



FLOYD COUNTY BOARD OF EDUCATION
Stephen A. Trimble, Interim Superintendent
106 North Front Avenue
Prestonsburg, Kentucky 41653
Telephone (606) 886-2354 Fax (606) 886-8862
www.floyd.kyschools.us

Sherry Robinson- Chair - District 5
Dr. Chandra Varia, Vice-Chair - District 2
Linda C. Gearheart, Member - District 1
William Newsome, Jr., Member - District 3
Rhonda Meade, Member - District 4

Date: April 18, 2018

Consent Agenda Item (Action Item): Approve purchase of ATLAS by use of the Floyd County Schools for the 2018-2021 School Years.

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

Fiscal/Budgetary Impact: NT3 Grant Funding \$6825.00

History/Background: ATLAS is an online searchable database of teacher videos. All videos meet the standard of accomplished teaching models as identified by the National Board for Professional Teaching Standards. This subscription will be used district-wide in Professional Learning Communities to help build capacity of Accomplished Teaching.

Recommended Action: Approve as presented.

Contact Person(s): Angela Duncan, Director District Wide-Services


Director


Superintendent

ATLAS

Accomplished Teaching, Learning and Schools™

**National Board for Professional Teaching Standards, Inc. ("National Board")
ATLAS Subscription Terms and Conditions**

Subscriber (Institution): Floyd County Schools

Contact Name: Angela Duncan

Contact Title: Director of District Wide Services

Address: 106 North Front Ave., Prestonsburg, KY 41653

Telephone: 606-886-2354 **Email:** angela.duncan@floyd.kyschools.us **Fax:** _____

The following ATLAS Subscription Terms and Conditions ("Terms") apply to the Licensed Content subscribed to by the above-referenced Subscriber, as specifically identified in this Cover Sheet. Capitalized terms used in this Cover Sheet shall be defined as set forth in these Terms.

Subscriber Authorized Users and Subscription Fees:

Authorized Organization(s):

Authorized User Volume: Up to 75 Users

- ☐ **Subscription Fee (Annual):** _____
☒ **Subscription Fee (3 year subscription):** \$ 6,825.00
☐ **LTI Integration Costs:**

Moodle, Canvas, or Blackboard. Other platforms are custom integrations..

Training: Webinar trainings for Site Administrator and Faculty

Subject Areas of Licensed Content:

- ☒ **ALL**
☐ **Other: Please specify:** _____

Collections:

- ☒ **ALL**
☐ **National Board** ☐ **edTPA** ☐ **Common Core Math** ☐ **Common Core ELA** ☐ **Next Gen Science**
☐ **High Leverage Teaching Practices** ☐ **Deeper Learning** ☐ **C3** ☐ **InTASC**

Developmental Age Ranges of Licensed Content:

- ☒ **ALL**
☐ **Other: Please specify:** _____

Term: The Initial Term shall begin on July 1, 2018 (the "Effective Date") and end on June 30, 2021.

By signing below, the Parties agree to be bound by the underlying ATLAS Subscription Terms and Conditions.

Subscriber	National Board
Signature: _____	Signature: <u>Stephen Helgeson</u>
Name: _____	Name: <u>Stephen Helgeson</u>
Title: _____	Title: <u>VP NP&S</u>
Date: _____	Date: <u>4/18/18</u>

National Board for Professional Teaching Standards, Inc.
ATLAS Subscription Terms and Conditions

The following ATLAS Subscription Terms and Conditions (“Terms”) are effective, as of the Effective Date set forth in the Cover Sheet, between National Board for Professional Teaching Standards, Inc. (the “National Board”) and Subscriber (collectively “the Parties”).

1. **Definitions.** For purposes of these Terms:

- a. **“ATLAS”** refers to the National Board’s ATLAS product, which is a web-based database of Cases (as defined herein).
- b. **“Licensed Content”** refers to the National Board materials consisting of audiovisual recordings, Cases, Commentaries, Instructional Materials, Framework Tags, Supplemental Material, and Resources (as those terms are defined herein) to be accessed via ATLAS, as further defined and delimited in these Terms.
- c. **“Case”** refers to an audiovisual recording, accompanying Commentary (as defined herein), and related Instructional Materials (as defined herein), to be accessed via ATLAS in accordance with these Terms.
- d. **“Commentary”** refers to written commentary that is associated with a specific Case that appears as onscreen text or, for administrative users, as a PDF of MS Word document.
- e. **“Instructional Materials”** refers to additional written or graphical material, supporting a specific Case that is usually available as a PDF or other electronic file.
- f. **“Framework Tags”** refers to identifiers that link teaching and learning frameworks to observable activities in ATLAS. Frameworks are copyrighted by their respective organizations. Framework tags are a copyright element in ATLAS.
- g. **“Resources”** are resources to help users make effective use of ATLAS, such as user guides, examples of use of ATLAS cases, syllabi, and related materials provided by the National Board to support effective use of ATLAS Cases. These materials are copyrighted but made available to users under an Attribution-NonCommercial-ShareAlike Creative Commons license.
- h. **“Background”** refers to written materials such as evaluation of evidence guide, standards, portfolio instructions, scoring guide, and other materials that the National Board regularly makes available to candidates for National Board certification.
- i. **“Course”** refers to educational courses, training, or other professional learning activities developed by Authorized Users (as defined herein) using Licensed Content in accordance with these Terms.
- j. **“Authorized Organizations”** refers to Subscriber and any organization serving or supporting pre-service or in-service teachers to whom Subscriber grants access to ATLAS, as set forth on Cover Sheet which is incorporated herein by reference. Access by Authorized Organizations, including updating the list of Authorized Organizations identified on Cover Sheet, shall be subject to prior approval by the National Board.

- k. **“Authorized Organization Materials”** refers to all works, reports, materials, and all works of authorship in whatever form, printed, electronic, or otherwise, except for Segments (as defined herein), that are developed, created, or prepared by Authorized Users in connection with any Course.
 - l. **“Authorized User”** refers, collectively, to Authorized Organization’s Administrative and General Users (as those terms are defined herein). Authorized Organization will disable access to ATLAS within three (3) business days if any Authorized User becomes disaffiliated with Authorized Organization.
 - a. **“Administrative User”** refers to an individual who is an employee, independent contractor, faculty member, or staff member of Authorized Organization who has been assigned a user name and password by Authorized Organization. Administrative users are permitted to access ATLAS directly (via the National Board’s website) or using Authorized Organization’s Authorized System (as defined herein) and use that access to provide Licensed Content in contexts such as Courses to General Users (e.g. pre-service and early career teachers). An independent contractor must be employed, and/or accessing ATLAS, physically at Authorized Organization’s facilities. Authorized Organization may permit Administrative Users to authorize access to Cases and ATLAS features by General Users, and create user names and passwords to be assigned to General Users in accordance with these Terms.
 - b. **“General User”** refers to an individual who is an employee, independent contractor, registered student, faculty member, or staff member of Authorized Organization who has been assigned a user name and password by either Authorized Organization or by an Administrative User in accordance with these Terms, and who is permitted to access ATLAS directly (via the National Board’s website) or using Authorized Organization’s Authorized System (as defined herein) for the purpose of professional learning and growth. An independent contractor must be employed, and/or accessing ATLAS, physically at Authorized Organization’s facilities.
 - m. **“Authorized System”** refers to a secure network (whether a standalone network or a virtual network on the Internet) that is accessible only to Authorized Organization’s Authorized Users, requiring authentication of such users at the time of log-in and periodically thereafter consistent with current best practice, and the conduct of such users to be subject to regulation by the Authorized Organization. A proxy server may be included in the network.
 - n. **“Segment”** refers to an excerpt of a Case, including excerpts of accompanying Commentary and/or Instructional Materials, not to exceed seven (7) minutes of video and not to exceed two (2) page of text
2. **License Grant.** Subject to these Terms, the National Board grants to Authorized Organization a non-exclusive, non-transferable, limited license to access and use the Licensed Content and the right to sublicense access to and use of the Licensed Content to Authorized Users solely for the Permitted Uses set forth in these Terms. This license shall terminate upon the expiration or termination of these Terms.

3. **Permitted Uses of Licensed Content.** Authorized Organization may use Licensed Content only for the purposes set forth below and only in accordance with these Terms.

a. **Authorized Users.** Administrative and General Users may use Licensed Content as follows:

i. **Administrative Users.**

- (1) Administrative Users may access and view Licensed Content for purposes of their own personal professional growth and development.
- (2) Administrative Users may access and view Licensed Content for purposes of developing and preparing Courses and/or Authorized Organization Materials as follows:
 - i. Administrative Users may embed, as links to ATLAS, Segments or Cases in Courses and/or Authorized Organization Materials. Upon request by the National Board, Authorized Organization agrees to provide the National Board with access to or a copy of any Course and/or Authorized Organization Materials developed by any Administrative User.
 - ii. Administrative Users may create Segments, including excerpts of Commentary and/or Documentation, to be embedded, as links to ATLAS or (in the case of Commentaries) as paper copies, in Courses and/or Authorized Organization Materials. Administrative Users may download Commentary and/or Instructional Materials related to Cases for the sole purpose of creating Segments. The National Board reserves the right to access and review any Segments created by any Administrative User.
 - iii. Commentaries or other Licensed Content may be printed or disseminated only for direct use with ATLAS, and only then only for personal professional development or use by or with General Users.
 - iv. The National Board reserves the right to deny the use of any Licensed Content by Authorized Organization in connection with any Course and/or Authorized Organization Materials.
- (3) Administrative Users may display Licensed Content to other Authorized Users in connection with the delivery of any Course and/or Authorized Organization Materials developed in accordance with these Terms.
- (4) Administrative Users may create user names and passwords to be assigned to General Users in connection with any Course.
- (5) Administrative Users may authorize General Users to access ATLAS, directly (via the National Board's website) or using Authorized Organization's Authorized System, and view certain Licensed Content in connection with any Course.
- (6) Administrative Users may authorize the use of specific ATLAS features by General Users in connection with any Course.

- ii. **General Users.** As authorized by an Administrative User, General Users may access ATLAS, directly (via the National Board's website) or using Authorized Organization's Authorized System, and view certain Licensed Content and/or use certain ATLAS features.
 - b. **Limited Use for Research.** Under limited circumstances, and in the sole discretion of the National Board, Authorized Organization may be permitted to: (i) use Licensed Content for research purposes; and (ii) publish abstracts, manuscripts, presentations, or other communications describing aspects of the Licensed Content. In all such cases, Authorized Organization must submit a written Request for Confidential and Appropriate use of National Board Data for Educational Research ("Research Request") to the National Board and receive written approval from the National Board before proceeding. Such approval may be conditioned upon execution of an additional license agreement by Authorized Organization.
 - c. **Additional Permitted Uses.** Authorized Organization may propose additional use(s) of Licensed Content to the National Board in writing for review and approval, which will be granted or denied in the sole discretion of the National Board. Any written proposal(s) submitted by Authorized Organization will be held confidential by the National Board unless otherwise agreed by Authorized Organization.
4. **Prohibited Uses of Licensed Content.** Authorized Organization acknowledges and agrees that Authorized Organization and its Authorized Users are prohibited from using Licensed Content as follows:
- a. Authorized Organization and its Authorized Users may not use ATLAS or Licensed Content for any purpose not explicitly permitted in paragraph 3 of these Terms.
 - b. Authorized Organization and its Authorized Users may not impose any fee or charge, or receive any other form of compensation in connection with the exercise of any of the rights granted under these Terms, excepting fees or tuition charged by Authorized Organization to its General Users in connection with Courses and/or Authorized Organization Materials, unless otherwise agreed upon by the Parties in writing.
 - c. Authorized Organization and its Authorized Users may not make any Licensed Content available for access to, display to, or use by anyone who is not an Authorized User, or otherwise transfer any Licensed Content to anyone who is not an Authorized User, except as explicitly provided in paragraph 3 of these Terms.
 - d. Authorized Organization and its Authorized Users may not download, reproduce, prepare derivative works based on, or store in print or electronic form any Licensed Content, except as explicitly provided in paragraph 3 of these Terms.
 - e. Authorized Organization and its Authorized Users may not make any effort to identify subjects appearing in any Licensed Content (including, without limitation, teachers, students, and other adults). In the event Authorized Organization becomes aware of the identity of any subject appearing in any Licensed Content, Authorized Organization must: (1) cease to make use of such cases with its Authorized Users with access to such Licensed Content; and (2) immediately notify the National Board.
 - f. Licensed Content may only be used to provide examples of accomplished teaching practice, as defined by the National Board standards (available at nbpts.org). In no event will

Authorized Organization and its Authorized Users use any Licensed Content to serve as an example of developmental or less-than-accomplished teaching practice, as defined by the National Board standards.

- g. Authorized Organization and its Authorized Users may not use Licensed Content in any manner that in any way demeans, disparages, or denigrates subjects appearing in Licensed Content (including, without limitation, teachers, students, and other adults), National Board Certified Teachers, or the National Board.
- h. Authorized Organization and its Authorized Users may not use Licensed Content in any manner that is inconsistent with the National Board mission to advance student learning and achievement by establishing the definitive standards and systems for certifying accomplished educators, providing programs and advocating policies that support excellence in teaching and leading, and engaging National Board Certified Teachers and leaders in that process.
- i. Authorized Organization and its Authorized Users may not use Licensed Content as example entries to support current candidates for National Board Certification or knowingly let current candidates access Licensed Content without providing appropriate accompanying Course or Organization Instructional Material without first notifying the National Board in writing; provided that candidates that are General Users of Authorized Organization may access and/or view Licensed Content in connection with Courses and/or Authorized Organization Materials delivered by an Administrative User for professional development in accordance with these Terms.
- j. Authorized Organization and its Authorized Users may not use Licensed Content to serve as benchmark examples or to otherwise be scored or used to certify teacher evaluators or observers without the prior written permission of the National Board.

5. Authorized Organization Obligations.

- a. Confidentiality.
 - i. Authorized Organization acknowledges that Authorized Organization will acquire information and materials from the National Board and knowledge about the business, products, services, and methods of the National Board, and that all such knowledge, information, and materials acquired, including, without limitation, ATLAS and Licensed Content, are and will be the trade secrets and confidential and proprietary information of the National Board (collectively “Confidential Information”). Wherever possible, Confidential Information will be marked to identify it as such. If Confidential Information is disclosed orally, the National Board will advise Authorized Organization of the confidentiality of such information in a manner deemed appropriate by the National Board. Confidential Information will not include, however, any information that is or becomes part of the public domain through no fault of Authorized Organization or that the National Board regularly provides to third parties without restrictions on use or disclosure or as required to disclose by law.
 - ii. Authorized Organization agrees to hold all Confidential Information in strict confidence and not to disclose any Confidential Information to others or use any Confidential Information in any way, commercially or otherwise, except as explicitly set forth in paragraph 3 of these Terms, or as otherwise authorized by the National Board in writing.

- iii. Authorized Organization agrees to take all reasonable action to prevent access to and/or use of any Confidential Information by any person or organization not expressly authorized by these Terms. Authorized Organization agrees to notify the National Board immediately of any unauthorized access to or use of any Confidential Information. Authorized Organization will promptly furnish full details of such unauthorized access or use to the National Board and will assist in preventing the recurrence of such unauthorized access or use.
- iv. The obligations of this paragraph 5.a. shall apply during the Term of these Terms and for five (5) years thereafter.

b. Additional Obligations.

- i. Authorized Organization assumes responsibility for any access to ATLAS by Authorized Organization's Authorized Users via Authorized Organization's Authorized System, and Authorized Organization assumes responsibility for any consequences that may result from any unauthorized access to or use of Licensed Content.
- ii. Authorized Organization and its Authorized Users are responsible for maintaining the confidentiality of any user names and passwords assigned by Authorized Organization under these Terms, including, without limitation, user names and/or passwords required for access by Authorized Organization's Authorized Users via Authorized Organization's Authorized System, and Authorized Organization assumes responsibility for any consequences that may result from any disclosure thereof.
- iii. Authorized Organization agrees to these Terms and shall be responsible for compliance with same on behalf of its Authorized Users. Authorized Organization represents and warrants that it has the right and authority to enter into these Terms and act on behalf of its Authorized Users.
- iv. Authorized Organization acknowledges and agrees that, upon initial access to ATLAS, Authorized Organization's Authorized Users will be required to accept a Click-Through Agreement with terms and conditions no less restrictive than these Terms, and, in the event of a conflict between the terms and conditions of the Click-Through Agreement and these Terms, these Terms will control. Authorized Organization represents and warrants that it will use best efforts to notify its Authorized Users of these Terms.

6. National Board Obligations.

a. Support.

- i. The National Board will provide access to ATLAS in accordance with common practice for commercial web-based services providers.
- ii. The National Board will provide Subscriber with reasonable technical support by email and telephone during the normal business hours of the National Board (Monday-Friday, 9:00 a.m. to 5:00 p.m. Eastern, except for official U.S. government holidays). Subscriber shall designate up to two (2) persons to the National Board, in writing, who shall be responsible for seeking support on behalf of Subscriber. Subscriber shall be entitled to change any or all of the persons so designated to the National Board at any time upon two (2) days' prior written notice. the National Board shall not be required to respond to

support inquiries from individual Authorized Users or non-Subscriber Authorized Organizations.

iii. The National Board reserves the right to interrupt the access to ATLAS as reasonably necessary or convenient for its own purposes, which may include, without limitation, changing access procedures and implementing improvements to ATLAS. The National Board shall use its best efforts to give Authorized Organization at least forty-eight (48) hours' notice of any interruption and to perform such maintenance during hours reasonably considered to cause the least disruption to Authorized Organization.

b. **Privacy.** The National Board will treat any Personally Identifiable Information accessed or collected by the National Board in connection with Authorized Organization's ATLAS subscription in accordance with the National Board for Professional Teaching Standards Privacy Policy (available at nbpts.org). "Personally Identifiable Information" means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Personally Identifiable Information in ATLAS may include User's name and email address.

7. Term and Termination.

a. **Term.** The Initial Term of use is set forth in the Cover Sheet. Thereafter, upon mutual written agreement of the Parties, these Terms will renew for successive terms ("Renewal Term(s)"), the duration of which will be determined by the Parties, and which, unless otherwise agreed to by the Parties, will begin on the anniversary of the Effective Date ("Renewal Date(s)"). The Initial Term and any Renewal Term(s) are collectively referred to herein as the Term.

b. **Termination.** These Terms may be terminated: (a) by either Party, for cause, upon fifteen (15) days' prior written notice if the other Party breaches any material term or condition of these Terms and such material breach is not remedied within such fifteen (15) day notice period; (b) immediately by written notice to the other Party upon the occurrence of any of the following events: (i) if the other Party ceases to do business, or otherwise terminates its business operations; (ii) if the other Party is unable to meet its obligations in the normal course of business; or (iii) if the other Party becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, or comparable proceeding, or if any such proceeding is instituted against the other Party and such proceeding is not dismissed within ninety (90) days; or (c) by either Party, for convenience, upon sixty (60) days' prior written notice to the other Party.

8. **Subscriber Obligations Upon Termination.** Within three (3) business days after the expiration or termination of these Terms, for any reason, all Authorized Organizations shall destroy or delete all Confidential Information in the possession of Authorized Organization and its Authorized Users, irrespective of format, including, without limitation, any Licensed Content, and shall provide to the National Board a written certification confirming such destruction.

9. Subscription Fee.

a. **Subscription Fee.** During the Initial Term of these Terms, Subscriber shall pay the National Board a subscription fee as set forth in the Cover Sheet.

b. **Payment.** Payment for the Initial Term is due within thirty (30) days of the Effective Date of these Terms. Payment for any Renewal Term(s) is due within thirty (30) days of any Renewal Date(s).

- c. Renewal. The National Board reserves the right to adjust the subscription fee in any Renewal Term(s) by providing notice to Subscriber within thirty (30) days of any Renewal Date(s).
- d. Taxes. Except as otherwise exempt from taxes, Subscriber shall be responsible for paying all applicable taxes resulting from its receipt of access to Licensed Content and/or any integration and connection services pursuant to these Terms, except for any taxes that may be based on income of the National Board.

10. Intellectual Property Rights.

- a. National Board Rights. The National Board shall own and retain ownership of all materials or intellectual property owned by the National Board as of the Effective Date of these Terms, including, without limitation, all the National Board trademarks, patents, copyrights, trade secrets, know-how, standards and assessments, certification processes, or other intellectual property or proprietary rights, and all rights, title, and interest in and to ATLAS and Licensed Content ("The National Board Pre-Existing IP"). The National Board shall also own and retain ownership of and any and all modifications, improvements, continuations, continuations in part, enhancements, or derivatives thereof created from the National Board Pre-Existing IP during the Term of these Terms, including, without limitation, any Segments. Authorized Organization shall not incorporate into any Segments any third party works or Authorized Organization Pre-Existing IP without the prior written consent of the National Board. The National Board reserves the right to monitor Authorized Organization's access to and use of Licensed Content.
- b. Authorized Organization Rights. Authorized Organization shall own and retain ownership of any materials or intellectual property owned by Authorized Organization as of the Effective Date, including, without limitation, all Authorized Organization trademarks, patents, copyrights, trade secrets, know-how, or other intellectual property or proprietary rights ("Authorized Organization Pre-Existing IP"). Authorized Organization shall also own and retain ownership of any and all Courses and Authorized Organization Materials, but Authorized Organization shall not have any ownership rights in any Licensed Content that may have been used to create such Courses and/or Authorized Organization Materials. Upon mutual agreement of the Parties, Authorized Organization will grant to the National Board a world-wide, perpetual, irrevocable, royalty free, transferable, assignable, and sub-licensable license to use, copy, modify, perform, display, and create derivative versions of such Courses and/or Authorized Organization Materials for the benefit of other users of ATLAS, and, also upon mutual agreement, Authorized Organizations shall provide access to such Courses and/or Authorized Organization Materials directly to other users of ATLAS by means of Creative Commons Attribution-NonCommercial-NoDerivatives (CC BY-NC-ND) license (<http://creativecommons.org/licenses/by-nc-nd/4.0/>).

11. Limited Warranty and Disclaimer.

- a. Limited Warranty. The National Board represents and warrants that it holds the rights, title, and interest in and to ATLAS and Licensed Content.
- b. Disclaimer. The National Board hereby disclaims any and all warranties, express or implied, including, without limitation, all implied or statutory warranties of merchantability, fitness for a particular purpose, accuracy of informational content, and non-infringement. the National Board makes no warranty or representation of any kind,

express or implied, with respect to the quality, originality, suitability, or searchability of the Licensed Content, including, without limitation, technical inaccuracies and typographical errors. The National Board disclaims all responsibility for any loss, injury, claim, liability, or damage of any kind resulting from use of ATLAS or the Licensed Content by the Authorized Organization and its Authorized Users.

12. **Indemnification.** Subscriber shall be liable for its own actions including any negligent act or omission or willful misconduct to the extent and in the manner provided for by applicable law. The National Board will (i) notify Subscriber in writing of any claim identified under this paragraph 12, and (ii) reasonably cooperate with Subscriber in the defense and settlement of such claim. In all events, the National Board shall have the right to participate, at the National Board's own expense, in the defense of any such claim through counsel of the National Board's choice. Subscriber shall not settle any such claim without the prior written consent of the National Board.

13. **Liability.**

- a. **Limitation of Liability.** EXCEPT IN CONNECTION WITH ANY INDEMNIFICATION REQUIREMENTS OF THESE TERMS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY PUNITIVE, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, LOSS OF USE OR EQUIPMENT DOWN TIME, AND LOSS OF OR CORRUPTION TO DATA) ARISING OUT OF OR RELATING TO THESE TERMS, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT, AND EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS.
- b. **Total Liability.** The total liability of the National Board for any losses, injuries, claims, liabilities, or damages arising out of or relating to these Terms shall not exceed the subscription fee paid by Subscriber to the National Board during the Initial Term of these Terms (as set forth in the Cover Sheet).

14. **Miscellaneous.**

- a. **Entire Agreement.** These Terms, including the Cover Sheet and any attachments hereto, sets forth the entire agreement between the Parties regarding the License and Subscriber's access to and use of Licensed Content, and supersedes any and all prior written or oral negotiations, understandings, and any other agreements between the Parties concerning the License and Subscriber's access to and use of Licensed Content. Any amendment or modification of these Terms must be in a writing signed by both Parties. Unless otherwise specified, all writings required by these Terms (e.g., the terms "written" or "in writing") shall include email.
- b. **Governing Law and Jurisdiction.** These Terms shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia, or, in the event of state agencies, the laws of that state, with the exception of the choice of law rules thereof. In the event of any litigation arising under or relating to these Terms, each Party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts located in the state and county of the defending Party's headquarters, and each Party hereby submits to the personal jurisdiction of such courts.
- c. **Disputes.** Any and all disputes arising under these Terms will be resolved by the Parties through good faith negotiations in the ordinary course of business. Any dispute not so resolved will be submitted for mediation to JAMS or its successor, or a similar organization as mutually agreed

upon by the Parties, in writing, prior to execution of these Terms. Each Party hereby reserves all rights to obtain provisional remedies that may be available under applicable law, and no application for any such remedy will be deemed inconsistent with the obligation of the Parties to mediate their disputes.

- d. No Assignment. Authorized Organization may not assign, subcontract, or sublicense these Terms or any of Authorized Organization's rights or obligations under these Terms, whether by operation of law or otherwise, without the prior written consent of the National Board. Any attempted assignment or other transfer in violation of the foregoing shall be void and of no force or effect. These Terms shall be fully binding upon, inure to the benefit of, and be enforceable by the Parties and their permitted successors and assigns.
- e. Audit. Subscriber acknowledges and agrees that the National Board shall have the right, upon reasonable prior notice, to inspect Subscriber's books and records for the purpose of verifying compliance with these Terms.
- f. Publicity. Except as required by applicable law, Authorized Organization shall not make any public announcement or press release regarding the existence or contents of these Terms without the prior written approval of the National Board. Authorized Organization shall not make any statements to any third parties not authorized by the National Board concerning any the National Board materials, products, or services, including, but not limited to statements regarding the efficacy of the National Board materials, products, or services, or the impact of using the National Board materials, research, products, or services on candidate achievement.
- g. Survival. The following provisions of paragraphs 4, 5, 10, 11, 12, 13, and any other provision that by its nature should survive, shall survive the expiration or termination of these Terms.
- h. Counterparts. These Terms may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. In the event that any signature is delivered by email delivery of an electronic data file (e.g., a ".pdf" format data file) or other electronic or digital signature format, such electronic or digital signature shall evidence the intent and create a valid and binding obligation of the executing party (or the party on whose behalf such signature is executed) with the same force and effect as if such electronic signature were an original thereof.

IN WITNESS WHEREOF, these Terms has been duly executed by the Parties hereto, effective as of the Effective Date set forth in the Cover Sheet.