



FLOYD COUNTY BOARD OF EDUCATION
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Dr. Chandra Varia, Member - District 2
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Consent Agenda Item (Action Item): Consider the purchase of CERT assessments for all students in Grades 8-11 at each school.

Applicable Statute or Regulation: Board Policy 01.11 General Powers and Duties of the Board

Fiscal/Budgetary Impact: The approximate total cost for online assessment and reports is \$12,500.00.

History/Background: The CERT assessment is an assessment program that will be used to predict performance on the ACT, as well as to measure progress throughout the school year.

Recommended Action: Approve the purchase of CERT assessment for Grades 8-11 for each school in the district.

Contact Person(s): Tonya Goodman

		
Principal	Director	Superintendent

Date: August 23, 2017

The Floyd County Board of Education does not discriminate on the basis of race, color, national origin, age, religion, marital status, sex, or disability in employment, educational programs, or activities as set forth in Title IX & VI, and in Section 504.

ePrep, Inc.
340 Wall Street
Princeton, NJ 08540 US
(877) 377-3744
thomas@eprep.com
www.eprep.com

ESTIMATE

ADDRESS

Floyd County HS, KY
ATTN: Tonya Goodman

ESTIMATE # 1535**DATE 08/15/2017**

SALES REP

Brooke Sampson

ACTIVITY	QTY	RATE	AMOUNT
420 - CERT Middle School Student Middle school student access to CERT for 1 year. Access to one course (6th, 7th, or 8th Grade)	500	5.00	2,500.00
420 - CERT High School Student High school student access to CERT for 1 year. Access to one course (9th, 10th, 11th, or 12th)	1,000	9.00	9,000.00
420 - Mini Quizzes 44 additional quizzes Subjects: English (8), Math (16), Reading (8), and Science (12)	1,000	1.00	1,000.00

TOTAL**\$12,500.00****Accepted By****Accepted Date**

LICENSE AND SERVICES AGREEMENT

THIS LICENSE AND SERVICES AGREEMENT (this "*Agreement*"), by and between ePrep, Inc. ("*ePrep*") and _____ ("*School*") is entered into as of the ____ day of _____, 2016 (the "*Effective Date*").

WITNESSETH

WHEREAS, ePrep is in the business of licensing access to its College Equipped Readiness Tool (CERT) to schools throughout the United States;

WHEREAS, School desires that ePrep license CERT to School; and

WHEREAS, ePrep desires to license CERT to School.

AGREEMENT

NOW, THEREFORE, ePrep and School, in consideration of the mutual covenants contained herein, hereby agree as follows:

I. LICENSE

ePrep hereby grants School a non-exclusive license (the "*License*"), during the Term (defined below), to use CERT through an exclusive online account created by ePrep for School (the "*School Account*"). The School Account will allow School to issue, monitor, and maintain CERT student accounts (collectively, "*Student Accounts*" and, individually, "*Student Account*"), each of which shall include grade-appropriate access to the assessment tests set forth in **Schedule 1**, attached hereto and made a part hereof.

The School Account will initially include a minimum of one hundred (100) program credits, each of which shall entitle School to create one Student Account. Program credits shall be purchased by School from ePrep in accordance with the fee schedule set forth in **Schedule 2**, attached hereto and made a part hereof. During the Term, School will have the right, but not the obligation, to purchase additional program credits in accordance with the fee schedule set forth in **Schedule 2**.

Access to ePrep's SnapGrader technology shall be purchased by School from ePrep, at School's discretion, in accordance with the fee schedule set forth in **Schedule 3**, attached hereto and made a part hereof.

II. EPREP SERVICES

A. School Account: Upon execution of this Agreement, ePrep will initialize the School Account (if one does not already exist from a prior year) and provide log-in credentials to an administrative representative of School, who shall be designated the "super administrator" of the School Account.

B. Online Training: After the School Account has been fully initialized, ePrep will provide School with a minimum of two (2) hour-long webinar training sessions on days and at times mutually agreed upon.

C. Customer Support: ePrep will provide customer support to School via email and a toll-free telephone number.

D. Web Hosting Services: ePrep will provide the following services:

- i. Host, manage, and make available the School Account and all Student Accounts (collectively, the "*School Program*") to School and its student end users, as appropriate.

- ii. Maintenance and general upgrades to back-end and online portions of the School Program performed in a manner, on days, and at such times so as to cause the least disruption in use and access to the School Program.

E. Test Release Cycle: ePrep will make assessment tests available to School during three (3) assessment periods each year in accordance with the dates set forth in **Schedule 4**, attached hereto and made a part hereof.

F. Definition of Services. The ePrep services set forth in subsections A-E above will be referred to in this Agreement as, the “*ePrep Services*.”

III. OBLIGATIONS OF SCHOOL

A. Initial Purchase: Upon execution of this Agreement, School will pay ePrep for its initial purchase of program credits, which will include a minimum of one hundred (100) program credits in accordance with the fee schedule set forth in **Schedule 2**.

B. Registration: School will issue one (1) Student Account to each student end user it selects to participate in the CERT interim testing program. School will not allow two or more students to share a single Student Account. School hereby represents and warrants that it will adhere to the terms of this subsection (B) during the Term. School hereby acknowledges that its failure to comply with the terms of this subsection (B) would be a material breach of this Agreement.

C. Restricted Account Access: School will limit access to the School Account to its employees and/or advisors. School will safeguard its School Account log-in credentials with the same degree of care it uses to safeguard its own confidential and/or proprietary information.

D. Restricted Test Content Access: School will use its best efforts to limit student access to CERT test materials. For purposes of clarity, this means that School will not permit its administrators or its students to copy, distribute, and/or use CERT test materials, other than for the purpose of administering and completing CERT tests in accordance with the testing dates set forth in **Schedule 4**.

E. Customer Support: With the help of ePrep, School will provide non-technical customer support to its student end users.

IV. Program Credits

A. Testing Cycle: Each program credit will entitle School to create one Student Account. Each student account will remain active throughout the academic year in which it was assigned. For purposes of clarity, a Student Account created in August or September (i.e., the beginning of an academic year) will remain active until the following June or July (i.e., the end of the same academic year), and a Student Account created in December or January (i.e., the middle of an academic year) will remain active only until the following June or July (i.e., the end of the same academic year).

B. Student Account Renewal: A student account that expires at the end of one academic year can be re-activated by a School administrator for any subsequent academic year. The cost of re-activating a Student Account for a subsequent academic year is one (1) program credit. For purposes of clarity, program credits can be used to create or re-activate Student Accounts.

C. Refunds/Expiration: Program credits are non-refundable. Program credits purchased during an academic year will expire at the end of such academic year. For purposes of clarity, program credits purchased but not used in one academic year, cannot be used in any subsequent academic year during the Term.

V. OWNERSHIP.

A. Ownership of Platform: ePrep is the sole and exclusive owner of the online platform that supports the School Program (the “*Platform*”). School shall not take any action inconsistent with ePrep’s ownership of the Platform.

B. Ownership of Test Content: ePrep is the sole and exclusive owner of the content included in each of the CERT tests (the “*Test Content*”). School shall not take any action inconsistent with ePrep’s ownership of the Test Content.

C. Ownership of Marks: Title to, and ownership of, the marks of ePrep and the look and feel of the School Account and the Student Accounts will at all times exclusively remain with ePrep.

D. Ownership of End User Information: School is the sole and exclusive owner of all personally identifiable student-end-user information. Notwithstanding the forgoing, ePrep shall have the right to use personally identifiable student-end-user information for the purpose of creating Student Accounts, assessing student performance through Student Accounts, and generating both individual and group reports for the use and benefit of School.

VI. TERM AND TERMINATION.

A. Term: The term of this Agreement shall commence on the Effective Date and shall expire on the date one year thereafter (the “*Initial Term*”). Unless either ePrep or School provides the other party with written notice of termination at least 30 days before the end of the Initial Term, or the then-current Renewal Term, this Agreement will be extended for additional one-year terms (each a “*Renewal Term*”). The Initial Term and all Renewal Terms are hereinafter referred to as the “*Term*.”

B. Termination for Breach: Either ePrep or School may terminate this Agreement at any time in the event of a material breach by the other party (i.e., either School or ePrep, as appropriate) that remains uncured after thirty (30) days written notice thereof. If any party to this Agreement reasonably determines that its good name or good reputation has been materially and adversely impacted by action of another party, both other parties, or the agents thereof, such adversely impacted party may terminate this Agreement immediately upon written notice to the other parties (with the notice specifying in reasonable detail the items relied upon by the adversely impacted party in making that determination).

C. Termination for Insolvency: Either ePrep or School may terminate this Agreement immediately following written notice to the other party (i.e., either School or ePrep, as appropriate), if the other party (i) ceases to do business in the normal course, (ii) becomes or is declared insolvent or bankrupt, (iii) is the subject of any proceeding related to its liquidation or insolvency (whether voluntary or involuntary) which is not dismissed within sixty (60) calendar days, or (iv) makes an assignment for the benefit of creditors.

D. Effect of Termination on End User Accounts: Expiration (or termination of this Agreement by either ePrep or School for any reason) shall result in the immediate termination of all of the Services and the License. Termination shall not limit a party from pursuing other remedies available to it.

VII. LIMITATION OF LIABILITY

NEITHER PARTY TO THIS AGREEMENT SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT OR ITS TERMINATION, WHETHER FOR BREACH OF WARRANTY OR ANY OBLIGATION ARISING THEREFROM OR OTHERWISE, WHETHER LIABILITY IS ASSERTED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT PRODUCT LIABILITY), AND IRRESPECTIVE OF WHETHER EITHER OF THE PARTIES HAS ADVISED, OR HAS BEEN ADVISED, OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.

VIII. AUTHORITY.

Each party represents and warrants that it has the authority to enter into this Agreement and to perform its respective responsibilities, duties and obligations as provided herein.

IX. NON-SOLICITATION OF EMPLOYEES.

No party, without the consent of the others, shall solicit for employment any employee of the other during the Term and for a period of twelve (12) months after the expiration or earlier termination of this Agreement. General solicitations or advertising for employment by one party to fill open positions in newspapers, periodicals or on the Internet, to which the employees of another party may respond, shall not be deemed to be a violation of the provisions of this Section IX.

X. GENERAL.

A. Independent Contractor/Subcontractors. As among themselves, the parties are independent contractors with no authority, other than that set forth in this Agreement, to contract for or in any way to bind or to commit another to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of another. Under no circumstances will any party hold itself out as or be considered an agent or an employee of another. In the event either party subcontracts some of its duties or obligations hereunder to a third-party service provider, such party agrees that such act shall not limit or abridge its obligations, responsibilities, or liabilities.

B. No Waiver. The failure of any party to insist upon a strict performance of or to seek remedy of any one of the terms or conditions of this Agreement or to exercise any right, remedy or election set forth herein or permitted by law shall not constitute nor be construed as a waiver or relinquishment for the future of such term, condition, right, remedy or election, but such items shall continue and remain in force and effect. All rights or remedies of a party specified in this Agreement and all other rights or remedies that any party may have at law, in equity or otherwise shall be distinct, separate and cumulative rights or remedies, and no one of them, whether exercised by the party seeking enforcement or not, shall be deemed to be in exclusion of any other right or remedy of such party. Any consent, waiver or approval by a party of any act or matter must be in writing and shall apply only to the particular act or matter to which such consent or approval is given.

C. Assignment. Any party may assign its rights and/or its obligations pursuant to this Agreement to any subsidiary, affiliate and/or to a successor in interest of itself, its subsidiaries, or its affiliates, and each party acknowledges that all or substantially all of the assets or the equity interests of the others may be transferred to a third party during the Term. Assignment includes merger, acquisition, sale or transfer of all or substantially all of the common stock or assets of a party, consolidation, restructuring, reorganization or other distribution including by operation of law.

D. Captions. The captions are for convenience and in no way define, limit, or enlarge the scope of this Agreement or any of its Sections.

E. Severability. If any provisions of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement, or the application of such provisions or circumstances other than those as to which it is determined to be invalid or unenforceable shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

F. Survival. The provisions of this Agreement regarding and each party's rights and obligations set forth in Sections IV, V, VII, VIII, IX, and this Section X shall survive expiration or termination of this Agreement.

G. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all previous representations, understandings, discussions or agreements, oral or written, by and between the parties regarding all relevant aspects of the subject matter of this Agreement and supersedes all prior understandings and agreements, if any and whether oral or in writing, among the parties regarding such subject matter. The parties further agree that they are not relying upon any representations, statements, or agreements from the other as a basis for entering into this Agreement except for those expressly set forth in this Agreement. This Agreement may only be amended by an instrument in writing signed by ePrep and School.

H. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

I. Facsimiles. The parties hereto (i) each agree to permit the use, from time to time and where appropriate under the circumstances, of signatures sent via facsimile or electronically (e.g., in a .pdf file) in order to expedite the transaction(s) contemplated by this Agreement; (ii) each party intends to be bound by its respective signature sent by that party via facsimile or electronically; (iii) are each aware that the other will rely on signature pages sent via facsimile or electronically; and (iv) each acknowledge such reliance and waive any defenses to the enforcement of the documents effecting the transactions contemplated by this Agreement based on the signature page being a facsimile or electronic copy. The parties covenant that each time they send a signature page via facsimile or electronically, they will in a timely manner send the other party the original signature page(s).

IN WITNESS WHEREOF, ePrep and School, each acknowledging that it has had the opportunity to review this Agreement with legal counsel, have signed this Agreement effective as of the Effective Date.

EPREP, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Schedule 1

Assessments included in CERT High School Package			
	Fall	Winter	Spring
Grade 9	9 th Grade Test 1 (CERT PLAN)	9 th Grade Test 2 (CERT PLAN)	9 th Grade Test 3 (CERT PLAN)
Grade 10	10 th Grade Test 1 (CERT PLAN)	10 th Grade Test 2 (CERT ACT)	10 th Grade Test 3 (CERT ACT)
Grade 11	11 th Grade Test 1 (CERT ACT)	11 th Grade Test 2 (CERT ACT)	11 th Grade Test 2 (CERT ACT)
Grade 12	The two tests of the CERT – Senior Remediation Program can be administered at any time between August 15 and June 30.		
Assessments included in CERT Middle School Package			
	Fall	Winter	Spring
Grade 6	6 th Grade Test 1 (CERT EXPLORE)	6 th Grade Test 2 (CERT EXPLORE)	6 th Grade Test 3 (CERT EXPLORE)
Grade 7	7 th Grade Test 1 (CERT EXPLORE)	7 th Grade Test 2 (CERT EXPLORE)	7 th Grade Test 3 (CERT EXPLORE)
Grade 8	8 th Grade Test 1 (CERT EXPLORE)	8 th Grade Test 2 (CERT EXPLORE)	8 th Grade Test 2 (CERT PLAN)

Schedule 2

CERT High School Package Fee: \$9.00 per student/year (without quizzes)*. **
\$10.00 per student/year (with quizzes) *. **

CERT Middle School Package Fees: \$7.00 per student/year (without quizzes) (when high school in same district does NOT use CERT) *. **
\$8.00 per student/year (with quizzes) (when high school in same district does NOT use CERT) *. **

\$5.00 per student/year (without quizzes) (when high school in same district uses CERT) *. **
\$6.00 per student/year (with quizzes) (when high school in same district uses CERT) *. **

*Note: Students are only permitted to complete the tests that correspond with their grade level. For example, a student in 9th grade may complete the CERT Grade 9 assessments only during such student's freshman year.

**Note: Schools purchasing credits must decide whether ALL of its students will have access to the quizzes or NONE of its students. Schools are NOT permitted to purchase program credits with quizzes for some students and without quizzes for others.

Schedule 3

Administration Costs	
Administration Mode	Costs
Online	N/A
Offline	CERT provides PDF files of all assessment tests and answer sheets. If the high school or middle school opts to administer a CERT test in a traditional offline (paper-pencil) environment, the school must bear the cost of printing tests and answer sheets.
Grading Costs	
Administration Mode	Costs
Online	N/A
Offline	<p>With regard to grading tests administered in offline (paper-pencil) mode, schools generally have two options:</p> <ol style="list-style-type: none"> 1. They can transfer answers from offline answer sheets to online answer grids manually one student at a time, using school employees or outside contractors. 2. They can use CERT's SnapGrader, a computer-based scanning tool, at the following prices: <ul style="list-style-type: none"> • \$200 for 100 scan credits* • \$500 for 300 scan credits* • \$750 for 500 scan credits* • \$1,500 per year for unlimited students**
<p>* One scan credit can be used to grade the assessment of one student. (For purposes of clarity, this means that a school will use 3 scan credits for 1 student who takes 3 CERT assessments during a given academic year: 1 credit during the fall assessment period; 1 during the winter period; and 1 during the spring period.) Scan credits not used by a school in one academic year can be used in the next. Scan credits are not refundable.</p> <p>** Because each school has a unique CERT account, a high school and a middle school in the same district are NOT permitted to share scan credits or the use of unlimited per-year scans.</p>	

Schedule 4

CERT Yearly Testing Schedule			
	Fall Administration	Winter Administration	Spring Administration
Testing Period Dates	August 15 – October 31	December 1 - February 28	March 1 – June 30