

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE.

ED TECH SERVICES AND DATA SHARING AGREEMENT
between the Board of Education of City of Chicago and
ZEARN, INC.
(Product: Zearn Math School Account for K-5)

This **ED TECH SERVICES AND DATA SHARING AGREEMENT** (“**Agreement**”) is entered into as of the date last signed below (“**Effective Date**”) by the Board of Education of the City of Chicago, a body politic and corporate, commonly known as Chicago Public Schools (the “**Board**” or “**CPS**”), and Zearn, Inc., with principal place of business located at 261 West 35th Street, 15th Floor, New York, New York 10001 (the “**Provider**”).

RECITALS

- A. The Board seeks technology to assist in the delivery of education and related support to its students;
- B. Provider has demonstrated expertise in providing services, 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 for the Board;
- C. The Board and Provider now wish to execute this Agreement that defines the nature of their relationship, describes the manner in which products and services may be provided to CPS and/or its Board Users (as defined below); and
- D. NOW THEREFORE, in consideration of the foregoing, which are incorporated into and made a part of this Agreement by this reference, and the mutual covenants contained herein, the parties agree as follows:

1. Definitions:

1.1. **Products.** includes any technology, regardless of means of use, delivery and storage, including but not limited to direct distribution of software, downloadable media, mobile application, cloud computing services, and/or through access to a secure website or open access website and any updates, bug fixes, patches, operational modifications or corrections, components, equipment or accessories that are necessary for the operation of the technology as proposed by Provider and accepted by the Board.

1.2. **Services.** shall be understood to refer to the performance of any services, duties, obligations, or other work that are necessary for or included in the successful delivery of the Products.

2. Term: This Agreement is for a term commencing on the Effective Date and continuing through June 30, 2021 (the “**Term**”), unless terminated sooner as provided herein. The Board shall have two (2) options to renew this Agreement for a period of one (1) year each (each a “**Renewal Term**”). Exercise of an option shall be subject to approval by the authorized representative of the Board and documented by a writing signed by the authorized representatives of both parties.

3. Scope of Products and Services: Provider agrees to deliver all Products and Services in accordance with the terms of this Agreement and any Statement of Work and Purchase Order received. The Board retains final authority with respect to all Products and Services delivered to the Board and all decisions related to those Products and Services. The Board, from time to time, may request changes in the scope of Products and Services. Those changes shall be documented in a written amendment to this Agreement signed by the authorized representatives of both parties. The scope of this Agreement shall be extended to individual Schools that are added through a Statement of Work (SOW). For the avoidance of doubt, the scope of this Agreement shall not extend to any user, school, or school district that has not purchased School Account Services with Zearn.

4. Compensation, Purchase Order, Billing and Payment Procedures:

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4.1 **Compensation.** Subject to the terms of this Agreement, each School will pay Provider, as compensation for the Services rendered at their respective School in the amounts and upon the schedule set forth in the School's signed Statement of Work and Purchase Order (the "**Fees**"), provided that the aggregate compensation to Provider for Services shall not exceed One Hundred Fifty Thousand 00/100 Dollars (\$150,000.00), the "**Maximum Compensation Amount**", without the prior approval of the Board and a written amendment to this Agreement. Provider agrees not to perform, and waives any and all claims for payment of Services and Products that would result in billings, beyond the above referenced not-to-exceed amount unless the parties have executed a written amendment authorizing such additional work and the payment thereof.

It is understood and agreed that the Maximum Compensation Amount referenced hereinabove is a 'not-to-exceed amount' and is not a guaranteed payment. Compensation shall be based on actual Services and Products performed during the Term of this Agreement and the Board shall not be obligated to pay for any Products or Services or deliverables not in compliance with this Agreement. If Provider overcharges, in addition to all other remedies, the Board shall be entitled to a refund in the amount of the overcharge, plus interest at the rate of 3% per month from the date the overcharge was paid by the Board until the date refund is made. The Board has the right to offset any overcharge against any amounts due to Provider under this or any other agreement between Provider and the Board.

4.2 **Purchase Order.** Any purchases by the Board of Services and Products 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. Under no circumstances shall Provider provide any Services or Products without a valid PO.

4.3 **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 Provider's name and the CPS Purchase Order number. All invoices must include:

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

Invoices shall be submitted in a timely manner. The final invoice shall be submitted no later than ninety (90) days after the expiration or termination of this Agreement. If Provider has more than one contract with the Board, separate invoices must be submitted for each contract. The Board shall process payments in accordance with the Local Government Prompt Payment Act (50 ILCS 505/1 et seq.). The Board reserves the right to request additional information and supporting documentation necessary for the Board to verify the Services and Products provided under this Agreement.

5. **Standards of Performance:** Provider must perform all Services required of it under this Agreement with that degree of skill, care, and diligence normally shown by a Provider performing services of a scope, purpose, and magnitude comparable with the nature of the Services to be provided under this Agreement. Provider acknowledges that, if in the course of providing Services hereunder, it is entrusted with or has access to valuable and confidential information and records of the Board, Provider agrees to be held to the standard of care of a fiduciary with respect to that information. Any review, approval, acceptance of Services or

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deliverables, or payment by the Board for any Services does not relieve Provider of its responsibility for the professional skill and care and technical accuracy of its Services and deliverables. This provision in no way limits the Board's rights against Provider under this Agreement, at law or in equity. When and where applicable, all members of Provider's staff must hold and maintain throughout the Term and any Renewal Term, valid certificates and/or licenses from the State of Illinois or such other relevant jurisdiction that authorize those individuals to perform the Services. Provider agrees to promptly furnish a copy of the license(s) of any and all direct service providers to the Board on request.

Throughout the Term and any Renewal Term, Provider must maintain and use sufficient staff to assure the effective and efficient operation of its programs. Provider must cause its staff to devote such time, attention, skill, knowledge, and professional ability as necessary to effectively and efficiently fulfill Provider's obligations under this Agreement.

6. Non-appropriation: Expenditures not appropriated by the Board in its current fiscal year budget are deemed to be contingent liabilities only and are subject to appropriation in subsequent fiscal year budgets. In the event no funds or insufficient funds are appropriated and budgeted in any subsequent fiscal period by the Board for performance under this Agreement, the Board shall notify Provider and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. Payment for Products and Services completed to the date of notification shall be made to Provider except that no payment shall be made or due to Provider under this Agreement beyond those amounts appropriated and budgeted by the Board to fund payments under this Agreement.

7. 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. E9997-7109-06. The amounts paid to Provider are inclusive of all other taxes that may be levied or based on this Agreement including, without limitation, sales, use, nonresident, value-added, excise, and similar taxes levied or imposed on the Services to be provided under this Agreement, but excluding taxes levied or imposed on the income or business privileges of Provider. Provider shall be responsible for any taxes levied or imposed upon the income or business privileges of Provider.

8. Technical Information: Prior to the execution of this Agreement, Provider supplied CPS's Department of Information Technology Services ("ITS") with information regarding its Product, including but not limited to the security and technical environment (collectively "**Technical Information**"). Provider is required to advise the Board's ITS Program Manager if the Technical Information for any Product(s) or Program(s) materially changes in any way during the Term of this Agreement, including any Renewal Terms. Any such changes that, in the Board's sole determination, do not result in the disqualification of the Products shall be documented by completion of a Change Order of Technical Information, a template of which is attached and incorporated into this Agreement as Exhibit A that will be signed by the Board's Chief Teaching & Learning Officer and the Board's ITS Program Manager, or a designee for each, and Provider's authorized representative and then made a part of this Agreement. No other terms or conditions of this Agreement may be changed via the Change Order for Technical Information and any attempt to do so shall be void. Changes that result in the disqualification of the Product shall be documented in a written amendment to this Agreement signed by the Board's Chief Teaching & Learning Officer and the Provider's authorized representative and approved by the Board's General Counsel.

9. Adequate Staffing: Provider must assign and maintain during the term of this Agreement and any Renewal Terms, an adequate staff of competent personnel that is fully equipped, trained, licensed as appropriate, available as needed, and qualified to perform the Services. If the Board determines, in its sole discretion, that any employee, subcontractor, or other person providing Services for Provider is not performing in accordance with the performance standards or other requirements of this Agreement, including but not limited to negatively affecting the safety or welfare of a CPS student, then the Board shall have the right to direct Provider to remove that person from performing Services under this Agreement.

10. 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

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responsibility for the professional skill and care and technical accuracy of its Services and deliverables. This provision in no way limits the Board's rights against Provider under this Agreement, at law or in equity. When and where applicable, all members of Provider's staff must hold and maintain throughout the Term and any Renewal Term, valid certificates and/or licenses from the State of Illinois or such other relevant jurisdiction that authorize those individuals to perform the Services. Provider agrees to promptly furnish a copy of the license(s) of any and all direct service providers to the Board on request.

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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

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employer of the individuals who perform services for the Board. As an independent contractor, Provider is 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 Provider, including its employees, agents, and subcontractors shall not represent themselves as employees or agents of 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.

11. **License, Implementation, Hosting, and Support:** Provider shall assure that the following will apply to Products, as necessary and applicable:

11.1 **License.** Provider hereby grants to the Board a non-exclusive, non-transferable, royalty-free (except for fees specified in this Agreement) license to use the Products for the Term of the Agreement and any Renewal Terms or as otherwise specifically stated in the purchase order for the associated Product ("**License**"). The Products and any accompanying documentation shall at all times remain the sole and exclusive property of Provider or, alternatively, the sole and exclusive property of a third party from whom Provider has obtained all necessary rights and permissions to sub-license the Products to the Board. The Board shall not sell, lease, license or otherwise transfer, use or dispose of the Products outside of the CPS. The Board shall not copy or knowingly permit the copying by any third party of the Products (other than for a reasonable number of back-up copies, where applicable) or distribute, market, sell, rent, transfer, sublicense or assign to any third party any portion of the Products. The Board shall not make any alterations, additions or modifications, create derivative works, decompile, disassemble or reverse engineer the Products without the prior written consent of Provider.

11.2 **Permissible Board Actions.** Nothing in this Section shall prevent the Board, its employees and representatives from sharing reports and data generated from Provider's Products and Services with other Providers of the Board as may be necessary to receive and evaluate the Products and Services for the Board's purposes. Nothing in this section grants the Board authority to share Zearn's downloadable reports (or its Intellectual Property) outside of CPS, except as in response to Freedom of Information Act requests.

11.3 **Implementation of the Products.** Where applicable and/or necessary, Provider shall provide installation, configuration, and implementation support for the Products so that it is accessible through the Board's computers and other compatible devices.

11.4 **Licensed Users.** Provider shall provide a username and password for each licensed user of the Products, if applicable. "**Licensed Users**" or "**Board Users**" may be specified by the Provider but usually means those schools, classrooms, administrators, teachers, students, or parents/legal guardians licensed to access the Products as stated in any Statement of Work or Purchase Order. The number of Licenses provided to any purchasing school shall be unlimited and shall be in effect through the Term or any Renewal Term, unless specifically stated otherwise by Provider and accepted by CPS in an addendum signed by the authorized representative of the Board and with the written approval of the Board's General Counsel. Unless specifically stated otherwise, a Licensed User may continue to use the License throughout the Term or any Renewal Term of this Agreement.

11.5 **Products Maintenance.** During the Term of this Agreement and any Renewal Terms, Provider shall be solely responsible for maintenance of the Products and accessibility to the Board.

11.6 **Products Support.** Provider shall provide the maintenance and support services to the Board for the use of the Products.

11.7 **Controlling Agreement.** Provider shall not request any CPS students or staff

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including school principals, administrative staff, or other CPS employees to sign any form, memorandum of understanding or other agreement for the delivery of the Products and Services except for those documents specifically approved by the Board under this Agreement. 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 agreement or any other agreement or license contained or referenced in the Products or any quote provided by Provider. Even if a Board User agrees to any agreement or license contained or referenced in the Products 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. Rather, 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.

11.8 Hosting of the Products and Data. Provider shall host the Products and the Board's data Subject to the terms and conditions of this Agreement and to Exhibit C attached hereto and incorporated herein of this Agreement.

11.9 Compatibility and Data Flow. Provider shall ensure that data flows properly between the Board's computers and other compatible devices and Provider's Products, Products and Services in accordance with the Exhibits that are attached and incorporated into this Agreement, as may be amended. Provider must ensure that any other resources that are supplied by Provider to the Board, incorporated by Provider, or approved or recommended by Provider for use by the Board in connection with the Products, Products and Services, are fully compatible with, and must not materially and adversely affect, or be materially and adversely affected by, each other or the other hardware, software, equipment, network components, systems, services, and other resources that are owned or leased by, or licensed to, the Board (collectively, the "**Board Resources**"). At all times, Provider must cooperate and work as requested with the other service providers of the Board to coordinate the development and the provision of Products and Services with the services and systems of such other service providers. Provider shall have no obligation under this Agreement to ensure that the Board maintains an active internet connection. Any unavailability of the Products due to the Board's lack of an internet connection, unless such lack of an internet connection is caused by Provider or Provider's Products or Services, shall be the sole responsibility of the Board.

12. **Materials:** If the Products or Services include delivery of goods, supplies, books, guides, handouts, or other materials (collectively "**Materials**"), then the following terms apply to the Materials:

12.1 Preview Materials. Provider will make those Materials available to the Board's Teaching & Learning Program Manager for review upon request without additional cost.

12.2 Packaging and Shipment and Risk of Loss. Where applicable, Provider shall package and ship all Materials in a commercially reasonable manner. All shipments shall be F.O.B. destination (as indicated on the Board's written notification) with freight and insurance prepaid. The Board may request that shipment be made to any location that the Board designates as a Chicago Public School, a CPS facility, or other location at which Services will be rendered. Any and all deliveries made to a Chicago Public School shall occur between the hours of 8:00 a.m. and 2:30 p.m. and Provider shall advise carrier of this restriction.

- i. The Board shall have no liability either for any insurance charges or freight charges.
- ii. The Board may adjust the shipping destination any time up to 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.

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12.3 **Inspection and Out-of-Box Failures.** The Board reserves the right to inspect all Materials upon delivery to adequately demonstrate that the Materials meet all of the specifications. Materials that do not conform to the specifications or that are otherwise damaged must either, at the Board's discretion, be retrieved by Provider (at Provider's expense) for replacement at no charge to the Board.

13. Bundled Hardware, Equipment, or Accessories: To the extent that the Products are bundled with or otherwise cannot be purchased separate from specified hardware, equipment, or accessories (collectively "**Hardware**"), such Hardware shall be subject to the terms and conditions of this Agreement and to Exhibit C attached hereto and incorporated herein of this Agreement

14. Confidential Information:

14.1 **Definitions:**

- i. **Confidential Information.** In the performance of the Agreement, Provider 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 Data as further defined below, employee data, technical data and specifications, software, ideas, budget figures, operational details, unpublished school information, CPS financial information, and CPS business plans. It is understood and agreed that Confidential Information also includes proprietary or confidential information of third parties provided by the Board to Provider. Confidential Information will not include information that is: (i) or becomes part of the public domain through no fault of Provider; (ii) made available to Provider by an independent third party having the legal right to make such disclosure; and (iii) information that can be established and documented by Provider to have been independently developed or obtained by Provider without violating the confidentiality obligations of this Agreement and any other agreements with the Board.
- ii. **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, including, but not limited to the Student Data listed in Exhibit B attached hereto and incorporated herein, 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) by the Board, its employees, agents, subcontractors, students, parents or legal guardians of any CPS students. For purposes of this Agreement, Student Data is Confidential Information hereunder; additional requirements regarding Student Data specifically are described below.
- iii. **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. Provider 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. The Board permits Provider to use De-identified Data for the purposes of quality assurance, the improvement and/or development of Provider's Products and Services, or to demonstrate the efficacy of Provider's Products and Services.

14.2 **Use of Confidential Information.** Provider shall only use Confidential Information for the sole purpose of delivering the Products and Services to the Board hereunder, and shall not disclose the Confidential Information except to those of its officers, agents, employees, third-party service providers, and subcontractors who have a need to access the Confidential Information for the performance of obligations set forth in this Agreement. Provider shall not copy or reproduce in any manner whatsoever the Confidential Information of the Board without the prior written consent of the Board, except where required for its own internal use solely to deliver the Services and Products under this Agreement and strictly in accordance with the terms of this Agreement. Provider shall use at least the same standard of care in the protection of

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Confidential Information as Provider 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 Confidential Information shall be subject to the special requirements of the Family Educational Rights and Privacy Act (“**FERPA**”), the Student Online Personal Protection Act (“**SOPPA**”), the Children’s Online Privacy Protection Act (“**COPPA**”), and the Illinois School Student Records Act (“**ISSRA**”).

14.3 Handling of Confidential Information. Provider shall protect against the unauthorized access, use or disclosure of Confidential Information subject to the terms and conditions of this Agreement and to Exhibit C attached hereto and incorporated herein of this Agreement.

14.4 Dissemination of Information. Provider shall not disseminate any Confidential Information to a third party without the prior written consent of the Board. If Provider 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 Provider’s possession as a result of Products, Services and/or materials supplied under the Agreement, Provider 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. Provider 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.

14.5 Press Release; Publicity: Provider 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, Provider 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.

14.6 Return or Destruction of Confidential Information. Provider shall, at the Board’s option, return all Confidential Information to the Board, provided that the Board has made such a request within 15 days of expiration or termination of the applicable School Account Agreement. Provider shall destroy all personally identifiable information within thirty (30) days of the expiration or termination of this Agreement or the applicable School Account Agreement unless Provider receives permission in writing from the Board’s Chief Education Officer or his/her designee that Provider may retain certain Confidential Information for a specific period of time. In the event the Board elects to have Provider destroy the Confidential Information, Provider shall provide an affidavit attesting to such destruction. Provider shall delete a specific student’s Student Data upon the written request of the Board. In the event that Provider is permitted to retain certain Confidential Information, such information shall be protected and handled in accordance with the terms of this Agreement for as long as Provider is permitted to retain such Confidential Information.

14.7 Unauthorized Access, Use or Disclosure. If Provider 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 seventy-two (72) hours from Provider 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. Provider shall bear the losses and expenses (including reasonable attorneys’ fees) associated with a breach of Provider’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. Provider shall include a provision in any and all agreements they execute with subcontractors performing Services under this Agreement that will allow Provider to comply with this section.

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14.8 Additional Obligations Regarding Treatment of Student Data. In addition to the above stated obligations for the treatment and handling of Confidential Information, Provider shall abide by the following obligations when handling, receiving, storing, transmitting or otherwise accessing Student Data:

(a) Student Data Use. Provider shall not use Student Data, including persistent unique identifiers, data created or gathered by Provider's site, Products, Services, and Products, for any purpose, including but not limited to amassing a profile about a CPS student or otherwise identify a CPS student except in furtherance of specific Services as set forth in this Agreement. Provider will use Student Data only for the purpose of fulfilling its duties and delivering Products and Services under this Agreement.

(b) Student Data Collection. Provider shall not collect Student Data except as specifically permitted hereunder and as necessary to fulfill its duties as outlined in this Agreement.

(c) Marketing and Advertising. Provider shall not advertise or market to schools, students or their parents/guardians when the advertising is based upon any Student Data that Provider has acquired because of the use of that Provider's site, Products, Services, or this Agreement.

(d) Student Data Mining. Provider is prohibited from mining Student Data for any purpose. Student Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents/guardians is prohibited.

(e) Student Data Transfer or Destruction. Provider will ensure that all Student Data in its possession and in the possession of any third-party service providers, subcontractors, or agents to whom Provider may have transferred Student Data, are destroyed or transferred to the Board under the direction of the Board when Student Data is no longer needed for its specified purpose. For the avoidance of doubt, as stated in Section 14.6, Provider will return Student Data to the Board, provided that the Board has made such a request within 15 days of expiration or termination of the Agreement or applicable School Account Agreement. Provider will securely delete all Student Data within 30 days of expiration or termination of the Agreement or applicable School Account Agreement.

(f) Rights in and to Student Data. All rights, including all intellectual property rights, associated with such Student Data shall remain the exclusive property of the Board. Nothing in this Agreement is meant and nothing shall be interpreted to mean that the Board releases any ownership or control of Student Data during the performance of the Services and delivery of Products under this Agreement. Student Data shall remain under the control of the Board throughout the Term of this Agreement, including any Renewal Terms. This Agreement does not give Provider any rights, implied or otherwise, to Student Data, content, or intellectual property. Provider does **not** have the right to sell or trade Student Data.

(g) Sale of Student Data. Provider is prohibited from selling, trading, or otherwise transferring Student Data.

(h) Access. Any Student Data held by Provider will be made available to the Board upon request of the Board. The identity of all persons having access to Student Data through Provider will be documented and access will be logged.

(i) Compliance with the Student Online Personal Protection Act (SOPPA). The parties acknowledge that Student Data hereunder includes student information that is "**Covered Information**" subject to the Student Online Personal Protection Act (105 ILCS 85/1 *et. seq.*) ("**SOPPA**"), and Provider further acknowledges that Provider: (i) is acting hereunder as an "**Operator**" (as the term is used in SOPPA) and a "**school official**" with a legitimate educational interest (as used in FERPA) (ii) is performing an institutional service or function, under the direct control of the Board, for which the Board would otherwise use employees, with respect to the use and maintenance of Covered Information as the term is defined in SOPPA; (iii) shall use the Covered Information only for a purpose authorized by the Board in accordance with the Board's instructions; and (iv) shall not re-disclose such information to third parties or affiliates except as authorized under this Agreement or with permission from the Board or pursuant to court order, unless

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otherwise permitted by SOPPA. “**Covered information**” as used in this paragraph has the meaning set forth in 105 ILCS 85/5, as amended.

1. Breach. If a “**Breach**”, as defined in SOPPA, is attributed to Provider, its officials, agents employees and subcontractors, Provider shall: (i) be liable for any costs and expenses incurred by the Board in investigating and remediating the Breach, including, but not limited to those costs and expenses identified in 105 ILCS 85/15(4)(D)(i)-(iv); (ii) inform the Board of the number of CPS students impacted by the Breach, as well as the date, estimated date, or estimated date range of the Breach; and (iii) inform the Board of each such Breach no later than thirty (30) calendar days after the determination that a Breach has occurred.
2. Data Deletion. As stated in the Student Data Transfer or Destruction Section of this Agreement, Provider shall ensure that all Student Data in its possession and in the possession of any subcontractors, or agents to whom Provider may have transferred Student Data, is destroyed or, as directed by the Board, transferred to the Board in a format determined by the Board within the time periods provided in the Student Data Transfer or Destruction Section of this Agreement.
 4. Publication. In accordance with SOPPA and the Board’s FOIA obligations as further described herein, the Board will make this Agreement available for public inspection on its website.
 5. Covered Information Access Listing. Provider shall provide to the Board a list of any subcontractors or third party service providers or affiliates to which Covered Information may, has been, or will be disclosed or will provide a link to Provider’s website clearly listing such information within ten (10) days of both parties entering into this Agreement. Provider must keep this list current at all times. Provider hereby discloses that it shares Covered Information with the following third-party service providers to perform the services herein: Amazon Web Services (cloud platform for data hosting); Dropbox (file transfer for rostering support); Heroku (Salesforce Enterprise) (cloud platform for database hosting); Looker (product analytics software); Talend (ETL); Zendesk (customer support communication and helpdesk function). Provider shall ensure that all Covered Information shared with third-party service providers complies with Exhibit C.
 6. Compliance. Provider shall comply with all requirements set forth in SOPPA as to Operators, as defined in SOPPA, including but not limited to providing all required listings, statements, descriptions, and notifications and developing processes, including for breaches.

14.9 Volunteers, Employees, Agents, and Subcontractors. Provider agrees to provide its volunteers, employees, agents, and, third-party service providers, 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, third-party service providers, and subcontractors to undertake the same obligations as agreed to herein by Provider.

14.10 Injunctive Relief. In the event of a breach or threatened breach of this Section, Provider 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, Provider 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.

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

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15. Use of the 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 August 28, 2019 (19-0828-PO1), and the Board's Staff Acceptable Use Policy, adopted August 28, 2019 (19-0822-PO3), both as amended, during the term of the Agreement and any renewals thereof. Provider shall not act or fail to act in any manner that will cause any CPS student to not comply with the Board's Student Acceptable Use Policy, adopted August 28, 2019 (19-0828-PO2), as may be amended.

16. Intellectual Property:

16.1 Intellectual Property Defined. Intellectual Property shall mean all trademarks, trade dress, copyrights and other intellectual property rights in the materials used in the performance of Services and delivery of Products under this Agreement.

16.2 Board's Intellectual Property. Provider agrees that all Confidential Information, as well as any intellectual property arising therefrom, shall at all times be and remain the property of the Board. The Board's intellectual property, to the extent applicable, shall include specifically any documents and materials created by the Board either alone or in cooperation with Provider in connection with the Services, including but not limited to such materials that are adapted or reproduced from Provider's Materials ("**Board Materials**"). Any and all 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 specifically for the Board in the performance of Services ("**Work Product**") is exclusively deemed to be "works for hire" within the meaning and purview of the United States Copyright Act, 17 U.S.C. § 101 *et seq.* To the extent that any Work Product does not qualify as a work for hire, the Provider irrevocably grants, assigns, and transfers to the Board all right, title, and interest in and to the Work Product in all media throughout the world in perpetuity and all intellectual property rights therein, free and clear of any liens, claims, or other encumbrances, to the fullest extent permitted by law. 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 intellectual property rights as defined in this Section. Board Materials shall exclude any and all (i) third party intellectual property, and (ii) pre-existing Provider intellectual property that is delivered to the Board as part of the Products and Services. Upon written agreement between the parties, Provider may be licensed to use the Board's intellectual property for specifically defined uses and terms.

16.3 Provider's Intellectual Property. All Intellectual Property owned by Provider prior to, created independently of the Services under this Agreement shall be and remain at all times "Provider's Intellectual Property", provided that none of the Board's Confidential Information is used or disclosed in Provider's Intellectual Property and such Intellectual Property is not Work Product. In the event that any Confidential Information is used or disclosed in any such Intellectual Property, it is the Board's Intellectual Property, and the Board shall have full and exclusive ownership rights to such Intellectual Property. Other than as may be expressly stated elsewhere in this Agreement, Provider grants to the Board a limited, royalty-free, non-transferable license to use such of Provider's Intellectual Property for non-commercial, educational purposes.

16.4 Third Party Intellectual Property. Provider represents and warrants to the Board that Provider, in connection with providing the Ed Tech Products, will not infringe on any presently existing United States patent, copyright, trademark, service mark, trade secret and/or other confidentiality or proprietary right of any person or other third party.

16.5 Survival. The obligations set forth in this Section shall survive the termination or expiration of this Agreement.

17. Representations and Warranties of Provider: Provider represents and warrants that the

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following are true and correct as of the effective date of this Agreement and shall continue to be true and correct during the Term of this Agreement.

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

17.2 Compliance with Laws. Provider is and shall remain in compliance with all applicable federal, state, county, and municipal statutes, laws, ordinances, and regulations relating to this Agreement, the performance of Services, and delivery of Products, in effect now or later and as amended from time to time, including but not limited to the Prevailing Wage Act, 820 ILCS 130/1 *et seq.*; the Drug-Free Workplace Act; the Illinois School Student Records Act (“ISSRA”); the Family Educational Rights and Privacy Act (“FERPA”); the Student Online Personal Protection Act (“SOPPA”); the Children’s Online Privacy Protection Act (“COPPA”); the Protection of Pupil Rights Amendment (“PPRA”); and any others relating to non-discrimination. Further, Provider is and shall remain in compliance with all applicable Board policies and rules. Board policies and rules are available at www.cps.edu.

17.3 Good Standing. Provider is not in default and has not been deemed by the Board to be in default under any other Agreement with the Board during the five-year period immediately preceding the effective date of this Agreement.

17.4 Authorization. If Provider is an entity other than a sole proprietorship, Provider represents that it has taken all action necessary for the approval and execution of this Agreement, and execution by the person signing on behalf of Provider is duly authorized by Provider and has been made with complete and full authority to commit Provider to all terms and conditions of this Agreement which shall constitute valid, binding obligations on Provider.

17.5 Financially Solvent. Provider 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, deliver all Products, and perform all obligations under this Agreement.

17.6 Gratuities. No payment, gratuity, or offer of employment was made by or to Provider in relation to this Agreement or as an inducement for award of this Agreement.

17.7 Contractor’s Disclosure Form. The disclosures in the Contractor’s Disclosure Form previously submitted by Provider are true and correct. Provider 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.

17.8 Research Activities and Data Requests. Provider shall not conduct any research in the Chicago Public Schools or use CPS Student Data for research purposes. In the event Provider seeks to conduct research in the Chicago Public Schools or use Confidential Information, including CPS Student Data, for purposes not specified in this Agreement, then Provider shall comply with the Board’s External Research Study and Data Policy (19-1211-PO3), as amended from time to time. Provider acknowledges and agrees that it may not begin any research activities or obtain data for research purposes without the prior written consent of the Board’s Director of Performance Data & Policy or his/her designee.

17.9 Prohibited Acts. Within the three (3) years prior to the Effective Date of this Agreement, Provider or any of its members if a joint venture or a limited liability company, or any of its or their respective officers, directors, shareholders, members, managers, other officials, agents or employees (1) have not been convicted of bribery or attempting to bribe a public officer or employee of any public entity, and (2) 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.

17.10 Debarment and Suspension. Provider certifies to the best of its knowledge and belief, after due inquiry, that:

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- i. it, its principals, and its subcontractors providing Products and Services under this 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 Section 33E-4 (bid rotating) of the Illinois Criminal Code (720 ILCS 5/33A *et seq.*);
- ii. it, its principals, and its subcontractors providing Products and Services under this Agreement are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency or any unit of State or local government; and
- iii. it, its principals, and its subcontractors providing Products and Services under this Agreement have not violated the rules, regulations, or laws of any federal, state, or local government unit or agency.

“Principals” for the purposes of this certification means officers, directors, owners, partners, persons having primary management or supervisory responsibilities within a business entity; and, if a joint venture is involved, each joint venture member and the principals of each such member. In performing the Services for the Board, Provider shall not utilize any firms that have been debarred from doing business with the Board under the Board’s Debarment Policy (08-1217-PO1), as amended.

17.11 Third Parties’ Property and Information. In performing and delivering Services and Products 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 Products, Materials and any other Products that it furnishes to the Board under the Agreement and can grant or assign all rights granted or assigned to the Board pursuant to the Agreement.

17.12 Assignment of Warranties. Provider has the right, title, and ability to assign and shall assign to the Board any third-party warranties from any necessary parties concerning the Products, including Products, and Services provided under this Agreement.

17.13 Documentation Warranty. All documentation provided to the Board from Provider concerning the Products and Services shall be kept current with any upgrades or updates.

17.14 Service Warranty. Provider has carefully examined and analyzed the provisions of this Agreement, including but not limited to all exhibits attached and incorporated into it, and can and will perform, or cause, the Services to be performed in strict accordance with the provisions and requirements of the Agreement. Services will be performed in a timely, professional and workmanlike manner in accordance with all applicable industry and professional standards.

17.15 Technology Performance. During the Term of the Agreement and any Renewal Terms, Products shall (i) be free from defects in material and workmanship under normal use and remain in good working order, and (ii) function properly and in conformity with the warranties herein and in accordance with this Agreement and with the description, specifications and documentation on the Board computers and systems including updates or new releases to such hardware, systems, and other software, and interface with other programs as required. The documentation shall completely and accurately reflect the operation of the Products. Provider shall promptly correct any failure of the Products to perform in accordance with the current published specifications and documentation, but in no case shall the Board be responsible for any costs associated with Products of which Provider has notice of unresolved performance issues.

17.16 Free of Computer Viruses. Provider shall use commercially reasonable best efforts to ensure that Products is free of any malware, malicious code, Trojan horses, ransomware, keyloggers, rootkits, worms or any other computer viruses (collectively **“Computer Viruses”**). Provider shall also maintain a master copy of the appropriate versions of Products, free of Computer Viruses, where appropriate.

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17.17 Not Alter Program. Provider shall not, directly or through a third party, knowingly remove, alter, change or interface with Products or any other program for the purpose or preventing the Board from utilizing Products or any other program.

17.18 No Disabling Code. Provider shall not knowingly cause any disabling code to be incorporated into Products.

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

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

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

18. **Background Check:** Provider 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 this 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". Provider shall not allow any Staff to have contact with students until Provider has confirmed with the Board that each respective Staff has successfully completed the Background Check in accordance with the following requirements:

18.1 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 this 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.

18.2 Criminal History Records Check. Provider 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 this Agreement through the process established by the Board, including using the Board's contracted Provider for conducting such checks, and otherwise in accordance with the Illinois School Code (105 ILCS 5/3418.5), 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; and
- 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.

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18.3 Department of Children and Family Services Check. At Provider's cost and expense, the Board shall have the right to check Staff who may have contact with a CPS student pursuant to this 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"). Provider 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.

18.4 Background Check Representations and Warranties. With respect to each Background Check, Provider further represents and warrants that Provider 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 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; and
- f. Immediately remove from any contact with any CPS student pursuant to this 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.

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

If Provider fails to comply with this Section, in whole or in part, then, in addition to the Remedies set forth in this Agreement, the Board may exercise additional remedies, including but not limited to: (i) withholding payments due under this Agreement, and any other agreement Provider may have or enter into with the Board until Provider remedies such non-compliance to the Board's reasonable satisfaction; (ii) immediately terminating this 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 this 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 Provider's non-compliance with this Section shall constitute a material breach of this Agreement.

19. Early Termination: The Board may terminate this Agreement in whole or in part at any time for any reason by giving thirty (30) days' written notice to Provider in accordance with the provisions of the Notice Section.

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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 that are providing Services under the Agreement 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 the Agreement. In no event shall Provider 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.

20. Suspension of Services: The Board may upon written notice, request that Provider suspend supplying Products and Services in whole or part. The date of suspension shall be the date set forth in the notice. 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. The Board shall not be responsible for any additional costs or expenses incurred by Provider as a result of remobilization.

21. Events of Default and Remedies:

21.1 Events of Default ("**Events of Default**") include without limitation the following:

- a. Any action or failure to act by Provider that affects the safety and/or welfare of any students or Board staff;
- b. Any material misrepresentation by Provider in the inducement of the Agreement or the provision of Services;
- c. Breach of any term, representation or warranty made by Provider in the Agreement;
- d. Default by Provider under any other agreement Provider may have with the Board;
- e. Where Services include contact with CPS students, any failure to comply with the Background Check Section of this Agreement, in whole or in part; and
- f. Failure of Provider to perform any of its obligations under this Agreement including without limitation the following:
 - i. Failure to perform the Services with sufficient personnel or material to ensure the timely performance of Services;
 - ii. Failure to perform Services and/or failure to deliver Products in accordance with the terms of this Agreement;
 - iii. Failure to deliver Products and/or to perform the Services in a manner reasonably satisfactory to the Chief Procurement Officer of the Board;
 - iv. Failure to promptly re-deliver Products and/or to re-perform Services that were rejected by the Board as incomplete or unsatisfactory within a reasonable time and at no cost to the Board;
 - v. Discontinuance of the Products and/or Services for reasons within Provider's reasonable control; and
 - vi. Failure to comply with any term of this Agreement, including but not limited to, the provisions concerning insurance and nondiscrimination and any other acts specifically stated in this Agreement constituting an Event of Default.
- g. Default by Provider under any other agreement Provider may have or may enter into with the Board.

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- h. Assignment by Provider for the benefit of creditors or consent by Provider to the appointment of a trustee or receiver or the filing by or against Provider 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.

21.2 Remedies: The Board in its sole discretion may declare Provider in default if Provider commits an Event of Default. The Chief Procurement Officer may in his/her discretion give the Provider an opportunity to cure the default within a certain period of time (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 Chief Procurement Officer determines, in his/her sole discretion, that no opportunity to cure is to be granted, he/she may give a default notice (“**Default Notice**”).

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 Services unless otherwise specifically directed in the notice.

Upon the giving of a notice as provided in this Agreement, the Board may invoke any or all of the following remedies:

- a. Take over and complete the supply of Services or any part thereof, by contract or otherwise as agent for and at cost of Provider either directly or through others, if applicable. 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. Terminate this Agreement, in whole or in part, as to any or all of the Services yet to be supplied effective at a time specified by the Board;
- c. Suspend performance of 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 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. Specific performance, an injunction or any other appropriate equitable remedy;
- e. Receive from Provider any and all damages incurred as a result or in consequence of an Event of Default;
- f. Money damages.
- g. Use an Event of Default as a basis to deem Provider non-responsible in future contracts to be awarded by the Board, and/or seek debarment of Provider pursuant to the Board’s Debarment Policy (19-0626-P01), as may be amended.

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 Services despite one or more Events of Default, Provider shall in no way be relieved of any responsibilities, duties

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or obligations under this Agreement nor shall the Board waive or relinquish any of its rights under this Agreement, at law, in 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 to the Early Termination provision above.

21.3 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, and to the extent applicable, Provider shall turn over to the Board or its designee within thirty (30) business 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 the Agreement or the performance or furnishing of Services, except that Provider may keep a copy of such information for its own records subject to other restrictions contained in this Agreement regarding the retention and use of this information. In the event the Board elects to have Provider destroy materials, Provider shall provide an affidavit attesting to such destruction.

22. Assignment: This Agreement is binding on the parties and their successors and assigns; provided, however, Provider may not assign this Agreement or any obligations imposed hereunder without the prior written consent of the Board.

23. 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 reasonable costs and attorney fees, arising out of all claims, liens, damages, obligations, actions, suits, judgments or settlements, or causes of action of every kind, nature, and character (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 Services infringe, misappropriate, or otherwise violate any confidentiality, proprietary, or intellectual property rights of any third party.

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, including but not limited to any Student Data, arising or alleged to arise from the acts or omissions of Provider, its employees, agents, or subcontractors, in addition to the obligations provided in this Section, Provider shall cover any costs or fees associated with (i) providing notices of a 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 reasonable 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.

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However, if Provider after receiving notice of any such proceeding, fails to promptly begin defense of such claim or action, then 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.

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

25. Insurance: Provider, at its own expense, shall procure and maintain insurance for all operations under this Agreement, whether performed by Provider 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. Provider shall submit to the Board satisfactory evidence of insurance coverage prior to commencement of Services. Minimum insurance requirements are:

a. Workers' Compensation and Employers' Liability Insurance. Workers' Compensation Insurance affording workers' compensation benefits for all employees as required by law and Employers' Liability Insurance covering all employees who are to provide Services under this 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.

b. Commercial General Liability Insurance. Commercial General Liability Insurance or equivalent with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) 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, and defense. Provider agrees to continue insurance meeting these requirements for a minimum of two years following termination or expiration of this Agreement, including any renewals. General liability insurance may not exclude coverage for sexual abuse and/or molestation. If Provider's Commercial General Liability insurance excludes coverage for sexual abuse and/or molestation, then Provider must have additional Sexual Abuse & Molestation Insurance equal to the terms set forth in this Sub-section.

c. Sexual Abuse & Molestation Insurance. If Provider does not have separate Sexual Abuse & Molestation Insurance, then Provider's Commercial General Liability policy must include and not exclude Sexual Abuse & Molestation with limits of not less than One Million Dollars (\$1,000,000.00) per claim and Two Million Dollars (\$2,000,000.00) in the aggregate. If coverage is claims made, the policy shall have a retroactive date effective upon the Effective Date of the Agreement and have extended reporting period of not less than two (2) years following completion of the Agreement. Any retroactive date or prior act exclusion must predate the Effective Date of this Agreement and any earlier commencement of Services.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE.

- d. Technology Errors and Omissions.** Provider shall maintain coverage with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for errors and omissions in conjunction with professional services inclusive of assumption of contractual liability. This coverage must include Privacy/Network Coverage and security/privacy must **not** be excluded. The policy shall have a retroactive date effective with commencement of professional services and have an extended reporting period of not less than two (2) years following completion of such professional services. Subcontractors performing technical services for Provider must maintain limits of not less than One Million Dollars (\$1,000,000) per occurrence with the same terms herein, if Provider is not providing coverage for its subcontractors.
- e. Cyber Liability and Privacy & Security Coverage Insurance.** Provider shall carry coverage for damages arising from a failure of computer security or wrongful release of private information including expenses for notification as required by local, state, and federal guidelines. Limit of liability should be at least Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate. Any retroactive date or prior acts exclusion must predate the date of the Agreement. If coverage is made on a "claims-made basis", an extended reporting provision of at least two (2) years must be included. Cyber liability may be included in a technology errors and omissions policy.
- f. Umbrella/Excess Liability Insurance.** Umbrella or Excess Liability Insurance with limits not less than Two Million Dollars (\$2,000,000.00) per occurrence, which will provide additional limits for employers' general insurance and shall cover the Board and its employees, subject to that of the primary coverage.
- g. Additional Insured.** Provider shall have its insurance policies endorsed to provide: "The Board of Education of the City of Chicago, a body politic and corporate, and its members, employees, and agents, and any other entity as may be designated by the Board are named as additional insured on a primary basis without recourse or right of contribution from the Board."

The Provider 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 Provider for any Products or Services if satisfactory proof of insurance is not provided by Provider prior to the performance of any Services. The Certificate must provide 30 days prior written notice of material change, cancellation, or non-renewal be given to:

Risk Management
Board of Education of 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 Provider's obligation to obtain the required insurance. The receipt of any certificate does** not constitute agreement by the Board that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with the **Agreement requirements. Provider's failure to carry or document required insurance shall** constitute an Event of Default. In the event Provider fails to fulfill the insurance requirements of this Agreement, the Board reserves the right to stop the Services until proper evidence of insurance is provided, or this Agreement may be terminated.

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

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

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE.

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

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

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

Certificate Monitoring Company

Topiary Communications, Inc.
211 W. Wacker Dr., Ste 220
Chicago, Illinois 60606
Phone – (312) 494-5709
Email – dans@topiarycomm.net

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

26. Audit and Document Retention: Provider shall permit and cooperate in good faith in any audits by the Board or its agents for compliance with this Agreement. Provider shall furnish the Board with such information, supporting documentation and reports as may be requested relative to the progress, execution and costs of the Products and Services. Failure of Provider to comply in full and cooperate with the requests of the Board or its agents shall give the Board, in addition to all other rights and remedies hereunder, the right to charge Provider for the cost of such audit. Provider shall maintain all records, correspondence, invoices, financial documents or information, receipts, vouchers, memoranda and other data regardless of type or medium (including emails or other electronically stored data) relating to Provider's Products and Services and to this Agreement. **Specifically, a complete record of all communications between the Board's students and Provider's employees, agents, and subcontractors, including but not limited to text messages, chat dialogue, email communications, and recorded voice communications, must be retained for three hundred sixty-five (365) days, in accordance with the Board's E-Mail Retention Policy, adopted July 25, 2007 (07-0725-PO3), as may be amended.** All other records referenced above shall be retained for five (5) years after the termination or expiration 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 shall cooperate with the Board in obtaining any records relating to Provider's Products and Services that may be in the possession of its subcontractors.

27. Notices: All notices required under this Agreement shall be in writing and shall be sent to the addresses and persons set forth below, or to such other addresses as may be designated by a party in writing. All notices shall be deemed received when (i) delivered personally, or (ii) sent by facsimile (followed by actual documentation), or (iii) one day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt. Refusal to accept delivery has the same effect as receipt.

If to the Board: Board of Education of City of Chicago
Office of Teaching & Learning
Chief Teaching & Learning Officer
42 W. Madison
Chicago, Illinois 60602

With a copy to: Board of Education of City of Chicago
Attention: General Counsel

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE.

One North Dearborn, 9th Floor
Chicago, Illinois 60602

If to Provider: Zearn, Inc.
261 West 35th Street, 15th Floor
New York, New York 10001
Attention: Legal Notices; legalnotices@zearn.org

28. 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 and delivery of Products hereunder, subject to the terms and conditions contained herein and those rules established by the Board and the subject school principal. 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 Products and Services. 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 of this Agreement.

29. Principal's Right to Direct: The principal or his/her designee, the Network Chief or his/her designee, or the Department Officer or his/her designee shall have the authority to the maximum extent possible, to direct Provider and its subcontractors when delivering Products and performing Services to a specific School, Network, or Department.

30. Minimum Wage: In performance of this Agreement, Provider must comply with the Board's Minimum Wage Resolution (14-1217-RS2) and any applicable regulations issued by the Board's CPO. The Board's resolution adopts Chicago Mayoral Executive Order 2014-1. A copy of the Mayoral Order may be downloaded from the Chicago City Clerk's website at: https://chicityclerk.s3.amazonaws.com/s3fs-public/document_uploads/executive-order/2014/Executive-Order-No-2014-1.pdf; the Board's Resolution may be downloaded from the Chicago Public School's website at: http://www.cpsboe.org/content/actions/2014_12/14-1217-RS2.pdf. In the event of any discrepancy between the summary below and the Resolution and Order, the Resolution and Order shall control.

Provider must: (i) pay its employees no less than the minimum wage in accordance with the Resolution and Order ("Minimum Wage") for work performed under the Agreement; and (ii) require any subcontractors sublicensees, or subtenants, to pay their employees no less than the Minimum Wage for work performed under the Agreement.

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

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

The Minimum Wage is not required to be paid to employees whose work is performed in general support of **Provider'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.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE.

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

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

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

31. Non-Discrimination: It shall be an unlawful employment practice for Provider 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, religion, sex, sexual orientation, age, disability, or national origin; or to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual from equal employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's race, color, religion, sex, sexual orientation, age, disability, or national origin.** Provider 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 Individuals with Disabilities Education Act, 20 U.S.C.A. 1400, *et seq.*; the Illinois Human Rights Act, 775 ILCS 5/1-101, *et seq.*; the *Illinois School Code*, 105 ILCS 5/1-1; and the Chicago Human Rights Ordinance, ch. 2-160 of the Municipal Code of Chicago, all as amended, as well as all other applicable federal, state, county, and municipal statutes, regulations and other laws. Nothing in this paragraph is intended nor shall be construed to create a private right of action against the Board or any of its employees. Furthermore, no part of this paragraph shall be construed to create contractual or other rights or expectations for the employees of either Provider or its subcontractors.

32. 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 of 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 addressed to the office identified in Notice Section above, by registered or certified mail addressed to the office actually maintained by Provider, or by personal delivery on any officer, director, or managing or general agent of Provider. 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.

33. Continuing Obligation to Perform: In the event of any dispute between Provider and the Board, Provider shall expeditiously and diligently proceed with the performance of all of its obligations under this Agreement with a reservation of all rights and remedies it may have under or pursuant to this Agreement at law or in equity.

34. Conflict of Interest: This Agreement is not legally binding on the Board if entered into in violation of the provisions of 105 ILCS 5/34-21.3, which restricts the employment of or in the letting of contracts to former Board members within one year period following expiration or other termination of their office.

35. Indebtedness: Provider 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 part of this Agreement as if fully set forth herein.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE.

36. Ethics: No officer, agent or employee of the Board is or shall be employed by Provider or has or shall have a financial interest, directly or indirectly, in this Agreement or the compensation to be paid hereunder except as may be permitted in writing by the Board's Code of Ethics, adopted May 25, 2011 (11-0525-PO2), as amended from time to time, which policy is hereby incorporated by reference into and made part of this Agreement as if fully set forth herein.

37. M/WBE Program: Provider acknowledges that it is familiar with the requirements of the Board's "*Remedial Program for Minority and Women Owned Business Enterprise Participation in Goods and Services Contracts*", which is incorporated by reference as if fully set forth herein. Provider agrees to adhere to the minimum participation goals, as applicable, and to all other applicable MBE/WBE requirements as set forth in the plan. Provider agrees to submit such documentation in connection with the plan as may be requested by the Board.

Provider 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>. Provider 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. Provider 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.

38. Inspector General: Each party acknowledges that in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Board of Education of 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.

39. Freedom of Information Act: Provider acknowledges that this Agreement and all documents submitted to the Board related to this contract are a matter of public record and are subject to the Illinois Freedom of Information Act (5 ILCS 140/1) and any other comparable state and federal laws and that this Agreement is subject to reporting requirements under 105 ILCS 5/10-20.44. Provider further acknowledges that this Agreement shall be posted on the Board's website at www.cps.edu.

40. 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.

41. Survival; Severability: All express warranties, representations and indemnifications made or given in this Agreement shall survive the supply of Products and Services by Provider or the termination of this Agreement for any reason. In the event that any one or more of the provisions contained herein will for any reason be held to be unenforceable or illegal, such provision will be severed; and the entire Agreement will not fail, but the balance of this Agreement will continue in full force and effect. In such event, the parties agree to negotiate in good faith a substitute enforceable and legal provision that most nearly effects the intent of the parties in entering into this Agreement.

42. 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. In the event of a conflict between the contents of an exhibit and those of the Agreement that is signed by both parties, the Agreement shall supersede and prevail. No modification of or amendment to this Agreement shall be effective unless such modification or amendment is in writing and signed by the authorized representatives of both parties. Any prior agreements or representations, either written or oral, relating to the subject matter of this Agreement is of no force and effect.

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

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE.

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

**BOARD OF EDUCATION OF
CITY OF CHICAGO**

Zearn, Inc.

DocuSigned by:
Jonathan Maples
By: _____
DDA11008D0234D7...
Jonathan Maples
Chief Procurement Officer

By: *Shalinee Sharma*
Name: Shalinee Sharma
Title: CEO

Date: October 13, 2020

Date: 10/01/2020

Board Authority: 20-0923-RS1

Approved as to legal form: DS
JW DS
JG DS
AB

DocuSigned by:
Joseph T. Moriarty

Joseph T. Moriarty
General Counsel

ATTACHMENTS:

- EXHIBIT A CHANGE ORDER FOR TECHNICAL INFORMATION**
- EXHIBIT B SCOPE OF STUDENT DATA COLLECTED**
- EXHIBIT C INFORMATION TECHNOLOGY AND SECURITY REQUIREMENTS**
- EXHIBIT D SCHOOL SOW TEMPLATE**

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE.

Exhibit A

CHANGE ORDER FORM FOR TECHNICAL INFORMATION			
Date		Change Order # _____	Provider Name
Change Request: This Change Order is pursuant to the terms of Agreement for Ed Tech Services and Data Sharing (“Agreement”)			
<p>Provider’s responses to ITS interrogatories regarding compliance with the Board’s Acceptable Use Policies (“Technical Information”) are modified as follows:</p> <p>All other Technical Information provided remains otherwise accurate and in effect for the Approved Product(s) identified in the Agreement.</p>			
Cause of Change Request:			
Comments/ Additional Information:			
Effective Date of Change Order			
Agreement Terms		All terms and conditions of the Agreement are applicable and remain in effect. No attempt to alter those terms and conditions through this Change Order will be effective.	
Authorizations (Must be signed by both parties in order for Change Order to be effective)			
Board’s Chief Teaching & Learning Officer/designee		Provider’s Authorized Representative	
Name:		Name:	
Date:		Date:	
Board’s ITS Program Manager			
Name:			

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE.

Exhibit B

Scope of Student Data Collected

This Scope of Student Data Collected ("**Scope**") will be conducted pursuant to the terms and conditions of the Ed Tech Services and Data Sharing Agreement ("**Agreement**") by and between the Board of Education of the City of Chicago, commonly known as the Chicago Public Schools (the "**Board**" or "**CPS**"), and Zearn, Inc. (the "**Provider**"). Defined terms used in this Scope will have the same meanings as those ascribed to such terms in the Agreement. If there is any conflict between this Scope and the Agreement, the Agreement shall govern and control.

<p>1. <u>Student Data Required:</u> The Provider requires the following Student Data elements necessary to provide the Products and/or Services under this Agreement: Student first name, student last name, student identification number, SIS ID, grade level, student date of birth (if using Clever for rostering).</p>	<p><input type="checkbox"/> Student email addresses only <input type="checkbox"/> Student rostering data (first name and last name of students, students' email addresses, students' school, students' teacher, students' class, students' grade)</p>
<p>2. <u>Student Data Usage:</u> Please describe how each aforementioned Student Data element will be used by the Provider under this Agreement:</p>	<p>Student Data will be used only as necessary for Provider to perform the services in the Zearn School Account Agreement.</p>
<p>3. <u>Deliverables:</u> The Provider will use the aforementioned Student Data in order to provide the following Products and/or Services:</p>	<p>Services as described in the Zearn School Account and On-Demand PD Agreement.</p>

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE.

EXHIBIT C: ITS REQUIREMENTS

Provider shall provide Services according to the following Information Technology And Security (“ITS”) requirements and pursuant to the terms and conditions of the Ed Tech Services and Data Sharing Agreement (“**Agreement**”) by and between the Board of Education of the City of Chicago, commonly known as the Chicago Public Schools (the “**Board**” or “**CPS**”), and Zearn, Inc. (the “**Provider**”). Defined terms used in this Exhibit will have the same meanings as those ascribed to such terms in the Agreement. If there is any conflict between this Exhibit and the Agreement, the Agreement shall govern and control.

1. **Hosting of the Products and Data.** Subject to the terms and conditions of this Agreement and to the extent applicable, Provider shall host the Products and the Board’s data on servers, hardware, components, and equipment (collectively “**Infrastructure**”) that Provider shall provide at its own cost (collectively, the “**Hosting Services**”). The Infrastructure shall be located within the continental United States. Provider is expected to provide ample storage and processing power within its Infrastructure and maintain it to assure the continued operation of the Products and Services and to take such action as may be necessary (at Provider’s own expense) to assure the continued performance according to the parties’ general expectations under the terms of the Agreement. This may include but is not limited to: an adequate disaster recovery plan; backup Infrastructure; secure connections between the Board’s Resources and the Infrastructure; and security controls and procedures to prevent unauthorized access to the Products and Infrastructure, which includes segregating or partitioning the Infrastructure from other unauthorized hardware and/or other devices. The Hosting Services shall be included in the term “**Services**” as that term is defined and used herein.
2. **Bundled Hardware, Equipment, or Accessories:** To the extent that the Products are bundled with or otherwise cannot be purchased separate from specified hardware, equipment, or accessories (collectively “**Hardware**”), the following terms shall apply to such Hardware:
 - 1.1 **Warranty.** Provider hereby warrants that all Hardware furnished hereunder shall be new and conform to the manufacturer’s specifications and such other specifications as may be included in the exhibits to this Agreement. The Hardware shall be of merchantable quality and in good working order, and shall be free from defects in materials, workmanship, and design for a period of at least one (1) year from the date of the Board’s receipt unless otherwise stated in the exhibits incorporated into this Agreement. This warranty shall survive inspection, acceptance, payment, expiration, or termination of this Agreement. A letter or other document describing all warranty information, including but not limited to the manufacturer’s name, the product number, the length of the warranty, and the manufacturer’s contact information, shall be provided to the Board.
 - 2.2 **Inspection and Out-of-Box Failures:** Following receipt, the Board will have a minimum of fifteen (15) business days to inspect the Hardware and perform any tests the Board deems necessary to adequately demonstrate that the Hardware meets the required specifications. Unless Provider receives written notification of defects, Provider will conclusively deem such Hardware accepted after the above-referenced inspection period; however, the Board will still have the right to return the Hardware through Provider’s or the manufacturer’s return policy.
 - 2.3 **Hardware Recall:** Provider shall notify the Board within two (2) business days of Provider’s receipt of any manufacturer or government sponsored recalls on Hardware purchased pursuant to this Agreement. Recalled Hardware should be replaced at no cost to the Board, including any costs associated with the retrieval and replacement of the Hardware, within a reasonable time.
3. **Handling of Confidential Information.** Provider shall protect against the unauthorized access, use or disclosure of Confidential Information by employing security measures that are no less

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protective as those used to protect Provider's own confidential information. When handling Confidential Information, which may include but is not limited to Student Data, Provider shall:

- i. When mailing physical copies of Confidential Information, send the Confidential Information in a tamper-proof, labeled container, with a tracking number and a delivery confirmation receipt;
- ii. Not store any Confidential Information on portable or removable electronic media, such as CDs, DVDs, electronic tape, flash drives, etc.;
- iii. Not leave Confidential Information in any medium unsecured and unattended at any time;
- iv. 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;
- v. 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. Provider 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. Provider 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.
- vi. Secure the Confidential Information stored on its systems, including but not limited to any servers, by employing adequate security measures to prevent unauthorized access, disclosure and use of that information. These measures include appropriate administrative, physical, and technical safeguards, policies and procedures relating to data access controls. All Confidential Information must be secured in transit using secure FTP services or https/TLS 1.0+. Provider must maintain industry recognized security practices to establish secure application(s), network, and infrastructure architectures.
- vii. Ensure that the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed within Provider's Products, Services, and supporting enterprise complies with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.
- viii. Conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Provider 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. Provider agrees to share its incident response plan upon request.
- ix. 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 design.
 2. Encrypt user passwords in any data storage location and obfuscate

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE.

- 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 login with a 256-bit or higher encryption algorithm.
 5. Secure transmission of login credentials.
 6. Enforce change of characters when new passwords are created.
 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. If applicable, conduct or undergo system level testing whenever new functionalities are added to the system to reconfirm system security measures are retained and functional, and that interaction with the Board systems is not degraded or compromised.
 10. Employ an in-line intrusion protection system that inspects incoming data transmissions.
 11. Prevention of hostile or unauthorized intrusion.
 12. Backup of all Confidential Information at least once every twenty-four (24) hours. Perform database snapshots at least daily and retain for at least ninety (90) days.
- x. Confidential Information shall be stored, backed up, and served only on servers located in the continental United States. Provider's network where Confidential Information may be stored shall have an in-line intrusion prevention system that inspects incoming data transmissions. Provider 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.

EXHIBIT D: SCHOOL SOW TEMPLATE
STATEMENT OF WORK #

This statement of work ("Statement of Work" or "SOW") is made and entered by and between the Board of Education of the City of Chicago, commonly known as Chicago Public Schools ("Board" or "CPS") and the undersigned Provider ("Provider"). Services provided pursuant to an approved Statement of Work form shall be performed pursuant to the terms of the For-Cost Ed Tech Services and Data Sharing Agreement by and between CPS and Provider ("Agreement"). No attempt to alter the terms and conditions of the Agreement through this Statement of Work will be effective. Any attempt to modify or add to the legal terms and conditions of the Agreement through this Statement of Work shall be null and void.

SCHOOL WHERE SERVICES WILL BE PROVIDED:

Provider will provide Services at the School specified below and shall be paid accordingly via a Purchase Order:

Name of School: _____

Address of School: _____

Service to be Provided:

CONTACT PERSON:

Each Party will appoint a person to act as that Party's point of contact ("Contact Person") as the time for performance nears and will communicate that person's name and information to the other Party's Contact Person.

The CPS Contact Person is authorized to approve materials and Services provided by Provider, and Provider may rely on the decisions and approvals made by the CPS Contact Person that are in accordance with the terms of the Agreement. The CPS Contact Person will manage all communications with Provider related to this SOW, and when Services are performed at a CPS-Designated Location, the CPS Contact Person will be present or available.

PROVIDER Contact Person

Name: Ashley Birsic
Title: Head of Partnerships
Email: ashley@zearn.org

CPS Contact Person

Name: _____
Title: _____
Email: _____

In acknowledgement that the parties below have read and understood this Statement of Work and agree to be bound by it, each party has caused this Statement of Work to be signed and transferred by its respective authorized representative.

PROVIDER:

By: _____

signature

Name: _____

Title: _____

Date: _____

Board of Education of City of Chicago

By: _____

signature

Name: _____

Title: _____

Date: _____

Copies of the fully approved Statement of Work shall be provided to the CPS Law Department upon execution.