TERM AND TERMINATION

A. The parties understand and agree that the Contract requires the approval of the Board of Education and/or the CPS Treasurer each school year. Without such approval, the Contract is null and void.

B. Conditions for default include non-payment, failure to perform duties of the Contract, and violations of state and/or federal law. In the event either party is in material default of its obligations under this Contract, the party not in default shall have the right to terminate this Contract if the defaulting party fails to cure such default within five (5) days of receiving written notice of the default.

C. CPS may terminate this Contract, with thirty (30) days prior written notice upon non-appropriation of funds without penalties incurred.

D. CPS must authorize any Renewal Term and any Additional Services that would increase the cost of the Contract in writing.

RELATIONSHIP OF PARTIES

A. The parties agree that the Provider shall perform all work and services described as an independent contractor, and not as an employee of CPS. The Provider shall have exclusive control of and the exclusive right to control the details of the services and work performed. The Provider and its employees are not eligible for any benefits not described in this Contract (health or dental insurance, life insurance, etc.). The Provider shall be responsible for workers’ compensation, unemployment, wages, and benefits for Provider’s employees.

B. Each party is an independent Contractor and not an agent, partner or joint venturer with the other party for any purpose. Neither party shall have any right, power, or authority to act or create any obligations, expressed or implied, on behalf of the other.
C. The Provider is required to disclose in writing any relationship or affinity with CPS, authorizing official, or member of the evaluation committee. Failure to properly disclose such a relationship may result in termination of the contract and may jeopardize Provider’s future business with CPS. The Provider will certify that it is not owned in whole or in part by a creditor or employee or official of CPS or a spouse, parent, grandparent, child, grandchild, sibling of or any person related by blood or marriage to an employee or official of CPS. This prohibition shall not apply where Provider is a publicly traded corporation in which the CPS employee or other listed relative has an ownership interest of less than 5% of the public corporation’s outstanding stock or is a creditor due to holding less than 5% of the public corporation’s outstanding debt.

D. Provider represents that it has no other agreement or relationship or commitment to any person or entity that conflicts with Provider’s obligations to CPS under this Contract, including, but not limited to, any agreement to assign inventions, trademarks, copyrights, ideas or other intellectual property to another person or entity.

E. The Provider shall be solely responsible for staff providing services under this agreement. Provider certifies that staff and/or trainees providing the services are adequately trained and prepared according to prevailing professional standards for providing such services and those personnel providing services are licensed or otherwise legally qualified. Provider certifies that it shall provide adequate supervision of the staff.

F. The District shall have the right to accept or reject the assignment of any Contractor personnel. The District shall have the right to remove any Contractor personnel from District premises and to preclude any Contractor personnel from performing services under this Agreement. Contractor shall immediately comply with any such request and shall provide replacement personnel within a commercially reasonable time.

COMPENSATION AND INVOICING

A. To receive compensation, the Provider must submit periodic invoices (invoice must include the purchase order number) describing any services provided or goods delivered per direction from the CPS administrator responsible for this Contract. Services cannot begin until a purchase order is issued.

B. The Provider shall submit invoices no later than sixty (60) days after completion of Services. If Services are provided in separate milestones and/or Deliverables, Provider shall submit invoices no later than sixty (60) days after completion of each milestone and/or Deliverable. Payment terms are Net 30 after receipt of a valid and verifiable invoice. CPS reserves the
right to conduct a Supplier Performance Review if Invoices are submitted more than sixty (60) days after completion of Services. The Provider shall invoice CPS with a correct invoice referencing a valid CPS Purchase Order issued for the purpose(s) outlined in this Contract or appropriate Statement of Work or Work Order.

C. Unless otherwise specifically set forth in this Contract, Statement of Work, or Work Order, Provider shall bear all of its own expenses arising from the performance of its obligations under this Agreement. If pursuant to this Contract to reimburse certain expenses of Provider, Provider must provide sufficient documentation to substantiate such expenses (as determined by CPS), and such expenses shall not include any markup by Provider unless specifically authorized under this Contract.

CONFIDENTIALITY

A. The parties acknowledge that CPS is subject to the Family Educational Rights and Privacy Act (“FERPA”). The Provider is prohibited from disclosing without authorization any student information and any other CPS proprietary information that the Provider may become aware of as a part of the engagement with CPS. The parties acknowledge that CPS is subject to the Ohio Public Records Act.

B. Provider agrees that it shall: (i) take reasonable measures to protect any CPS information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of CPS information as the Provider uses to protect its own confidential information of a like nature; (ii) limit disclosure to those person’s within Provider’s organization with a need to know and who have previously agreed in writing, prior to receipt of CPS information either as a condition of their employment or in order to obtain CPS information, to obligations similar to the provisions hereof; (iii) not copy, reverse engineer, disassemble, create any works from, or decompile any prototypes, software or other tangible objects which embody CPS information and/or which are provided to the party hereunder; and (iv) comply with, and obtain all authorizations required by, all applicable export control laws or regulations. CPS information shall not be reproduced in any form except as required to accomplish the purposes and intent of this Contract. Any reproduction of CPS information shall be the property of CPS and shall contain any and all notices of confidentiality contained in the original.

C. Exceptions. The parties agree that the foregoing shall not apply to any information that Provider can evidence: (i) is or becomes publicly known and made generally available through no improper action or inaction of Provider; (ii) was already in its possession or known by its prior to disclosure by CPS to Provider; (iii) is independently developed by Provider without
use of or reference to any CPS information; or (iv) was rightfully disclosed to it by a third party, Provider rightfully obtains from a third party. Provider may make disclosures required by law or court order provided that Provider: (a) uses diligent efforts to limit disclosure and to obtain confidential treatment or a protective order; (b) has given prompt advance notice to CPS of such required disclosure; and (c) has allowed CPS to participate in the proceedings.

D. CPS will retain all right, title and interest to CPS information. The parties acknowledge that a violation of the Provider’s obligations with respect to CPS information may cause irreparable harm to CPS for which a remedy at law would be inadequate. Therefore, in addition to any and all remedies available at law, CPS shall be entitled to seek an injunction or other equitable remedies in all legal proceedings in the event of any threatened or actual violation of any or all of the provisions hereof.

BACKGROUND CHECKS

A. To the extent the Provider works within a CPS building or interacts directly with students, Provider is required to submit criminal background checks pursuant to CPS Board Policy and Ohio law. Details about background checks may be obtained from the CPS’s Office of Safety and Security Services, District Form 8475-1. The cost of background checks shall be the responsibility of the Provider.

B. The Provider will provide a list of the Provider’s employees who may have contact with students to the District. This list shall be updated for employee changes and shall list employees by appropriate school site or location.

C. Provider must obtain a CPS Identification Badge that must be worn at all times when performing services at a CPS site.

INDEMNIFICATION AND INSURANCE

A. To the fullest extent permitted by law, Provider shall defend, indemnify and hold harmless CPS, its board members and employees (collectively, the “Indemnified Parties”) from and against any and all claims, damages, losses, costs, expenses, liabilities, causes of action and/or judgments, including, but not limited to, attorneys’ fees, costs of litigation and other expenses (collectively, “Losses”), arising out of or in connection with (i) the acts or omissions of Provider or its employees, agents, independent contractors, subcontractors or affiliates wherever Provider may be providing services or performing work pursuant to this agreement; (ii) the breach of this agreement by Provider or its employees, agents, independent contractors, subcontractors or affiliates; or (iii) any violation of any law, statute, ordinance,
rule, building code or regulation by Provider or its employees, agents, independent contractors, subcontractors or affiliates.

B. Provider shall also defend, indemnify and hold harmless the Indemnified Parties from and against all Losses, and shall assume full responsibility for the payment of, all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws, with respect to Provider’s employees, agents, independent contractors, subcontractors or affiliates engaged in the performance of this Contract. Provider’s liabilities under this agreement shall in no way be limited by the insurance maintained by Provider pursuant to this agreement.

C. This agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without reference to the conflict of laws or choice of law’s provisions thereof.

D. Provider shall provide the following minimum insurance coverage:
   1. Worker’s compensation coverage from the Ohio Bureau of Workers Compensation.
   2. Employers Liability insurance with minimum limits of $500,000 per occurrence applying separately to each of the three insuring agreements associated with this coverage. A waiver of subrogation in favor the CPS must be provided.
   3. Automobile Liability Insurance – including coverage for all owned, non-owned, and hired vehicles with a combined single limit of not less: than $1,000,000 per occurrence.
   4. Commercial General Liability Insurance with minimum limits of $1 million per occurrence and $2 million aggregate. Said coverage must include both premises operations and products/completed operations.
   5. Excess or umbrella liability policy(ies) with a combined single limit of at least $1,000,000 per occurrence in excess of the limits of the Employers Liability, Automobile Liability and General Liability specified above.

E. Additional Consideration
   1. CPS shall be added as an additional insured to Provider’s/Vendor’s general, automobile, excess or umbrella, environmental, and, if appropriate, professional and cyber liability policies.
   2. The limits expressed herein are minimum limits. Should Provider choose to purchase or maintain higher coverage limits, then CPS, in its capacity as an additional insured, shall automatically benefit equally from said higher limits.
3. Additional insured status/coverage as outlined above shall apply on a primary and non-contributory basis irrespective of any other insurance coverage which CPS may choose to maintain on its own.

4. All of the policies mentioned in item one (1) above shall also be endorsed to provide a waiver of subrogation in favor of CPS.

F. Delivery of Insurance Certificates of Insurance must be sent to CPS at least seven (7) days prior to the commencement of any operations or work by Provider and as otherwise required by this agreement upon insurance renewal, to: Yolanda Johnson, Contracts Administrator at johnsoy@cpsboe.k12.oh.us.

LIMITATIONS OF LIABILITY
A. THE LIABILITY OF CPS FOR DAMAGES ARISING OUT OF ANY BREACH OF THIS AGREEMENT SHALL BE LIMITED TO FEES ACTUALLY PAID TO PROVIDER UNDER THIS CONTRACT. CPS SHALL NOT HAVE ANY LIABILITY WHATSOEVER FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) OF PROVIDER OR ANY THIRD PARTY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

CPS POLICIES
A. Provider acknowledges and agrees to comply with all CPS policies. All District policies may be found online at https://community.cps-k12.org/sites/boardpolicies/default.aspx

ADVERTISING
A. The Provider shall not use any CPS names, logos, information, or trademarks in any advertising, publicity, marketing, displays, promotions, or similar materials unless approved in writing by CPS.

NON-EXCLUSIVE RELATIONSHIP
A. This Contract is not exclusive, and Provider acknowledges that: (i) CPS has no obligation to provide Provider any minimum level of work or compensation under this Agreement; and (ii) CPS may obtain services or materials from third parties that may be similar to the Services or Deliverables, without any obligation or liability to Provider.

MOST FAVORED CUSTOMER
A. If any other customer of Provider obtains aggregate pricing and/or rebate terms with respect to any Services which are more favorable (taking into account all credits, discounts, rebates, adjustments, bonuses, allowances, or any other incentives offered) than those terms provided to CPS at any time during the term of this Contract, Provider shall retroactively adjust the pricing and/or rebate terms under the appropriate CPS agreement for each such
Service to conform to the more favorable terms and Provider shall promptly pay CPS any amount owing CPS there from. CPS shall have the right to conduct periodic reviews of Provider’s books and records with respect to such Services to conform to Provider’s compliance with the provisions of this Section.

**CONTRACT COMPLIANCE**

A. CPS has the right to audit Provider’s performance under the Contract at any time, for any or no reason.

B. CPS at its expense, and upon reasonable notice and during business hours, send to Provider, and Provider will permit, CPS’s personnel or authorized representatives to observe Provider’s performance of its obligations pursuant to this Agreement.

**DISPUTE RESOLUTION**

A. The parties agree to attempt in good faith to resolve any and all disputes or disagreements in mediation. The parties shall mutually agree to a mediator. Mediation will take place in Hamilton County, Ohio. The parties agree to equally share the mediator cost(s) and each shall bear responsibility for their own costs, including attorney fees. In the event mediation fails, any action that arises under this Contract shall be resolved or brought or filed in the courts of Hamilton County, Ohio. This Contract shall be governed in accordance with the laws of the State of Ohio.

**NON ASSIGNMENT**

A. Provider shall not assign this contract or any rights or obligations hereunder without the prior written consent of CPS, and any attempted unpermitted assignment shall be null and void and without further effect; provided, however, that, upon the sale or transfer of all or substantially all of the assets of Provider, or upon the merger by Provider into or the combination with another corporation or other business entity, or upon the liquidation or dissolution of Provider, this contract will inure to the benefit of and be binding upon the person, firm or corporation purchasing such assets, or the corporation surviving such merger or consolidation, or the shareholder affecting such liquidation or dissolution, as the case may be. After any such transaction, Provider in this contract shall refer to the entity which conducts the business now conducted by Provider. The provisions of this contract shall be binding upon and inure to the benefit of CPS and upon and to the benefit of the permitted successors and assigns of the parties hereto. If CPS consents to any subcontractor or delegation, then Provider will cause and ensure that all such third parties will be bound by the terms of this Contract. Notwithstanding the existence or terms of any subcontractor or delegation, Provider will remain responsible for the full performance of the Services.
COUNTERPARTS; ELECTRONIC SIGNATURES
A. This agreement may be signed in one or more counterparts, which together will form a single agreement. This Contract may be signed electronically.

WARRANTIES
A. The Provider shall supervise, inspect and direct the work under the Contract completely and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract. The Provider shall be solely responsible for the means, methods, techniques, sequences, and procedures to complete the Contract requirements. The Provider shall be responsible to see that the completed work complies accurately with the Contract. If required by CPS, Provider shall promptly either correct all defective work, whether or not fabricated, installed or completed, or, if the Work has been rejected by CPS, remove it from the location and replace it with Work that is not defective. The Provider shall pay all claims, costs, losses, and damages caused by or resulting from such correction or removal (including, but not limited to, all costs of repair or replacement of work of others).

B. The Provider shall comply with all Federal, State, County, District, and Municipal Laws, Ordinances, Rules, Regulations, and Codes, relating to or applicable to work under the Contract and shall furnish certification of compliance at the completion of the work upon request of the CPS.

C. Provider shall perform all work under the Contract and furnish all materials and equipment, equipment, labor, transportation, superintendence, testing, facilities, services, means, methods, techniques, insurance, bonding and utilities, except as otherwise specified in the Contract, necessary or proper to perform and complete all work required by and in accordance with the Contract and pay all applicable taxes incidental to performing said work and furnishing such items.

D. Provider is the lawful owner or licensee of all programs and Provider Property used by it in the performance of the Services contemplated hereunder; such programs and/or Provider Property have been lawfully developed or acquired by the Provider and Provider has the right to permit CPS access to or use of such programs and/or Provider Property.

MISCELLANEOUS
A. The Provider shall be responsible for identifying its employees who are participants in the School Employees Retirement System (“SERS”). The Provider shall be responsible for
withholding and paying all SERS contributions, including both the employees’ and employers’ contributions, and all surcharges.

B. The parties have read this Contract and agree to be bound by its terms, and further agree that it constitutes the complete and entire contract of the parties and supersedes all previous communications, verbal or written, and all other communications between them relating to the subject matter. No representations or statements of any kind made by either party, which are not expressly stated in this Contract, shall be binding on the party. No provision in either party’s purchase orders or in any other business forms used by either party will supersede the terms and conditions of this Contract, and no supplement, modification or amendment of this Contract shall be binding unless executed in writing by an authorized representative of each party to this Contract.

C. Should any provision or application of this Contract be found invalid or unenforceable by a court of competent jurisdiction, the remainder of the provisions of this Contract shall not be affected and shall continue enforceable to the fullest extent permitted by law.

D. In the event that either Provider or CPS is unable to perform or is precluded from performing its obligations under this Contract due to any unforeseen circumstances beyond the reasonable control of the party precluded from performing, including, but not limited to, fire, riot or civil commotion, act of government or governmental instrumentality (whether federal, state or local), war, failure of performance by a common carrier, failure in whole or in part of technical facilities or any other cause beyond the reasonable control of said party (a “Force Majeure Event”), then such inability to perform shall not be deemed to be a default hereunder; provided, however, that the party declaring a force majeure event shall make all reasonable efforts to continue to meet its obligations throughout the duration of the force majeure condition; and provided, further, that the party declaring force majeure shall notify the other party promptly when the force majeure condition begins, the nature of the force majeure condition, and when such condition has terminated. The suspension of any obligations shall only last during the time the force majeure condition continues (and such reasonable time thereafter to allow said party to respond to such condition). In the event of Provider’s failure to perform its obligations hereunder due to Force Majeure Event, Provider will promptly consult with CPS regarding an alternative plan acceptable to CPS to provide total support for its requirements as stated in this Contract. Full implementation of the alternative plan acceptable to CPS shall be completed at Provider’s earliest opportunity, not to exceed five (5) days from the occurrence of such Force Majeure Event. If the alternative plan is not acceptable to CPS, CPS reserves the right to use other services, including those of another provider, to complete the project under such circumstances.
E. The headings contained in this Contract are for the purpose of convenience or reference only and are not intended to limit or affect any terms or conditions. The parties agree to the terms and conditions of this Contract as of the Effective Date. Each party represents and warrants to the other that (a) it has the right, power and authority to execute, deliver and perform this Contract (and shall have all right, power and authority to execute, deliver and perform any Statement of Work, or Work Order hereunder), and has taken all action necessary to authorize it to enter into and perform this Contract (and shall have taken all action necessary to authorize it to enter into and perform any Statement of Work and Work Order hereunder), including without limitation, in the case of Provider (if a limited liability company), in compliance with any and all requirements of the operating agreement of such limited liability company, (b) the signatory for such party has full right, power and authority to bind such party to all of the terms and conditions of this Contract (and to any Statement of Work or Work Order hereunder), and (c) this Contract (and each Statement of Work and Work Order) constitutes a valid, legal and binding obligation of such party.

Vendor Initials _______________________ & Company Name ________________________________

The respondent acknowledges and agrees to the terms and conditions listed above. If there are any terms and conditions that respondent is not willing to comply with or does not have the capability to accept or agree to, please address in the response to this RFP.