

## LICENSE AGREEMENT

**THIS LICENSE AGREEMENT (the “Agreement”)**, dated as of \_\_\_\_\_, 20\_\_\_\_, is made and entered into by and between **THE INDEPENDENT SCHOOL DISTRICT NO. 1 OF TULSA COUNTY, OKLAHOMA, a/k/a TULSA PUBLIC SCHOOLS (“TPS”)** and **THE INDEPENDENT SCHOOL DISTRICT NO. \_\_\_\_\_ OF \_\_\_\_\_ COUNTY, OKLAHOMA, a/k/a \_\_\_\_\_ PUBLIC SCHOOLS (“Licensee”)**.

### RECITALS:

A. TPS has developed a teacher evaluation framework known as the Tulsa TLE Observation and Evaluation System which has been selected as the presumptive default for teacher evaluations under the Oklahoma Teacher and Leader Effectiveness Evaluation System in accordance with the provisions of OKLA. STAT. tit. 70, § 6-101.16.

B. TPS and the Licensee desire to license the use of TPS’s TLE System to the Licensee for use in teacher evaluations beginning with the pilot year of implementation (2012-2013) and thereafter.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TPS and Licensee agree as follows:

1. **Definitions.** The following definitions shall apply to this Agreement:

(a) **“Documentation”** shall mean all written user information, in any format, delivered or made available to Licensee by TPS under the terms of this Agreement and related to the TLE System, including, without limitation, instructions, manuals, training materials, handbooks, rubrics, templates, observation forms and any other publications that contain, describe, explain or otherwise relate to the TLE System.

(b) **“TLE System”** shall mean the Tulsa TLE Observation and Evaluation System and all related Documentation licensed to Licensee pursuant to this Agreement.

2. **Grant of License.** Subject to the terms and conditions of this Agreement, TPS hereby grants to Licensee a perpetual, non-exclusive, non-transferable license to use the TLE System and any accompanying Documentation according to TPS’s directions and specifications (the “License”). The Licensee may make copies of or otherwise reproduce the TLE System Documentation for Licensee’s internal use provided Licensee agrees not to remove or destroy any copyright or other designations or notices placed upon or contained within the TLE System Documentation.

3. **License Limitations.** All rights not specifically granted to Licensee under this Agreement are retained by TPS. Licensee acquires no ownership, rights, title or other interest in

or to the TLE System other than as expressly provided herein. This License does not include any right to grant sublicenses or other rights in the TLE System to others or to assign or transfer this License to any third party. Licensee is not granted the right to create derivative works of the TLE System; but any and all derivative works of the TLE System, if created and by whomever created, shall be the sole property of TPS. Licensee agrees that it shall not contest TPS's ownership of or intellectual property rights to the TLE System or related Documentation.

4. **Licensee's Obligations.** Licensee agrees to permit TPS and its employees, agents or representatives, to make onsite visits and to conduct telephone interviews with Licensee's employees utilizing the TLE System to monitor proper implementation of the TLE System and to obtain information regarding Licensee's use of and experience with the TLE System.

5. **Term and Termination.** The term of this Agreement shall be perpetual subject, however, to TPS's right of termination as provided herein. Upon termination of the License for any reason, Licensee shall cease using the TLE System and shall destroy or return all copies of the Documentation in Licensee's possession or under its control whether provided by TPS under this Agreement or copied or created by Licensee.

TPS shall have the right to terminate this Agreement upon written notice to the Licensee should the Licensee fail to comply in any material respect with Licensee's obligations hereunder. TPS's right of termination shall be in addition to any other right or remedy it may have at law or in equity.

7. **Support, Training and Services.** Licensee's license of the TLE System does not, by itself, entitle Licensee to any support, training or other services. TPS may agree to provide Licensee with technical support, upgrades, enhancements and modifications of the TLE System and Documentation as may become available, from time to time. TPS may charge Licensee a reasonable fee for the delivery of upgrades, enhancements and modifications of the TLE System or for access to training materials created after the date of this Agreement. Licensee shall reimburse TPS for all costs incurred by TPS in providing Documentation, now or in the future and for providing training or support services requested of TPS by Licensee.

8. **License Fee.** The TLE System is provided to Licensee at no cost to Licensee save and except for reimbursement of costs for Documentation, support and/or training services requested by Licensee.

9. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING FROM THIS AGREEMENT OR THE BREACH HEREOF.

10. **Disclaimer of Warranties.** TPS provides the TLE System to Licensee "AS IS". TPS makes no warranty, either expressed or implied, as to any matter whatsoever, including, without limitation, the functionality of the TLE System, its merchantability or fitness for use or

for any particular purpose. TPS does not warrant that the TLE System will meet Licensee's requirements.

11. **Release by Licensee.** Licensee, in consideration for the grant of the License and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby releases TPS, its officers, board members, agents and employees, from any and all liability or expense, including, without limitation, reasonable attorneys' fees, expenses, costs, judgments, settlements, or other costs to the extent arising out of or relating to (1) Licensee's use, misuse or modification of the TLE System; or (2) Licensee's failure to use corrections or enhancements to the TLE System provided to Licensee by TPS.

12. **Licensee's Remedies.** Licensee's exclusive remedy hereunder is termination of this Agreement.

13. **Miscellaneous.**

(a) **Representations and Warranties.** Each party represents and warrants that (i) it is authorized, empowered and able to enter into and fully perform its obligations under this Agreement; (ii) its performance of this Agreement will not conflict with or result in a breach or violation of any of the terms or provisions or contribute to a default under any agreement to which it is a party; and (iii) it will comply with all applicable laws, rules and regulations of any governmental authority of competent jurisdiction in the performance of its obligations under this Agreement.

(b) **Relationship of the Parties.** TPS and Licensee are independent contractors under this Agreement and nothing contained herein will be construed to create a partnership, joint venture or agency relationship of any kind.

(c) **Assignment.** The license granted by this Agreement may not be assigned, sublicensed, transferred voluntarily by Licensee or by operation of law or otherwise without TPS's prior written consent.

(d) **Notices.** Any notice to be delivered pursuant to this Agreement shall be deemed delivered upon service, if served personally, or three (3) days after deposit in the United States mail if mailed by first class mail, postage prepaid, registered or certified, and addressed to the person designated for receipt of notice hereunder, at the following address or at such other address as may be specified from time to time by either party:

TPS:

Tulsa Public Schools  
Attn: \_\_\_\_\_  
3027 South New Haven  
Tulsa, Oklahoma 74114-6131

Licensee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(e) **Entire Agreement.** This Agreement constitutes the entire agreement of the parties relative to the licensing of use of the TLE System and supersedes all oral or written proposals or understandings concerning such subject matter. This Agreement may be modified only pursuant to a writing executed by both parties.

(f) **Severability.** If any of the provisions of this Agreement are held by a court of competent jurisdiction to be invalid or unenforceable under any applicable statute or rule of law, such provision shall, to that extent, be deemed omitted and the remaining portions of this Agreement shall remain in full force and effect.

(g) **Survivability.** The obligations set forth herein shall survive any termination of this Agreement.

(h) **Waiver.** No term or provision of this Agreement shall be deemed to be waived and no consent to any breach or default shall be deemed to have been made unless such waiver or consent shall be in writing signed by the party against whom the waiver or consent is asserted. The waiver of one breach or default or any delay in exercising any rights under this Agreement shall not constitute a waiver of any subsequent breach or default.

(i) **Construction.** Descriptive headings or captions in this Agreement are for convenience only and shall not affect the construction or application of this Agreement. No rule of construction requiring interpretation against the drafting party shall be applied or given effect.

(j) **Intellectual Property.** Licensee shall cooperate fully with TPS in the maintenance and protection by TPS of any rights or interests of TPS in the TLE System or other intellectual property or interests therein that are the subject matter of this License.

**IN WITNESS WHEREOF**, TPS and Licensee have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**INDEPENDENT SCHOOL DISTRICT NO. 1  
OF TULSA COUNTY, OKLAHOMA, a/k/a  
TULSA PUBLIC SCHOOLS**

**By:** \_\_\_\_\_  
**President, Board of Education**

**“TPS”**

**INDEPENDENT SCHOOL DISTRICT NO. \_\_\_\_  
OF \_\_\_\_\_ COUNTY, OKLAHOMA,  
a/k/a \_\_\_\_\_ PUBLIC SCHOOLS**

**By:** \_\_\_\_\_  
**President, Board of Education**

**“LICENSEE”**