

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

SOFTWARE AND SERVICES AGREEMENT
(N2Y, LLC)

This Software and Services Agreement (this "**Agreement**") is entered into as of December 15, 2020 (the "**Effective Date**"), by and between the Board of Education of the City of Chicago, a body politic and corporate, commonly known as Chicago Public Schools, with offices located at 42 West Madison Street, Chicago, Illinois 60602 (the "**Board**" or "**CPS**") and N2Y, LLC with principal offices located at 909 University Drive South, Huron, OH 44839 ("**Vendor**").

RECITALS

- A. The Board requires significantly modified digital supplemental curriculum aligned to the Common Core Essential Element. This curriculum will be used to support instruction for the Board's students in low-incidence cluster classrooms; and
- B. Vendor has demonstrated expertise in providing such services, has represented that it has the requisite knowledge, skill, experience and other resources necessary to provide and perform such Products and Services and is desirous of providing such Products and Services to the Board; and
- 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, which are incorporated into and made a part of this Agreement by this reference, and the mutual covenants contained herein, the parties agree:

1. Definitions:

1.1. **Products.** includes any technology, regardless of means of use, delivery and storage, including but not limited to direct distribution of software, downloadable media, mobile application, cloud computing services, and/or through access to a secure website or open access website and any updates, bug fixes, patches, operational modifications or corrections, components, equipment or accessories that are necessary for the operation of the technology as proposed by Provider and accepted by the Board.

1.2. **Services.** shall be understood to refer to the performance of any services, duties, obligations, or other work that are necessary for or included in the successful delivery of the Products.

2. Term. This Agreement will commence on December 15, 2020 and continue through December 14, 2021 (the "**Term**" or "**Initial Term**"), plus an option to renew for one (1) year.

3. Scope of Services. Vendor agrees to provide the Services and Products as described in this Agreement, including the Scope of Services attached hereto and incorporated into this Agreement as Exhibit A and any and all services, products, equipment, accessories, deliverables, duties, responsibilities, and work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

The Board retains final authority with respect to all Products or Services-related decisions. The Board may, from time to time, request changes in the scope of Products or Services. Any such changes shall be documented by a written amendment to this Agreement signed by the authorized representatives of both parties and the Board's General Counsel.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

3.1. Quantity. The Board assumes no obligation hereunder to purchase any quantity of Products other than those identified on a purchase order issued by the Board.

3.2. Uniform Commercial Code. In the absence of a governing provision under the Agreement or should any provision of the Agreement be construed by a court of competent jurisdiction as vague, the corresponding provision of the Uniform Commercial Code, Article 2, shall apply.

3.3. Additional Restrictions and Requirements: Vendor shall only provide in-person Services at any time during the Term, including during full or partial/hybrid closure of CPS schools due to COVID-19: (1) as set forth on Exhibit A and as expressly approved by the CPS Project Manager; (2) in compliance with all policies, guidelines, requirements and protocol regarding health, safety and COVID-19 of the Chicago Public Health Department ("CDPH"); (3) 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.

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

4. Compensation, Purchase Order, Billing and Payment Procedures.

4.1. Compensation. Vendor shall be paid in accordance with the fees and costs set forth in **Exhibit A**. The maximum compensation payable to Vendor for the Term of this Agreement shall not exceed Two Hundred Thirty-Two Thousand Eight Hundred Ninety Four and 20/100 Dollars (**\$232,894.20**) ("**Maximum Compensation Amount**"). Vendor agrees not to perform, and waives any and all claims for payment of Services and Products 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.

4.2. It is understood and agreed that the Maximum Compensation Amount is a 'not-to-exceed amount' and is not a guaranteed payment. Compensation shall be based on actual Services performed and Products provided during the Term of this Agreement, and the Board shall not be obligated to pay for any Services and/or Products or other deliverables not in compliance with this Agreement. No expenses shall be reimbursed under 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 and other deliverables 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. N2Y subscriptions are sold in prepaid 1-year increments. No refunds will be granted for partial year prorations for termination without cause.

4.3. Purchase Order. Any purchases by the Board of Products and Services covered by this Agreement will be completed by submitting an order on the Board's Standard Purchase Order Form ("PO"). The terms and conditions found on the PO shall apply to the extent that such terms supplement and are not inconsistent with the terms and conditions contained in this Agreement. Under no circumstances shall Vendor provide any Products and Services without a valid PO.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

4.4. 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 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
- Itemized description of the services rendered and/or goods delivered
- Date the services were provided and/or goods were delivered to CPS
- Detail 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 this 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 Services provided under this Agreement.

5. Standards of Performance. Vendor must perform all Services required of it under this Agreement with that degree of skill, care, and diligence normally shown by a Vendor performing services of a scope, purpose, and magnitude comparable with the nature of the Services to be provided under this Agreement. Vendor acknowledges that, if in the course of providing Services hereunder, it is entrusted with or has access to valuable and confidential information and records of the Board, Vendor agrees to be held to the standard of care of a fiduciary with respect to that information. Any review, approval, acceptance of Products and Services or other deliverables or payment for any of the Products and Services by the Board does not relieve Vendor of its responsibility for the professional skill, care, and technical accuracy of its Services and deliverables. Vendor shall remain financially and legally responsible to the Board for the professional and technical accuracy of all Products and Services, including any Products and any other deliverables furnished, whether by Vendor or its subcontractors or others on its behalf. This provision in no way limits the Board's rights against Vendor under this Agreement, at law or in equity. When and where applicable, all members of Vendor's staff must hold and maintain throughout the Term, valid certificates and/or licenses from the State of Illinois or such other relevant jurisdiction that authorize those individuals to perform the Services. Vendor agrees to promptly furnish a copy of the license(s) of any and all direct service providers to the Board on request.

Throughout the Term, Vendor must maintain and use sufficient staff to assure the effective and efficient operation of its programs. Vendor must cause its staff to devote such time, attention, skill, knowledge, and professional ability as necessary to effectively and efficiently fulfill Vendor's obligations under this Agreement.

6. Personnel. Vendor must assign and maintain during the term of this Agreement an adequate staff of competent personnel that is fully assigned, licensed as appropriate, available as needed, qualified and assigned to perform the Services. For the avoidance of doubt, all volunteers of Vendor shall be considered agents of Vendor and subject to the same requirements hereunder as Vendor's paid employees and subcontractors. If the Board determines, in its sole discretion, that any employee, subcontractor or other person providing Services hereunder is not performing in accordance with the performance standards or other requirements of this Agreement, the Board shall have the right to direct Vendor to remove such personnel from the Board's account and provide replacement(s) in a timely manner. In the event that the Board has concerns that an individual poses a risk to the safety or welfare of the Board's students or staff, Vendor agrees that such personnel shall be removed from the Board's account immediately and shall have no further contact with the Board's employees, agents, and students. Vendor further agrees to bear any costs associated with the removal of such person.

7. Technical Information. Prior to the execution of this Agreement, Vendor supplied the Board's Department of Information Technology Services ("ITS") with information regarding its Product, including but not limited to the security and technical environment (collectively "Technical

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

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. Any changes that, in the Board's sole determination, do not result in the disqualification of the Products shall be documented by completion of a Change Order of Technical Information, a template of which is attached and incorporated into this Agreement as Exhibit B that will be signed by the Board's Chief Financial Officer and the Board's ITS Program Manager, or a designee for each, and Vendor's authorized representative and then made a part of this Agreement. No other terms or conditions of this Agreement may be changed via the Change Order for Technical Information and any attempt to do so shall be void. Changes that result in the disqualification of the Product shall be documented in a written amendment to this Agreement signed by the Board's Chief Teaching & Learning Officer and the Vendor's authorized representative and approved by the Board's General Counsel.

8. Adequate Staffing: Vendor must assign and maintain during the Term of this Agreement, an adequate staff of competent personnel that is fully equipped, trained, licensed as appropriate, available as needed, and qualified to perform the Services. If the Board determines, in its sole discretion, that any employee, subcontractor, or other person providing Services for Vendor is not performing in accordance with the performance standards or other requirements of this Agreement, including but not limited to negatively affecting the safety or welfare of a CPS student, then the Board shall have the right to direct Vendor to remove that person from performing Services under this Agreement.

9. 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 this Agreement, the Board shall notify Vendor and this 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 this Agreement are exhausted. Payment 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 this Agreement beyond those amounts appropriated and budgeted by the Board to fund payments under this Agreement.

10. License, Implementation, Hosting, And Support.

10.1. License. Vendor hereby grants to the Board a non-exclusive, worldwide, non-transferable, royalty-free (except for fees specified in this Agreement) license to use the Products for the Term of the Agreement and any Renewal Terms or as otherwise specifically stated in the purchase order for the associated Product ("**License**"). The Products 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 Products to the Board. The Board shall not sell, lease, license or otherwise transfer, use or dispose of the Products 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 Products (other than for a reasonable number of back-up copies, where applicable) or distribute, market, sell, rent, transfer, sublicense or assign to any third party any portion of the Products 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 Products without the prior written consent of Vendor.

10.2. 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.

10.3. Implementation of the Products. Where applicable and/or necessary, Vendor shall provide installation, configuration, and implementation support for the Products so that it is accessible through the Board's computers and other compatible devices.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

10.4. **Licensed Users.** Vendor shall provide a username and password for each licensed user of the Products, if applicable. “**Licensed Users**” or “**Board Users**” may be specified by the Vendor but usually means those schools, classrooms, administrators, teachers, students, or parents/legal guardians licensed to access the Products. If the number of Licenses is not fixed by Exhibit A or Exhibit C, then the number of Licensed Users is unlimited and shall be in effect through the Term or any Renewal Term, unless specifically stated otherwise by Vendor and accepted by CPS in an addendum signed by the authorized representative of the Board and with the written approval of the Board’s General Counsel.

10.5. **Products Maintenance.** During the Term of this Agreement and any Renewal Terms, Vendor shall be solely responsible for maintenance of the Products and accessibility to the Board.

10.6. **Products Support.** Vendor shall provide the maintenance and support services to the Board for the use of the Products.

10.7. **Controlling Agreement.** Vendor shall not request any CPS students or staff including school principals, administrative staff, or other CPS employees to sign any form, memorandum of understanding or other agreement for the delivery of the Products and Services except for those documents specifically approved by the Board under this Agreement. 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 agreement or any other agreement or license contained or referenced in the Products or any quote provided by Vendor. Even if a Board User agrees to any agreement or license contained or referenced in the Products 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. Rather, Vendor acknowledges and agrees that the terms and conditions of this 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 this Agreement is made and signed by the authorized representatives of both parties and approved by the Board’s General Counsel.

10.8. **Hosting of the Products and Data.** Subject to the terms and conditions of this Agreement and to the extent applicable, Vendor shall host the Products and the Board’s data on servers, hardware, components, and equipment (collectively “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 Products 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’s Resources and the Infrastructure; and security controls and procedures to prevent unauthorized access to the Products 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. As in the past, CPS will provide its own user devices/hardware.

10.9. **Compatibility and Data Flow.** Vendor shall ensure that data flows properly between the Board’s computers and other compatible devices and Vendor’s Products, Products and Services in accordance with the Exhibits that are attached and incorporated into this Agreement, as may be amended. Vendor must ensure that any other resources that are supplied by Vendor to the Board, incorporated by Vendor, or approved or recommended by Vendor for use by the Board in connection with the Products, Products and Services, are 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

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

Board to coordinate the development and the provision of Products and Services with the services and systems of such other service providers. Vendor shall have no obligation under this Agreement to ensure that the Board maintains an active internet connection. Any unavailability of the Products due to the Board's lack of an internet connection, unless such lack of an internet connection is caused by Vendor or Vendor's Products or Services, shall be the sole responsibility of the Board.

11. Materials: If the Products or Services include delivery of goods, supplies, books, guides, handouts, or other materials (collectively "Materials"), then the following terms apply to the Materials:

11.1. Preview Materials. Vendor will make those Materials available to the Board's Teaching & Learning Program Manager for review upon request without additional cost.

11.2. Packaging and Shipment and Risk of Loss. Where applicable, Vendor shall package and ship all Materials in a commercially reasonable manner. All shipments shall be F.O.B. destination (as indicated on the Board's written notification) with freight and insurance prepaid. The Board may request that shipment be made to any location that the Board designates as a Chicago Public School, a CPS facility, or other location at which Services will be rendered. Any and all deliveries made to a Chicago Public School shall occur between the hours of 8:00 a.m. and 2:30 p.m. and Vendor shall advise carrier of this restriction.

A. The Board shall have no liability either for any insurance charges or freight charges.

B. The Board may adjust the shipping destination any time up to 10 business days prior to shipment. The risk of loss and damage to Materials ordered by the Board shall pass to the Board only after delivery to the destination designated by the Board.

11.3. Inspection and Out-Of-Box Failures. The Board reserves the right to inspect all Materials upon delivery to adequately demonstrate that the Materials meet all of the specifications. Materials that do not conform to the specifications or that are otherwise damaged must either, at the Board's discretion, be retrieved by Vendor (at Vendor's expense) for replacement at no charge to the Board.

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

12.1. Early Termination. The Board may terminate the Agreement in whole or in part, without cause, 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 and 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.

12.2. Suspension of Services. The Board may, upon written notice, direct Vendor to suspend Services in whole or part. Vendor shall promptly resume performance of Services upon written

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

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.

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

- i. Any action or failure to act by Vendor which affects the safety and/or welfare of students or Board staff;
- ii. Any material misrepresentation by Vendor in the inducement or the performance of the Agreement;
- iii. Breach of any term, condition, representation or warranty made by Vendor in the Agreement;
- iv. Failure of Vendor to perform any of its obligations under the Agreement, including, but not limited to, the following:
 - A. Failure to perform any portion of the Services or deliver Products in the manner specified in the Agreement;
 - B. Failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the timely performance of the Services and delivery of Products;
 - C. 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;
 - D. Discontinuance of the Products and Services for reasons within Vendor's reasonable control;
 - E. Failure to comply with any term of the Agreement, including but not limited to, the provisions concerning insurance and nondiscrimination, and any other acts specifically and expressly stated in the Agreement constituting an Event of Default or
 - F. Failure to meet MBE/WBE project participation goals.
- v. Default by Vendor under any other agreement Vendor may presently have or may enter into with the Board;
- vi. Where Services include contact with CPS students, any failure to comply with the Background Check Section of the Agreement, in whole or in part; and
- vii. 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.

12.4. 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

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

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 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:

- i. Take over and complete the 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.
- ii. Terminate the Agreement, in whole or in part, as to any or all of the Services yet to be performed or Products to be delivered, effective at a time specified by the Board.
- iii. Suspend Services and the delivery of Products 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 and the delivery of Products is 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.
- iv. Seek specific performance, an injunction or any other appropriate equitable remedy.
- v. Receive from Vendor any and all damages incurred as a result or in consequence of an Event of Default.
- vi. Money damages.
- vii. Withhold all or part of Vendor's compensation under the Contract that are due or future payments that may become due under the Contract.
- viii. 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 (08-1217-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 Chief Procurement Officer 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.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

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.

12.5. 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 Services, except that Vendor may keep a copy of such information for its own records subject to the terms of the Agreement. No work product will be produced as a result of this Agreement.

- 13. Assignment.** This Agreement shall be binding on the parties and their respective successors and assigns, provided however, that Vendor may not assign this Agreement or any obligations imposed hereunder without the prior written consent of the Board.

14. Confidential Information; Dissemination of Information; Ownership; Injunctive Relief; Survival:

14.1. 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"). Such Confidential Information may include but is not limited to: student data as further defined below, employee data, technical data or specifications, software, ideas, budget figures, operational details, security details, unpublished school information, CPS financial information, 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.

14.2. 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, including, but not limited to the Student Data listed in Exhibit C attached hereto and incorporated herein, 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) by the Board, its employees, agents, subcontractors, students, parents or legal guardians of any CPS students. For purposes of this Agreement, Student Data is Confidential Information hereunder; additional requirements regarding Student Data specifically are described below.

14.3. Use of Confidential Information. Vendor shall only use Confidential Information for the sole purpose of delivering the Products and Services to the Board hereunder, and shall not disclose the Confidential Information except to those of its officers, agents, employees, and subcontractors who have a need to access the Confidential Information for the performance of obligations set forth in this Agreement. Vendor shall not copy or reproduce in any manner whatsoever the

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

Confidential Information of the Board without the prior written consent of the Board, except where required for its own internal use in accordance with 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 Confidential Information shall be subject to the special requirements of the Family Educational Rights and Privacy Act ("FERPA"), the Student Online Personal Protection Act ("SOPPA"), and the Illinois School Student Records Act ("ISSRA") as described in the Compliance with Laws Section.

14.4. 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.

14.5. Handling Of Confidential Information. Vendor shall protect against the unauthorized access, use or disclosure of Confidential Information by employing security measures that are no less protective as those used to protect Vendor's own confidential information. 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;
- (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, disclosure and use of that information. These measures include appropriate administrative, physical, and technical safeguards, policies and procedures 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 Products, Services, and supporting enterprise complies with applicable data protection and privacy laws, as well

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

as the terms and conditions of this 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 login with a 256-bit or higher encryption algorithm.
- (5) Secure transmission of login credentials.
- (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 protection system that inspects incoming data transmissions.
- (11) Prevention of hostile or 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.

14.6. 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 Products, Services and/or materials supplied 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.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

14.7. Press Release; 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.

14.8. Unauthorized Access, Use, or Disclosure of Confidential Information. If Vendor becomes aware of any unauthorized access, use, or disclosure of the Confidential Information, it shall: (i) notify the Board immediately, which shall be no more than twenty-four hours from Vendor receiving notice of the unauthorized access, use or disclosure of the Confidential Information; (ii) take prompt and appropriate action to prevent further unauthorized access, use or disclosure of the Confidential Information; (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 laws; and (iv) take such other actions as the Board may reasonably require to remedy such unauthorized access, use and 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 the breach of its obligations concerning the handling and protection of Confidential Information, 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 damages 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.

14.9. 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:

(a) **Student Data Use.** Vendor shall not use Student Data, including persistent unique identifiers, data created or gathered by Vendor's site, Products, Services, and Products, for any purpose, including but not limited to amassing a profile about a CPS student or otherwise identify a CPS student. Vendor will use Student Data only for the purpose of fulfilling its duties and delivering Products and Services under this Agreement.

(b) **Student Data Collection.** Vendor shall not collect Student Data except as specifically permitted hereunder and as necessary to fulfill its duties as outlined in this Agreement.

(c) **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.

(d) **Student Data Mining.** Vendor is prohibited from mining Student Data for the purpose of advertising or marketing to students or their parents/guardians is prohibited.

(e) **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 may 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.

(f) **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

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

Services and delivery of Products under this Agreement. Student Data shall remain under the control of the Board throughout the Term of this Agreement. 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.

(g) Sale of Student Data. Vendor is prohibited from selling, trading, or otherwise transferring Student Data.

(h) 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.

(i) Compliance with the Student Online Personal Protection Act (SOPPA). The parties acknowledge that Student Data hereunder includes student information that is “**Covered Information**” subject to the Student Online Personal Protection Act (105 ILCS 85/1 *et. seq.*) (“**SOPPA**”), and Vendor further acknowledges that Vendor: (i) is acting hereunder as an “**Operator**” (as the term is used in SOPPA) and a “**school official**” with a legitimate educational interest (as used in FERPA) (ii) is performing an institutional service or function, under the direct control of the Board, for which the Board would otherwise use employees, with respect to the use and maintenance of Covered Information as the term is defined in SOPPA; (iii) shall use the Covered Information only for a purpose authorized by the Board in accordance with the Board's instructions; and (iv) shall not re-disclose such information to third parties or affiliates except as authorized under this Agreement or with permission from the Board or pursuant to court order, unless otherwise permitted by SOPPA. “**Covered information**” as used in this paragraph has the meaning set forth in 105 ILCS 85/5, as amended.

1. Breach. If a “**Breach**”, as defined in SOPPA, is attributed to Vendor, its officials, agents employees and subcontractors, Vendor shall: (i) be liable for any costs and expenses incurred by the Board in investigating and remediating the Breach, including, but not limited to those costs and expenses identified in 105 ILCS 85/15(4)(D)(i)-(iv); (ii) inform the Board of the number of CPS students impacted by the Breach, as well as the date, estimated date, or estimated date range of the Breach; and (iii) inform the Board of each such Breach no later than thirty (30) calendar days after the determination that a Breach has occurred.

2. Data Deletion. As stated in the Student Data Transfer or Destruction Section of this Agreement, Vendor shall ensure that all Student Data in its possession and in the possession of any subcontractors, or agents to whom Vendor may have transferred Student Data, is destroyed or, as directed by the Board, transferred to the Board in a format determined by the Board within the time periods provided in the Student Data Transfer or Destruction Section of this Agreement.

3. Publication. In accordance with SOPPA and the Board’s FOIA obligations as further described herein, the Board will make this Agreement available for public inspection on its website.

4. Covered Information Access Listing. Vendor shall provide to the Board a list of any subcontractors or third party affiliates to which Covered Information may, has been, or will be disclosed or will provide a link to Vendor’s website clearly listing such information within ten (10) days of both parties entering into this Agreement. Vendor must keep this list current at all times.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

5. Compliance. Vendor shall comply with all requirements set forth in SOPPA as to Operators, as defined in SOPPA, including but not limited to providing all required listings, statements, descriptions, and notifications and developing processes, including for breaches.

14.10. 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.

14.11. 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.

14.12. Return or Destruction of Confidential Information. Vendor shall, at the Board's option, destroy or return all Confidential Information provided by the Board to the Board within five (5) business days of demand, or if no demand is made, it shall destroy or return all Confidential Information, including any Work Product (defined below), to the Board within five (5) days of the expiration or termination of this Agreement unless Vendor receives permission in writing from the Board's Chief Information Officer or his designee that Vendor may retain certain Confidential Information or Work Product for a specific period of time. In the event the Board elects to have Vendor destroy the Confidential Information, Vendor shall provide an affidavit attesting to such destruction. 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.

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

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

15. Use of Board's Network: 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-PO2), as may be amended.

16. Intellectual Property:

16.1. 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.

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

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

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, the 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. No new Intellectual Property, Work Product or the like will be created as a result of this Agreement.

16.3. Vendor's Intellectual Property. All Intellectual Property owned by Vendor prior to, created independently of the 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. No new Intellectual Property, Work Product or the like will be created as a result of this Agreement.

16.4. Third Party Intellectual Property. Vendor represents and warrants to the Board that Vendor, in connection with providing the Products, 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.

16.5. Survival. The obligations set forth in this Section shall survive the termination or expiration of this Agreement.

- 17. Representations and Warranties of Vendor.** Vendor represents and warrants that the following shall be true and correct as of the effective date of this Agreement and shall continue to be true and correct during the Term of this Agreement:

17.1. Licensed Professionals. Vendor is appropriately licensed under Illinois law to perform Services required under this Agreement and shall perform no Services for which a professional license is required by law and for which Vendor, its employees, agents, or subcontractors, as applicable, are not appropriately licensed.

17.2. 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 this Agreement and the performance of Services in effect now or later and as amended from time to time, including but not limited to the Prevailing Wage Act, 820 ILCS 130/1 *et seq.*, City of Chicago and Cook County Minimum Wage Ordinances, including applicable Executive Order(s) and Board(s) Resolutions, the Drug-Free Workplace, the Illinois School Student Records Act ("ISSRA"), the Family Educational Rights and Privacy Act ("FERPA"), the Protection of Pupil Rights Amendment, the Student Online Personal Protection Act ("SOPPA"), and any others relating to non-discrimination. Further, Vendor is and shall remain in compliance with all applicable Board policies and rules, including, but not limited to, all health, safety and COVID-19-policies, guidelines, requirements and protocols as set forth above in Section 3, and tuberculosis testing, and warrants that Vendor, and any individual who Vendor assigns to provide Services hereunder, is free from a communicable disease in accordance with 105 ILCS 5/24-5. Board policies and rules are available at <http://www.cps.edu/>.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

17.3. Good Standing. Vendor is not in default and has not been deemed by the Board to be in default under any other Agreement with the Board during the five (5) year period immediately preceding the effective date of this Agreement.

17.4. Authorization. Vendor represents that it has taken all action necessary for the approval and execution of this 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 this Agreement which shall constitute valid, binding obligations of Vendor.

17.5. 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 this Agreement.

17.6. Gratuities. No payment, gratuity or offer of employment was made by or to Vendor, or to the best of Vendor's knowledge, by or to any subcontractors, in relation to this Agreement or as an inducement for award of this Agreement. Vendor is and shall remain in compliance with all applicable anti-kickback laws and regulations.

17.7. Research Activities and Data Requests. Vendor shall not conduct any research in the Chicago Public Schools or use CPS Data for research purposes. In the event Vendor seeks to conduct research in the Chicago Public Schools or use Confidential Information, including CPS Student Data, for purposes not specified in this Agreement, then Vendor shall comply with the Board's External Research Study and Data Policy (19-1211-PO3), as 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 & Research or his/her designee.

17.8. Debarment and Suspension. Vendor certifies to the best of its knowledge and belief, after due inquiry, that:

A. it, its principals, and its subcontractors providing Services and Products under this 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 Section 33E-4 (bid rotating) of the Illinois Criminal Code (720 ILCS 5/33A *et seq.*);

B. it, its principals, and its subcontractors providing Services and Products under this 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; and

C. it, its principals, and its subcontractors providing Services and Products under this 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 firms that the Board has debarred from doing business with CPS pursuant to the Board's Debarment Policy (08-1217-PO1), as amended.

17.9. Third parties' property and information. In performing and delivering Services and Products under this 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 Products, Materials and any other Products that it furnishes to the Board under the Agreement and can grant or assign all

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

rights granted or assigned to the Board pursuant to the Agreement.

17.10. Assignment of Warranties. Vendor has the right, title, and ability to assign and shall assign to the Board any third-party warranties from any necessary parties concerning the Products, including Products, and Services provided under this Agreement.

17.11. Documentation Warranty. All documentation provided to the Board from Vendor concerning the Products and Services shall be kept current with any upgrades or updates.

17.12. Service Warranty. Vendor has carefully examined and analyzed the provisions of this Agreement, including but not limited to all exhibits attached and incorporated into it, and can and will perform, or cause, the Services to be performed in strict accordance with the provisions and requirements of the Agreement. Services will be performed in a timely, professional and workmanlike manner in accordance with all applicable industry and professional standards.

17.13. Technology Performance. During the Term of the Agreement, Products shall (i) be free from defects in material and workmanship under normal use and remain in good working order, and (ii) function properly and in conformity with the warranties herein and in accordance with this Agreement and with the description, specifications and documentation on the Board computers and systems including updates or new releases to such hardware, systems, and other software, and interface with other programs as required. The documentation shall completely and accurately reflect the operation of the Products. Vendor shall promptly correct any failure of the Products to perform in accordance with the current published specifications and documentation, but in no case shall the Board be responsible for any costs associated with Products of which Vendor has notice of unresolved performance issues.

17.14. Free of Computer Viruses. Vendor shall use commercially reasonable best efforts to ensure that Products is free of any malware, malicious code, Trojan horses, ransomware, keyloggers, rootkits, worms or any other computer viruses (collectively "Computer Viruses"). Vendor shall also maintain a master copy of the appropriate versions of Products, free of Computer Viruses, where appropriate.

17.15. Not Alter Program. Vendor shall not, directly or through a third party, knowingly remove, alter, change or interface with Products or any other program for the purpose or preventing the Board from utilizing Products or any other program.

17.16. No Disabling Code. Vendor shall not knowingly cause any disabling code to be incorporated into Products.

17.17. Warranty of Title. The Products and Services are free and clear from all liens, contracts, chattel mortgages or other encumbrances; that Vendor has the lawful right to dispose of and sell the Products and Services and that Vendor shall warrant and defend its title against all claims.

17.18. Prohibited Acts. Within the three (3) years prior to the effective date of this 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 the restraint of trade, including bid-rigging or bid-rotating, as those terms are defined under the Illinois Criminal Code.

17.19. Continued Disclosure Requirement. If at any time during the Term of this Agreement 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 in accordance with the Notice provision of this Agreement.

17.20. Survival. All warranties in this Section shall survive inspection, acceptance, expiration or termination of this Agreement. Nothing in the foregoing warranties shall be construed to limit any

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

other rights or remedies available to the Board under the law and this Agreement.

18. **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 this 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:

18.1. 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 this 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.

18.2. 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 this 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; and
- B. A check of the Illinois Sex Offender Registry and the Nationwide Sex Offender Registry; and
- 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.

18.3. 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 this 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.

18.4. Background Check Representations and Warranties. With respect to each Background 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

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

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; and
- F. Immediately remove from any contact with any CPS student pursuant to this 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.

18.5. 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 this 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 this Agreement, the Board may exercise additional remedies, including but not limited to: (i) withholding payments due under this 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 this 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 this 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 this Agreement.

- 19. **Product Compliance:** All Products shall comply with any applicable local, state and federal health and safety standards.
- 20. **Product Availability.** If Vendor or a manufacturer/supplier cancels or discontinues a Product during the Term of the Agreement or any Renewal Terms, Vendor shall work with the Board's authorized representative to find an equivalent, acceptable Product that maintains or reduces cost to the Board. Vendor must notify the Board of any such manufacturer's discontinuation or cancellation within five (5) business days of the Vendor's knowledge of said discontinuation or cancellation. Replacement units must be made available to the Board's Chief Procurement Officer or his/her designee for review and approval prior to substitution. Any agreed-upon substitutions or replacements of Products shall be documented in a written addendum that will be signed by the Board's Chief Procurement Officer and approved by the Board's General Counsel, provided that there are no material revisions of the terms of the Agreement as defined therein.
- 21. **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).
- 22. **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. Vendor is the common law employer of the individuals who perform Services for the Board. 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

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

4980H of the Internal Revenue Code, Vendor shall be solely responsible for paying such taxes.

Vendor agrees that neither Vendor nor its employees, agents, and 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, a social security number or federal employer identification number.

23. **Indemnification.** Vendor agrees to defend, indemnify, and hold harmless the Board, its members, employees, agents, officers and officials from and against 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 Vendor, its officials, agents and employees and subcontractors in the performance of this Agreement. The foregoing obligation extends to and is intended to encompass any and all Claims that the Products and Services infringe, misappropriate, or otherwise violate any confidentiality, proprietary, or intellectual property rights of a third party.

Furthermore, 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 this Agreement, Vendor shall indemnify the Board for any such liability. And, 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, and subcontractors, in addition to the obligations provided in this Section, Vendor shall cover any costs or fees associated with (i) providing notices of 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.

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 Corp.*, 146 Ill.2d 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, or any other statute or judicial decision.

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

24. **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 this Agreement to

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

Vendor, its members if a joint venture, or any subcontractors.

25. **Notices**. All notices, requests, consents, approvals, acknowledgements and waivers under this Agreement will be in writing and delivered to the applicable party, addressed to the designee for notification purposes set forth below:

To Vendor:

N2Y, LLC
909 University Drive South
Huron, OH 44839

To the Board:

Board of Education of the City of Chicago
Attention: Accounting
42 West Madison Street
Chicago, Illinois 60602

with a copy to:

Board of Education of the City of Chicago
Attention: General Counsel
One North Dearborn Street
Ninth Floor
Chicago, Illinois 60602

Notice will be deemed given: (A) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (B) when verified by automated receipt. A party may change its address or designee for notification purposes by giving the other party written notice of the new address or designee and the date upon which it will become effective.

26. **Governing Law**. This 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 this Agreement. Vendor agrees that service of process on Vendor may be made, at the option of the Board, by either registered or certified mail in accordance with the Notice Section of this Agreement. If any action is brought by Vendor against the Board concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

27. **Insurance**. Vendor, at Vendor's own expense, shall procure and maintain insurance for all operations under this 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 below and any additional coverage which may be specified by the Board:

27.1. **Workers' Compensation and Employers' Liability Insurance**. Workers' Compensation Insurance affording workers' compensation benefits for all employees as required by Illinois law and Employers' Liability Insurance covering all employees who are to provide Services under this Agreement with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence. The workers' compensation policy shall contain a waiver of subrogation clause.

27.2. **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,

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

independent contractors, products/completed operations (for a minimum of two (2) years following completion) and defense. Vendor agrees to continue insurance meeting these requirements for a minimum of two (2) years following termination or expiration of this Agreement. General liability insurance may not exclude coverage for sexual abuse and/or molestation.

27.3. 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.

27.4. Umbrella/Excess Liability Insurance. Umbrella or Excess Liability Insurance with limits not less than Two Million Dollars (\$2,000,000.00) per occurrence, which will provide additional limits for employers' general and automobile liability insurance and shall cover the Board and its employees, subject to that of the primary coverage.

27.5. Cyber Liability and Privacy & Security Coverage. Vendor shall carry 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, and federal guidelines. Limit of liability should be at least One Million Dollars (\$1,000,000) per claim. Any retroactive date or prior acts exclusion must predate the date of the Agreement. If coverage is made on a "claims-made basis", an extended reporting provision of at least two (2) years must be included. Cyber liability may be included in a technology errors and omissions policy.

27.6. Professional Liability Insurance. If professional services are rendered in performance of this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than One Million Dollars (\$1,000,000.00) per claim for errors and omission in conjunction with professional services inclusive of assumption of contractual liability. 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 replaced or renewed, must have an extended reporting period of two (2) years.

27.7. Additional Insured. Vendor shall have its insurance policies 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".

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 Services or Products if satisfactory proof of insurance is not provided by Vendor prior to the performance of Services or Products. 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 West Madison Street
Chicago, Illinois 60602
riskmanagement@cps.edu

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 an 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 a breach of Vendor's agreement with the Board. In the event Vendor fails to fulfill the insurance requirements of this Agreement, the Board reserves the right to stop the Services until proper evidence of insurance is provided, or this Agreement may be terminated.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

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 with insurance provided by Vendor under the Agreement.

All subcontractors are subject to the same insurance requirements of Vendor unless otherwise specified in this Agreement. Vendor shall require any subcontractors under this Agreement to maintain comparable insurance naming Vendor, the Board inclusive of its members, employees and agents, and any other entity designated by the Board, as Additional Insureds. 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 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 this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law. Vendor agrees that insurers waive their rights of subrogation against the Board. Vendor must register with the insurance certificate monitoring company designated by the Board stated 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. The **initial** annual monitoring fee is currently Twelve Dollars (\$12.00) per year, but is subject to change.

Each year, Vendor will be notified 30 to 45 days prior to the expiration date of their required insurance coverage (highlighted on their latest submitted insurance certificate on file) that they must 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 identified below. Questions on submissions and payment options should be directed to the certificate monitoring company.

Certificate Monitoring Company:

Topiary Communications Inc.
211 West Wacker Drive, Suite 220
Chicago, Illinois 60606
Phone: (312) 494-5709
Email: dans@topiarycomm.net
URL: <https://www.cpsvendorcert.com>

Website for online registration, insurance certificate submissions and annual fee payments: <http://www.cpsvendorcert.com>

28. **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 delivery of the Products; progress, execution 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 and delivery of Products. All records referenced above shall be retained for at least five (5) years after the termination or expiration of the Agreement and shall be subject to inspection and audit by the Board, subject to modification by the terms of the Agreement. If any audit, litigation, or other action involving the records is being conducted or has not been resolved, all

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

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.

29. **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. The amounts to be paid to Vendor hereunder are inclusive of all other taxes that may be levied or based on this Agreement, including without limitation, sales, use, non-resident, value-added, excise, and similar taxes levied or imposed on the Services and/or Products, but excluding taxes levied or imposed on the income or business privileges of Vendor, which remain the responsibility of Vendor.
30. **M/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 incorporated by reference as if fully set forth herein. Vendor agrees to adhere to the minimum participation goals and to all other applicable MBE/WBE requirements as set forth in the plan. Vendor agrees to submit such documentation in connection with the plan 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.
31. **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.
32. **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 Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400 *et seq.*; the Illinois Human Rights Act, 775 ILCS 5/1-101, *et seq.*; the Illinois School Code, 105 ILCS 5/1-1 *et seq.*; the Illinois Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *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, county, 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.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

Furthermore, no part of this paragraph shall be construed to create contractual or other rights or expectations for Vendor's employees or Vendor's subcontractors' employees.

- 33. Minimum Wage.** Vendor must comply with the City of Chicago Minimum Wage Ordinance (01-24), as may be amended, and the Board's Minimum Wage Resolution (14-1217-RS2) and any applicable regulations issued by the Board's Chief Procurement Officer. The Board's resolution adopts Chicago Mayoral Executive Order 2014-1. A copy of the Mayoral Order may be downloaded from the Chicago City Clerk's website at: https://chicityclerk.s3.amazonaws.com/s3fs-public/document_uploads/executive-order/2014/Executive-Order-No-2014-1.pdf; the Board's Resolution may be downloaded from the Chicago Public School's website at: http://www.cpsboe.org/content/actions/2014_12/14-1217-RS2.pdf. 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 stated 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 this 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 the Vendor must pay the prevailing wage.

- 34. 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 this Agreement with a reservation of all rights and remedies it may have under or pursuant to this Agreement at law or in equity.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

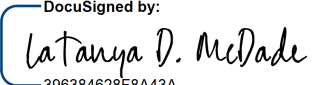
35. **Conflict of Interest**. This Agreement is not legally binding on the Board if entered into in violation of the provisions of 105 ILCS 5/34-21.3, which restricts the employment of, or the letting of contracts to, former Board members within a one year period following expiration or other termination of their office.
36. **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 this Agreement as fully set forth herein.
37. **Freedom of Information Act**. Vendor acknowledges that this Agreement and all documents submitted to the Board related to this 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 this Agreement is subject to reporting requirements under 105 ILCS 5/10-20.44.
38. **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 this 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 this Agreement as if fully set forth herein.
39. **Inspector General**. Each party to this Agreement hereby acknowledges that in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Chicago Board of Education has the authority to conduct certain investigations and that the Inspector General will have access to all information and personnel necessary to conduct those investigations.
40. **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.
41. **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.
42. **Survival/Severability**. All express representations or indemnifications made or given in this Agreement shall survive the completion of Services or Products or the termination of this Agreement for any reason. If any provision or part of this Agreement is held to be unenforceable, the Agreement shall be considered divisible and such provision shall be deemed inoperative to the extent 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.
43. **Entire Agreement**. This 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 this agreement. No modification of or amendment to this Agreement shall be effective unless such modification or amendment is in writing and signed by the authorize representatives of both parties. Any prior agreements or representations, either written or oral, relating to the subject matter of this Agreement are of no force or effect. In the event of a conflict between the terms of this Agreement and any other documents, including but not limited to any terms and conditions that may be attached to the use of any electronic media provided by Vendor, the terms of this Agreement shall supersede and prevail.
44. **Counterparts and Electronic Signatures**. This 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 electronic means shall be considered binding for both parties.

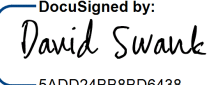
THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date set forth above.

**BOARD OF EDUCATION OF THE
CITY OF CHICAGO**

N2Y, LLC

DocuSigned by:

396384628E8A43A
LaTanya D. McDade
Chief Education Officer



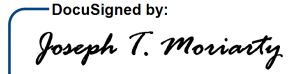
DocuSigned by:

5ADD24BB8BD6438
By: _____

Name: David Swank

Title: CFO

Date: December 17, 2020 Date: December 16, 2020

Board Report: 20-0923-RS1

Approved as to Legal Form:  
DocuSigned by:

574EC59C33144C5
Joseph T. Moriarty, General Counsel

Attachments:

Exhibit A: Scope of Services

Exhibit B: Scope of Student Data Collected

Exhibit C: Change Order for Technical Information

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

EXHIBIT A

SCOPE OF SERVICES

(N2Y, LLC)

CPS Project Manager: Rebecca Parker

Phone: 773-383-3546

E-Mail: RAParker@cps.edu

Vendor's Project Manager: Christine Doody

Phone: 419.433.9800 x1194

E-Mail: cdoody@n2y.com

Period of Performance: December 15, 2020 through December 14, 2021

This Scope of Services will be conducted pursuant to the terms and conditions of that SOFTWARE AND SERVICES AGREEMENT ("Agreement"), dated December 15, 2020, 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 N2Y, LLC (the "Vendor" or "N2Y"). Capitalized terms used in this Scope of Services and not defined herein will have the same meanings as those ascribed to such terms in the Agreement. If there is a conflict between the terms of this Scope of Services and the terms in the body of the Agreement, the terms in the body of the Agreement shall govern.

I. BACKGROUND:

Vendor will provide a significantly modified digital supplemental curriculum aligned to the Common Core Essential Elements. This curriculum will be used to support instruction for our Districts' students in low-incidence cluster classrooms.

II. VENDOR SERVICES:

A. DELIVERABLES:

Vendor will provide CPS with the Unique Learning System (the "**Software**" or "**Unique Learning System**"). Schools will use their own computer to access the Software made available by Vendor. The Unique Learning System provides differentiated learning materials with adapted methods for instruction so the students participate in rigorous daily classroom instruction. The activities include visual representations onscreen, hearing text-to-speech as selected text is read aloud, hands-on learning with experiments and written expression opportunities. The Unique Learning System includes a standards-based set of interactive tools specifically designed for cluster classroom students. All materials, licenses and on-line access for the proposed product are included in this purchase.

Deliverables include: Schools will have access to the 420 teacher Software licenses, limited to 15 students/license, inclusive of the Teacher Dashboard, Monthly Lessons, Teacher Reference Materials, Core Materials, Technical Requirements, Reports, and Student Accounts no later than December 15, 2020.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

Unique Learning System:

- Provides full access to the core Math and ELA Curriculum aligned to Illinois Extended State Standards. (provides assurance that all IL. Standards are addressed repeatedly)
- 30 thematic lessons per month, alternating between a Science and a Social Studies theme. (Multiple activities per lesson, engaging and reinforce concepts)
- Full offering of social studies and science lessons
- Lessons available through interactive I-Docs or Lessons are available in downloadable PDFs that can be printed.
- Lessons are age appropriate, divided into 6 grade bands, Pre-K through High School and Transition (Age appropriate and respectful material)
- Lessons are differentiated into 3 different learning levels, Level 3=Independent, Level 2=Supported and Level 3=Participatory. (Material presented at student's level of understanding)
- Many additional resources, such as a library of books for additional learning. (full solution)

Teacher Dashboard:

- An organizational hub where lessons are automatically populated for day, week, month, however they are customizable too.
- Ability to export lesson plans to share with administration, teaching partners
- Tools for daily observation and reports that capture student progress with the lessons
- Area to assign homework and leveled books

Student Dashboard:

- Student lessons automatically populate into their very own dashboard for access and completion based on their individual learning level.
- Access to assigned leveled books, homework assignments
- Full virtual access or lessons can be printed for access

Full tracking of students skills via GPS(Goals, Preferences, Skills Tracking)-for IDEA and Compliance

- Hub for Progress monitoring and data tracking for supporting and maintaining IEPs and Compliance
- Skills tracking based on the goals of the IEP
- Monthly Pre and Post tests to show progress or areas for targeted reinforcement
- Benchmark Assessments: 2-4 times per year to establish baseline and improvements over longer periods of time

Administrators: have access to reports to support staff and students.

- Staff log in and usage reports
- Monthly CheckPoint completion reports
- Benchmark completion reports

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

B. ACCESSIBILITY

Vendor's Materials and supporting services shall be provided in formats as required to meet federal, State of Illinois, and Board requirements. The basic accessibility compliance standards to meet are incorporated into this Scope of Services.

C. LANGUAGES

If support is required for languages other than English, then the Board and the Vendor shall determine the appropriate method to provide that support.

D. PROFESSIONAL DEVELOPMENT

Professional Development will be digital on demand webinars available for teachers based on their need. These will be available anytime during the life of the contract for every teacher with an active license.

E. STUDENT DATA REQUIRED: The Vendor does not require the use of student data for a teacher to use the Software, but the following Student Data elements can be inputted to provide more detailed services for students:

- i. Teachers only need the student's first and last name to set up a student login.
- ii. In order to provide the correct level of lessons, there is a learning profile established which is the guide to establish the IEP for the student (the Software uses information from the student's skills/responses as they are conducting a lesson to calculate the student's learning profile)

F. KEY PERFORMANCE INDICATORS:

Performance Indicator	Measurement	Target
System Availability	Uptime Level	99.5%
Customer Service	Satisfaction Survey	Overall positive rating on customer service satisfaction survey from central office and school-based customers

III. Technical Requirements

If use of or access to any Software is necessary for some or all of the Services received by the Board, then, in addition to the representations, warranties, and obligations set forth in this Agreement, Vendor shall comply with the following:

- I. Vendor shall support the latest SAML protocol for authentication integration capabilities.
- II. Vendor shall have the latest security protection systems in place, including, but not limited to, anti-virus, vulnerability assessment, firewall, and other security software applications.
- III. Documented project management methodology shall be presented and utilized to manage the implementation of the new services, which include scope, budget, communication, risk, training, and schedule management. This method should always be used to instantiate Services and is subject to the Board's approval.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

- IV. Vendor must demonstrate that they have the necessary support systems and qualified staff to guide the Board through implementation, migration, transition, and operations support. This competency should be delivered in a documented form before commencing Services under the Agreement.
- V. Vendor shall quickly respond to and resolve issues as they arise, comply with the terms and conditions in this Agreement, and have a documented remediation process for handling issues.
- VI. Vendor shall demonstrate system readiness through a documented test plan (subject to approval by the Board's users Board) and show that the service is operating as planned before going live.
- VII. Vendor shall provide technical diagrams showing technical architecture, data field requirements, and application and data flows for all IT services.
- VIII. Vendor shall provide documentation of what type of transactional information is collected within the IT system. Additionally, Vendor shall provide the Board performance data via reporting or secure data transfer to the Board's IT environment.
- IX. Upon request, Vendor will provide the Board with data logs reflecting the Board's use of the Services and breaking down this activity by individual Board users.
- X. Vendor shall complete a Board security questionnaire. If the Software requires Board data integrations to function, then Vendor shall have a mechanism to facilitate automated and secure transmissions of data. If the Software maintains PII, then the data shall be encrypted in transit and at rest.
- XI. Vendor shall comply with the following Information, Integrations, and Data Management requirements:

Vendor capabilities must include the following, at a minimum:

- Must employ experts to work, in collaboration with CPS IT and business experts;
- Aligned with district academic and administrative data management programs, which include aligning with IMS Global Standard for open operability, or allowing for open data exchange (for all data within the proposed system) using sfp, 3rd party API's like Clever.
- Ability to maintain logs of activities, status, and functional state of the Software
- Have an application architecture built with security in mind, using the latest industry techniques
- The hosted environment must be redundant, with no single points of failure, and have the capacity to handle District demands, and have the capabilities needed to recover from data loss or corruption
- Able to enable reporting and analytics (BI)
- Able to schedule routine imports and exports of data in an automated fashion
- Quality controls for data management within the user interface, and within data synchronization routines
- Leverage the CPS system of record for identity and access management (Rapid ID / SAML for single sign on)
- For third party integrations - Document purpose, data exchanges, utility of integration, method of integrations, provide geography of operations, the name of the third party, and a formal CPS IT approval

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

- For educational platforms, support One-roster / IMS Global protocols

A more comprehensive explanation of the requirements above are described in the sections below.

Audit History

The software should maintain a complete history of all data including the user identification and timestamp for data creation, updates and deletions to support a complete audit history; this includes persistence of deleted data ("soft deletes") for all key entities as determined by Board requirements. Reporting on audit history shall be easy and efficient, preferably including out of the box reports summarizing data changes.

Data Integrations

The Software should support both ad hoc and automated import, export, and update of all necessary data for the in scope systems, at appropriate frequencies, including near-real-time. For platforms supporting digital learning then the Software must support IMS global / One-Roster protocols. Employee assessment results will only be exportable at an anonymized, aggregate level.

APPLICATION SUPPORT REQUIREMENTS

The following Services are covered by the Vendor's Support Processes.

- **TRAINING**. Vendor must provide End Users with application training, use of the browser and other Software required with using and accessing the Software and the Services. The Vendor should recommend training options. CPS will provide training facilities and expects training to track via CPS training technology, or a Vendor proposed training technology.
- **HELP DESK REPORTING**. CPS should have real time access to reports that detail CPS help desk requests associated with the proposed service, and the resolution times of requests. CPS expects Vendor assistance with sharing or integrating help-desk data between the CPS and Vendor help-desk systems, via data movement, or e-mail syncs.
- **MONITORING**. Monitoring of System Availability will be a part of the CPS environments and as such, subject to all change standards and documentation requirements. CPS should be able to view system performance using the Vendor Process Monitor, or the Vendor can allow the CPS monitoring service access to monitor the service.
- **SUPPORT HOURS**.
 - Manned Telephone support
M-Sun. 7:00am - 5:00pm CST,
Calls received out of office hours will be forwarded to a mobile phone and best efforts will be made to answer / action the call; however, there will be a backup answer phone service
 - Manned Online Live Chat support
M-Sun. 7:00am - 5:00pm CST
 - Monitored Email support
M-Sun. 7:00am - 5:00pm CST
Emails received outside of office hours will be collected, however no action can be guaranteed until the next business day

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

- Remote assistance using GoToAssist, SCCM, or similar technology
M-F availability by appointment
Schedule via phone or email with Vendor Tier 2 Support Engineer
 - Planned or Emergency Onsite assistance
 - Monthly application check-in (health-check)
- **SUPPORT DESK AND SERVICES.** Vendor will provide CPS a designated service contact with a tracking number used until the incident report is closed. Incident reports are characterized, tracked and responded to as follows:

Environment	Priority	Tech Response Time	Maximum Resolution Time
Production	High	15 minutes	4 hours
Production	Medium	15 minutes	8 hours
Production	Low	15 minutes	24 hours
Development/Test	High	15 minutes	8 hours
Development/Test	Medium	15 minutes	12 hours
Development/Test	Low	15 minutes	24 hours

- **RESOLUTION TIME.** Resolution Time means the maximum elapsed time during PHOs for Vendor to either remedy the problem or determine the resolution process, if the problem is not within the control of Vendor. For instance, hosted Software errors may require a remedy provided by the Software Vendor that is beyond the control of the Vendor. Implementation of Software patches is conducted by Vendor in a controlled process and will be accomplished when made available by the Software Vendor and then as quickly and safely as practical during the scheduled change control windows.
The Vendor should respond to 100% of all issues and tickets according to the metrics approved for the service. The Vendor will provide a determined Service Credit if responses to support falls below a metric, which should be tracked via ticket.
- **SYSTEM AVAILABILITY CREDITS.** CPS understands and acknowledges that unplanned service losses will occasionally occur. Vendor will use best efforts to provide a minimum System Availability Performance of 99.99% per month measured on a 24 hours per day 7 days per week basis. The 99.99% System Availability Performance must not include time attributable to performance issues (including Unscheduled Downtime) that resulted from CPS equipment and/or third-party equipment or actions not within the sole control of Vendor and which are outside the Point of Demarcation; or (ii) the action or inaction of CPS or any individual or entity to which CPS has given access, or (iii) Vendor application errors (“bugs”) in the Software; (iv) stopping and starting of the Application servers and web servers by District personnel. Further, District personnel will notify the Vendor in advance of stopping or starting dependent (changes) Application and Web Servers Network and

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

Active Directory.

- **PERFORMANCE CREDIT TABLE** The Board is seeking to ensure that all SLAs and Deliverables are completed and met with the highest standards.

Data Accessibility

Vendor shall support both ad hoc and automated extract of all data from the Software at appropriate frequencies.

Portability

It is critical that CPS be able to retrieve its data and applications from the Software and move it into different CPS environments, or directly to a new Solution at the expiration or termination of any applicable contract with the Vendor. If the Software uses proprietary software and formats to store customer data or applications, it may end up being very difficult to retrieve applications and data in a usable format; if this condition exists then Vendor shall transform the data for CPS consumption. In addition, CPS may need to retrieve data to respond to a Freedom of Information Act ("FOIA") request or otherwise uphold its legal obligations.. Assessment results are only stored at an anonymized, aggregated level.

Data Validation

Integration of multiple datasets together can be fraught with difficulty, including inconsistent fields, missing datasets, and conflicting sets of information. The Vendor solution will need rules to ensure referential integrity between datasets:

- Ensure that primary keys in one dataset are indeed unique, even compound primary keys
- Ensure that foreign keys in one file match the primary keys in another file
- Validation that all other fields are well formed, and cleaned as required
- In the data integration environment, it's also important that data issues can be quickly acted upon. Vendor shall provide the following options:
- Automatic quarantining of data to ensure that invalid data is not ingested. Even if this is only part of a file, the invalid data is removed and the remainder quarantined
- Email alerts when data issues are identified so they can quickly be escalated when jobs are not synchronized.

Data Management

- The Vendor will not copy any CPS data to any media, including hard drives, flash drives, or other electronic devices, other than as expressly approved by CPS.
- Vendor shall return or destroy all confidential information received from CPS, or created or received by Vendor on behalf of CPS.
- In the event that Vendor determines that returning or destroying the confidential information is infeasible, Vendor shall notify CPS of the conditions that make return or destruction infeasible, but such plans will be approved by CPS.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

- If CPS agrees that return or destruction of confidential information is infeasible; Vendor shall extend the protections for such confidential information and limit further uses and disclosures of such confidential information.
- Return all data that is the property of CPS in an electronic format, via an online secure service, such as SFTP, or a shared storage facility security.
- The Software should support the latest encryption and SSL in motion and at rest for PII (Personally identifiable information).
- Security practices regarding secure application development must be documented.
- Data exchanges with CPS shall be done in an automated fashion.

Data Conversion and Validation

The Vendor must provide human resources to partner with the CPS Enterprise Data Team to document the proper conversion mapping and perform test validation for any/all bi-directional data exchanges, or any automation.

Data Protection

Data shall be protected with the latest backup technologies, and be backed up daily, with retention of no less than 30 days, and for the duration of the agreement. Protection techniques shall exist within the production and DR environments, where information is hosted and protected in the United States for student information.

Identity and Access Management

- Must be in compliance with the CPS Security and Access Control policies (<https://cps.edu/AcceptableUsePolicy/Pages/platformGuidelines.aspx>)
- Ensure that any consumer, including a 3rd party vendor's employees or subcontractor to whom access is granted agrees to the same restrictions, standards, and conditions that apply through the contract with CPS, and that access to CPS data is approved by CPS.
- Ensure that any consumer, including a subcontractor, employee, or another 3rd party to whom access to data and/or information systems, agrees to implement reasonable and appropriate safeguards to ensure the confidentiality, integrity, and availability of the data and information systems.
- Report to the CIO of CPS within 24 hours of discovery of any security incidents that occur within solution / information systems that may affect CPS systems.
- Maintain audit events according to policy and provide this information to CPS upon request. These audit logs must be kept according to CPS's records retention policy for student records.
- Authentication mechanism and integration with Active Directory. Should support user account and password requirements and is compatible with the latest version of SAML, Google, Rapid ID, or other CPS approved SSO service platform.
- Documented security controls in place to protect sensitive and/or confidential information.

Reporting

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

If applicable, Vendor shall provide the Office of Diverse Learner Supports and Services (ODLSS) a quarterly student-level data dump of all associated certification exam results. Data files will include, without limitation, the following fields: student name, test giver name, the location of exam, test name, test date, test score, pass/fail status. An alternative ID field would be preferable for use with CPS-associated student IDs. Vendor shall also provide ODLSS with an administrative log-in to review all associated exam data.

Vendor shall provide ODLSS quarterly data files and yearly written reports pertaining to the services provided to the Board. Reports shall include school names, the scope of services provided, and any other data requested by the Board.

IV. PRICING

Cost Detail	Description	Item Number	Quantity of Licenses	Unit Cost	Amount	Start Date	End Date
Unique Learning System License Fee	Unique Learning System is a cloud-based platform that provides students with complex learning needs meaningful access to the general education curriculum (continued below)	ULS	420	\$554.51	\$232,894.20	12/15/2020	12/14/2021

Unique Learning System License Description (continued)

One-year Unique Learning System License Provides:

- Unlimited access to one grade band of differentiated lessons, monthly suggested lesson plans, and standards-aligned content for ELA, math, social studies & science, and transition. Designed to ensure standards mastery, grade bands include Pre-K, Elementary (K–2), Intermediate (3–5), Middle School (6–8), High School (9–12) and Transition. Use of the powerful Goals, Preferences and Skills (GPS) assessment hub and resulting student data. Access to regular updates and additions

EXHIBIT B**Scope of Student Data Collected**

This Scope of Student Data Collected ("**Scope**") will be conducted pursuant to the terms and conditions of the Software and Services Agreement ("**Agreement**") by and between the Board of Education of the City of Chicago, commonly known as the Chicago Public Schools (the "**Board**" or "**CPS**"), and N2Y, LLC (the "**Vendor**" or "**N2Y**"). Defined terms used in this Scope will have the same meanings as those ascribed to such terms in the Agreement. If there is any conflict between this Scope and the Agreement, the Agreement shall govern and control.

1. <u>Student Data Required:</u> The Vendor requires the following Student Data elements necessary to provide the Products and/or Services under this Agreement:	Student name (first and last) only student email addresses
2. <u>Student Data Usage:</u> Please describe how each aforementioned Student Data element will be used by the Vendor under this Agreement:	Student information will be used for the purpose of designating the student account so that teachers are able to track student progress on the lessons and assessments.
3. <u>Deliverables:</u> The Vendor will use the aforementioned Student Data in order to provide the following Products and/or Services:	The data will be used to track skill attainment from student lessons and pre- and post test data. Information will be used to support teachers with determining next lessons and IEP development.

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

Exhibit C

CHANGE ORDER FORM FOR TECHNICAL INFORMATION			
Date		Change Order # _	Vendor Name
Change Request: This Change Order is pursuant to the terms of the Software and Services Agreement ("Agreement")			
Vendor's responses to ITS interrogatories regarding compliance with the Board's Acceptable Use Policies ("Technical Information") are modified as follows:			
All other Technical Information provided remains otherwise accurate and in effect for the Approved Product(s) identified in the Agreement.			
Cause of Change Request:			
Comments/ Additional Information:			
Effective Date of Change Order			
Agreement Terms		All terms and conditions of the Agreement are applicable and remain in effect. No attempt to alter those terms and conditions through this Change Order will be effective.	
Authorizations (Must be signed by both parties in order for Change Order to be effective)			
Board's Chief Financial Officer/designee		Vendor's Authorized Representative	
Name:		Name:	
Date:		Date:	
Board's ITS Program Manager			
Name:			

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE
