

Section I. Membership Terms and Conditions

1. PARTIES AND DEFINITIONS

1.1 This Membership Agreement (this "Agreement") is entered into as of the date noted in Section III by and between American Productivity & Quality Center, Inc.® ("APQC") and the organization listed in Section III ("Member").

1.2 As used in this Agreement, (a) "Affiliate" means any entity in which Member has greater than 50% ownership; (b) "Employee" means a person who receives an IRS Form W-2, or international equivalent, from Member or Affiliate; and (c) "APQC Content" means the materials made available to Member as a membership benefit, including through the APQC website, Knowledge Base, Benchmarking Portal, Open Standards BenchmarkingSM Database, MosaiQ™, and all content, software, databases and associated services provided in connection therewith.

2. MEMBERSHIP TERMS, CONDITIONS & BENEFITS

2.1 Membership Fee. Member shall select the appropriate level below and pay the applicable annual membership fee. Fees are payable in U.S. Dollars by check, credit card or wire transfer and do not include applicable taxes.

Number of schools in the district	Annual Fee
1 – 50	\$1,000 USD
51 – 150	\$2,500 USD
More than 150	\$5,000 USD

2.2 Membership Benefits. Membership entitles Member, including its Affiliates and Employees, access to and use of APQC's standard member benefits and services during the term of membership, including access to the APQC Content, in accordance with the terms of this Agreement. All member benefits are for Member's internal use only and may not be marketed, distributed or sold to third parties, whether or not for profit. Except as may be provided by separate agreement or license between Member and APQC, Member may not publicly distribute, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell any of APQC's membership benefits or services.

2.3 Online Resources. The APQC Content is available to Member during the term of membership through APQC's Online Resources. Member's access to and use of APQC's Online Resources is subject to APQC's Online Resources Terms of Service. APQC reserves

the right to update, revise, replace and/or remove portions of the APQC Content from time to time without notice.

3. TERM AND TERMINATION

3.1 Term. The membership shall begin upon execution of this Agreement by Member and shall continue for so long as Member pays the applicable membership fee.

3.2 Termination. APQC may terminate this Agreement upon ten (10) days written notice if (a) Member materially fails to comply with the terms and conditions of this Agreement, including APQC's Online Resources Terms of Service, or (b) APQC reasonably determines termination is or may be required by any applicable law, rule, regulation, court order or government action. In the event of termination under paragraph 3.2(b), APQC will refund Member a prorated portion of the current membership fee.

4. SPECIAL PROVISIONS

4.1 Publicity. APQC may publish, online or in print, a full or partial list of member organizations for the purpose of soliciting new members. At Member's request, APQC shall exclude Member's organization name from APQC's public member list.

4.2 No transfer of title. APQC's disclosure of any information or data to Member shall not operate to transfer to Member any ownership rights in such information or data and nothing herein shall be construed to give Member any right, title or interest in any such information or data.

4.3 Independent contractors. Nothing herein is intended to or shall be construed as (a) forming a partnership, joint venture, or other combination between APQC and Member, (b) obligating either party to deal with the other on an exclusive basis, or (c) benefiting any third-party.

4.4 Disclaimer of Warranty and Limitation of Damages. EXCEPT AS PROVIDED IN PARAGRAPH 4.5 BELOW, ALL PRODUCTS AND SERVICES PROVIDED BY APQC PURSUANT TO THIS AGREEMENT ARE PROVIDED "AS-IS." APQC DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE. MEMBER ASSUMES ALL RISK OF LOSS OR DAMAGE ARISING OUT OF OR RELATED TO THE MEMBERSHIP. UNDER NO CIRCUMSTANCES SHALL APQC BE LIABLE TO MEMBER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR COVER DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM DELAY OF DELIVERY OR FROM LOSS OF PROFITS, DATA, BUSINESS OR GOODWILL, WHETHER OR NOT APQC HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL APQC'S LIABILITY TO MEMBER, FOR ANY CLAIM, DEMAND OR CAUSE OF ACTION, EXCEED THE AMOUNT PAID TO APQC FOR THE MEMBERSHIP.

4.5 Representation as to APQC Content. Notwithstanding anything in this Agreement to the contrary, APQC represents and warrants to Member that (a) APQC owns, or otherwise has the right to license to others, the right to use, copy, publish, and display the APQC Content

and (b) the APQC Content does not infringe upon or violate any patent, copyright, trademark, trade secret or other proprietary or intellectual property right of any third party.

5. MISCELLANEOUS

5.1 No Assignment. Neither party may assign this Agreement without the prior express written permission of the other party.

5.2 Survival. If any term of this Agreement is or becomes illegal, unenforceable, or invalid (in whole or in part) for any reason, the remainder of this Agreement shall remain in full force and effect without being impaired or invalidated in any way. All obligations of the parties that expressly or by their nature survive termination or expiration of this Agreement shall continue in full force and effect subsequent to and notwithstanding such termination or expiration and until they are satisfied or by their nature expire.

5.3 Governing law; jurisdiction. This Agreement, including any question concerning its existence, scope, validity, or interpretation, shall be governed by and construed solely in accordance with the laws of the State of Texas, without regard to its conflicts of law principles. Each Party irrevocably agrees that any legal action, suit or proceeding in any way arising out of or related to this Agreement or the membership must be brought solely and exclusively in the state or federal courts located in Houston, Texas, USA and each Party irrevocably submits to the sole and exclusive jurisdiction of such courts. APQC AND MEMBER AGREE NOT TO DEMAND A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM AND HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ISSUE.

5.4 Entire agreement. This Agreement represents the entire agreement and understanding of the parties with respect to the matters addressed herein and supersedes any and all prior or contemporaneous representations, statements or agreements of any kind, whether written or oral, made by or on behalf of either party. This Agreement may not be changed or amended unless done so in writing signed by both parties.

Section II. Membership Fee

Member agrees to submit total payment in US Dollars within 30 days of the Effective Date below.

<u>Number of schools in the district</u>	<u>Annual Fee</u>
<input checked="" type="checkbox"/> 1 – 50	\$1,000
<input type="checkbox"/> 51 – 150	\$2,500
<input type="checkbox"/> More than 150	\$5,000
Total	\$ _____

APQC's Federal Tax Identification Number is 74-2094629.

Section III. Authorization and Effective Date

On behalf of Member, I have read and agree to be bound by this Agreement.

Organization
Name:

Boone County Schools Tax ID No.: 01-0001252

Signature: _____

Print Name: _____

Job Title:

Superintendent

Effective Date: _____