

including but not limited to Worker's Compensation, Comprehensive General and Contractual Liability Insurance in no event less than the amount of \$1,000,000 for each occurrence with an insurer having a "Best Policyholders" rating of B+ or better. DPS BOE shall be added as an additional insured on the Certificate of Insurance. Copies of certificates of insurance shall be provided to DPS and shall include the following:

- i. Name of insurance company, policy number, and expiration date;
 - ii. The coverage required and the limits on each, including the amount of deductibles or self-insured retentions (which shall be for the account of the Contractor);
 - iii. A statement indicating that DPS BOE shall receive thirty (30) days' notice of cancellation or significant modification of any of the policies which may affect DPS BOE's interest; and
 - iv. A statement confirming that DPS BOE has been added as an additional insured (except for Workers' Compensation) on all policies.
- e. Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of California.
- f. Each party has all necessary corporate power and authority to enter into and perform this Agreement.
- g. Each party owns and shall retain all right, title and interest in and to any and all Intellectual Property (as defined below) of such party originated or developed by such party prior to the effective date of this Agreement, or independently developed materials or works of authorship and Intellectual Property embodied therein (collectively, "Proprietary IP"), as well as any derivative works, enhancements or modifications to such Proprietary IP (regardless of whether created by such party), subject to any licenses provided by one party to the other in this Agreement.
 - i. To the extent DPS needs to utilize any Proprietary IP of Contractor to fully utilize the services delivered, Contractor shall continue to own all right, title and interest in such Proprietary IP, and Contractor hereby grants to DPS BOE a non-exclusive and non-transferable license (including the right to grant sublicenses) to use such Proprietary IP, which license will run concurrently with the license granted to DPS BOE herein with respect to the services. "Intellectual Property Rights" shall mean all patent rights, copyrights, trademarks, trade secrets, trade dress rights and other proprietary rights in any jurisdiction, and all applications and registrations therefore.
- h. Contractor expressly agrees and acknowledges that all original materials developed by Contractor in connection with Contractor's work for DPS, including but not limited to computer programs, listings, designs, specifications, flow charts and other documentation, are to be considered

“work made for hire” under the United States copyright laws as the same may be amended from time to time, and are and shall be the sole and exclusive property of DPS BOE. To the extent (if any) that, notwithstanding the foregoing, Contractor retains such rights, Contractor shall and does hereby assign exclusively and irrevocably to DPS BOE the copyright in said materials and all rights there under, including but not limited to all rights to reproduce the work in copies, to prepare derivative works based thereupon, and to distribute copies of the work by sale or other transfer, and all rights to authorize others to do so. Contractor represents and warrants that all materials delivered to DPS BOE shall be original work of Contractor (and its employees, if any), and not of any independent contractor. Contractor agrees during its work for DPS BOE and thereafter to execute any documents and papers and to render to DPS BOE or its designee all assistance reasonably necessary to establish, perfect, or preserve such rights. To the extent any Proprietary IP of Contractor is contained in such works, Contractor grants to DPS BOE or its designee the rights noted in subparagraph j above.

- i. Contractor agrees that no license or right is granted by DPS BOE to Contractor, either expressly or by implication, estoppel or otherwise to publish or reproduce, prepare derivative works based upon, distribute copies of, publicly display, or perform any of the works described in the preceding paragraph, except pre-existing materials of Contractor, either during or after the term of this Agreement.
- j. Notwithstanding anything to the contrary herein, Contractor and its personnel shall be free to use and employ its and their general skills, know-how, and expertise, and to use, disclose, and employ and generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as it or they acquire and apply such information without the use or disclosure of any Proprietary IP of DPS BOE.
- k. Contractor agrees to communicate to DPS every Invention conceived, completed, or reduced to practice during the course of Contractor’s work for DPS which is (i) related to the Statement of Work; or (ii) results from any work performed by Contractor using any equipment, facilities, materials, information or personnel of DPS BOE; or (iii) results from or are suggested by any work performed for or on behalf of DPS BOE. “Invention” refers without limitation to any idea, design, concept, technique, discovery or improvement, whether patentable or not, including, but not limited to hardware, and apparatus, processes and methods, formulas, computer programs and techniques, as well as improvements thereof and knowledge related thereto.
- l. Contractor agrees to assign and does hereby assign to DPS BOE or DPS BOE’s designee Contractor’s entire right, title and interest in and to all Inventions described in subparagraph m. above, including all patent rights, trademarks and copyrights in such Inventions, and any patent applications filed and/or patent rights granted thereon in the United States and any

parties may renew this Agreement only by separate written agreement or addendum hereto, which must be executed by both parties.

4. DPS's COVENANTS. DPS covenants and agrees to be responsible for the following:
 - a. DPS shall grant access to equipment as needed according to the prior notice and prescribed schedule established by Contractor with the approval of DPS.
 - b. DPS reserves the right to exercise prior approval of scheduled services.
 - c. DPS shall have the right to request written reports at any time during the performance of this Agreement which shall be furnished within a reasonable time after such request, in the manner directed, describing progress, status of costs, data, and other matters pertaining to the services rendered, at no additional cost to DPS.
5. INDEMNIFICATION. Contractor shall indemnify, defend and save harmless DPS against any and all claims, actions, demands, costs, damages, loss or expense of any kind whatsoever, in whole or part, resulting from or connected with any negligent act or omission or willful misconduct under this Agreement by Contractor, its agents and/or employees, including but not limited to court costs and attorney's fees incurred by DPS in connection with the defense of said matters. The parties agree that this indemnification clause is an "evidence of indebtedness" for purpose of N. C. Gen. Stat. § 6-21.2.

DPS shall indemnify, defend and save harmless Contractor against any and all claims, actions, demands, costs, damages, loss or expense of any kind whatsoever, in whole or part, resulting from or connected with any negligent act or omission or willful misconduct under this Agreement by DPS, and its employees. However, nothing in this section, entire agreement, or statement of work shall be construed to waive any defense of governmental immunity or sovereign immunity or any other immunity which might otherwise be available to the DPS Board. This indemnification provision shall not waive any statutory, governmental, or other immunity applicable to DPS, including without limitation N.C.G.S. 115C-524.

6. EVENTS OF DEFAULT. This paragraph shall not limit the Board's right to terminate this Agreement as provided in the foregoing sections of this Agreement. The occurrence of any one of the following events shall constitute an event of default allowing either party to terminate this Agreement upon fifteen (15) days written notice to the other party:
 - a. A party's failure to provide payment or services required under this Agreement or a party's material breach of its obligations under this Agreement and a failure to cure such failure or breach within fifteen (15) days after written notification of such failure or breach.
 - b. A party's purported unauthorized transfer or assignment of this Agreement or any rights or obligations under this Agreement.

- c. A party or any agent or employee of that party commits, during the course of performance of any activity for or on behalf of the other party, any act punishable by fine or imprisonment under state or federal law.
 - d. A party or any agent or employee of that party commits an act or omission, in the course of its performance hereunder, that endangers or threatens the health and safety of others.
 - e. A party or any agent or employee of that party commits an act of fraud, defalcation, or dishonesty, or any act or omission or series of acts or omissions which singly or together constitute an unfair or deceptive act or practice.
 - f. Any discovery that any material representation by a party is materially misleading or inaccurate, or a party's failure to perform any material covenant, obligation, term or condition contained in this Agreement.
 - g. A party's cessation of doing business as a going concern, assignment for the benefit of creditor's, admission in writing of its inability to pay debts as they become due, filing of a petition in bankruptcy or appointment of a receiver, acquiescence in the appointment of a trustee or liquidator of it or any substantial part of its assets or properties.
7. TERMINATION FOR CONVENIENCE. DPS may terminate this Contract at any time at its complete discretion upon twenty (20) calendar days' notice in writing from DPS to the Contractor prior to the date of termination. In addition, all finished or unfinished documents and other materials produced by the Contractor pursuant to this contract shall, at the request of DPS be turned over to it and become its property. If the contract is terminated by DPS in accordance with this section, DPS will pay the Contractor the lesser of the hourly rate for all services performed as of the effective date of termination or the amount due and owing under the SOW as of the effective date of termination.
8. RIGHTS UPON TERMINATION. Upon the occurrence of an event of default, the non-offending party shall have the right to terminate the Agreement upon fifteen (15) days written notice to the other party, and seek all legal and equitable remedies to which it is entitled, including but not limited to refunds for amounts paid or fees owed for services performed as of the effective date of termination. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other remedies available to it.
9. COUNTERPARTS. This Contract may be executed in any number of counterparts, each of which shall be deemed an original but all of which together will constitute one and the same agreement. The Parties agree that scanned, faxed, and/or electronically transmitted copies of this Contract will have the same validity and force as an original, and that scanned, faxed, or electronic signatures shall be deemed original signatures for purposes of this Contract and given the same legal effect as original signatures.

to those described in this paragraph and this substantially prevents DPS's use of Contractor's service, DPS shall have the option of suspending payments due under the Agreement for the time period use is substantially prevented or terminating the Agreement immediately without penalty or further expense.

15. COUNTERPARTS. This Agreement may be executed in several counterparts, all of which taken together, shall constitute one single agreement between the parties hereto.
16. WAIVER. No delay or omission by either party hereto to exercise any right or power hereunder shall be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant contained herein.
17. ASSIGNMENT. This Agreement may not be assigned without the written agreement of all parties, but if the same is assigned by agreement, it shall be binding on the assignee and his heirs. Notwithstanding the foregoing, each party shall be permitted to assign this Agreement to its successor in interest in the event of a change of control resulting from a merger, sale of stock or sale of all or substantially all of its assets without first obtaining the written consent of the other party.
18. GOVERNING LAW. This Agreement and the rights and obligations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina without regard to any principles of conflicts of laws that would make applicable the law of any other jurisdiction. Further, the parties irrevocably agree that any legal action or proceedings brought by or against them with respect to this Agreement or its subject matter shall be in the General Court of Justice in Durham County, North Carolina or in the United States District Court located in Durham County, North Carolina and, by execution and delivery hereof, the parties hereby irrevocably submit to each such jurisdiction and hereby irrevocably waive any and all objections which they may have with respect to such proceedings in any of the courts of North Carolina identified above.
19. RESTRICTED COMPANIES LISTS. Provider represents that as of the date of this Contract, Provider is not included on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.58. Provider also represents that as of the date of this Contract, Provider is not included on the list of restricted companies determined to be engaged in a boycott of Israel created by the North Carolina State Treasurer pursuant to N.C. Gen. Stat. § 147-86.81.
20. ANTI-NEPOTISM. Contractor warrants that, to the best of its knowledge and in the exercise of due diligence, none of its corporate officers, directors, or trustees and none of its employees who will directly provide services under this Agreement are immediate family members of any member of the Durham Public Schools Board of Education or of any principal or central office staff administrator employed by the Board. For purposes of this provision,

“immediate family” means spouse, parent, child, brother, sister, grandparent, or grandchild, and includes step, half, and in-law relationships. Should Contractor become aware of any family relationship covered by this provision or should such a family relationship arise at any time during the term of this Agreement, Contractor shall immediately disclose the family relationship in writing to the Superintendent of the Schools. Unless formally waived by the Board, the existence of a family relationship covered by this Agreement is grounds for immediate termination by DPS without further financial liability to Contractor.

21. BINDING. All provisions of this Agreement shall be binding upon, and inure to the benefit of, and be enforceable by and against the parties, their respective heirs, representatives, successors, and assigns.
22. FURTHER ASSURANCES. The parties hereto shall each perform such acts, execute and deliver such instruments and documents, and do all such other things as may be reasonably necessary to accomplish the transactions contemplated herein.
23. HEADINGS. The articles and section headings are for reference and convenience only and shall not be considered in the interpretation of this Agreement.
24. RECORDS AND CONFIDENTIALITY OF STUDENT INFORMATION. The Contractor agrees that all student records obtained in the course of providing services to DPS under this Agreement shall be subject to the confidentiality and disclosure provisions of applicable federal and state statutes and regulations and DPS BOE’s policies which are available on the DPS website. All student records shall be kept in a secure location preventing access by unauthorized individuals. Contractor will maintain an access log delineating date, time, agency, and identity of individual accessing student records who is not in the direct employ of the Contractor. Contractor shall not forward to any person any student record, including, but not limited to, the student’s identity.
25. LUNSFORD ACT/CRIMINAL BACKGROUND CHECKS. Contractor also acknowledges that G.S. § 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. Contractor shall conduct or arrange to have conducted, at its own expense, sexual offender registry checks on each of its employees, agents, ownership personnel, or contractors (“contractual personnel”) who will engage in any service on or delivery of goods to school system property or at a school-system sponsored event, except checks shall not be required for individuals who are solely delivering or picking up equipment, materials, or supplies at: (1) the administrative office or loading dock of a school; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites. The checks shall include at a minimum checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry (“the Registries”). For Contractor’s

convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>. Contractor shall provide certification on the Sexual Offender Registry Check Certification Form that the registry checks were conducted on each of its contractual personnel providing services or delivering goods under this Agreement prior to the commencement of such services or the delivery of such goods. Contractor shall conduct a current initial check of the registries (a check done more than 30 days prior to the date of this Agreement shall not satisfy this contractual obligation). In addition, Contractor agrees to conduct the registry checks and provide a supplemental certification form before any additional contractual personnel are used to deliver goods or provide services pursuant to this Agreement. Contractor further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Agreement. Contractor shall not assign any individual to deliver goods or provide services pursuant to this Agreement if said individual appears on any of the listed registries. Contractor agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each contractual personnel, and agrees to provide such records and documents to DPS upon request. Contractor specifically acknowledges that DPS retains the right to audit these records to ensure compliance with this section at any time in DPS's sole discretion. Failure to comply with the terms of this provision shall be deemed a material breach of the Agreement. In addition, DPS may conduct additional criminal records checks at DPS's expense. If DPS exercises this right to conduct additional criminal records checks, Contractor agrees to provide within seven (7) days of request the full name, date of birth, state of residency for the past ten years, and any additional information requested by DPS for all contractual personnel who may deliver goods or perform services under this Agreement. Contractor further agrees that it has an ongoing obligation to provide DPS with the name of any new contractual personnel who may deliver goods or provide services under the Agreement. DPS reserves the right to prohibit any contractual personnel of Contractor from delivering goods or providing services under this Agreement if DPS determines, in its sole discretion, that such contractual personnel may pose a threat to the safety or well-being of students, school personnel or others.

26. RELATIONSHIP OF PARTIES. The relationship of the parties established by this Agreement is solely that of independent contractors, and nothing contained herein shall be construed to (i) give any party the power to direct and control the day-to-day activities of the other; or (ii) constitute such parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or (iii) make Contractor an agent of the Durham Public Schools for any purpose whatsoever except as otherwise agreed in writing by the parties hereto.
27. ENTIRE UNDERSTANDING. This Agreement contains the final expression of the parties' intent and the sole and entire understanding between Contractor