

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

SERVICES AGREEMENT

(Vertosoft, LLC)

This Services Agreement (“**Agreement**”) is effective as of January 1, 2024 (“**Effective Date**”) and is entered into by and between the Board of Education of the City of Chicago, a body politic and corporate, commonly known as the Chicago Public Schools (the “**Board**” or “**CPS**”) and Vertosoft, LLC, a Limited Liability Corporation, with principal offices located at 1602 Village Market Blvd #215, Leesburg, VA 20175 (the “**Vendor**”). The Board and Vendor may be referred to herein individually as a “**Party**” or collectively as the “**Parties**.”

RECITALS

- A. Vendor was selected on a non-competitive basis pursuant to Board Rule 7-6. This item was presented to the Board's Single/Sole Source Committee on October 3, 2023 and approved by the Chief Procurement Officer;
- B. Vendor has the requisite knowledge skill, experience and resources necessary to perform such services, Vendor was subsequently selected as a provider of Services as is detailed further in this Agreement;
- C. The Parties now wish to execute this Agreement that defines the nature of their relationship, establishes pricing, and describes the manner in which services and products will be furnished by Vendor.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein as though fully set forth herein, and for good and valuable consideration, the parties agree as follows:

I. GENERAL TERMS & CONDITIONS

- 1. **Term of the Agreement.** The initial term of this Agreement (“**Term**”) will be for a period commencing on January 1, 2024 and continuing through December 31, 2027. The Term will automatically renew for two (2) successive periods of one (1) year each (“**Renewal Term**”). Each Renewal Term shall be the Board's option. The Board can elect, with or without cause, to not exercise any Renewal Term by notifying the Vendor in writing, not less than thirty (30) days prior to the expiration of the active term. This notice of non-renewal will be effective upon the conclusion of the active term. Both the Term and any Renewal Term are subject to earlier termination as otherwise provided for by this Agreement.
- 2. **Scope of Services.** Vendor agrees to provide the services as described in this Agreement, including the Scope of Services that is attached and incorporated into this Agreement as Exhibit A (“**Scope**”). “**Services**” means, collectively, the services, deliverables, duties and responsibilities described and any and all work necessary to complete them or carry them out fully and to the standard of performance required in the Agreement, including without limitation any Products or Materials (both as hereinafter defined). Reference to Services throughout shall be deemed to include Products and Product terms. “**Products**” means, collectively, any goods, hardware, software, documentation, licenses, updates, components, equipment, or accessories as described in the Agreement that one would consider within the ordinary meaning of the product as understood in the applicable industry or field of business. The Board retains final authority with respect to all Service and Product related decisions, including scale. The Board may, from time to time, request changes in the Scope of Services. Any such changes, including any increase or decrease in Vendor's fees, shall be documented by a written amendment to the Agreement signed by the authorized representatives of both parties or other document executed in accordance with the Change Management Process section set forth in this Agreement. The

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Board assumes no obligation hereunder to purchase any quantity of Products or Services other than those identified on a Purchase Order issued by the Board.

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

3. **Compensation; Purchase Orders; Billing and Payment Procedures; Electronic Payments.**

3.1. Compensation; Maximum Compensation Amount. Compensation for Products and Services during the Term shall be payable in accordance with the Schedule of Compensation to be attached to this Agreement and incorporated herein as Exhibit B (the "**Schedule of Compensation**"). Prices shall be firm as set forth in the Schedule of Compensation for the Term and, if the Board elects to exercise any Renewal option, will be determined by the Board and will be capped for any such Renewal Term at the amounts set forth in the Schedule of Compensation. There will be no reimbursable expenses.

The total compensation for Services provided by Vendor during the Initial Term shall not exceed Two Hundred Forty Two Thousand One Hundred Eighty Six Dollars 73/100 (\$242,186.73) (the "**Maximum Compensation Amount**"), authorized by Sole/Single Source Committee; PRDA 24-0129-PRDA11. Vendor agrees not to perform, and waives any and all claims for payment of Products and Services 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 Products delivered and Services performed during the Term of this Agreement and the Board shall not be obligated to pay for any Products or Services not in compliance with this Agreement. In the event the Agreement is terminated early, the Board shall only be obligated to pay the fees incurred up to the effective date of termination and Vendor shall promptly refund to the Board any payments received for Products and Services not provided. If Vendor 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 Vendor under this or any other agreement between Vendor and the Board.

3.2. Purchase Orders. Orders must be on the Board's Standard Purchase Order Form. The pre-printed terms and conditions found on the Board's Purchase Order shall apply to the extent that such terms supplement and are not inconsistent with the terms and conditions contained in the Agreement. Under no circumstances shall Vendor deliver any Products or render any Services without an approved Purchase Order.

3.3. 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 the Vendor's name and the CPS Purchase Order number. All invoices must include:

- Vendor name and payment address
- Unique invoice number (determined by Vendor)
- Valid purchase order number (only one PO number may be referenced on each invoice)
- Invoice date

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- Itemized description of the Services rendered and Products delivered
- Date the Services were provided and Products were delivered to CPS
- Detailed pricing information such as quantities, unit prices, discount, and final net amount due

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 the Agreement. If Vendor 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 Products and Services provided under the Agreement.

3.4. Electronic Payments. Vendor agrees that, at the Board's sole discretion, the Board may make payment electronically to Vendor for any and all amounts due to Vendor pursuant to the Agreement by means of the Board's procurement charge card account. Vendor recognizes that any charge to the Board's procurement charge card that is in excess of the open remaining amount as stipulated in the applicable Purchase Order, or any charge unaccompanied by the requisite documentation and data as required by the Board, shall be deemed invalid and disputed by the Board. Vendor further recognizes that, in the absence of any supporting documentation as may be required by the Board, payments associated with disputed charges shall be rescinded by the Board and deemed not owed by the Board. Vendor agrees to comply with the rules, procedures and documentation required for electronic payment via the Board's procurement charge card as established by the Board's Department of Procurement.

3.5. Subcontractor Payments. When a Vendor receives any payment from the Board pursuant to this Agreement, the Vendor must make payment to its subcontractors within 15 days after receipt of payment from the Board, provided that such subcontractor has satisfactorily provided the supplies, equipment, goods or services in accordance with the Agreement and provided the Vendor with all of the documents and information required of the Vendor.

The Vendor may delay or postpone payment to a subcontractor when the subcontractor's supplies, equipment, goods, or services do not comply with the requirements of the Agreement, the Vendor is acting in good faith, and not in retaliation for a subcontractor exercising legal or contractual rights.

However, the Board may, whenever there is reason to believe that the Vendor has neglected or failed to pay any subcontractors, workmen, or employees for work performed or for materials furnished and used in or about the work contracted for, order and direct that no future vouchers or estimates be issued and no further payments be made upon the Agreement until such subcontractors, workmen and employees have been fully paid.

Whenever the Board shall notify the Vendor, in accordance with the notice requirements of the Agreement, that no further vouchers or estimates will be issued or payments made on the Agreement until subcontractors, workmen and employees have been paid and the subcontractor shall neglect or refuse for a period of ten (10) days after such notice is given, as above provided for, the Board may pay such subcontractors, workmen and employees applying moneys otherwise due to Vendor without other or further notice to said Vendor.

Notwithstanding the above, failure by the Board to retain and apply such moneys, or to order or direct that no vouchers or estimates shall be issued or further payments be made shall not, nor shall the paying over of such sum without such subcontractors,

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workmen or employees being first paid, in any way affect the liability of the Vendor or of its sureties to the Board, or to any such subcontractors, workmen or employees upon any bond given in connection with such Agreement.

4. **Standards of Performance.** Vendor shall devote, and shall cause all of its employees, agents, and subcontractors to devote, such of their time, attention, best skill and judgment, knowledge and professional ability as is necessary to perform all Services effectively, efficiently and to the satisfaction of the Chief Procurement Officer or Interim Chief Procurement Officer, as the case may be (“CPO”). Vendor shall retain and utilize, as required by law or by the Agreement, professionals licensed to practice in the State of Illinois in the applicable profession. Vendor shall use efficient business administration methods and perform the Services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and in an expeditious and economical manner consistent with the best interests of the Board, so as to assure, among other things, that the Products and Services are performed at a reasonable cost to the Board and that Services performed by other entities or persons in connection with the Agreement are efficiently and cost-effectively delivered. Vendor acknowledges that, if in the course of providing Products and Services hereunder, it is entrusted with or has access to valuable and confidential information and records of the Board, that with respect to that information, Vendor agrees to be held to the standard of care of a fiduciary. Any review, approval, acceptance of Products or Services or payment for any of the Products or Services by the Board does not relieve Vendor of its responsibility for the professional skill, care, and technical accuracy of its Products and Services. Vendor shall remain financially and legally responsible to the Board for the professional and technical accuracy of all Products and Services, including any other deliverables furnished, whether by Vendor or its subcontractors or others on its behalf.

5. **Personnel.**

- 5.1. **Adequate Staffing.** The Board has retained Vendor because of Vendor’s expertise and that of its employees, agents, volunteers and subcontractors (collectively referred to as “Staff”). For the avoidance of doubt, all volunteers of Vendor shall be considered agents of Vendor. Vendor must assign and maintain during the Term of the Agreement and any renewal of it, an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Services. If the Board determines, in its sole discretion, that any employee, subcontractor or other person providing Services hereunder for Vendor is not performing in accordance with the performance standards or other requirements of the Agreement, the Board shall have the right to direct the Vendor to remove that person from performing Services under the Agreement.

- 5.2. **Key Personnel.** The Agreement may list individuals employed by the Vendor, or otherwise provided to perform Services, who have particular expertise on which the Board is relying (“Key Personnel”). Vendor may not reassign or replace Key Personnel without the written consent of the Board, which consent shall not be unreasonably withheld or delayed. If one or more Key Personnel terminate his or her employment with Vendor or otherwise become unavailable for reasons beyond Vendor’s reasonable control, Vendor shall promptly replace such person with another person with comparable training and experience, subject to the approval of the Board, which approval shall not be unreasonably withheld or delayed. As stated in Section 5.1. above, the Board shall have the right to direct Vendor to remove an individual from performing Services under the 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 the Agreement, the Board shall

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notify Vendor and the 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 the Agreement are exhausted. Payments for Products and Services completed to the date of notification shall be made to Vendor except that no payment shall be made or due to Vendor under the Agreement beyond those amounts appropriated and budgeted by the Board to fund payments under the Agreement.

7. Termination, Suspension of Services, Events of Default, Remedies, and Turnover of Documents.

- 7.1. Early Termination.** The Board may terminate the Agreement in whole or in part, without cause or penalty, at any time, by a notice in writing from the Board to Vendor in accordance with the notice provisions herein. The effective date of termination shall be thirty (30) calendar days from the date the notice is received, or the date stated in the notice, whichever is later.

After notice is received, Vendor 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. Payment for any Products or Services actually and satisfactorily delivered before the effective date of the termination is on the same basis as set forth in the Compensation Section of the Agreement.

Vendor must include in its contracts with subcontractors 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.

Vendor shall not be entitled to make any early termination claims against the Board resulting from any subcontractor's claims against Vendor or the Board to the extent inconsistent with this provision.

- 7.2. Suspension of Services.** The Board upon written notice may direct Vendor to suspend delivery of Products or Services in whole or part. Vendor shall promptly resume delivery and performance of 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 Vendor. Responsibility for any additional costs or expenses actually incurred by Vendor as a result of remobilization shall be determined by mutual agreement of the parties.

- 7.3. Events of Default.** Events of default ("**Events of Default**") include, but are not limited to, the following:

- A. Any action or failure to act by Vendor which affects the safety and/or welfare of students or Board staff.
- B. Any material misrepresentation by Vendor in the inducement or the performance of the Agreement.
- C. Breach of any term, condition, representation or warranty made by Vendor in the Agreement.
- D. Failure of Vendor to perform any of its obligations under the Agreement, including, but not limited to, the following:
 - i. Failure to perform any portion of the Services or deliver Products in the manner specified in the Agreement.
 - ii. Failure to perform the Services with sufficient personnel and equipment or with

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- sufficient material to ensure the timely performance of the Services and delivery of Products.
- iii. Failure to promptly re-perform or re-deliver within a reasonable time and at no cost to the Board, Services or Products that were determined by the Board to be incomplete or unsatisfactory.
 - iv. Discontinuance of the Products or Services for reasons within Vendor's reasonable control.
 - v. Failure to comply with any term of the Agreement, including but not limited to, the provisions concerning insurance, nondiscrimination, and any other acts specifically and expressly stated in the Agreement constituting an Event of Default.
 - vi. Failure to meet MBE/WBE project participation goals.
- E. Default by Vendor under any other agreement Vendor may presently have or may enter into with the Board.
- F. Where Services include contact with CPS students, any failure to comply with the Background Check requirements, in whole or in part.
- G. Assignment by Vendor for the benefit of creditors or consent by Vendor to the appointment of a trustee or receiver or the filing by or against Vendor 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.

- 7.4. Remedies.** The Board, in its sole discretion, may declare Vendor in default, in whole or in part, if Vendor commits an Event of Default. The CPO may give Vendor an opportunity to cure the default within a certain period of time ("**Cure Period**"). The CPO shall give Vendor written notice of a default, either in the form of a cure notice ("**Cure Notice**") or, if no opportunity to cure is granted, a default notice ("**Default Notice**").

The CPO may give a Default Notice after a Cure Notice if: (1) Vendor 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 the Cure Period, Vendor 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, effective on Vendor's receipt of such notice or on the date set forth in the notice, whichever is later. When a Default Notice is given, Vendor must discontinue all Products and Services, unless otherwise specifically directed in the notice, and Vendor must deliver to the Board all materials prepared or created in the performance of the Agreement, whether completed or in-process.

Upon the occurrence of an Event of Default, the Board may invoke any or all of the following remedies:

- A. Take over and complete the Products and Services or any part thereof, either directly or through others, as agent for and at the cost of Vendor. In such event, Vendor shall be liable to the Board for any excess costs incurred by the Board. Any amount due Vendor under the Agreement or any other agreement Vendor may have with the Board may be offset against amounts claimed due by the Board in exercising this remedy.
- B. Terminate the Agreement, in whole or in part, as to any or all of the Products or Services yet to be performed, effective at a time specified by the Board.
- C. Suspend the performance of Services during the Cure Period if the default results from an action or failure to act by Vendor which affects the safety and/or welfare of students or Board staff. In the event that the performance of Services is

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- resumed, Vendor shall not be entitled to seek reimbursement from the Board for any additional costs and expenses incurred as a result of the remobilization.
- D. Seek specific performance, an injunction or any other appropriate equitable remedy.
 - E. Receive from Vendor any and all damages incurred as a result or in consequence of an Event of Default.
 - F. Money damages.
 - G. Withhold all or part of Vendor's compensation under the Agreement that are due or future payments that may become due under the Agreement.
 - H. Deem Vendor non-responsible in future contracts to be awarded by the Board, and/or seek debarment of the Vendor pursuant to the Board's Debarment Policy (19-0626-PO1), as may be amended from time to time.

The Board may elect not to declare Vendor in default or to terminate the Agreement. The parties acknowledge that this provision is solely for the benefit of the Board and that if the Board permits Vendor to continue to provide the Products and Services despite one or more Events of Default, Vendor shall in no way be relieved of any responsibilities, duties or obligations under the Agreement nor shall the Board waive or relinquish any of its rights under the Agreement, at law, in equity or by statute, nor shall the Board be deemed to have waived or relinquished any of the rights it has to declare an Event of Default in the future. If the CPO 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 remedies under the terms of the 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 the occurrence of 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 the 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 Section above.

7.5. 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, Vendor shall turn over to the Board or its designee within five (5) 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 Products and Services.

8. Assignment. This Agreement shall be binding on the parties and their respective successors and assigns, provided however, that neither party may assign the Agreement, or any obligations imposed hereunder, without the prior written consent of the other party.

9. Intellectual Property.

9.1. 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.

9.2. Board's Intellectual Property. Vendor agrees that all Confidential Information, as well as

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any intellectual property arising therefrom, shall at all times be and remain the property of the Board. The Board's intellectual property shall include specifically any documents and materials created by the Board either alone or in cooperation with Vendor in connection with the Services, including but not limited to such materials that are adapted or reproduced from Vendor'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 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, Vendor 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. Vendor 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 Vendor intellectual property that is delivered to the Board as part of the Products and Services. Upon written agreement between the parties, Vendor may be licensed to use the Board's intellectual property for specifically defined uses and terms.

Unless otherwise specified in this Agreement, all of the foregoing items shall be delivered to the Board upon demand at any time and in any event, shall be promptly delivered to the Board upon expiration or termination of the Agreement within three (3) business days of demand. In addition, Vendor shall return the Board's data in the format requested by the Board. If any of the above items are lost or damaged while in Vendor's possession, such items shall be restored or replaced at Vendor's expense.

- 9.3. Vendor's Intellectual Property.** All Intellectual Property owned by Vendor prior to, created independently of the Products and Services under this Agreement shall be and remain at all times "Vendor's Intellectual Property", provided that none of the Board's Confidential Information is used or disclosed in Vendor'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, Vendor grants to the Board a perpetual, royalty-free, non-transferable license to use such of Vendor's Intellectual Property for non-commercial, educational purposes.
- 9.4. Third Party Intellectual Property.** Vendor represents and warrants to the Board that Vendor, in connection with providing the Products and Services, 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.
- 9.5. Survival.** The obligations set forth in this Section shall survive the termination or expiration of this Agreement.
- 10. Representations and Warranties of Vendor.** Vendor represents and warrants that the following shall be true and correct as of the effective date of the Agreement and shall continue to be true and correct during the Term of the Agreement and any Renewal Terms.
- 10.1. Licensed Professionals.** Vendor is appropriately licensed under Illinois law to perform Services required under the Agreement and shall perform no Services for which a professional license is required by law and for which Vendor, its employees, agents, or

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subcontractors, as applicable, are not appropriately licensed.

- 10.2.** Technical Accuracy. All Services will be technically accurate and correct and performed in strict accordance with the provisions and requirements of this Agreement.
- 10.3.** Compliance with Laws. Vendor is and shall remain in compliance with all applicable federal, state, county, and municipal, statutes, laws, ordinances, and regulations relating to the Agreement and the performance of Services in effect now or later and as amended from time to time, including but not limited to the Drug-Free Workplace Act, the Family Educational Rights and Privacy Act (“**FERPA**”), the Protection of Pupil Rights Amendment (“**PPRA**”), the Illinois School Student Records Act (“**ISSRA**”), the Student Online Personal Protection Act (“**SOPPA**”), the Children’s Online Privacy Protection Act (“**COPPA**”), and any others relating to non-discrimination and as applicable. Further, Vendor is and shall remain in compliance with all applicable Board policies and rules. Board policies and rules are available at <http://www.cps.edu>. In addition, Vendor shall comply with any governmental regulations, requirements and guidelines and Board guidelines, policies, and rules in effect now or later, and as amended from time to time related to COVID-19, including without limitation all reporting requirements and requirements or recommendations regarding face coverings and social distancing.
- 10.4.** Good Standing. Vendor is not in default and has not been deemed by the Board to be in default under any other contract with the Board during the five (5) year period immediately preceding the effective date of the Agreement.
- 10.5.** Authorization. If Vendor is an entity other than a sole proprietorship, Vendor represents that it has taken all action necessary for the approval and execution of the Agreement, and execution by the person signing on behalf of Vendor is duly authorized by Vendor and has been made with complete and full authority to commit Vendor to all terms and conditions of the Agreement which shall constitute valid, binding obligations of Vendor.
- 10.6.** Financially Solvent. Vendor 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 and perform all obligations under the Agreement.
- 10.7.** Gratuities. No payment, gratuity or offer of employment was made by or to Vendor in relation to the Agreement or as an inducement for award of the Agreement.
- 10.8.** Freedom from Communicable Disease: Vendor shall require all persons assigned to perform Services at any school to show evidence that they are free from communicable disease, including tuberculosis. Acceptable evidence is described in the Illinois School Code, 105 ILCS 5/24-5. From time to time, the Board may require Vendor to demonstrate its compliance with the provisions of this Section.
- 10.9.** Contractor’s Disclosure Form. The disclosures in the Contractor Disclosure Form, previously submitted by Vendor, are true and correct. Vendor 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.
- 10.10.** Third Parties’ Property and Information. In performing and delivering the Services under the Agreement, Vendor 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. Vendor shall have, without encumbrance, all ownership, licensing, marketing, and other rights required to furnish all materials and 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 this

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- 10.11.** Warranty of Title. Vendor warrants title to all Products and Services sold to Board and warrants that all Products and Services sold to Board are free and clear from all liens, contracts, chattel mortgages, or other encumbrances; and that Vendor has the lawful right to dispose of and sell such Products and Services and that Vendor shall warrant and defend title against all claims.
- 10.12.** Assignment of Warranties. Vendor has the right, title and ability to assign and shall assign to the Board any third-party warranties concerning the Services provided under the Agreement to the Board.
- 10.13.** Free of Computer Viruses. Vendor shall use commercially reasonable best efforts to ensure that the Services, including but not limited to any software used in the performance of the Services, do not introduce or transfer any malicious code, malware, Trojan horses, ransomware, worms or other computer viruses into the Board's network, systems, and computers.
- 10.14.** Debarment and Suspension. Vendor certifies, to the best of its knowledge and belief, after due inquiry, that:
- A. It, its principals, or its subcontractors providing Services under the 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 33E-4 (bid rotating) of the Illinois Criminal Code (720 ILCS 5/33E).
 - B. It, its principals, or its subcontractors providing Services under the 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.
 - C. It, its principals, or its subcontractors providing Services under the 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 any obligations of the Agreement, Vendor shall not utilize any organizations that the Board has debarred from doing business with CPS pursuant to the Board's Debarment Policy (19-0626-PO1), as may be amended.
- 10.15.** Prohibited Acts. Within the three (3) years prior to the effective date of the Agreement, Vendor 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 (i) have not been convicted of bribery or attempting to bribe a public officer or employee of any public entity and (ii) 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.
- 10.16.** Continued Disclosure Requirement. If at any time during the Term of the Agreement or during any Renewal Terms, Vendor becomes aware of any change in the circumstances that makes the representations and warranties stated above no longer true, Vendor must immediately disclose such change to the Board.
- 10.17.** Survival. All representations and warranties will survive inspection, acceptance,

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payment and expiration or termination of this Agreement. Nothing in the foregoing representations and warranties will be construed to limit any other rights or remedies available to the Board under the law and the Agreement.

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

11.1. **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 the 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.

11.2. **Criminal History Records Check.** Vendor 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 the Agreement through the process established by the Board, including using the Board’s contracted vendor for conducting such checks, and otherwise in accordance with the Illinois School Code (105 ILCS 5/34-18.5), 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.
- 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.

11.3. **Department of Children and Family Services Check.** At Vendor’s cost and expense, the Board shall have the right to check Staff who may have contact with a CPS student pursuant to the 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**”). Vendor 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.

11.4. **Background Check Representations and Warranties.** With respect to each Background

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Check, Vendor further represents and warrants that Vendor 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.
- F. Immediately remove from any contact with any CPS student pursuant to the 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.

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

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

- 12. Research Activities and Data Requests.** Vendor shall not conduct research in the Chicago Public Schools or use CPS student data for research purposes. In the event Vendor seeks to conduct research in the Chicago Public Schools or use CPS student data for research purposes in connection with the Agreement or for any other purposes, Vendor shall comply with the Board's External Research Study and Data Policy adopted December 11, 2019 (19-1211-PO3), as may be amended from time to time. Vendor acknowledges and agrees that it may not begin any research activities or obtain data for research purposes without the prior written consent of the Director of School Quality Measurement and Research, or as otherwise provided in the

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Policy.

13. **Use of Board's Network; Acceptable Use Policies.** If at any time, Vendor has access to the Board's computer network, Vendor 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 (19-0828-PO3), both as amended, during the Term of the Agreement and any renewals thereof. Vendor 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-P21), as may be amended. Vendor shall also comply with the requirements and guidance in the following links as applicable, as may be amended: Acceptable Use Policy of Technology Guidance and other vendor requirements, found at <https://cps.edu/AcceptableUsePolicy/Pages/vendorPolicy.aspx> ("**Vendor AUP**").
14. **Independent Contractor.** It is understood and agreed that the relationship of Vendor to the Board is and shall continue to be that of an independent contractor and neither Vendor nor any of Vendor's employees shall be entitled to receive Board employee benefits. As an independent contractor, Vendor agrees to be 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 Vendor is subject to taxes under Section 4980H of the Internal Revenue Code, Vendor shall be solely responsible for paying such taxes. Vendor agrees that neither Vendor nor its employees, staff or subcontractors shall represent themselves as employees or agents of the Board. Vendor shall provide the Board with a valid taxpayer identification number as defined by the United States Internal Revenue Code, including but not limited to social security number or federal employer identification number. 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 the use of Vendor's employees under the Agreement, Vendor shall indemnify the Board for any such liability.
15. **Indemnification.** Vendor agrees to defend, indemnify and hold harmless the Board, its members, employees, agents, officers and officials from and against all liabilities, losses, penalties, damages and expenses, including 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 the Vendor, its officers, agents, employees and subcontractors in the performance of the 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 right of a third party.

Furthermore, as stated in Independent Contractor Section above, 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 Vendor's employees under the Agreement, Vendor shall indemnify the Board for any such liability. As stated in the Confidential Information Section above, in the event of unauthorized access, use, or disclosure of the Board's Confidential Information arising or alleged to arise from the acts or omissions of Vendor, its employees, agents, or subcontractors, in addition to the obligations provided in this Section, Vendor 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.

Vendor shall, at its own cost and expense, appear, defend and pay all attorney fees and, other costs and expenses arising hereunder. In addition, if any judgment shall be rendered against the Board in any such action, Vendor 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 Vendor 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 Vendor, after receiving notice of any such proceeding, fails to immediately begin the defense of such claim or action, the Board may (without further notice to Vendor) retain counsel and undertake the defense, compromise, or settlement of such claim or action at the expense of Vendor, subject to the right of Vendor 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 Vendor and Vendor 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 Vendor was conducting the defense.

To the extent permissible by law, Vendor 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 Vendor 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 Corporation*, 146 Ill. 2nd 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, any other statute or judicial decision.

The indemnities set forth herein shall survive the expiration or termination of the Agreement.

16. **Non-liability of Board Officials.** Vendor agrees that no Board member, employee, agent, officer or official shall be personally charged by Vendor, its members if a joint venture, or any subcontractors with any liability or expense under the Agreement or be held personally liable under the Agreement to Vendor, its members if a joint venture, or any subcontractors.
17. **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 Vendor are inclusive of all other taxes that may be levied or based on the Agreement, including without limitation sales, use, nonresident, value-added, excise, and similar taxes levied or imposed on the Services to be provided under the Agreement, but excluding taxes levied or imposed on the income or business privileges of Vendor. Vendor shall be responsible for any taxes levied or imposed upon the income or business privileges of Vendor.
18. **Audit and Records Retention.** Vendor shall permit and cooperate in good faith in any audits by the Board, including its Department of Procurement or its agents, for compliance by the Vendor with the Agreement. Vendor shall furnish the Board with such information, supporting documentation and reports as may be requested relative to the progress, execution, delivery and costs of the Services and compliance with applicable MBE/WBE requirements. Failure of the Vendor 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 Vendor for the cost of such audit.

Vendor shall maintain all records related to the Agreement. As used in this Section, "records" shall include all correspondence, receipts, vouchers, memoranda and other data, regardless of type or medium (including emails or other electronically stored data) relating to the Agreement and Vendor's performance of Services). Specifically, a complete record of all communications between the Board's students and Vendor's employees, agents, and subcontractors, including but not limited to text messages, chat dialogue, email communications, and recorded voice communications, must be retained. All records shall be retained for the life of the Agreement and through any Transition period. Vendor shall transfer all records and data to the Board generated in the course of performing services within thirty (30) calendar days of expiration or termination of the Agreement. Confidential Information shall be returned to the Board in a secured, consumable format as directed by the Board, such as .csv or SQL file. Upon return of all Confidential Information, Vendor shall provide an affidavit attesting to destruction of all copies in Vendor's possession. All records and data generated pursuant to the Agreement shall be subject to inspection and audit by the Board during the life of the Agreement. If any audit, litigation, or

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other action involving the records is being conducted or has not been resolved, all applicable records must be retained until the proceeding is closed. Vendor shall require all of its subcontractors to maintain the above-described records and allow the Board the same right to inspect and audit said records as set forth herein.

19. **Freedom of Information Act.** Vendor acknowledges that the Agreement and all documents submitted to the Board related to the contract award 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 the Agreement is subject to reporting requirements under 105 ILCS 5/10-20.44. Vendor further acknowledges that the Agreement shall be posted on the Board's Internet website.
20. **MBE/WBE Program.** Vendor 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*" ("**Remedial Plan**"), which is available on the Board's website at <https://policy.cps.edu/download.aspx?ID=153> and is incorporated as if fully set forth herein. (Please see extension: https://www.cpsboe.org/content/actions/2021_12/21-1215-RS1.pdf). Vendor agrees to adhere to the minimum participation goals and to all other applicable MBE/WBE requirements as set forth in the program. Vendor agrees to submit such documentation in connection with the program as may be requested by the Board.

Vendor 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>. Vendor 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. Vendor 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.

21. **Right of Entry.** Vendor 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 hereunder, subject to the terms and conditions contained herein and those rules established by the Board and the subject school principal. Vendor shall provide advance notice to the Board whenever applicable, of any such intended entry. 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. Vendor 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 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 the Agreement, including without limitation, the indemnification provisions contained in the Agreement.
22. **Non-Discrimination.** It shall be an unlawful employment practice for Vendor 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, national origin, religion, sex, gender identity/expression, sexual orientation, age or disability; 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, national origin, religion, sex, gender identity/expression, sexual orientation, age or disability. Vendor 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 Illinois Human Rights Act, 775 ILCS 5/1-101, *et seq.*; the Illinois

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School Code, 105 ILCS 5/1-1 *et seq.*; the Illinois Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.*; the Individuals with Disabilities Education Act (IDEA) 20 U.S.C.A. § 1400 *et seq.*; and, the Chicago Human Rights Ordinance, ch. 2-160 of the Municipal Code of Chicago, all as may be amended and all other applicable federal, state, and municipal statutes, regulations, ordinances 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 Vendor's employees or the Vendor's subcontractors' employees.

23. **Wage Requirements.** In the performance of this Agreement, Vendor must comply with the City of Chicago Minimum Wage Ordinance (01-24), as amended, available at: https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2639765; the Board's Minimum Wage Resolution (14-1217-RS2), available at https://www.cpsboe.org/content/actions/2014_12/14-1217-RS2.pdf; which adopts Chicago Mayoral Executive Order 2014-1, available at: https://chicityclerk.s3.amazonaws.com/s3fs-public/document_uploads/executive-order/2014/Executive-Order-No-2014-1.pdf; and, any applicable regulations issued by the Board's CPO.

In the event of any discrepancy between the summary below and the Resolution and Order, the Resolution and Order shall control.

Vendor must: (i) pay its employees no less than the minimum wage as determined by the City of Chicago ("**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 Vendor'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.

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 the 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 Vendor must pay the prevailing wage.

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24. **Public Works.** Any construction contract with CPS calls for the construction of a “public work,” within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. (“the Act”). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current “prevailing rate of wages” (hourly cash wages plus amount for fringe benefits) in the county where the work is performed. The Department publishes the prevailing wage rates on its website at <http://labor.illinois.gov/>. The Department revises the prevailing wage rates and the contractor/subcontractor has an obligation to check the Department’s website for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor’s website. All contractors and subcontractors rendering services under this contract must comply with all requirements of the Act, including but not limited to, all wage requirements and notice and record keeping duties.
25. **Kickbacks.** Neither Vendor nor any of its members if a joint venture or limited liability company has accepted and shall not accept from or on behalf of any subcontractor or any intermediate tier subcontractor any payment, gratuity or offer of employment in relation to the Agreement or as an inducement for the acceptance of the Agreement. Vendor is and shall remain in compliance with all applicable anti-kickback laws and regulations.
26. **Joint and Several Liability.** In the event that Vendor, or its successors or assigns, if any, is comprised of more than one legal entity, then in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by Vendor shall be the joint and several obligation or undertaking of each such legal entity.
27. **Survival/Severability.** All express representations or indemnifications made or given in the Agreement shall survive the completion of Services or the expiration or termination of the Agreement for any reason. If any provision or part of the Agreement is held to be unenforceable, the Agreement shall be considered divisible and such provision shall be deemed inoperative to the extent that it is deemed unenforceable, and in all other respects the Agreement shall remain in full force and effect, provided however, that if any such provision may be made enforceable by limitation thereof, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.
28. **Counterparts and Electronic Signatures.** The 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 electronic means shall be considered binding for both parties.
29. **Entire Agreement and Amendment.** The 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 the Agreement. No modification of or amendment to the Agreement shall be effective unless such modification or amendment is in writing and signed by the authorized representatives of each party. Any prior agreements or representations, either written or oral, relating to the subject matter of the Agreement are of no force or effect.

The parties, however, acknowledge that Vendor may have or may have had one or more prior agreements or contracts with Board, pursuant to which Vendor may have continuing obligations currently or after termination or expiration thereof (“**Other Agreements/ Continuing Obligations**”), such as but not limited to other services, warranties, record retention obligations, or indemnification obligations. It is not the intention of the parties to subsume or supersede those Other Agreements/Continuing Obligations in this Agreement, and the parties’ respective obligations thereunder.

30. **Controlling Agreement.** Vendor shall not request any CPS staff including school principals,

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administrative staff or other CPS employee to sign any form, memorandum of understanding or any other agreement for the performance of Services except for those documents specifically approved by the Board under the Agreement. Additionally, 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 or any other agreement or license contained or referenced in the products or service or any quote provided by Vendor. Even if a CPS staff or Board user agrees to any agreement or license contained or referenced in the Products or Services or a quote from Vendor, Vendor acknowledges and agrees that those terms and conditions are null and void and are not binding on the Board. Vendor acknowledges and agrees that the terms and conditions of the 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 the Agreement is made and signed by the authorized representatives of both parties and approved by the Board's General Counsel, or is otherwise documented and executed in accordance with the Change Management Process section of this Agreement.

31. **Governing Law.** Without regard to application of any conflict of law provisions, the Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois. Vendor 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, or relating to, or in any way concerning the execution or performance of the Agreement. Vendor agrees that service of process on Vendor may be made, at the option of the Board, by either registered or certified mail addressed to the office identified in the notice provision herein, by registered or certified mail addressed to the office actually maintained by Vendor, or by personal delivery on any officer, director, or managing or general agent of Vendor. If any action is brought by Vendor against the Board concerning the Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.
32. **Continuing Obligation to Perform.** In the event of any dispute between Vendor and Board, Vendor shall expeditiously and diligently proceed with the performance of all its obligations under the Agreement with a reservation of all rights and remedies it may have under or pursuant to the Agreement at law or in equity.
33. **Conflict of Interest.** The 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 the letting of contracts to, former Board members within a one-year period following expiration or other termination of their office.
34. **Indebtedness.** Vendor 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 a part of the Agreement as fully set forth herein.
35. **Ethics.** No officer, agent or employee of the Board is or shall be employed by Vendor or has or shall have a financial interest, directly, or indirectly, in the 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 a part of the Agreement as fully set forth herein.
36. **Inspector General.** Each party to the Agreement hereby acknowledges that in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Board of Education of the 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. It shall be the duty of every contractor, subcontractor, agent or licensee of the Board, and every applicant for certification of eligibility for a Board contract or program, to cooperate with the inspector general in any inquiry undertaken related to the Agreement. Assurance of compliance with this requirement by the contractor's employees, agents or subcontractors shall be the responsibility of the contractor. Failure to cooperate as required may result in monetary and/or other penalties.

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37. **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.

II. SPECIFIC TERMS & CONDITIONS

1. **Principal's Right to Direct.** The principal at each school shall have the authority, to the maximum extent possible, to direct Vendor and its subcontractors when performing the Services on the school site.
2. **Warranty of Services.** Vendor hereby represents and warrants that its Services will be performed in a manner consistent with the standards of the applicable industry or profession. Vendor warrants that its Services will be performed in a manner that does not damage or corrupt data of the Board. Vendor also warrants that the deliverables submitted to the Board for acceptance will conform to the Scope of Services and will be free of errors or defects in design, material and workmanship. The warranties contained in this Section will continue for the duration of the Agreement ("**Warranty Period**") after acceptance of the deliverables, in writing, by the Board. If the Board notifies Vendor, or Vendor becomes aware, of any non-performance, error or defect covered by the foregoing warranties within the Warranty Period, Vendor shall, at its own expense, promptly correct such non-performance, error or defect, but in no event later than thirty (30) days after notification by the Board. Any repair or replacement of deliverables or portions thereof will be additionally and automatically warranted therein. All warranties will survive inspection, acceptance and payment.
3. **Authority.** Vendor understands and agrees that Vendor is not an authorized representative of the Board or the Chicago Public Schools. All agreements and approvals (written or verbal) of the Board or the Chicago Public Schools must be made by authorized Board employee(s).
4. **Account Management.** Vendor must provide a single point of contact ("**Account Manager**") who is assigned to oversee and manage the day-to-day activities of this relationship with the Board as well as overall management of the customer service issues and reporting. Vendor shall also be required to have periodic meetings with the Department of Procurement personnel for reasonable contract review meetings as well as an annual review at a time determined by the Department of Procurement. Vendor must support the Board with an appropriate number of personnel to meet the Board's needs.
5. **Subcontractor Employee Screening and Monitoring Process.** If the awarded Vendor plans to subcontract the Services outlined in the Agreement to a third party, Vendor must submit its subcontractor's employee screening and monitoring process for Board approval prior to final contract approval.
6. **Charter School Participation.** Charter schools which receive funding from the Board shall be eligible to purchase Services pursuant to the terms and conditions of the Agreement and, if such charter schools are authorized by their governing bodies to execute such purchases, by issuing their own purchase order(s) to Vendor. The Board shall not be responsible for payment of any amounts owed by charter schools. The Board assumes no authority, liability or obligation on behalf of any charter school.
7. **Participation by Other Local Government Agencies.** Other local government agencies ("Local Government Agencies") may be eligible to purchase Services pursuant to the terms and conditions of the Agreement if: (a) such agencies are authorized, by law or their governing bodies, to execute such purchases; (b) such authorization is allowed by the Board of Education's CPO; and (c) such purchases have no significant net adverse effect on the Board and result in no

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observed diminished ability on the Vendor to provide the Services to the Board or Board's user departments pursuant to such purchases. Local Government Agencies shall include without limitation: City of Chicago, Chicago Park District, City Colleges of Chicago, Chicago Transit Authority, Chicago Housing Authority, Chicago Board of Elections, Metropolitan Pier & Exposition Authority (McCormick Place, Navy Pier), and the Municipal Courts. All purchases and payment transactions shall be made directly between the Vendor and the requesting Local Government Agency; the Board shall not be responsible for payment of any amounts owed by any Local Government Agency to Vendor. The Board assumes no authority, liability or obligation on behalf of any Local Government Authority.

8. **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 or email as shown by the transmitting device, 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 Finance
42 W. Madison Street
Chicago, Illinois 60602

With a copy to: Board of Education of City of Chicago
Attention: General Counsel
One North Dearborn, 9th Floor
Chicago, Illinois 60602
Facsimile: (773) 553-1701

If to Vendor: Vertosoft
1602 Village Market Blvd SE,
Suite 320
Leesburg, VA 20175
Attention: Carly Moore
Phone: (540) 998-8361
Email: carly.moore@vertosoft.com

9. **Remote and In-Person Services.**

- 9.1. Vendor shall provide remote Services consistent with the Scope of Services as directed by the Board. Any and all remote services shall comply with the CPS Acceptable Use Policy found at <https://cps.edu/AcceptableUsePolicy/Pages/vendorPolicy.aspx>, as may be amended ("**Vendor AUP**"). Vendor represents and warrants that Vendor will comply with all Vendor AUP requirements and restrictions.
- 9.2. Vendor shall only provide in-person Services at any time during the Term or any Renewal Term, including during full or partial/hybrid closure of CPS schools due to COVID-19:
- A. As set forth the Scope of Services.
 - B. In compliance with all policies, guidelines, requirements and protocol regarding health, safety and COVID-19 of the Chicago Public Health Department ("**CDPH**").
 - C. In compliance with all CPS policies, guidelines, requirements and protocol regarding health, safety and COVID-19, as may be amended, including but not limited to all standards and expectations for on-site programming at schools during remote learning.

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10. Transitions.

10.1. Transition at Effective Date of Agreement. Upon commencement of the Agreement, Vendor shall familiarize itself with and prepare to transition to Board's existing programs and current System requirements and procedures that are pertinent to Vendor's programs and performance of Vendor's Services. Vendor shall familiarize itself with ongoing Department of Finance program activities, facilities, operations, equipment, materials, supplies, and other such matters that may be pertinent to the performance of Vendor's Services. Vendor shall fully cooperate with other Board contractors, subcontractors and assigns and shall carefully plan and perform its own work to accommodate the work of other Board contractors. Vendor shall not intentionally commit or permit any act which will interfere with the performance of work by any other Board contractors.

10.2. Transition at Termination/Expiration of Agreement. Upon expiration or early termination of this Agreement, Vendor shall take all actions necessary to accomplish a complete and timely transition from Vendor to Board, or to any replacement service providers designated by Board (collectively "**New Provider**"), without material impact on the Services or any other services provided by third parties. Vendor shall provide Board and New Provider with all information regarding the Services that is needed for the transition. Vendor shall provide for the prompt and orderly conclusion of all work, as Board may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition. Vendor shall provide any additional transition services as Board requests in writing for a period of up to one year after the termination or expiration of this Agreement, on a time and materials basis, at a rate to be mutually agreed between Board and Vendor. Vendor shall further ensure that all data, records, and Confidential Information generated in the course of performance is returned to the Board in accordance with the terms of the Agreement.

11. Change Management Process. During the Term of this Agreement or any Renewal Term, **the** parties may determine that change(s) to the Agreement is necessary. In such an event, the parties shall determine if the proposed change amounts to a material revision as described in this Section before determining how that change will be documented.

11.1. Material Revision. A "material revision" includes (i) increasing the unit cost of the Products and/or Services to be provided during the Term of this Agreement, or Renewal Term; (ii) substantial reduction in the scope of Products and Services; (iii) substantial expansion of the Products and Services to be provided beyond the Scope of Products and Services authorized by the Board in this Agreement; (iv) extending the time of performance of Services beyond the time period approved by the Board; (v) change or modification to the legal terms and conditions in this Agreement; or (vi) any other shift of the risks and liabilities between the parties. A material revision requires a written amendment to the Agreement approved in advance by the Board, then signed by the authorized representatives of both parties and approved by the Board's General Counsel.

11.2. Statements of Work and Change Requests and Orders. If the proposed change does not amount to a material revision as defined above, the parties' authorized representatives shall agree in writing to a Statement of Work or Change Request and Order, as appropriate, before each change takes effect.

11.3. Supplemental Statements of Work. The parties may mutually agree upon and enter into a written Supplemental Statement of Work ("**Supplemental SOW**") to further describe the Products to be provided and the Services to be rendered, the roles and responsibilities of the parties, the periods of performance, timelines, deliverables, and any other terms necessary for the performance of the Services according to the expectations described in the Agreement. Each Supplemental SOW entered into shall be numbered sequentially in

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order of execution and shall be executed by the Board's Project Manager and/or Deputy Controller and—where software and/or technology services and products are involved—by the Board's Chief Information Officer, and the authorized representative of Vendor. No SOW shall modify, amend, or add legal terms, conditions, or provisions; shift risks or liabilities between the parties; or otherwise constitute a material revision. Any Products provided and Services performed in accordance with a SOW shall be performed in accordance with the terms of the Agreement. Any SOW that is not completed and approved in accordance with the terms of the Agreement, including this Section, shall be null and void, and Vendor shall not be entitled to any compensation for Products provided or Services performed pursuant to a void SOW. In the event of a conflict or inconsistency between the terms and conditions of a Statement of Work and the terms and conditions of this Agreement, this Agreement controls.

11.4. **Change Requests and Orders.** The parties may at any time determine that changes to the Products and Services provided under this Agreement are necessary. Provided that such changes do not amount to a material revision and do not require a SOW, the parties shall exchange Change Requests, proposals, and then Change Orders. All Change Orders shall contain a detailed, written description of the change in Products and Services and any compensation change (provided that it is not a material revision of the compensation). Any Products and Services provided pursuant to a Change Order shall be subject to and comply with the terms of this Agreement. Change Orders shall not modify, amend, or add legal terms, conditions, or provisions; shift risks or liabilities between the parties; or otherwise constitute a material revision. Any Change Order is not effective unless and until it is properly signed by the Board's Project Manager and/or Deputy Controller and—where software and/or technology services and products are involved—by the Board's Chief Information Officer, and the authorized representative of Vendor. Any Change Order that is not completed and approved in accordance with the terms of the Agreement, including this Section, shall be null and void, and Vendor shall not be entitled to any compensation for Products provided or Services performed pursuant to a void Change Order. In the event of a conflict or inconsistency between the terms and conditions of a Change Order and the terms and conditions of this Agreement, this Agreement controls.

12. **Technical Information.** Prior to the execution of this Agreement, Vendor shall supply CPS's Department of Information and Technology Services ("ITS") and Department of Finance with information regarding its Products (including without limitation any Software), including but not limited to the security and technical environment (collectively "**Technical Information**"). Vendor is required to advise the Board's ITS Program Manager if the Technical Information for any Product(s) or Program(s) changes in any way during the Term of this Agreement, including any Renewal Terms. Any changes that, in the Board's sole determination, do not result in the disqualification of the Products shall be documented in accordance with the Change Management Process section. Changes that result in the disqualification of any Product shall be documented in accordance with the requirements of the Change Management Process section.

13. **Approval of Technology Products.** All proposed technology products will require vetting and approval with regard to compliance with CPS safety, technical, security/privacy and academic/instructional standards. It is anticipated that vetted and approved Products will be set forth in an Exhibit to the Agreement.

14. **Marketplace.** The Board utilizes an eProcurement system referred to as "Marketplace" for electronic order placement of goods and services via a hosted eCatalog. At the Board's sole discretion, the Board may eliminate use of an eProcurement system or determine that certain services or goods may not be made available for purchase by the Board through an eProcurement system. Access to Marketplace is for internal CPS use only. CPS Schools, Networks and Departments may use Marketplace to place an order/purchase. Once the purchase is made through the Marketplace a Purchase Order ("PO") will be sent to Vendor

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electronically through the CPS iSupplier portal.

Vendor shall have the option of making its Products and Services available through Marketplace; however Vendor is not required to utilize Marketplace. Orders and purchases must still be placed utilizing approved POs. The Marketplace is a supplemental tool for the Board's benefit and efficiency and is not to be used in lieu of the process for placing orders or obtaining services as otherwise provided in this Agreement. Use of the Marketplace by Vendor may result in greater visibility of Vendor's Products and Services to CPS Schools, Networks and Departments. If Vendor chooses to use Marketplace, Vendor is responsible for entering the description of the Products and Services and associated pricing into the Marketplace and must maintain its own catalog(s).

The information entered into the Marketplace by Vendor must be in conformity with the terms of the Agreement. The initial Vendor information entered into Marketplace must be approved by an authorized representative of Board, or otherwise in accordance with Board's then-current procedures. Prior to making any changes to the Marketplace, Vendor must first submit the proposed modification or amendment to the Board Project Manager identified in the Scope of Services for review and approval, which approval must be documented by a written amendment signed by the authorized representatives of both Parties in accordance with the terms of the Agreement. Any addition, deletion, change, modification or substitution of Services in Marketplace that is not made in compliance with the Agreement shall be void.

Vendor may not include on the CPS Marketplace any hyperlinks to any external site. Vendor recognizes that any deviation in the description of Products and Services entered in the Marketplace by Vendor from the Products and Services described herein that results in an order being placed will result in that order being deemed invalid by the Board and the associated cost not owed by the Board.

15. **Additional Requirements for Delivery of Products and Services.** In the event of a strike, sympathy strike, picketing, work stoppage, slowdown, demonstration, or any other lawful or unlawful disruptive activity that impacts Services, Vendor shall ensure continued uninterrupted delivery of Services and Products to the Board in accordance with the terms of the Agreement, or as may be otherwise directed by the Board and agreed upon by the Parties. Under the aforementioned circumstances, the Board shall have the right to direct Vendor to use any of the following methods to arrange for continued delivery of Products and Services: 1) use of Vendor's non-union employees or an alternative courier to deliver products; 2) delivery of products to an alternative site; 3) use of Board employees to pick up Products from Vendor or Vendor's couriers; or 4) any other alternative means necessary to ensure that Products and Services are timely delivered to the Board without disruption. Vendor shall also enforce any no-strike clauses Vendor has in its collective bargaining agreements when such clauses impact the delivery of any Services or Products under this Agreement. Any alternative delivery methods utilized under this section shall be approved by a representative designated by the Board.
16. **Social Security Number Protection Policy.** If at any time, in the course of providing Services, any Social Security numbers may be disclosed to Vendor, Vendor warrants that it is and shall remain in compliance with Board's Social Security Number Protection Policy adopted May 25, 2011 (11-0525-PO3), as may be amended or restated from time to time.

III. **PRODUCT TERMS**

1. **New Products; Options.** During the Term of the Agreement or any Renewal Terms, Vendor may inform the Board Project Manager, the Chief Information Officer if software or technology is involved, and the Department of Procurement if an addition to the Products (including without limitation any Software), provided under the Agreement may reduce costs, improve quality or efficiencies, or be otherwise beneficial to the Board and are still within the scope of the

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Agreement. For example, as new technologies evolve during the Term of the Agreement or any Renewal Term, additional products may be offered to consumers similarly situated to the Board that are within the scope of the Agreement. In such an event, Vendor shall provide to the Board the specifications, price, and any other relevant information regarding the proposed product (including a sample where requested), and the Board Project Manager, the Chief Information Officer if software or technology is involved, and the Department of Procurement shall determine if the product is within the scope of the Agreement and can be added to the Products list included within the Agreement as set forth herein. Any addition or modification to the Products list that does not amount to a material revision as defined in the Agreement shall be documented in writing in accordance with the Change Management Process section of this Agreement. The sale of any new Products shall be in accordance with the terms of the Agreement. The price for any Products added to the Products list in this manner shall reflect discounts consistent with the prices for other Products that are available for the Board to purchase or lease under the Agreement. The Board shall have no financial or other obligations for the sale of any product that is not included in any Products list in the Agreement at the time of the sale with the appropriate written documentation.

2. **Supply of Products.** Upon installation (or delivery, as the case may be), other than as may be set forth herein, all Products will become the sole property of the Board. Vendor will supply the Products in a safe, thorough and timely manner. All Products will be supplied in accordance with the terms and provisions of this Agreement and to the satisfaction of the Board's CPO.
3. **Products Compliance.** All Products and any other goods, equipment or materials that may be provided or used as part of the Agreement shall comply with the applicable local, state, and federal health and safety standards, including without limitation the Consumer Protection Agency and the Federal Trade Commission standards and guidelines.
4. **Product Warranty.** Vendor warrants that all Products furnished hereunder shall be new and conform with any specifications ("Specifications") and other requirements as set forth in the Agreement. Products shall be of merchantable quality and in good working order, and shall be free from defects in material, workmanship and design for a period of time of at least one year from the receipt of shipment (or the length of the manufacturer's warranty, whichever is longer), unless the Board specifies a longer period or specifically agrees otherwise. Vendor shall assign to the Board the benefits of any manufacturer's warranty of the Products and shall cooperate with the Board in securing any and all remedies of such warranties for the benefit of the Board during the Term of the Agreement and any Renewal Terms.

During the warranty period, the Board shall have the option to require Vendor to repair and replace defective Products without charge or expense, or to reject any defective Products and obtain a full refund or credit for any payment therefor. Repaired or replaced Products shall be warranted for a minimum period of one (1) year from completion of repairs (or date of receipt of replacement, as the case may be) or the remainder of the Product's original warranty, whichever is longer. Vendor shall be responsible for transportation charges for all warranty shipments. This warranty shall survive inspection, acceptance, payment and expiration or termination of the Agreement. Each warranty shall include, but is not limited to, the manufacturer's name, the Board's name, the School's name, the product style name, the product number, the length of the warranty, the manufacturer's contact person and the Agreement number. Warranty information shall be provided with the delivery of the Products and when Vendor submits its invoice. Nothing within this Section shall limit or be interpreted as reducing any warranty that may be provided by Vendor or the original manufacturer of the Product to the extent that the original warranty may be more expansive than the warranty set forth in this Section.

Upon final acceptance of any Products delivered, Vendor shall provide to the Board Project Manager and the Department of Procurement every manufacturer's warranty, guarantee, parts list, and literature for each of the Products delivered to the schools.

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A letter containing all warranty information must be provided with the invoice or the invoice will not be processed for that school or location. All maintenance and installation instructions for Products should be provided at that time as well per manufacturer recommendations. The manufacturers' warranties are in addition to and not in lieu of any other of Vendor's warranties stated herein, and the Board is entitled to look to Vendor for remedy in all cases where Vendor's warranty applies regardless of whether a manufacturer's warranty also applies.

The Board acknowledges that Vendor may not be the manufacturer of all the Products being supplied under this Agreement. Nonetheless, Vendor warrants that from the date of delivery, the Products shall be covered by the respective manufacturer's warranty, and Vendor shall only provide Products covered by manufacturer's warranties, including but not limited to the warranty that all Products are free from defects in materials and workmanship and will, as to substantial operational functions, conform to the current published Product specifications.

5. **Products Availability and Successor Models.** If Vendor or a manufacturer/supplier cancels or discontinues a Product during the Term of the Agreement or any Renewal Term, Vendor must notify the Board of any such manufacturer's discontinuation or cancellation within five (5) business days of Vendor's knowledge of said discontinuation or cancellation. In such an event, Vendor shall work with the Board's authorized representative to find an equivalent, acceptable product that maintains or reduces cost and, to the extent commercially possible, maintains or improves specifications as determined by the Board's authorized representative ("Successor Model"). Seed devices of the proposed Successor Models must be made available to the Board's Project Manager, the Chief Information Officer if software or technology is involved, and the Chief Procurement Officer ("CPO") for their review and approval prior to substitution. Products must be replaced with an equivalent model that meets any specification of the original item specified in the Agreement. If not a material revision, any agreement to replace a Product in the Agreement must be documented in writing in accordance with the Change Management Process section. The absence of a written agreement documenting acceptance of the replacement product shall mean that any purchases of the replacement product shall be null and void.
6. **Product Recall.** In accordance with the notice provisions set forth herein, Vendor shall notify the Board within forty-eight (48) hours of Vendor's receipt of any manufacturer or government issued recalls on Products purchased by the Board pursuant to the Agreement. All Products purchased by the Board subject to a recall shall be replaced at no cost to the Board by Vendor with the same make and model Product within ten (10) business days of Vendor notifying the Board of the recall. If the same make and model is not available due to the recall, then Vendor shall provide a product comparable to the recalled Products in terms of quality and price. Acceptance of the comparable Product shall be at the sole discretion of the CPO. If the CPO rejects in writing the comparable product, Vendor shall remove all the recalled Products from the Board sites and provide a full refund for each recalled product within ten (10) business days of such written rejection (or, if a life safety issue is involved, such removal shall occur within two [2] business days of Vendor's notice of recall or otherwise as may be requested by Board). Replacement of the recalled Products shall include delivery of the same make and model Products or the comparable Products (if accepted) to the sites where the recalled Products are located and removal of the recalled Products at no cost to the Board. Vendor shall remove all recalled Products from Board property at the time the replacement Products are delivered.
7. **Product Change Management.** CPS must be notified of all post go-live changes to the Products, which include changes to functionality, the introduction of additional applications, and major platform upgrades. CPS must also be notified of all planned changes, expansion, or reduction to data elements or data management procedures and shall not make such changes without the prior written consent of the Board which shall not be unreasonably withheld. Change notifications shall be sent to a designated CPS email address and must primarily list the change description and the planned date of change. All notifications should be provided at a minimum one (1) week before any change takes effect. For changes that require adjustments to the CPS environment or involve any system integrations, Vendor shall require written approval from CPS

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prior to any go-live changes and shall not make any changes without the prior written approval of CPS.

8. **Data Integration & Management.** Products must align to IMS Global interoperability standards for data exchanges and authentication (One Roster, or Google Single Sign On / SSO).

IV. SOFTWARE TERMS

1. **License.** Vendor hereby grants to the Board a non-exclusive, worldwide, nontransferable, royalty-free (except for fees specified in the Agreement) license to use, through the Term of the Agreement, including any Renewal Terms, any software that Vendor may offer as part of its performance of Services under the Agreement (collectively "Software"). The Software includes any software and applications, regardless of the means of delivery, updates, bug fixes, patches, operational modifications or corrections, components, equipment, or accessories that are necessary for the operation of the Services as proposed by Vendor and accepted by the Board. The Software and any accompanying documentation shall at all times remain the sole and exclusive property of Vendor or, alternatively, the sole and exclusive property of a third party from whom Vendor has obtained all necessary rights and permissions to sub-license the Software to the Board. The Board shall not sell, lease, license or otherwise transfer, use or dispose of the Software outside of the CPS except as expressly provided herein. The Board shall not copy or knowingly permit the copying by any third party of the Software (other than for a reasonable number of back-up copies) or distribute, market, sell, rent, lease, license, transfer, sublicense or assign to any third party any portion of the Software except as permitted under this Agreement. The Board shall not make any alterations, additions or modifications, create derivative works, decompile, disassemble or reverse engineer the Software without the prior written consent of Vendor.
2. **Permissible Board Actions.** Nothing in this Section shall prevent the Board, its employees and representatives from sharing reports and data generated from Vendor's Products and Services with other vendors of the Board as may be necessary to receive and evaluate the Products and Services for the Board's purposes.
3. **Licensed Users.** Vendor shall provide a username and password for each licensed user of the Software, if applicable. "Licensed Users" or "Board Users" usually means those schools, classrooms, administrators, teachers, students, parents/legal guardians and other identified individuals licensed to access the Software. Unless specifically stated in the Agreement, there is no set maximum or minimum number of Board Users who will be able to access the Software. The number of Licenses provided shall be unlimited and shall be in effect through the Term or any Renewal Term, unless specifically stated otherwise in this Agreement. Unless specifically stated otherwise, a Licensed User may continue to use the License throughout the Term or any Renewal Term of this Agreement, regardless of any transfer to any other CPS school during that Term.
4. **Implementation of the Software.** Where applicable or necessary, Vendor shall provide installation, configuration, and implementation services for any software or applications provided under the Agreement, regardless of the medium used for its delivery (collectively referred to as "Software"), so that it is accessible through the Board's computers and other compatible devices. (For the purposes of the Agreement, Software may be considered to be included in the terms "Products" and "Services" where appropriate as determined by the Board.)
5. **Software Maintenance and Support.** As applicable, Vendor shall be solely responsible for maintenance and support services to the Board for any Software purchased or used as part of the Services as more fully described in the Agreement.
6. **Hosting Services.** As part of the Services provided pursuant to the Agreement, as applicable, Vendor shall host the Software on servers, hardware, components and equipment (collectively

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“Infrastructure”) that Vendor shall provide at its own cost (collectively, the "Hosting Services"). The Infrastructure shall be located within the continental United States. Vendor is expected to provide ample storage and processing power within its Infrastructure and maintain it to assure the continued operation of the Software and Services and to take such action as may be necessary (at Vendor'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 Resources and the Infrastructure; and security controls and procedures to prevent unauthorized access to the Software 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.

7. **Compatibility and Data Flow.** Vendor shall ensure that the Software and Services allows data to flow properly between the Board's users and the Software. Vendor must ensure that the Services, Software, and other resources and materials (collectively, the “Provided Resources”) that are provided by Vendor to the Board, incorporated by Vendor, or approved or recommended by Vendor for use by the Board in connection with the Services, be 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, Vendor must cooperate and work as requested with the other service providers of the Board to coordinate the development and the provision of Services with the services and systems of such other service providers, including without limitation the following:
- A. Facilitating with such other relevant service providers the timely resolution of all problems that may arise and impact the Services, regardless of the actual or suspected root-cause of such problems, and using all commercially reasonable efforts to obtain and maintain the active participation, cooperation, and involvement of such other service providers as is required for such problem resolution.
 - B. Providing information concerning any or all of the Provided Resources or the data, computing environment, and technology direction used in implementing and providing the Services.
 - C. Working with the Board's other service providers in the implementation and integration of the Services with the Board Resources in the Board's environment and the integration and interfacing of the services of such other service providers with the Services.
 - D. Providing reasonable access to and use of the Provided Resources.
 - E. Performing other reasonably necessary tasks in connection with the Services in order to accomplish the foregoing activities described in this section.

In the event of any dispute between the parties as to whether a particular services or function falls within the Scope of Services to be provided by the Board's third-party service providers (or by the Board itself), or within the Scope of Services to be provided by Vendor, such particular service or function shall be considered to be a part of the Services hereunder if it is consistent with, and reasonably inferable to be within, the scope of Vendor's work, as set forth in the Agreement, and it more reasonably would be associated with the scope of Vendor's work than with the scope of the services to be provided by such other service providers. If any of the foregoing requires the disclosure of any proprietary information or Confidential Information of Vendor to any third party, such third party may be required to enter into a reasonable confidentiality agreement with Vendor and/or Board, with terms substantially equivalent to those of the Agreement regarding the protection of Confidential Information.

Vendor shall have no obligation under this section to ensure that the Board maintains an active internet connection. Any unavailability of the Services due to the Board's lack of an internet connection, unless such lack of an internet connection is caused by Vendor, the Services, or the Software, shall be the sole responsibility of the Board.

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8. **Software Warranties and Representations.** For any Software that may be supplied or licensed to the Board or otherwise used in performance of the Services, Vendor represents and warrants that the following shall be true and correct as of the effective date of the Agreement and shall continue to be true and correct during the Term of the Agreement and any Renewal Terms:
- 8.1. **Assignment of Warranties.** Vendor will assign to the Board any warranties concerning the Software from the manufacturer to the Board as applicable.
 - 8.2. **Compatibility.** The Software is compatible with and shall support implementation and full utilization as set forth in the Scope of Services.
 - 8.3. **Documentation Warranty.** The documentation provided to the Board concerning the Software (“Documentation”) shall be kept current with the upgrades of the Software.
 - 8.4. **Title Warranty.** Vendor has the lawful right, power, and authority to license the Software.
 - 8.5. **Software Performance.** The Software shall perform the functions described in the Documentation on any hardware/operating system combination on which Vendor has indicated that such Software shall perform such functions. Vendor shall correct any failure of the Software to perform in accordance with the Documentation within five (5) business days.
 - 8.6. **Free of Defect Media Warranty.** The tapes, diskettes, flash drives, and CD-ROM and other media on which the Software is furnished shall be free from defects in materials and workmanship under normal use for 90 days.
 - 8.7. **Free of Computer Viruses.** Vendor will use commercially reasonable best efforts to ensure that the Services, including but not limited to any Software used in the performance of the Services, are free and do not introduce or transfer any malicious code, malware, Trojan horses, ransomware, worms rootkits, keyloggers, redirectors, or other computer viruses into the Board’s network, systems, and computers. Vendor will also maintain a master copy of the appropriate versions of the Software, free of computer malware, if applicable.
 - 8.8. **Not Alter Program.** Vendor will not, directly or through a third party, knowingly remove, alter, change or interface with the Software for the purpose or preventing the Board from utilizing the Software.
 - 8.9. **No Disabling Code.** Vendor will not knowingly cause any disabling code to be incorporated into the Software.
 - 8.10. **Enhancement Warranty.** Any enhancements shall perform as described in the Documentation.
 - 8.11. **Software Customization.** Any customizations of the Software shall not infringe upon or violate any patent, copyright, trade secret or other property right of any third party. In addition, Vendor hereby represents and warrants that any Software application customized shall meet the specifications as provided in the Agreement. If the Board notifies Vendor, or Vendor becomes aware, of any non-performance, error or defect covered by the foregoing warranties, the Vendor shall, at its own expense, promptly correct such non-performance, error or defect, but in no event later than 30 days after notification by the Board. Any repair or replacement of Software or Services or portions thereof will be additionally and automatically warranted therein.
 - 8.12. **Survival.** The warranties and representations set forth above shall survive the expiration or earlier termination of this Agreement.

V. DATA SECURITY & CONFIDENTIALITY TERMS**1. Definitions.**

- 1.1. **Confidential Information.** In the performance of the Agreement, Vendor 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-Generated Content (hereinafter defined), Student

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Data as further defined below, employee data, technical data and specifications, software, ideas, budget figures, operational details, unpublished school information, CPS financial information, access control and/or system logs, 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 Vendor. Confidential Information will not include information that is: (i) or becomes part of the public domain through no fault of Vendor; (ii) made available to Vendor by an independent third party having the legal right to make such disclosure; and (iii) information that can be established and documented by Vendor to have been independently developed or obtained by Vendor without violating the confidentiality obligations of this Agreement and any other agreements with the Board.

- 1.2. **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, 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 and including without limitation Software) by the Board, its employees, agents, subcontractors, students, parents or legal guardians of any CPS students relating to a CPS student. For purposes of this Agreement, Student Data is Confidential Information hereunder; additional requirements regarding Student Data specifically are described below.
 - 1.3. **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. Vendor 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.
 - 1.4. **Student Generated Content.** The term “Student-Generated Content” means materials or content created by a student in the Services including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, and videos.
2. **Use of Confidential Information.** Vendor shall only use Confidential Information for the sole purpose of providing Services to the Board and shall not disclose the Confidential Information except to those of its directors, officers, agents, servants, employees, and contractors who have a need to access the Confidential Information in order to perform the Services set forth in the Agreement. Vendor is prohibited from sharing Student Data with any contractors or third parties without executing a Student Data exhibit to be incorporated into a written agreement between the Parties. Vendor shall not copy or otherwise reproduce in any manner whatsoever the Confidential Information for any purposes outside the terms of the Agreement without the **prior written consent** of the Board, except where required for its own internal use solely to deliver the Services under this Agreement and strictly in accordance with the terms of this Agreement. Vendor shall use at least the same standard of care in the protection of Confidential Information as Vendor 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 the Confidential Information may be subject to the special requirements set forth in the Family Educational Rights and Privacy Act (“**FERPA**”), the Protection of Pupil Rights Amendment (“**PPRA**”), the Illinois School Student Records Act (“**ISSRA**”), the Student Online Personal Protection Act (“**SOPPA**”) and the Children’s Online Privacy Protection Act (“**COPPA**”).
 3. **Handling of Confidential Information.** Vendor shall protect against the unauthorized access, use, or disclosure of Confidential Information by employing security measures when handling

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Confidential Information that are no less protective as those used to protect Vendor's own confidential information and at least as secure as the following. When handling Confidential Information, which may include but is not limited to Student Data, Vendor shall:

- A. 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. Vendor shall not send with encrypted Confidential Information, via mail or electronically, any password or other information sufficient to allow decryption.
- B. Not store any Confidential Information on portable or removable electronic media, such as CDs, DVDs, electronic tape, flash drives, etc.
- C. Not leave Confidential Information in any medium unsecured and unattended at any time.
- D. 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.
- E. 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. Vendor 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. Vendor 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.
- F. Secure the Confidential Information stored on its systems, including but not limited to any servers, by employing adequate security measures to prevent unauthorized access to, disclosure and use of that information. These measures include appropriate administrative, physical, and technical safeguards, policies, procedures, and technical elements relating to data access controls. All Confidential Information must be secured in transit using secure FTP services or https/TLS 1.0+. Vendor must maintain industry recognized security practices to establish secure application(s), network, and infrastructure architectures.
- G. Ensure that the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed within Vendor's Services and supporting enterprise complies with applicable data protection and privacy laws, as well as the terms and conditions of the Agreement.
- H. Conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Vendor 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. Vendor agrees to share its incident response plan upon request.
- I. 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 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 logins with a 256-bit or higher encryption algorithm.
 5. Secure transmission of login credentials.

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6. Automatic password change routine.
 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. 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 prevention system that inspects incoming data transmissions.
 11. Prevention of hostile and unauthorized intrusion.
 12. Backup of all Confidential Information at least once every twenty-four (24) hours. Perform content snapshots at least daily and retain for at least ninety (90) days.
- J. Confidential Information shall be stored, backed up, and served only on servers located in the continental United States. Vendor's network where Confidential Information may be stored shall have an in-line intrusion prevention system that inspects incoming data transmissions. Vendor 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.
4. **Dissemination of Information.** Vendor shall not disseminate any Confidential Information to a third party without the prior written consent of the Board. If Vendor 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 Vendor's possession as a result of Services and/or Materials provided under the Agreement, Vendor 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. Vendor 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.
 5. **Press Releases; Publicity.** Vendor 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, Vendor 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.
 6. **Return or Destruction of Confidential Information.** Vendor shall return all Confidential Information to the Board within thirty (30) calendar days of expiration or termination of the Agreement. Confidential Information shall be returned to the Board in a secured, consumable format as directed by the Board, such as .csv or SQL file. Upon return of all Confidential Information, Vendor shall provide an affidavit attesting to destruction of all copies in Vendor's possession. Vendor shall delete a specific student's Student Data upon the written request of the Board. In the event that Vendor is permitted to retain certain Confidential Information, provided such permission is granted in writing by the Board, such information shall be protected and handled in accordance with the terms of this Agreement for as long as Vendor is permitted to retain such Confidential Information.
 7. **Unauthorized Access, Use or Disclosure of Confidential Information.** If Vendor has

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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 twenty-four hours from Vendor 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. Vendor shall bear the losses and expenses (including attorneys' fees) associated with a breach of Vendor'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. Vendor shall include this provision in any and all agreements it executes with subcontractors performing Services or providing Products under this Agreement.

8. **Security Requirements.** Vendor will store and process Confidential Information, including any Student Data, in accordance with the industry best practices, which at a minimum shall be in accordance with the standards set forth in the Agreement. This includes appropriate administrative, physical, and technical safeguards to secure Student Data from unauthorized access, disclosure, and use. All data must be secured in transit using secure FTP services or https/TLS 1.0+. Vendor is required to specify any personally identifiable information (PII) collected or used by their Products. In addition, Vendor must maintain industry recognized security practices to establish secure application(s), network, and infrastructure architectures. Industry certifications, such as International Organization for Standardization (ISO), SysTrust, Cloud Security Alliance (CSA) STAR Certification, or WebTrust security for SaaS environments are recommended. Such safeguards shall be no less rigorous than accepted industry practices, including specifically the NIST 800-53r4 moderate level, International Organization for Standardization's standards ISO/IEC 27001:2005 (Information Security Management Systems – Requirements), and ISO-IEC 27002:2005 (Code of Practice for International Security Management).

Vendor shall ensure that the manner in which Student Data is collected, accessed, used, stored, processed, disposed of and disclosed complies with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement. Vendor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Vendor 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 Student Data security practices.

Vendor agrees to share its incident response plan upon request. Vendor shall assure that all data that is transmitted between the Board's access points and the ultimate server, by Vendor or its recipients, will use Board-approved encryption of no less rigor than NIST-validated DES standards.

- 8.1. **Security Safeguards.** Vendor agrees to provide the following additional safeguards:
- A. Include component and system level fault tolerance and redundancy in system design.
 - B. Encrypt user passwords in any data storage location and obfuscate password entry fields in any entry interface controlled by the discloser.
 - C. Encrypt Student Data at-rest and in-transit.
 - D. Authentication of users at login with a 128-bit or higher encryption algorithm.
 - E. Secure transmission of login credentials.
 - F. Automatic password change routine.

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- G. Trace user system access via a combination of system logs and Google Analytics.
 - H. 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.
 - I. 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.
 - J. Employ an in-line Intrusion Protection System that inspects incoming data transmissions.
 - K. Ensure that Student Data is stored in privately addressed network devices that have no direct interaction with public networks.
 - L. Provide a documented disaster recovery plan that includes the following elements:
 - i. Available recovery times.
 - ii. Conduct 24x7 system monitoring that is capable of detecting Potential outages.
 - iii. Plans for File-level, Database and server recovery after a component/system failure, damage or compromise.
 - iv. Substantial geographical separation between data centers hosting production, backup and redundant system elements.
 - v. Include recovery/mitigation procedures for all managed sites, including subcontractors, agents, and other recipients.
 - vi. Include provisions for at least the following events:
 - (a) Fire
 - (b) Natural disaster
 - (c) Sabotage
 - (d) Accidental human error
 - (e) Flooding
 - (f) Equipment failure
 - (g) Application/database failure
 - (h) Other unlikely events
 - M. No less than annual testing of the disaster recovery plan (at least parts that affect Student Data) with results of the test made available to the Board, as well as information about, and schedule for, the correction of deficiencies identified in the test.
 - N. Prevention of hostile or unauthorized intrusion.
 - O. Screening of employees with access to Student Data to assure that any employees who are in violation of the statutes referenced in the Criminal Background Check in the Agreement do not have access to Student Data. Vendor shall provide the security measures taken to ensure that said employees do not have access to Student Data.
 - P. Backup of all Student Data at least once every twenty-four (24) hours.
 - Q. Perform content snapshots at least daily and retain for at least ninety (90) days.
9. **Additional Obligations Regarding Treatment of Student Data.** In addition to the above stated obligations for the treatment and handling of Confidential Information, Vendor shall abide by the following obligations when handling, receiving, storing, transmitting or otherwise accessing Student Data, if permitted by the Board:
- 9.1. **Student Data Use.** Vendor shall not use Student Data, including persistent unique identifiers, data created or gathered by Vendor's site, Products, Services, and technology, 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. Vendor will use Student Data only for the purpose of fulfilling its duties and delivering Products and Services under this Agreement, if applicable.

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- 9.2. Student Data Collection. Vendor shall not collect Student Data except as specifically permitted in this Agreement.
- 9.3. Marketing and Advertising. Vendor shall not advertise or market to schools, students or their parents/guardians when the advertising is based upon any Student Data that Vendor has acquired because of the use of that Vendor's site, Products, Services, or this Agreement.
- 9.4. Student Data Mining. Vendor 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.
- 9.5. Student Data Transfer or Destruction. Vendor will ensure that all Student Data in its possession and in the possession of any subcontractors, or agents to whom Vendor 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, if applicable.
- 9.6. 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 Vendor any rights, implied or otherwise, to Student Data, content, or intellectual property. Vendor does **not** have the right to sell or trade Student Data.
- 9.7. Sale of Student Data. Vendor is prohibited from selling, trading, or otherwise transferring Student Data.
- 9.8. Access. Any Student Data held by Vendor will be made available to the Board upon request of the Board. The identity of all persons having access to Student Data through Vendor will be documented and access will be logged.
10. **Student Data Prohibition; Compliance with the SOPPA and FERPA.** Vendor is strictly prohibited from using any digital, software, online or cloud platform outside of the CPS Google Platform, including, but not limited to any educational technology (Ed Tech) and other student engagement or learning enrichment platforms in connection with the Services Vendor will be offering and providing to CPS under this Agreement.

Further, the Board will not provide Vendor with any information or data which may reasonably be subject to SOPPA or FERPA, or classified as 'sensitive' under any law or regulation related to data privacy.

11. **Volunteers, Employees, Agents, and Subcontractors.** Vendor agrees to provide its volunteers, employees, agents, and 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, and subcontractors to undertake the same obligations as agreed to herein by Vendor.
12. **Data Security Manager.** Vendor shall provide the Board with the name and contact information for a primary and alternate employee of Vendor who shall serve as the Board's primary security contact and who shall be available to assist the Board twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Confidential

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Information-related security breach. The designated contact shall respond to any Board inquiries within two (2) hours.

13. **Injunctive Relief.** In the event of a breach or threatened breach of this Section, Vendor 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, Vendor 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. **Survival.** The provisions of this Section shall survive the termination or expiration of this Agreement.

VI. INSURANCE REQUIREMENTS

Vendor, at its own expense, shall procure and maintain insurance covering all operations under the Agreement, whether performed by Vendor 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. Vendor shall submit to the Board satisfactory evidence of insurance coverage and upon request, shall promptly provide a certified copy of any applicable policy of insurance. Minimum insurance requirements include the coverage set forth:

1. **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 the 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.
2. **Commercial General Liability Insurance.** Commercial General Liability Insurance or equivalent with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) 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 (for a minimum of two (2) years following completion), and defense. Commercial General Liability Coverage must include and not exclude coverage for sexual abuse and molestation.
3. **Automobile Liability Insurance.** Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with Services to be performed, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
4. **Professional Liability/ Errors and Omissions.** When any professionals perform Services in connection with the Agreement, Professional Liability Insurance covering acts, errors, or omissions in conjunction with the professional services must be maintained with limits of not less than One Million Dollars (\$1,000,000.00) each claim and Two Million (\$2,000,000.00) in the aggregate. Coverage must include contractual liability, Privacy/Network Coverage, and security/privacy. Such coverage must not be excluded. When policies are renewed or replaced, the policy retroactive date must coincide with or precede start of Services under this Agreement. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years following completion of professional services. This coverage may be included in a Cyber Liability And Privacy & Security Insurance policy.
5. **Sexual Abuse & Molestation Insurance.** Sexual Abuse & Molestation Insurance with limits of not less than One Million (\$1,000,000.00) per claim and Two Million (\$2,000,000.00) in the aggregate. If coverage is claims-made, the policy shall have a retroactive date effective upon the

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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 acts exclusion must predate both the Effective Date of this Agreement and any earlier commencement of services.

6. **Cyber Liability And Privacy & Security Insurance.** Cyber Liability and Privacy & Security 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 or federal guidelines, with limits of liability not less than One Million Dollars (\$1,000,000.00) per claim and Two Million Dollars (\$2,000,000.00) in the aggregate. Coverage shall include failure to prevent transmission of malicious code. The policy will be a claims-made program with any prior acts exclusion predating both the date of the Agreement and any earlier commencement of Services. Such coverage shall either be maintained continuously for a period of two (2) years after expiration or termination of the Agreement or Vendor must secure a 2-year extended reporting provision.
7. **Umbrella/Excess Liability Insurance.** Umbrella or Excess Liability Insurance to provide additional limits for underlying Workers' Compensation and Employers' Liability Insurance, Commercial General Liability Insurance, Automobile Liability Insurance Sexual Abuse & Molestation Insurance (if the latter is required) (and Professional Liability/Medical Errors and Omissions, Professional Liability /Technology Errors and Omissions, and Cyber Liability And Privacy & Security Insurance, if Umbrella/Excess coverage is available for these coverages), with limits not less than Two Million Dollars (\$2,000,000.00) per occurrence, and shall cover the Board and its employees, subject to that of the primary coverage.
8. **Additional Insured.** Vendor shall have its Commercial General Liability, Umbrella/Excess Liability, Automobile Liability Insurance and Sexual Abuse and Molestation Insurance policies (if the latter is required) (and its Professional Liability / Medical Errors and Omissions Insurance, Professional Liability/Technology Errors and Omissions, and Cyber Liability And Privacy & Security Insurance, if this endorsement is available for those coverages) endorsed to provide that "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".
9. **General.** The insurance company, or its representative, 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 Vendor for any Products or Services if satisfactory proof of insurance is not provided by Vendor prior to the performance of any Services. The Certificate must provide thirty (30) days prior written notice of material change, cancellation, or non-renewal be given to:

Risk Management
Board of Education of the City of Chicago
42 W. Madison
Chicago, Illinois 60602
riskmanagement@cps.edu

The Board retains final authority with respect to all insurance-related decisions and maintains the right to modify, delete, alter or change these requirements upon written notice provided to Vendor by the Board's Office of Finance, Risk Management. Any failure of the Board to demand or receive proof of insurance coverage shall not constitute a waiver of Vendor's obligation to obtain the required insurance. The receipt of any certificate does not constitute agreement by the Board that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. Vendor's failure to carry or document required insurance shall constitute an Event of Default of the Vendor's Agreement with the Board. In the event Vendor fails to fulfill the insurance requirements of the Agreement, the Board reserves the right to stop the Services until proper evidence of insurance is provided, or the Agreement may be terminated.

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Any deductibles or self-insured retentions on referenced insurance coverage must be borne by Vendor. Any insurance or self-insurance programs maintained by the Board of Education do not contribute to insurance provided by the Vendor.

All subcontractors are subject to the same insurance requirements of Vendor unless otherwise specified in the Agreement. The Vendor shall require any subcontractors under the Agreement to maintain comparable insurance naming the Vendor, the Board inclusive of its members, employees and agents, and any other entity designated by the Board, as Additional Insured. The Vendor will maintain a file of subcontractor's insurance certificates evidencing compliance with these requirements.

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

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

The Board retains final authority with respect to all insurance-related decisions and maintains the right to modify, delete, alter or change these requirements upon written notice provided to Vendor by the Board's Office of Finance, Risk Management.

Vendor must register with the insurance certificate monitoring company designated by the Board and indicated below and must maintain a current insurance certificate on file during the entire time of providing services to the Board. Vendor must register and pay the initial annual monitoring fee to the insurance certificate monitoring company prior to performing services for the Board.

Each year, Board-approved, registered vendors will be notified 30 days prior to the expiration date of their required insurance coverage (highlighted on their latest submitted insurance certificate on file) in order to 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 (see URL below). Should you have any questions on submissions and payment options, you can contact the certificate monitoring company.

Certificate Monitoring Company:
Topiary Communications Inc.
211 W. Wacker Drive, Ste 220
Chicago, IL 60606
Phone: (312) 494-5709
Email: dans@topiarycomm.net

URL: <http://www.cpsVendorcert.com> (designated website for online registration, insurance certificate submissions and annual fee payments)

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date first written above.

THE BOARD OF EDUCATION
OF THE CITY OF CHICAGO

^{DS}
ES

VERTOSOFT, LLC

DocuSigned by:
Patricia Hernandez
By: 68F0875FFDF456...
Patricia Hernandez,
Chief Procurement Officer

By: *H. Jay Colavita*
[Name] Jay Colavita

February 13, 2024 | 12:45:59 PM CST

[title] President

Date: 12/16/2023

PRDA: 24-0129-PRDA11

Approved as to legal form: ^{DS}JF ^{DS}JDE ^{DS}ES

DocuSigned by:
Ruchi Verma
By: 56B562E0FFA44C9
Ruchi Verma, General Counsel

ATTACHMENTS:

- Exhibit A: Scope of Services
- Exhibit B: Pricing Exhibit

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE**Equipment and Real Estate.**

- Vendor will support CPS in the SBITA Reporting - GASB 96 in the following areas:
 - Generate GASB 96 journal entries for each individual subscription arrangement and all SBITAs in aggregate.
 - Prepare the information needed for GASB 96 Disclosures
 - Provide amortization schedules for each individual subscription arrangement and all SBITAs in aggregate.

The Software will be available 99.5% of the time, measured on a quarterly basis. Availability shall be calculated for the measurement period by dividing (a) the Baseline Uptime less Unscheduled Downtime by (b) the Baseline Uptime for the same period. The Software will work properly without the requirement of significant repair or maintenance after any Microsoft Office tools' upgrade, especially Excel. Those upgrades shall not have any major interruption on the Software's regular performance.

II. TASK/DELIVERABLES SCHEDULE

| Deliverables | Delivery Date / Milestone | Expected Outcome |
|---|----------------------------------|---|
| Connected Government Financial Reporting Solution with Wdate - Per Unit | 1/1/2024 to 12/31/2027 | WDesk - CGFRS-01 Software subscription |
| Workiva - GASB87 Reporting Module | 1/1/2024 to 12/31/2027 | Workiva - GASB87 Reporting Module Software subscription |
| Workiva – GASB96 Reporting Module | 1/1/2024 to 12/31/2027 | Workiva – GASB96 Reporting Module Software subscription |

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EXHIBIT B

PRICING EXHIBIT

INVOICE ATTACHED AS EXHIBIT B ON FOLLOWING PAGE

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1602 Village Market Blvd SE, Suite 320 Leesburg,
VA20175 USA

Cage Code: 7QV38
UEI Number Y7D5MXRU2839
DUNS# 080431574
Federal Tax ID: 81-3911287
Business Size: Small Business

Date: 10/23/2023, 10:46 AM

Phone: 571 707-4130
Fax: 571-291-4119
Email: sales@vertosoft.com

Vertosoft Contact: Carly Moore
Phone: (540) 998-8361
Email: carly.moore@vertosoft.com

Workiva Quote for Chicago Public Schools

Contract: Open Market

Quote #: Q-03707
Expires On: 11/19/2023

Ship To
City of Chicago
CHICAGO PUBLIC SCHOOLS 42 WEST
MADISON STREET CHICAGO, ILLINOIS
60602

Quote For:
Name: Rolando
Hernandez
Company: Chicago
Public Schools
Email:
rshernandez1@cps.e
du **Phone:**
773-553-6316

| PAYMENT TERMS | DELIVERY METHOD | PAYMENT METHOD | VERTOSOFT CUST ID | SUPPLIER REF # |
|---------------|-----------------|-----------------------|-------------------|----------------|
| Net 30 | Electronic | Check/ACH/Credit Card | | |

Overall POP Start Date: 1/1/2024
Overall POP End Date: 12/30/2028

01/01/2024-12/31/2024

| PART # | DESCRIPTION | QTY | UNIT PRICE | EXTENDED |
|-------------------------------------|--|------|-------------|--------------------|
| WDESK-CGMRS-01 | Connected Government Management Reporting Solution with Wdata - Per Unit | 2.00 | \$5,222.37 | \$10,444.75 |
| WDESK-CGFRS-01 | Connected Government Financial Reporting Solution with Wdata - Per Unit | 2.00 | \$33,189.51 | \$66,379.02 |
| 01/01/2024-12/31/2024 TOTAL: | | | | \$76,823.77 |

01/01/2025-12/31/2025

| PART # | DESCRIPTION | QTY | UNIT PRICE | EXTENDED |
|-------------------------------------|--|------------|-------------------|-----------------|
| WDESK-CGMRS-01 | Connected Government Management Reporting Solution with Wdata - Per Unit | 2.00 | \$5,483.48 | \$10,966.96 |
| WDESK-CGFRS-01 | Connected Government Financial Reporting Solution with Wdata - Per Unit | 2.00 | \$34,848.90 | \$69,697.80 |
| 01/01/2025-12/31/2025 TOTAL: | | | | \$80,664.76 |

01/01/2026-12/31/2026

| PART # | DESCRIPTION | QTY | UNIT PRICE | EXTENDED |
|-------------------------------------|--|------------|-------------------|-----------------|
| WDESK-CGMRS-01 | Connected Government Management Reporting Solution with Wdata - Per Unit | 2.00 | \$5,757.66 | \$11,515.32 |
| WDESK-CGFRS-01 | Connected Government Financial Reporting Solution with Wdata - Per Unit | 2.00 | \$36,591.44 | \$73,182.88 |
| 01/01/2026-12/31/2026 TOTAL: | | | | \$84,698.20 |

01/01/2027-12/31/2027

| PART # | DESCRIPTION | QTY | UNIT PRICE | EXTENDED |
|-------------------------------------|--|------------|-------------------|-----------------|
| WDESK-CGMRS-01 | Connected Government Management Reporting Solution with Wdata - Per Unit | 2.00 | \$6,045.54 | \$12,091.08 |
| WDESK-CGFRS-01 | Connected Government Financial Reporting Solution with Wdata - Per Unit | 2.00 | \$38,421.01 | \$76,842.02 |
| 01/01/2027-12/31/2027 TOTAL: | | | | \$88,933.10 |

01/01/2028-12/31/2028

| PART # | DESCRIPTION | QTY | UNIT PRICE | EXTENDED |
|-------------------------------------|--|------------|-------------------|-----------------|
| WDESK-CGMRS-01 | Connected Government Management Reporting Solution with Wdata - Per Unit | 2.00 | \$6,347.82 | \$12,695.64 |
| WDESK-CGFRS-01 | Connected Government Financial Reporting Solution with Wdata - Per Unit | 2.00 | \$40,342.06 | \$80,684.12 |
| 01/01/2028-12/31/2028 TOTAL: | | | | \$93,379.76 |

Quote Terms

By purchasing the products and services described in this order form, the Customer is expressly agreeing to the End User Agreement published at <https://www.vertosoft.com/terms-and-conditions-workiva>

Taxes: Sales tax shall be added at the time of an invoice, unless a copy of a valid tax exemption or resale certificate is provided.

Credit Card Orders: Additional fees may apply if paying by credit card.

All Purchase Orders must include: End User Name, Phone Number, Email Address, Purchase Order Number, Government Contract Number or Our Quote Number, Bill-To and Ship-To Address (Cannot ship to a PO Box), Period of Performance (if applicable), and a Signature of a duly Authorized Representative.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

END OF EXHIBIT B.

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