein by Vendor.

10. **Data Security Manager.** Vendor shall provide the Board with the name and contact information for a primary and alternate employee of Vendor 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 Confidential Information-related security breach. The designated contact shall respond to any Board inquiries within two (2) hours.

11. **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.

*THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE***I. Data Security & Confidentiality Terms**

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

V. INSURANCE REQUIREMENTS

Vendor, at its own expense, shall procure and maintain insurance covering all operations under the Agreement, whether performed by Vendor or by subcontractors. All insurers shall be licensed by the State of Illinois and rated A-VII or better by A.M. Best or a comparable rating service. Vendor shall submit to the Board satisfactory evidence of insurance coverage and upon request, shall promptly provide a certified copy of any applicable policy of insurance. Minimum insurance requirements include the coverage set forth:

1. **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 the Agreement with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence. The workers' compensation policy must contain a waiver of subrogation clause.
2. **Commercial General Liability Insurance.** Commercial General Liability Insurance or equivalent with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate for bodily injury, personal injury and property damage liability. Coverage shall include, but not be limited to: all operations, contractual liability, independent contractors, products/completed operations (for a minimum of two (2) years following completion), and defense. Commercial General Liability Coverage must include and not exclude coverage for sexual abuse and molestation.
3. **Automobile Liability Insurance.** Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with Services to be performed, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
4. **Professional Liability/ Errors and Omissions.** When any professionals perform Services in connection with the Agreement, Professional Liability Insurance covering acts, errors, or omissions in conjunction with the professional services must be maintained with limits of not less than Five Million Dollars (\$5,000,000.00). Coverage must include contractual liability, Privacy/Network Coverage, and security/privacy. Such coverage must not be excluded. 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. This coverage may be included in a Cyber Liability And Privacy & Security Insurance policy.
5. **Umbrella/Excess Liability Insurance.** Umbrella or Excess Liability Insurance to provide additional limits for underlying Workers' Compensation and Employers' Liability Insurance, Commercial General Liability Insurance, Automobile Liability Insurance Sexual Abuse & Molestation Insurance (if the latter is required) (and Professional Liability/Medical Errors and Omissions, Professional Liability /Technology Errors and Omissions, and Cyber Liability And Privacy & Security Insurance, if Umbrella/Excess coverage is available for these coverages), with limits not less than Two Million Dollars (\$2,000,000.00) per occurrence, and shall cover the Board and its employees, subject to that of the primary coverage.
6. **Additional Insured.** Vendor shall have its Commercial General Liability, Umbrella/Excess Liability, Automobile Liability Insurance and Sexual Abuse and Molestation Insurance policies (if the latter is required) (and its Professional Liability / Medical Errors and Omissions Insurance, Professional Liability/Technology Errors and Omissions, and Cyber Liability And Privacy & Security Insurance, if this endorsement is available for those coverages) endorsed to provide that

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III. Insurance Requirements

“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”.

7. **General.** The insurance company, or its representative, shall submit an insurance certificate evidencing all coverage as required hereunder and indicating the Additional Insured status as required above. The Board will not pay Vendor for any Products or Services if satisfactory proof of insurance is not provided by Vendor prior to the performance of any Services. The Certificate must provide thirty (30) days prior written notice of material change, cancellation, or non-renewal be given to:

Risk Management
Board of Education of the City of Chicago
42 W. Madison
Chicago, Illinois 60602
riskmanagement@cps.edu

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 the 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 an Event of Default of the Vendor's Agreement with the Board. In the event Vendor fails to fulfill the insurance requirements of the Agreement, the Board reserves the right to stop the Services until proper evidence of insurance is provided, or the Agreement may be terminated.

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

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

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

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

The Board retains final authority with respect to all insurance-related decisions and maintains the right to modify, delete, alter or change these requirements upon written notice provided to Vendor by the Board's Office of Finance, Risk Management.

Vendor must register with the insurance certificate monitoring company designated by the Board and indicated 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.

Each year, Board-approved, registered vendors will be notified 30 days prior to the

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III. Insurance Requirements

expiration date of their required insurance coverage (highlighted on their latest submitted insurance certificate on file) in order to 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 (see URL below). Should you have any questions on submissions and payment options, you can contact the certificate monitoring company.

Certificate Monitoring Company:

Topiary Communications Inc.

211 W. Wacker Drive, Ste 220

Chicago, IL 60606

Phone: (312) 494-5709

Email: dans@topiarycomm.net

URL: <http://www.cpsVendorcert.com> (designated website for online registration, insurance certificate submissions and annual fee payments)

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

THE BOARD OF EDUCATION
OF THE CITY OF CHICAGO ^{DS}
RV

AMPLIFY EDUCATION, INC.

DocuSigned by:
Jianan Shi
By: _____
B5029923484041E...
Jianan Shi, Board President

By: *Catherine Mackay*
Catherine Mackay, President & COO

DocuSigned by:
Susan Narrajos
Attest: _____
ADCE249319B6429...
Susan Narrajos, Secretary

Date: September 22, 2023 | 4:55:56 PM CDT

Date: 09 / 20 / 2023

DocuSigned by:
Pedro Martinez
By: _____
AA17786A4B2446C...
Pedro Martinez, Chief Executive Officer

Board Report No.: 23-0824-PR2

Approved as to legal form: ^{DS}*ES* ^{DS}*JDE* ^{DS}*RV*

DocuSigned by:
Ruchi Verma
By: _____
506502E0FFA14C9...
Ruchi Verma, General Counsel

ATTACHMENTS:

- Exhibit A: Scope of Products & Services
- Exhibit B: Schedule of Compensation

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EXHIBIT A

SCOPE OF PRODUCTS & SERVICES

(Amplify Education, Inc.)

Service: Science Kits Sole Source

CPS Project Manager: Kara Thorstenson

Phone: 773-553-6506

Email: klthorstenson@cps.edu

Vendor's Project Manager: Michael Kasloff

Regional Vice President

E-Mail: mkasloff@amplify.com

This Scope of Products & Services will be conducted pursuant to the terms and conditions of the Services Agreement ("**Agreement**"), effective as of September 1, 2023 by and between Amplify Education, Inc. ("**Vendor**") and the Board of Education of the City of Chicago, a body politic and corporate, commonly known as the Chicago Public Schools (the "**Board**" or "**CPS**"). Capitalized terms in this Scope of Products & Services shall be understood to have the same definitions as given to them in the Agreement unless specifically noted otherwise in this document. The terms and conditions set forth in the Agreement shall not be changed or modified in the Scope of Products & Services or in any other document unless it is done so in accordance with the terms of the Agreement, particularly those set forth in the Change Management Process Section of the Agreement. In the event of a conflict between the terms and conditions contained in the body of the Agreement and those in this Scope of Products & Services, the terms in the body of the Agreement shall supersede and prevail.

I. PROVIDER'S MATERIALS

- A. Materials. Provider is approved to market and sell to any CPS school, network or central office department the materials identified in the Product and Pricing Lists ("Materials") that are attached and incorporated into this Agreement as Exhibit B. No Materials shall be added to this List except where provided for and completed in accordance with the terms of the Agreement.
1. Materials kits for all units including everything needed for the hands-on investigations.
 2. Student books which enhance science topics and allow students to practice reading within the science content area (five titles per unit, 18 copies per title for partner reading) as well as teacher access to the digital student book library (one-year subscription).
 3. English-language Student Investigation Notebooks which allow students to interact with content while taking notes, answering questions, and conducting investigations.
 4. Spanish-language Student Investigation Notebooks which allow students to interact with content while taking notes, answering questions, and conducting investigations.
- B. NGSS and Five Innovations. Provider represents and warrants by entering into this Agreement that the Materials comply with the Next Generation Science Standards (NGSS) and are designed around the five NGSS Innovations, as outlined in Achieve's Primary Evaluation of Essential Criteria (PEEC) for the NGSS Instructional Material Design.
- C. New, Revised, or Updated Versions of Materials. New, revised, updated versions of the Materials that are developed, published, and/or issued during the Term of the Contract and any renewals, must be provided to CPS at the same or lower prices to those set forth in the List.

New, revised, updated version(s) of the Materials must be provided immediately upon publication, and notice will be provided to CPS of the nature of the changes.

- D. General Expectations for Materials. Materials should comply with the minimum safety practices and regulations set forth by the National Science Teachers Association (NSTA) for all hands-on

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demonstrations and experiments. All substances and materials included in kits should meet chemical safety guidelines and be developmentally appropriate for the age of students.

Materials should be designed to support effective differentiated instruction, including how supports are scaffolded, varied, and extensive for both students and teachers. Materials should support various learning styles, performance levels, language development, and differently abled students. Materials should be designed to meet the needs of students with specific needs, e.g., English language learners, students with special education needs, students that have a vision or hearing impairment, students performing below and above grade level.

- E. Accessibility. All of the Provider's print and physical materials and supporting services shall be provided in formats as required to meet federal, State of Illinois, and Board requirements for accessibility.
- F. Languages. If support is required for languages other than English and Spanish, then the Board and the Provider shall determine the appropriate method to provide that support.
- G. Production and Printing. Provider is responsible for production, printing and delivery of all Materials purchased under this Agreement. The Provider must deliver its Materials in sufficient quantities for all teachers and students using the Provider's resources.

II. **MONITORING AND EVALUATION**

- A. Monitoring. At the Board's request, the Provider shall work with the Board and an evaluator to monitor and evaluate the implementation of the Provider's Materials throughout the Term of the Agreement. As part of its work, the Provider shall:
 - 1. Contact CPS leadership immediately when the Provider perceives or identifies a problem or concern regarding implementation of the Provider's Materials, and discuss that problem or concern and steps necessary to correct it.
 - 2. Meet regularly with Board representatives to share experiences and ideas for future support.
- B. Evaluation
 - 1. Scope of Evaluation. Biannually or when so determined by the Board, the Board will evaluate Provider's performance of its obligations and Services under the Agreement. The objectives of the evaluation may include:
 - i. To determine the value of the Science Materials through measurement of student achievement.
 - ii. To identify factors related to higher student achievement.
 - iii. To recommend areas for improving implementation/utilization.
 - 2. Assistance of Provider. The Provider, if requested by the Board, shall provide assistance to the Board in data collection for the board's evaluation by undertaking some or all of the following activities at the request of the Board:
 - i. Distribution of surveys.
 - ii. Participation in focus groups and interviews.
 - 3. Outside Evaluator. The Board may secure the services of an outside consultant to perform evaluations of the Materials. At the discretion of the Board, the outside evaluator may conduct research or evaluation concerning the effectiveness of the Materials, Materials implementation and fidelity, or other lines of inquiry related to efficacy of the Materials. The design of any contracted third party evaluation shall be reviewed and approved by the Board, including methodology and scale of the evaluation and shall comply with all relevant Board policies as well as state and federal laws.

III. **ORDERING**

As stated in the Agreement, Purchase Orders are required for the purchase of any Materials or Services under this Agreement. The Provider shall work with the Board as necessary to reconcile any order

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problems within 10 business days unless otherwise specified by school.

For all orders placed during a given school year, Provider shall confirm and adhere to the start date included in the Purchase Order.

- A. Shipping, Costs, Risk of Loss. All order filling and shipping shall be undertaken by the Provider at no additional cost to CPS beyond what is specifically stated in the Pricing Lists. Orders shall be shipped, for Materials in stock, by reputable shippers for delivery within fifteen business days or less after receipt of the order, unless otherwise directed. All shipments shall be insured by the Provider. The Provider and its shippers shall keep accurate records of all orders, all shipments, and all acceptance signatures and tracking data. The Provider shall bear all risks of loss and liability for each shipment until that shipment is received by the school. The Board shall have no liability for any shipping or insurance costs or charges except as provided in the Agreement, including this Scope of Services.
- B. Acceptance of Order by School. For each order, the school shall have 10 business days, to determine whether the delivery includes the number of items stated in the order, commencing (a) for orders placed between June 1 and August 31, on the first day of the school semester per the CPS school calendar immediately following receipt of the order; or (b) for all other orders, on the date of the delivery of the order. This time period shall apply regardless of any signature made by the school on any delivery document at the time of receipt of the order.
- C. Process if Shortage. If a school experiences a shortage of Materials as the result of circumstances not reasonably foreseeable to the school, then the Provider shall deliver the necessary additional Materials immediately upon being advised of the shortfall, by next-day delivery. Additional shipping charges would apply.

IV. **SPECIFIC DELIVERY DEADLINES**

Delivery Deadlines throughout School Years

All Materials ordered by an individual school site throughout the Term of this agreement shall be delivered directly to the appropriate school within fifteen (15) business days of the order being placed.

All materials ordered by networks or central office departments throughout the Terms of this agreement shall be delivered directly to the appropriate school/CPS as soon as possible, agreed upon in writing between CPS and Amplify if the quantities ordered are significant enough that delivery within fifteen (15) business days is unrealistic or impractical.

V. **ACCOUNT MANAGEMENT**

- A. Monthly Reports. The Provider shall provide to the Program Manager or her designee, at the Provider's expense, monthly written reports including (a) all Materials and Products purchased by each CPS school, (b) a description of problems and their resolutions, (c) Materials returns, (d) other data and reports as may be reasonably requested by the Board. The monthly reports shall be provided electronically, in a format and to Board representatives reasonably designated by the Board. The Board shall provide the Provider with a template of the monthly report no later than October 1, 2023.
- B. Quarterly Meetings. The Provider, at its expense, shall meet with the Board's designated representative at least once each calendar quarter to discuss customer service matters and the overall performance of the Provider.
- C. CPS Account Representative. The Provider shall designate at least one representative to provide customer support for teachers and administrators as well as project management support, including but not limited to implementation planning, technology readiness, regular project reporting, and communications support.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

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EXHIBIT B**SCHEDULE OF COMPENSATION***(Amplify Education, Inc.)*

This Schedule of Compensation shall be incorporated into and governed by the terms of that certain Services Agreement ("**Agreement**"), effective as of September 1, 2023, by and between Amplify Education, Inc. ("**Vendor**") and the Board of Education of the City of Chicago, a body politic and corporate, commonly known as the Chicago Public Schools (the "**Board**" or "**CPS**").

Initial Term: September 1, 2023 through August 31, 2025		
Bundle	Item number	Price
CPS kindergarten classroom bundle – 36-student kit configuration	978-1-64333-230-7	\$ 2,383.50
CPS grade 1 classroom bundle – 36-student kit configuration	978-1-64333-232-1	\$ 2,293.50
CPS grade 2 classroom bundle – 36-student kit configuration	978-1-64333-234-5	\$ 2,150.65
CPS grade 3 classroom bundle – 36-student kit configuration	978-1-64333-236-9	\$ 3,370.00
CPS grade 4 classroom bundle – 36-student kit configuration	978-1-64333-238-3	\$ 2,954.00
CPS grade 5 classroom bundle – 36-student kit configuration	978-1-64333-240-6	\$ 2,677.75
CPS grade 6 teacher bundle - includes consumable and non-consumable materials for five uses of 40 students for all grade-level units	978-1-64333-629-9	\$ 2,594.32
CPS grade 7 teacher bundle - includes consumable and non-consumable materials for five uses of 40 students for all grade-level units	978-1-64333-630-5	\$ 2,903.20
CPS grade 8 teacher bundle - includes consumable and non-consumable materials for five uses of 40 students for all grade-level units	978-1-64333-631-2	\$ 3,132.00

Initial Term: September 1, 2023 - August 31, 2025		
Add-ons – individual items	Item number	Price per item
Student Investigation Notebooks in Spanish, grades K-8 (per unit)	Various	\$ 2.10

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Initial Term: September 1, 2023 - August 31, 2025				
Student Notebook sets <i>Includes one copy of all unit-level notebooks for a single student</i>	Investigation	Item number	Price per item	
CPS Kindergarten Amplify Science Student Investigation Notebook Set (3 notebooks)		978-1-64333-612-1	\$ 6.27	
CPS Student Amplify Science Investigation Notebook Set (3 notebooks)	Grade 1	978-1-64333-613-8	\$ 6.30	
CPS Student Amplify Science Investigation Notebook Set (3 notebooks)	Grade 2	978-1-64333-614-5	\$ 6.30	
CPS Student Amplify Science Investigation Notebook Set (4 notebooks)	Grade 3	978-1-64333-615-2	\$ 8.40	
CPS Student Amplify Science Investigation Notebook Set (4 notebooks)	Grade 4	978-1-64333-616-9	\$ 8.40	
CPS Student Amplify Science Investigation Notebook Set (4 notebooks)	Grade 5	978-1-64333-617-6	\$ 8.40	
CPS Student Amplify Science Investigation Notebook Set (9 notebooks)	Grade 6	978-1-64333-955-9	\$ 18.81	
CPS Student Amplify Science Investigation Notebook Set (9 notebooks)	Grade 7	978-1-64333-956-6	\$ 18.81	
CPS Student Amplify Science Investigation Notebook Set (9 notebooks)	Grade 8	978-1-64333-957-3	\$ 18.81	

Initial Term: September 1, 2023 - August 31, 2025				
Print-only bundles <i>Includes all Spanish print-only Add On Kits for the grade (nonconsumable print materials in Spanish for a class size of 36 students)</i>	Spanish add-on	Item number	Price per item	
CPS Kindergarten Spanish Print Only Add On Kit Bundle	Science	978-1-64333-594-0	\$ 1,335.00	
CPS Spanish Print Only Add On Kit Bundle	Science Grade 1	978-1-64333-595-7	\$ 1,305.00	

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CPS Amplify Science Grade 2 Spanish Print Only Add On Kit Bundle	978-1-64333-596-4	\$ 1,215.00
CPS Amplify Science Grade 3 Spanish Print Only Add On Kit Bundle	978-1-64333-597-1	\$ 1,745.00
CPS Amplify Science Grade 4 Spanish Print Only Add On Kit Bundle	978-1-64333-598-8	\$ 1,620.00
CPS Amplify Science Grade 5 Spanish Print Only Add On Kit Bundle	978-1-64333-599-5	\$ 1,680.00
CPS Amplify Science Grade 6 Spanish Print Only Add On Kit Bundle	978-1-64333-638-1	\$ 770.00
CPS Amplify Science Grade 7 Spanish Print Only Add On Kit Bundle	978-1-64333-639-8	\$ 655.00
CPS Amplify Science Grade 8 Spanish Print Only Add On Kit Bundle	978-1-64333-640-4	\$ 475.00

Initial Term: September 1, 2023 - August 31, 2025		
Refill kit bundles - DO NOT include Student Investigation Notebooks	Item number	Price
Kindergarten refill kit bundle – consumables for 2 uses of 36 students, all units	978-1-64333-242-0	\$ 445.25
Grade 1 refill kit bundle – consumables for 2 uses of 36 students, all units	978-1-64333-244-4	\$ 318.50
Grade 2 refill kit bundle – consumables for 2 uses of 36 students, all units	978-1-64333-246-8	\$ 464.75
Grade 3 refill kit bundle – consumables for 2 uses of 36 students, all units	978-1-64333-248-2	\$ 464.75
Grade 4 refill kit bundle – consumables for 2 uses of 36 students, all units	978-1-64333-250-5	\$ 344.50
Grade 5 refill kit bundle – consumables for 2 uses of 36 students, all units	978-1-64333-252-9	\$ 585.00
Grade 6 refill kit bundle – consumables for 5 uses of 40 students, all units	978-1-64333-644-2	\$ 62.10
Grade 7 refill kit bundle – consumables for 5 uses of 40 students, all units	978-1-64333-645-9	\$ 211.50
Grade 8 refill kit bundle – consumables for 5 uses of 40 students, all units	978-1-64333-646-6	\$ 156.60

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