

<p align="center"><b>Durham Public Schools</b>  Purchasing Office  ATTN: Stephanie Williams  511 Cleveland St  Durham, NC 27701</p>	<p align="center"><b>Request for Proposal</b>  <b># 179-1920-549-CPMS_REBID</b>  <b>Construction Project Management System</b></p>
<p><b>Direct all inquiries concerning this Request for Proposal to:</b></p> <p>Thomas Griffis  <a href="mailto:thomas.griffis@dpsnc.net">thomas.griffis@dpsnc.net</a></p> <p>All questions must be submitted via email no later than 4:00 p.m. on Wednesday, February 5, 2020. The administration will not respond if questions are submitted by phone, text, or in person.</p>	<p align="center"><b>Proposals Due/Bid Opening:</b>  Wednesday, February 26, 2020, 3:00 p.m.</p>

**NOTICE TO BIDDERS**

Sealed Proposals, subject to the conditions made a part hereof, will be received at the Durham Public Schools Purchasing Office located at 511 Cleveland St, Durham, NC 27701 until 3:00 p.m. on Wednesday, February 26, 2020 for furnishing and delivering the commodity as described herein. Bids are subject to rejection unless submitted on this form.

Bids submitted via electronic means, including but not limited to email, in response to this Request for Proposal will not be acceptable. Bids are subject to rejection unless submitted on this form.

Please submit three (3) printed Originals of your Proposal and one (1) copy on a USB drive. All versions should be mailed in the same package.

**EXECUTION**

In compliance with this Request for Proposal, and subject to all the conditions herein, the undersigned Vendor offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein. By executing this Proposal, the undersigned Vendor certifies that this Proposal is submitted competitively and without collusion (G.S. 143-54), that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that it is not an ineligible Vendor as set forth in G.S. 143-59.1. False certification is a Class I felony. Furthermore, by executing this Proposal, the undersigned certifies to the best of Vendor's knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency. As required by G.S. 143-48.5, the undersigned Vendor certifies that it, and each of its sub-Contractors for any Contract awarded as a result of this RFP, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system. G.S. 133-32 and Executive Order 24 (2009) prohibit the offer to, or acceptance by, any State Employee associated with the preparing plans, specifications, estimates for public Contract; or awarding or administering public Contracts; or inspecting or supervising delivery of the public Contract of any gift from anyone with a Contract with the State, or from any person seeking to do business with the State. By execution of this response to the RFP, the undersigned certifies, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

**Failure to execute/sign Proposal prior to submittal shall render Proposal invalid and it WILL BE REJECTED. Late Proposals will not be accepted.**

VENDOR:		FEDERAL ID NUMBER:	
STREET ADDRESS:		P.O. BOX:	ZIP:
CITY & STATE & ZIP:		TELEPHONE NUMBER:	TOLL FREE TEL. NO:
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #10)			
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR:			
VENDOR'S AUTHORIZED SIGNATURE	DATE:	EMAIL:	

Offer valid for 120 days from date of Proposal opening, unless otherwise stated. After this time, any withdrawal of offer shall be made in writing, effective upon receipt by the agency issuing this Request for Proposal.

**ACCEPTANCE OF PROPOSAL**

If any or all parts of this Proposal are accepted by Durham Public Schools, an authorized representative of Durham Public Schools shall affix his/her signature hereto and this document and all provisions of this Request For Proposal along with the Vendor Proposal response and the written results of any negotiations shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Vendor(s).

<p><b><u>FOR DURHAM PUBLIC SCHOOLS USE ONLY:</u></b> Offer accepted and Contract awarded this _____ day of _____, 20____, as indicated on the attached certification, by _____</p> <p>_____          (Authorized Representative of [Agency Name])</p>
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## **1.0 PURPOSE AND BACKGROUND**

Durham Public Schools (DPS) is seeking Proposals for a web-based Construction Project Management System (CPMS).

## **2.0 GENERAL INFORMATION**

This Request For Proposal (RFP) is comprised of the base Proposal document, any attachments, and any addenda released before contract award. All attachments and addenda released for this RFP in advance of any Contract award are incorporated herein by reference. Proposals shall be submitted in accordance with the terms and conditions of this RFP and any addenda issued hereto.

### **TAXES**

DPS is NOT tax-exempt. Unless otherwise indicated, tax must be computed and added to your Proposal. Any itemized shipping charges are also subject to tax. When invoiced, tax should be invoiced as a separate line item.

### **MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE (MWBE)**

The DPS Board of Education awards public contracts without regard to race, religion, color, creed, national origin, sex, age or handicapped condition as defined by North Carolina General Statutes, 168A-3. DPS Board of Education promotes full and equal access to business opportunities with DPS. Minority businesses are encouraged to submit Proposals for this project. All Vendors shall have a fair and reasonable opportunity to participate in DPS business opportunities.

### **INSURANCE**

#### **Certificate of Insurance**

Each Vendor shall furnish DPS a certificate of insurance showing that the required workmen's compensation and public liability insurance are carried by the Contractor. The certificate of insurance should show that it is issued to or at the request of the DPS Board of Education, Durham, North Carolina. All insurance carriers shall be licensed to do business in North Carolina or approved to issue insurance coverage by the Commission of Insurance of North Carolina.

The certificate of insurance shall include substantially the following provision: The insurance policies to which this certificate refers shall not be altered or canceled until after ten (10) days' written notice of such cancellation or alteration has been sent by certified mail to the DPS Board of Education, Durham, North Carolina.

#### **Public Liability Insurance**

The Vendor shall maintain public liability insurance covering his liability for bodily injury and property damage which may arise from his operations, contractual obligations, products and completed operations, as well as operations performed by independent contractors, in not less than the following amounts:

1. A combined single limit (CSL) of \$1,000,000 each occurrence, or
2. A \$1,000,000 limit for Bodily Injury Liability, and \$1,000,000 limit for Property Damage Liability.

An occurrence form of policy will be required, and the certificate of insurance submitted by the Contractor must be personally signed by a resident licensed agent of each of the companies listed on that form.

#### **Worker's Compensation Insurance**

The Contractor shall maintain during the life of his contract all such workmen's compensation insurance as is or may be required by the laws of North Carolina.

## **TERMS AND CONDITIONS**

It shall be the Vendor's responsibility to read the instructions, terms and conditions, all relevant exhibits and attachments, and any other components made a part of this RFP, and comply with all requirements and specifications herein. Vendors also are responsible for obtaining and complying with all Addenda and other changes that may be issued relating to this RFP.

## **3.0 SPECIFIC INFORMATION**

### **PROPOSAL QUESTIONS**

Upon review of the RFP documents, Vendors may have questions to clarify or interpret the RFP to submit the best Proposal possible. To accommodate the Proposal questions process, Vendors shall submit any such questions by 4:00 p.m. on Wednesday, February 5, 2020.

Written questions shall be emailed to Thomas Griffis at [thomas.griffis@dpsnc.net](mailto:thomas.griffis@dpsnc.net) by the date and time specified above. Vendors will enter "RFP# 179-1920-549-CPMS\_REBID Questions" as the subject for the email. Question submittal will include a reference to the applicable RFP section.

Questions received prior to the submission deadline date, DPS's response, and any additional terms deemed necessary by DPS will be posted in the form of an addendum by 4:00 p.m. on Wednesday, February 12, 2020. No information, instruction or advice provided orally or informally by any DPS personnel, whether made in response to a question or otherwise regarding this RFP, shall be considered authoritative or binding. Vendors shall be entitled to rely only on written material contained in an addendum to this RFP.

### **PROPOSAL SUBMITTAL**

Sealed Proposals, subject to the conditions made a part hereof and the receipt requirements described below, shall be received at the address indicated below, as described herein. Three (3) printed Originals and one (1) copy on a USB drive should be addressed in an envelope with the RFP number as shown below. It is the responsibility of the Bidder to have the Proposal in the DPS Purchasing Office by the specified time and date of opening.

Proposals shall be marked on the outside of the sealed envelope with the Vendor's name, Proposal number and date and time of opening. If Vendor is submitting more than one Proposal, each Proposal shall be submitted in separate sealed envelopes and marked accordingly. For delivery purposes, separate sealed Proposals from a single Vendor may be included in the same outer package.

Attempts to submit a Proposal via electronic means, including but not limited to email, in response to this RFP will not be accepted. Proposals are subject to rejection unless submitted with the information above included on the outside of the sealed Proposal package.

### **MAILING INSTRUCTIONS**

DELIVERED BY US POSTAL SERVICE OR ANY OTHER MEANS:

ATTN: STEPHANIE WILLIAMS  
PURCHASING OFFICE  
DURHAM PUBLIC SCHOOLS  
511 CLEVELAND ST  
DURHAM NC 27701-3334

RFP No. 179-1920-549-CPMS\_REBID

## **BRAND NAME**

Unless otherwise indicated, manufacturer names and model numbers specified are used for purposes of identifying and establishing general quality level desired. Such references are not intended to be restrictive and comparable products of other manufacturers will be considered. The specifications following are the minimum acceptable by DPS. Any deviations from the specifications shall be so stated in writing in the Bidder's response. Please include in your response manufacturers' model numbers along with prices of items offered. Submit complete descriptive literature and specifications on all items offered. Proposals which fail to comply may be subject to rejection.

## **REFERENCES**

DPS reserves the right to require upon request a list of references from other school districts or similar service agencies for which the company has provided the services or goods solicited in this RFP. DPS may contact these users to determine quality level. Such information may be considered in the evaluation of the Proposal.

## **4.0 AWARD AND PROPOSAL EVALUATION**

### **REVIEW AND AWARD**

It is the intent of DPS to award this RFP to the responsible Bidder(s) who best matches the needs of DPS. DPS reserves the right to reject any or all Proposals presented and to waive any informalities and irregularities. Award of this Proposal may be in whole or in part as deemed to be in the best interest of DPS. All projects are awarded contingent upon funding. No Proposal may be withdrawn after the scheduled closing time for the receipt of Proposals for a period of 120 days. (See Part 1 of Section 06 Evaluation & Recommendation in Proposal Document)

### **EVALUATION CRITERIA**

See Part 2 of Section 06 Evaluation & Recommendation in Proposal document.

### **SECTION 01 GENERAL**

#### **Part 1 PURPOSE**

- 1.1. Durham Public Schools (DPS) is seeking Proposals for a web-based Construction Project Management System (CPMS).
- 1.2. This Request for Proposal (RFP) describes, in detail, the product/service requirements and the required ability of the Vendor to provide them.
- 1.3. The specifications listed in this RFP are minimums. Vendors should include in their responses any specifications superior to those listed in the RFP or that the Vendor believes would enhance the products or services provided to DPS.

#### **Part 2 DISTRICT INFORMATION**

- 2.1. DPS is located in Durham County, NC. DPS serves over 33,000 students in 53 schools in urban, suburban, and rural areas.

#### **Part 3 DEFINITIONS**

- 3.1. "DPS" refers to Durham Public Schools.
- 3.2. "DPS Workdays" means weekdays on which DPS is not closed and 12-month employees are required to report to work.
- 3.3. "Proposal(s)" refer to the product(s), service(s), and warranty(ies) submitted by the Vendor(s) in response to this RFP.
- 3.4. "RFP" refers to this Request for Proposal.
- 3.5. "RFP Contact Person" refers to the person described in Part 4 of this Section.

- 3.6. "Recommended Vendor(s)" refers to the Vendor recommended for award of a contract in connection with this RFP.
- 3.7. "Third Party Item(s)" refers to products/services that Vendor proposes to purchase and resell to DPS.
- 3.8. "Vendor(s)" refers to companies or other entities responding to this RFP.

**Part 4 RFP CONTACT PERSON / QUESTIONS**

- 4.1. Vendor shall direct any question regarding this RFP to the DPS RFP Contact Person, Thomas Griffis at thomas.griffis@dpsnc.net.
- 4.2. All communications shall be through email with the name and number of the RFP as the subject line.
- 4.3. DPS will provide answers to Vendor's questions by means of an addendum posted to the DPS Purchasing website. Answers will not be provided by any other means.

**Part 5 DPS RESERVATIONS**

- 5.1. Issuance of this RFP does not commit DPS to issue an award, sign a contract, or make a purchase.
- 5.2. DPS reserves the right to revise or re-issue this RFP, to issue a completely new RFP for the same purpose, or to abandon the purpose altogether.
- 5.3. DPS, at its sole discretion, reserves the right to recognize and waive minor informalities and irregularities found in Proposals.
- 5.4. For purposes of this RFP, DPS will purchase from a single Vendor.

**Part 6 VENDOR NOTICES**

- 6.1. It is Vendor's responsibility to examine the entire RFP and to seek clarification from DPS if needed. Additional requirements established by DPS, the State of North Carolina, or other entities are included herein by reference.
- 6.2. Any revisions to this document will be made by written addendum only. Verbal communications, no matter the source, will be of no effect and Vendors may not rely upon them.
- 6.3. Vendors are responsible for all expenses incurred by the Vendor in the preparation of a Proposal to this RFP. This includes attendance at interview, presentations, or other meetings and demonstrations, where applicable.
- 6.4. Vendor's Proposal, including all appendices and attachments, may be incorporated in the final contract, if awarded.
- 6.5. Following announcement of an award decision, all Proposals in response to this RFP will be considered public records for public inspection pursuant to the State of North Carolina General Statutes, Chapter 132. In the event a request is made to produce a Proposal, DPS will provide the Proposal to the requester. DPS will not undertake to determine where any Proposal or part of Proposal is confidential or otherwise protected from disclosure.

**Part 7 APPLICABLE LAW**

- 7.1. All applicable laws, whether or not explicitly referenced, are included herein by this reference. It is the Vendor's responsibility to determine the applicability and requirements of any such laws and to abide by them.
- 7.2. All terms in the RFP shall be enforceable as contract terms. The use of phrases such as "shall," "must," and "requirements" are intended to create enforceable contract conditions.
- 7.3. The DPS Board of Education is the binding legal entity and authority for the purposes of contract, arbitration, and any other legal matters related to this RFP.
- 7.4. This RFP and any contract, negotiation, claim, or dispute arising out of it and/or in connection with its subject matter will be governed by and interpreted in accordance with the laws of the State of North Carolina and the United States without giving effect to any choice-of-law rule that

would cause the application of the law of any other state or nation. Exclusive jurisdiction for any claim or dispute arising from this Agreement will reside in federal and state courts within the Middle District of North Carolina.

**Part 8 CONTRACT TERM**

- 8.1. DPS is seeking an agreement for the contract period of April 2020 through March 2021.
- 8.2. Following the initial one year term of the contract, DPS may opt to renew the contract for up to five (5) additional one year period(s), subject to satisfactory performance. There is no guarantee that an extension will be exercised and Vendors should have no expectation of this occurring.

**Part 9 MINORITY AND WOMAN BUSINESS ENTERPRISES (MWBE)**

- 9.1. The DPS Board of Education promotes full and equal access to business opportunities with DPS. Minority and woman owned businesses as well as other responsible Vendors shall have a fair and reasonable opportunity to participate in DPS business opportunities.
- 9.2. Prime suppliers (i.e., those who deal directly with DPS) should support the DPS MWBE Program by making an effort to engage minority and woman owned businesses as subcontractors for goods and services to the extent available.

**End of SECTION 01**

**SECTION 02 VENDOR REQUIREMENTS**

**Part 1 GENERAL**

- 1.1. Public agencies, private for-profit companies, and non-profit companies and institutions are invited to submit Proposals in response to this RFP. Partnerships and consortia of entities may work together to respond to this RFP. However, each Proposal must clearly identify a prime Vendor. The prime Vendor will be responsible for providing all deliverables as defined by any resulting contract or purchase agreement according to the terms and conditions as set forth in any resulting contract or purchase agreement.

**Part 2 FINAL DIVESTMENT ACT**

- 2.1. By acceptance of this contract, Vendor certifies that as of the date of this document:
  - A. Vendor is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. § 143C-6A-4 (the "Final Divestment List");
  - B. And Vendor will not utilize any subcontractor performing work under this RFP which is listed on the Final Divestment List. The Final Divestment List can be found on the State Treasurer's website at the address [www.nctreasurer.com/iran](http://www.nctreasurer.com/iran).

**Part 3 CAPABILITY**

- 3.1. Vendor must demonstrate a minimum of five (5) years of experience in providing the product/service to K-12 clients, or that it has other experience that clearly demonstrates capacity to successfully perform as outlined in its Proposal.
- 3.2. Vendor shall provide a minimum of three (3) current K-12 clients using the product/service proposed, or other clients that clearly demonstrates capacity to successfully perform as outlined in its Proposal.
- 3.3. Vendor must demonstrate that it has supplied a purchase contract of similar size and value as proposed in Vendor's response.
- 3.4. Vendor must demonstrate that it has the ability, capacity, and flexibility to collaborate successfully and actively with DPS during the preparation, delivery, and support of the product/service it proposes in its response.
- 3.5. Vendor must be
  - A. the manufacturer;

- B. developer; or
- C. a manufacturer/developer authorized reseller that is
  - 1. authorized to purchase product directly from the manufacturer;
  - 2. authorized by the manufacturer to resell product; and
  - 3. if relevant, certified by the manufacturer to grant a manufacturer's warranty on the product.

**Part 4 RESELLERS**

- 4.1. DPS acknowledges that the Vendor may be a reseller that proposes to purchase and resale Third Party Items.
- 4.2. Should the Vendor be a reseller, it will:
  - A. provide DPS with copies of all documentation and warranties for the Third Party Items; and
  - B. assign all applicable Third Party Item warranties to DPS.

**End of SECTION 02**

**SECTION 03 PRODUCT REQUIREMENTS**

**Part 1 GENERAL**

- 1.1. Complete and Cost Effective - the Vendor must provide a product that is both functionally complete and cost effective. The Vendor must demonstrate the ability, capacity, and flexibility to collaborate successfully and actively with DPS.
- 1.2. Ongoing Improvements - DPS is vitally interested in investing in products which have long-life and upgradeability to provide continuing and enhanced capabilities over time, including migration to evolving standards. Vendor should describe its product's ability to adapt to or incorporate improved technology.

**Part 2 PLATFORM**

- 2.1. Web
  - A. CPMS system proposed shall be a modern cloud-based Software as a Service (SaaS) platform.
  - B. CPMS shall be compatible with Google Chrome and Microsoft Edge browsers. No add-ins shall be required for browsers.
- 2.2. Android - CPMS shall be fully accessible and useable from a mobile Android device.
- 2.3. iOS - CPMS shall be fully accessible and useable from a mobile iOS device.

**Part 3 FEATURES**

- 3.1. For each section below, include details of how the CPMS you are proposing meets the desired feature.
- 3.2. Financials
  - A. Budgeting
  - B. Change Management
  - C. Contract Management
  - D. Cost Management
  - E. Integration with Financial Systems
  - F. Invoicing
  - G. Automated functions for
    - 1. accounts receivable;
    - 2. accounts payable;
    - 3. work order entry; and
    - 4. payroll.

### 3.3. Project Management

- A. Bidding
- B. Daily Log
- C. Drawings and Specifications
- D. Notifications
- E. Meetings
- F. Project Documentation, including photos and videos
- G. Punch List
- H. RFIs
- I. Scheduling
- J. Submittals
- K. Time expense tracking
- L. Transmittals.

### 3.4. Quality

- A. Daily Log
- B. Documentation, including photos and videos
- C. Inspections
- D. Observations
- E. Scheduling.

### 3.5. Safety

- A. Daily Log
- B. Forms
- C. Incidents
- D. Inspections.

### 3.6. Reporting

- A. Project Data
- B. Project Analytics Reports
- C. Customizable Reports
- D. Exporting to other third-party software like Microsoft Excel
- E. Easy to understand format

## **End of SECTION 03**

## **SECTION 04 SERVICE REQUIREMENTS**

### **Part 1 GENERAL**

- 1.1. Complete and Cost Effective - the Vendor must provide a service that is both complete and cost effective. The Vendor must demonstrate the ability, capacity, and flexibility to collaborate successfully and actively with DPS.
- 1.2. Ongoing Improvements - DPS is vitally interested in investing in services which have long-life and upgradeability to provide continuing and enhanced capabilities over time, including migration to evolving standards. Vendor should describe its service's ability to adapt to or incorporate improved technology.

### **Part 2 SERVICE LEVEL**

- 2.1. Vendor agrees to provide a 99.5% uptime service level agreement.
- 2.2. CPMS shall have backup, failover, and disaster recovery capabilities.

### **Part 3 PLAN**

- 3.1. Include a detailed work plan, with estimated times, for the implementation of the CPMS. Plan shall include:

- A. Software configuration;
- B. User configuration;
- C. Administrative configuration;
- D. Initial project configuration; and
- E. Chart of responsibilities.

**Part 4 DATA RETENTION**

- 4.1. Data shall be retained by Vendor during the duration of the contract.
- 4.2. DPS shall retain sole ownership of all data.
- 4.3. At termination of contract
  - A. Vendor shall make available all data in a reasonable format.
  - B. Vendor shall destroy any and all copies of data belonging to DPS.

**Part 5 DATA IMPORT**

- 5.1. DPS prefers a data import of existing projects into the CPMS.
  - A. Data export will be from current system(s).
  - B. Include plan for import of data.

**Part 6 DATA SECURITY**

- 6.1. CPMS and data shall be maintained in an SSAE SOC Type 2 certified data center. Vendor shall be liable for any and all expenses related to notification, suits, and payments to victims of a data breach.
- 6.2. Access to CPMS and data shall be controlled by username/password maintained within the CPMS administrative console.
- 6.3. Access levels shall be configurable by user, group, project, and module.
- 6.4. Vendor shall appoint a data custodian to protect student and teacher confidentiality and security.
- 6.5. Vendor must have an individual who is authorized to execute contracts sign our Data Security Agreements (see Appendix E and F).

**Part 7 TRAINING**

- 7.1. Vendor shall provide a comprehensive training program.
- 7.2. Training program shall consist of
  - A. On-site training for administrators and key users.
  - B. Online help.
  - C. Online video tutorials.
  - D. Digital and paper training manuals.

**Part 8 SUPPORT**

- 8.1. Describe the post-implementation support plan.
- 8.2. Describe the structure of your support office
  - A. In-house, contracted, etc.;
  - B. Hours of operation;
  - C. Average wait times;
  - D. Cost per hour.

**End of SECTION 04**

**SECTION 05 RESPONSE**

**Part 1 GENERAL**

- 1.1. Vendor's Proposal must adhere to the instructions and format requirements outlined in this RFP and any written supplements or amendments issued by DPS.
- 1.2. Vendor's Proposal must be signed by a person authorized to legally bind the Vendor.

- 1.3. Vendor's Proposal shall contain a statement that the Proposal and the pricing contained therein will remain valid for a period of 1 year from the date and time of the Proposal submission.
- 1.4. Failure to adhere to the instructions and/or format requirements or to respond to any question(s) may result in the response being disqualified as non-responsive or receiving a reduced evaluation.
- 1.5. DPS has sole discretion to determine whether a variance from the RFP requirements should result in either disqualification or reduction in evaluation.
- 1.6. DPS seeks detailed, yet succinct, responses that demonstrate the Vendor's experience and ability to perform the requirements of this RFP.

## **Part 2 PROPOSAL CONTENTS**

- 2.1. Cover Page
- 2.2. Summary
- 2.3. Section 02 Vendor Requirements Response
- 2.4. Section 03 Product Requirements Response
- 2.5. Section 04 Service Requirements Response
- 2.6. References
- 2.7. Pricing

## **Part 3 PROPOSAL FORMAT**

- 3.1. Quantity - three (3) printed Originals and one (1) copy on a USB drive.
- 3.2. Cover Page
  - A. There must be a cover page as the first page of the Proposal.
  - B. Cover page must match, as closely as possible, the sample cover page provided.
  - C. Cover page must be dated and signed by a person authorized to enter into contracts on behalf of the Vendor.
- 3.3. Format
  - A. Proposal shall be single-spaced with 1" margins using a font no smaller than 11 point Arial.
  - B. All pages shall be numbered consecutively beginning with number 1 on the first page of the narrative (this does not include the cover page or table of contents pages) through to the end, including all forms and attachments.
  - C. Vendor's name shall appear on every page, including attachments.
  - D. Each attachment shall reference the Section and Number to which it corresponds.
- 3.4. Vendor shall be concise and respond to each requirement in Sections 02, 03 and 04. Number each response to correspond to the Section, Part, and sub-part. Repeat the Section, Part, and sub-part prior to responding.
- 3.5. Each Section, Part, and sub-part shall contain an answer. At a minimum the answer should be "(Vendor) agrees to this requirement."
- 3.6. Include any forms provided in the RFP package or reproduce those forms as closely as possible. All information shall be presented in the same order and format as described.
- 3.7. It is the responsibility of the Vendor to include all information requested at the time of submission. Failure to provide information requested may, at the discretion of DPS, result in a lower scoring or the Proposal being disqualified.

**End of SECTION 05**

## **SECTION 06 EVALUATION AND RECOMMENDATION**

### **Part 1 REVIEW TEAM**

- 1.1. A review team of qualified reviewers will judge the merits of the Proposals in accordance with the criteria defined in the RFP, and in accordance with the most advantageous cost and effectiveness considerations for DPS.
- 1.2. The review team reserves the right to communicate and/or schedule interviews/presentations with Vendors if needed to obtain clarification of information contained in the Proposal. The review team may revise the scores assigned in the initial evaluation to reflect these communications and/or interviews/presentations.
- 1.3. The review team will consider materials provided in the Proposal, information obtained through interviews/presentations, and internal DPS information of previous contract history with the Vendor in consideration of Proposal scoring. DPS also reserves the right to consider other reliable references and publicly available information in evaluating a Vendor's experience and capabilities.
- 1.4. Award of a Contract to one Vendor does not mean that the other Proposals lacked merit, but that, all factors considered, the selected Proposal was deemed most advantageous and represented the best value to DPS.

### **Part 2 EVALUATION CRITERIA**

- 2.1. 100 – TOTAL POINTS
- 2.2. 10 points - Vendor background and experience.
- 2.3. 20 points – Product requirements.
- 2.4. 15 points – Service requirements.
- 2.5. 15 points – Work plan.
- 2.6. 15 points – Training and support.
- 2.7. 15 Points – Cost
- 2.8. 10 Points – MWBE Participation

### **Part 3 DEMONSTRATIONS**

- 3.1. After evaluating all Proposals, DPS may choose to invite the highest scoring Vendors to provide an in-person demonstration of their proposed solution.
- 3.2. These Vendors may not change their Proposals during the demonstration.
- 3.3. Based on the Vendors' demonstration, DPS may revise the scores assigned in the initial review to reflect the additional evaluation.

### **Part 4 NEGOTIATION**

- 4.1. DPS reserves the right to negotiate with the selected Vendor. Such negotiations may not significantly vary the content, nature, or requirements of the Proposal.
- 4.2. In the event that an acceptable contract cannot be negotiated with the highest scoring Vendor, DPS may withdraw its recommendation and negotiate with another Vendor.
- 4.3. DPS reserves the right to reject all original offers and request one or more of the Vendors submitting Proposals within a competitive range to submit a best and final offer (BAFO), based on discussions and negotiations with DPS, if the initial responses to the RFP have been evaluated and determined to be unsatisfactory

### **Part 5 RECOMMENDATION AND AWARD**

- 5.1. After further review and any negotiation, the review team will make a final recommendation to the DPS budget authority.
- 5.2. Notification of the contract or purchase agreement award(s) will be made in writing to the Selected Vendor(s) after approval by the DPS budget authority.

**End of SECTION 06**

**SECTION 07 EXPECTED TIMELINE**

**Part 1 GENERAL**

- 1.1. All dates are subject to change at the sole discretion of DPS.
- 1.2. All dates are final deadlines. The action described may be completed prior to that date.

**Part 2 TIMELINE**

- 2.1. January 26, 2020: Issue of RFP
- 2.2. February 5, 2020 4:00 pm: Questions Due to DPS
- 2.3. February 12, 2020 4:00 pm: Addendum Published
- 2.4. February 26, 2020 3:00 pm: Proposals Due/Bid Opening

**End of SECTION 07**

## APPENDIX A - COVER PAGE

### Request for Proposal Construction Project Management System

*Vendor*

*Address*

*City, State Zip*

*Phone*

*Proposal Contact*

*Address*

*City, State Zip*

*Phone*

*Fax*

*Email*

**End of APPENDIX A**

## APPENDIX B - RESPONSE TO REQUIREMENTS EXAMPLE

### Part 1 SERVICE LEVEL

- 1.1. Vendor agrees to provide a 99.5% uptime service level agreement. *Vendorname agrees to this requirement.*
- 1.2. CPMS shall have backup, failover, and disaster recovery capabilities. *Vendorname agrees to this requirement.*

### Part 2 PLAN

- 2.1. Include a detailed work plan, with estimated times, for the implementation of the CPMS. Plan shall include: *See attached implementation plan.*
  - A. Software configuration;
  - B. User configuration;
  - C. Administrative configuration;
  - D. Initial project configuration; and
  - E. Chart of responsibilities.

### Part 3 DATA RETENTION

- 3.1. Data shall be retained by Vendor during the duration of the contract. *Vendorname agrees to this requirement.*
- 3.2. DPS shall retain sole ownership of all data. *Vendorname agrees to this requirement.*
- 3.3. At termination of contract *Vendorname agrees to this requirement.*
  - A. Vendor shall make available all data in a reasonable format.
  - B. Vendor shall destroy any and all copies of data belonging to DPS.

**End of APPENDIX B**

## APPENDIX C - REFERENCES

### Reference 1

<b>Entity</b>	
<b>Contact</b>	
<b>Phone</b>	
<b>Email</b>	
<b>Brief description of project/service.</b>	

### Reference 2

<b>Entity</b>	
<b>Contact</b>	
<b>Phone</b>	
<b>Email</b>	
<b>Brief description of project/service.</b>	

### Reference 3

<b>Entity</b>	
<b>Contact</b>	
<b>Phone</b>	
<b>Email</b>	
<b>Brief description of project/service.</b>	

End of APPENDIX C

## APPENDIX D - PROPOSAL COST

### Base

Base Software Cost (includes all modules required to meet RFP requirements.)	\$
Advanced Levels	\$
Annual Fees	\$
Number of System Admin Accounts Included	#
Number of Project Manager Accounts Included	#
Number of Reporting Accounts Included	#
Number of Contractor Accounts Included	#
Number of Other Accounts Included	#

### Additional Modules

List each additional module that would enhance CPMS	
	\$
	\$
	\$
	\$

### Additional Users

System Admin Accounts	\$
Project Manager Accounts	\$
Reporting Accounts	\$
Contractor Accounts	\$
Other Accounts	\$

### Implementation

Cost of Implementation (details can be included below)	\$
	\$
	\$
	\$
	\$

### Training

Cost of Training / Maximum Number of Sessions	\$
	\$
	\$
	\$
	\$

End of APPENDIX D

## APPENDIX E - DATA SECURITY AGREEMENT (PERSONNEL)

### Durham Public Schools Data Confidentiality and Security Agreement for Online Service Providers (Personnel Data)

\_\_\_\_\_ (“Provider”) hereby agrees to the terms of this Data Confidentiality and Security Agreement (“Security Agreement”) for the purpose of sharing confidential personnel information between Durham Public Schools (“DPS” or “District”) and Provider in a manner consistent with N.C. Gen. Stat. §§ 115C-319 through 321 and DPS Board Policy 5235, and any accompanying regulations and procedures.

- Purpose.** DPS is a local education agency that maintains personnel information in accordance with N.C. Gen. Stat. §§ 115C-319 through 321 and DPS Board Policy 5235. Provider is requesting access to certain personnel information maintained by DPS for the purpose of providing online human resources services and/or technology products to DPS, as described herein. The purpose of this Security Agreement is to set forth the terms and conditions upon which Provider may be granted access to such personnel information order to ensure that the personnel information is used and stored appropriately and in compliance with all applicable state laws and DPS policies.
- Personnel Records and Information.** Provider acknowledges that any data shared and released to Provider by DPS (the “Shared Data”) is for the sole purpose of providing services to DPS. The Shared Data is defined as any data or information shared with Provider pursuant to this Agreement, including but not limited to any personally identifiable information (PII) about employees, and other employee information. The parties agree that the Shared Data and all rights to the Shared Data, including all intellectual property rights, shall remain the exclusive property of DPS, and that Provider has a limited, nonexclusive, license solely for the purpose of performing its obligations as outlined in this Agreement.
- Compliance with Applicable Laws, Policies, and Procedures.** To become or remain a recipient of the Shared Data, Provider agrees to comply with the provisions of N.C. Gen. Stat. §§ 115C-319 through 321 and DPS Board Policy 5235, and any accompanying regulations and procedures. Nothing in this Security Agreement may be construed to allow Provider to maintain, use, or disclose any Shared Data in a manner inconsistent with any applicable law, regulation, or policy. Provider and its sub-contractors understand and acknowledge that under N.C.G.S. § 115-321, the unauthorized examination, removal, and/or copying of any portion of a personnel file record of an employee of the DPS may constitute a Class 3 misdemeanor
- Authorized Use of Shared Data.** Provider agrees to use the Shared Data for no other purpose other than those identified in Paragraph 2 of this Agreement. Provider understands that the Security Agreement does not convey ownership of Shared Data to Provider. Provider specifically acknowledges that Provider’s marketing activities are not an authorized use of the Shared Data.
- Procedures for the Maintenance and Security of Shared Data.** While in the possession, custody, or control of Provider, all Shared Data shall be stored in a secure environment with access limited to the least number of staff needed to complete the work requested by DPS. Provider shall develop, implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity, and availability of all electronically maintained or transmitted data received from, or on behalf of, DPS. Such measures shall include processes for transmission and storage of such data.

- a. Provider agrees that it will protect the Shared Data against loss, destruction, and unauthorized uses or disclosures according to industry best practices and no less rigorously than it protects its own confidential information. Specifically, Provider agrees that all employee records and PII obtained in the course of providing services to DPS shall be subject to the confidentiality and disclosure provisions of applicable state statutes and 179-1819-528-E\_LEARNING PAGE 31 regulations, and Durham Public Schools policies, including but not limited to the laws and policies described in Paragraph 3 of this Security Agreement.
- b. b. For the purposes of ensuring Provider 's compliance with this Security Agreement and all applicable state laws, Provider shall designate one or more individuals as the primary data custodian(s) of the data that DPS shares with Provider and shall notify DPS of the name(s) and title(s) of such individual(s) prior to any data being shared. DPS will release all data and information for this project to the named primary data custodian(s). The primary data custodian(s) shall ensure that the project shall be conducted in a manner that does not permit personal identification of DPS employees by anyone other than representatives of Provider who need such information for the purposes described in Paragraphs 1 and 2 of this Security Agreement. The primary data custodian(s) shall also be responsible for maintaining a log of all data received pursuant to this Security Agreement and ensuring the timely destruction or return of the Shared Data as required by this Security Agreement.
- c. c. Provider shall use industry best practices to protect DPS data from unauthorized physical and electronic access no less rigorously than it protects its own confidential information. All DPS data shall be kept in a secure location preventing access by unauthorized individuals. Provider shall not forward to any person or entity other than DPS any employee record or PII, including, but not limited to, the employee's identity, without the advance written consent of DPS. Provider agrees to handle any and all Shared Data using appropriate access control and security, including password-protection and encryption in transport and electronic storage, and periodic auditing of data at rest. Data shall not be emailed in plain text or used for marketing campaigns. Provider will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.
- d. Provider will maintain an access log delineating the date, time, and identity of any person or entity given access to any Shared Data who is not in the direct employ of Provider. No such access shall be granted except in strict compliance with the terms and conditions of this Agreement and applicable law.

**6. Prohibition on Unauthorized Use or Disclosure of Shared Data.**

- a. Provider agrees to hold all Shared Data in strict confidence. Provider shall not use or disclose such data received from or on behalf of DPS except as authorized in writing by DPS or as required by law. Provider agrees not disclose any data obtained from DPS in a manner that could identify any individual employee to any other entity, attempt to infer or deduce the identity of any individual employee based on data provided by DPS, or claim to have identified or deduced the identity of any employee based on data provided by DPS.
- b. b. Provider is prohibited from mining Shared Data for any purposes other than those agreed to in advance writing by DPS. Data mining or scanning of user content for the purpose of advertising and/or marketing employees is strictly prohibited. c.
- c. In no event will Provider use any of the Shared Data for its own commercial marketing or advertising purposes, or for the commercial marketing or advertising purposes of any third-party. Provider will not use any Shared Data to advertise or market to DPS employees.

- d. In the event of any unauthorized use or disclosure, Provider shall report the incident to DPS no less than one (1) business day after Provider learns of such use or disclosure. Such report shall identify:
  - i. The nature of the unauthorized use or disclosure,
  - ii. The data used or disclosed,
  - iii. Who made the unauthorized use or received the unauthorized disclosure
  - iv. What Provider has done or shall do to mitigate the effects of the unauthorized use or disclosure
  - v. What corrective action Provider has taken or shall take to prevent future similar unauthorized use or disclosure.

Provider shall also provide such other information related to the unauthorized use or disclosure that may be reasonably requested by DPS. DPS also may require that Provider provide a written notice of the breach or disclosure, as well as a description of the corrective actions taken, to any DPS employee directly impacted by the breach or disclosure. Any such corrective action and notice shall be subject to review and approval by DPS.

- e. Provider may use de-identified, aggregated Shared Data for product development and research purposes only as specifically authorized and consented to in advance in writing by DPS. Any such de-identified data will have all direct and indirect personal identifiers removed, including, but not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Provider agrees not to attempt to re-identify any deidentified data and not to transfer de-identified data to any other party without DPS express written consent.
- f. Provider will not release any research or publications pertaining to DPS's data without DPS's advance written consent.

7. **Employees, Contractors, and Agents.** Provider may share any of the Shared Data with any of its subcontractors only with the advance written permission of DPS. Any such request from Provider shall be in writing and shall identify the person(s) or entit(ies) to whom disclosures will be made and the purposes of the disclosures. Should DPS, in its sole discretion, approve any such request, Provider shall ensure that each approved subcontractor is contractually bound to adhere to all of the terms of this Security Agreement with respect to its possession and use of any Shared Data and is aware of its obligations under applicable law with regard to the possession, use and re-disclosure of any PII. Any such agreement between Provider and its subcontractor(s) shall be subject to review and approval by DPS before any Shared Data is disclosed to the subcontractor(s). Nothing in this paragraph shall relieve Provider of any its obligations under this Agreement, including its responsibilities to ensure the security of any Shared Data provided by DPS pursuant to this Agreement.

8. **Monitoring and Auditing.** Any Shared Data held by Provider will be made available to DPS for review and inspection upon request of DPS. Provider shall cooperate with DPS or with any other person or agency as directed by DPS, in monitoring, auditing, or investigating activities related to Provider's use and safeguarding of the Shared Data, including but not limited to allowing inspection of the data logs described in Paragraph 5.b and 5.d of this Agreement. DPS and its auditors will maintain the confidentiality of any trade secrets of Provider that may be accessed during an audit conducted under this Security Agreement.

9. **Term; Post-Termination.** This Security Agreement takes effect upon the date of full execution and continues in full force and effect for so long as Provider has possession, custody, or control of any of the Shared Data. Upon the termination of the subscription to the instructional system provided by Provider and/or any other contract, purchase order, agreement or terms of service between DPS and

Provider, all Shared Data shall be destroyed. No other entity, including any subcontractors of Provider, shall be authorized to continue possessing or using any Shared Data. Any data remaining on any computers, servers, or other technological devices of Provider or its employees, agents, or subcontractors, shall be permanently deleted. Provider shall complete such destruction as promptly as possible, but not less than thirty (30) days after the effective date of the conclusion of this Agreement. Within such thirty (30) day period, Provider shall certify in writing to Durham Public Schools that such destruction has been completed. This section shall survive the expiration or earlier termination of this Agreement.

**10. Breach and Default; Indemnification; Remedies.**

- a. In the event of a material data or security breach, or, if DPS determines, in its sole discretion, that employee information has been mishandled or disclosed in a manner inconsistent with this Security Agreement, DPS may demand the immediate return or destruction of any and all of the Shared Data.
- b. Provider shall fully indemnify and hold harmless the DPS Board of Education and its past, current and future members, agents, and employees from and against all claims, actions, demands, costs, damages, losses, and/or expenses of any kind whatsoever proximately resulting from any material data breach of this Security Agreement or any unauthorized use or disclosure of the Shared Data by Provider or its subcontractor(s). The parties agree that this indemnification clause is an "evidence of indebtedness" for purpose of N. C. Gen. Stat. § 6-21.2. This section shall survive the expiration or earlier termination of this Security Agreement.
- c. Nothing in this Agreement shall restrict DPS from seeking any other rights or remedies to which it may be entitled at law or equity. 179-1819-528-E\_LEARNING PAGE 33

**11. No Right or Entitlement to Data.** This Security Agreement sets out the terms and conditions, under which DPS may, in its sole discretion, provide Shared Data to Provider. Nothing in this Security Agreement creates any right, title, or interest in Provider to receive any such information.

**12. Miscellaneous.**

- a. Governing Law. This Security 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.
- b. Relationship of Parties. The parties shall be independent contractors, and nothing herein shall be construed as creating a partnership or joint venture; nor shall any employee of either party be construed as employees, agents, or principals of any other party hereto.
- c. No Third Party Beneficiaries. Nothing in this Security Agreement shall confer upon any person other than the parties any rights, remedies, obligations, or liabilities whatsoever.
- d. Counterparts. This Security Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- e. Headings. The headings and other captions in this Security Agreement are for convenience and reference only and shall not be used in interpreting, construing or enforcing any of the provisions of this Security Agreement.
- f. Execution. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- g. Assignment of Rights. Neither this Security Agreement, nor any rights, duties, nor obligations described herein shall be assigned by Provider without the prior express written consent of DPS.
- h. Severability. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.



## APPENDIX F - DATA SECURITY AGREEMENT (STUDENT)

### Durham Public Schools Data Confidentiality and Security Agreement for Online Service Providers (Student Data)

\_\_\_\_\_ (“Provider”) hereby agrees to the terms of this Data Confidentiality and Security Agreement (“Security Agreement”) for the purpose of sharing confidential student information between Durham Public Schools (“DPS” or “District”) and Provider in a manner consistent with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g and its implementing regulations at 34 CFR part 99; the Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. 1232h and its implementing regulations at 34 CFR part 98; the Children’s Online Privacy Protection Act (COPPA), 15 U.S.C. 6501-6506 and its implementing regulations at 16 CFR part 312; N.C. Gen. Stat. §§ 115C-401.1, 115C-401.2, and 115C-402; DPS Board Policies 4200 to 4209 and their accompanying regulations and procedures; and other applicable laws and policies.

- 1. Purpose.** DPS is a local education agency that maintains student educational records under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, and its implementing regulations at 34 CFR part 99; N.C. Gen. Stat. §§ 115C401.1, 115C-401.2, and 115C-402; DPS Board Policies 4200 to 4209; and other applicable law. Provider is requesting access to certain student data maintained by DPS for the purpose of providing online educational services and/or instructional technology products to DPS, as described herein. The purpose of this Security Agreement is to set forth the terms and conditions upon which Provider may be granted access to such student data in order to ensure that the student data is used and stored appropriately and in compliance with all applicable federal, state, and local laws, regulations, and policies.
- 2. Student Records and Information.** Provider acknowledges that any data shared and released to Provider by DPS (the “Shared Data”) is for the sole purpose of providing educational services to enhance, supplement, and improve instruction for students within DPS. The Shared Data is defined as any data or information shared with Provider pursuant to this Agreement, including but not limited to any de-identified data, aggregated data sets, personally identifiable information (PII) about students, and other student information, including, but not limited to, student data, metadata, and user content. The Shared Data will be used by Provider for the sole purpose of populating student data into instructional systems subscribed to by DPS, and for improving services under this Agreement. The parties agree that the Shared Data and all rights to the Shared Data, including all intellectual property rights, shall remain the exclusive property of DPS, and that Provider has a limited, nonexclusive, license solely for the purpose of performing its obligations as outlined in this Agreement.
- 3. Compliance with Applicable Laws, Policies, and Procedures.** To become or remain a recipient of the Shared Data, Provider agrees to comply with the provisions of FERPA, PPRA, COPPA, N.C. Gen. Stat. § 115C-401.2, and all other applicable laws and regulations in all respects. For purposes of this Security Agreement, FERPA includes 20 U.S.C. 1232g, Chapter 99 of Title 34 of the Code of Federal Regulations, and any DPS Board of Education policies and procedures implementing these federal laws. PPRA includes 20 U.S.C 1232h, Chapter 98 of Title 34 of the Code of Federal Regulations, and any state law and DPS Board of Education policies implementing these federal laws. COPPA includes 5 U.S.C. 6501-6505, Chapter 312 of Title 16 of the Code of Federal

Regulations, and any state law and DPS Board of Education policies implementing these federal laws. Nothing in this Security Agreement may be construed to allow Provider to maintain, use, or disclose any Shared Data in a manner inconsistent with any applicable law, regulation, or policy.

4. **Authorized Use of Shared Data.** All services provided by Provider shall at all times be limited to institutional functions of DPS that could otherwise be provided by a school official and which DPS is “outsourcing” to Provider pursuant to 34 CFR 99.31(a)(1)(B). Provider agrees to use the Shared Data for no other purpose other than those identified in Paragraph 2 of this Agreement. Provider understands that the Security Agreement does not convey ownership of Shared Data to Provider. Provider specifically acknowledges that Provider’s marketing activities are not an authorized use of the Shared Data.
  
5. **Procedures for the Maintenance and Security of Shared Data.** While in the possession, custody, or control of Provider, all Shared Data shall be stored in a secure environment with access limited to the least number of staff needed to complete the work requested by DPS. Provider shall develop, implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity, and availability of all electronically maintained or transmitted data received from, or on behalf of, DPS. Such measures shall include processes for transmission and storage of such data.
  - a. Provider agrees that it will protect the Shared Data against loss, destruction, and unauthorized uses or disclosures according to industry best practices and no less rigorously than it protects its own confidential information. Specifically, Provider agrees that all student records and PII obtained in the course of providing services to DPS shall be subject to the confidentiality and disclosure provisions of applicable federal and state statutes and regulations, and Durham Public Schools policies, including but not limited to the laws and policies described in Paragraph 3 of this Security Agreement.
  - b. For the purposes of ensuring Provider’s compliance with this Security Agreement and all applicable state and federal laws, Provider shall designate one or more individuals as the primary data custodian(s) of the data that DPS shares with Provider and shall notify DPS of the name(s) and title(s) of such individual(s) prior to any data being shared. DPS will release all data and information for this project to the named primary data custodian(s). The primary data custodian(s) shall ensure that the project shall be conducted in a manner that does not permit personal identification of DPS students by anyone other than representatives of Provider who need such information for the purposes described in Paragraphs 1 and 2 of this Security Agreement. The primary data custodian(s) shall also be responsible for maintaining a log of all data received pursuant to this Security Agreement and ensuring the timely destruction or return of the Shared Data as required by this Security Agreement.
  - c. Provider shall use industry best practices to protect DPS data from unauthorized physical and electronic access no less rigorously than it protects its own confidential information. All DPS data shall be kept in a secure location preventing access by unauthorized individuals. Provider shall not forward to any person or entity other than DPS any student record or PII, including, but not limited to, the student’s identity, without the advance written consent of DPS. Provider agrees to handle any and all Shared Data using appropriate access control and security, including password-protection and encryption in transport and electronic storage, and periodic auditing of data at rest. Data subject to FERPA shall not be emailed in plain text or used for marketing campaigns. Provider will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.
  - d. Provider will maintain an access log delineating the date, time, and identity of any person or entity given access to any Shared Data student records who is not in the direct employ of

Provider. No such access shall be granted except in strict compliance with the terms and conditions of this Agreement and applicable law.

6. Prohibition on Unauthorized Use or Disclosure of Shared Data.

- a. Provider agrees to hold all Shared Data in strict confidence. Provider shall not use or disclose such data received from or on behalf of DPS except as authorized in writing by DPS or as required by law. Provider agrees not disclose any data obtained from DPS in a manner that could identify any individual student to any other entity, attempt to infer or deduce the identity of any individual student based on data provided by DPS, or claim to have identified or deduced the identity of any student based on data provided by DPS.
- b. Provider is prohibited from mining Shared Data for any purposes other than those agreed to in advance writing by DPS. Data mining or scanning of user content for the purpose of advertising and/or marketing to students or their parents is strictly prohibited.
- c. In no event will Provider use any of the Shared Data for its own commercial marketing or advertising purposes, or for the commercial marketing or advertising purposes of any third-party. Provider will not use any Shared Data to advertise or market to DPS students or their parents
- d. In the event of any unauthorized use or disclosure, Provider shall report the incident to DPS no less than one (1) business day after Provider learns of such use or disclosure. Such report shall identify:
  - i. The nature of the unauthorized use or disclosure,
  - ii. The data used or disclosed,
  - iii. Who made the unauthorized use or received the unauthorized disclosure,
  - iv. What Provider has done or shall do to mitigate the effects of the unauthorized use or disclosure, and
  - v. What corrective action Provider has taken or shall take to prevent future similar unauthorized use or disclosure.

Provider shall also provide such other information related to the unauthorized use or disclosure that may be reasonably requested by DPS. DPS also may require that Provider provide a written notice of the breach or disclosure, as well as a description of the corrective actions taken, to any DPS student, parent, or employee directly impacted by the breach or disclosure. Any such notice shall be subject to review and approval by DPS.

- e. Provider may use de-identified, aggregated Shared Data for product development and research purposes only as specifically authorized and consented to in advance in writing by DPS. Any such de-identified data will have all direct and indirect personal identifiers removed, including, but not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Provider agrees not to attempt to re-identify any deidentified data and not to transfer de-identified data to any other party without DPS express written consent.
- f. Provider will not release any research or publications pertaining to DPS's data without DPS's advance written consent.

7. Employees, Contractors, and Agents. Provider may share any of the Shared Data with any of its subcontractors only with the advance written permission of DPS. Any such request from Provider shall be in writing and shall identify the person(s) or entit(ies) to whom disclosures will be made and the purposes of the disclosures. Should DPS, in its sole discretion, approve any such request, Provider shall ensure that each approved subcontractor is contractually bound to adhere to all of the terms of this Security Agreement with respect to its possession and use of any Shared Data and is aware of its obligations under applicable law with regard to the possession, use and re-disclosure of any PII. Any such agreement between Provider and its subcontractor(s) shall be subject to review

and approval by DPS before any Shared Data is disclosed to the subcontractor(s). Nothing in this paragraph shall relieve Provider of any its obligations under this Agreement, including its responsibilities to ensure the security of any Shared Data provided by DPS pursuant to this Agreement.

8. **Monitoring and Auditing.** Any Shared Data held by Provider will be made available to DPS for review and inspection upon request of DPS. Provider shall cooperate with DPS or with any other person or agency as directed by DPS, in monitoring, auditing, or investigating activities related to Provider's use and safeguarding of the Shared Data, including but not limited to allowing inspection of the data logs described in Paragraph 5.b and 5.d of this Agreement. DPS and its auditors will maintain the confidentiality of any trade secrets of Provider that may be accessed during an audit conducted under this Security Agreement.
9. **Term; Post-Termination.** This Security Agreement takes effect upon the date of full execution and continues in full force and effect for so long as Provider has possession, custody, or control of any of the Shared Data. Upon the termination of the subscription to the instructional system provided by Provider and/or any other contract, purchase order, agreement or terms of service between DPS and Provider, all Shared Data shall be destroyed. No other entity, including any subcontractors of Provider, shall be authorized to continue possessing or using any Shared Data. Any data remaining on any computers, servers, or other technological devices of Provider or its employees, agents, or subcontractors, shall be permanently deleted. Provider shall complete such destruction as promptly as possible, but not less than thirty (30) days after the effective date of the conclusion of this Agreement. Within such thirty (30) day period, Provider shall certify in writing to Durham Public Schools that such destruction has been completed. This section shall survive the expiration or earlier termination of this Agreement.
10. **Breach and Default; Indemnification; Remedies.**
  - a. In the event of a material data or security breach, or, if DPS determines, in its sole discretion, that student information has been mishandled or disclosed in a manner inconsistent with this Security Agreement, DPS may demand the immediate return or destruction of any and all of the Shared Data.
  - b. Provider shall fully indemnify and hold harmless the DPS Board of Education and its past, current and future members, agents, and employees from and against all claims, actions, demands, costs, damages, losses, and/or expenses of any kind whatsoever proximately resulting from any material data breach of this Security Agreement or any unauthorized use or disclosure of the Shared Data by Provider or it's subcontractor(s). The parties agree that this indemnification clause is an "evidence of indebtedness" for purpose of N. C. Gen. Stat. § 6-21.2. This section shall survive the expiration or earlier termination of this Security Agreement.
  - c. Nothing in this Agreement shall restrict DPS from seeking any other rights or remedies to which it may be entitled at law or equity.
11. **No Right or Entitlement to Student Data.** This Security Agreement sets out the terms and conditions, under which DPS may, in its sole discretion, provide Shared Data to Provider. Nothing in this Security Agreement creates any right, title, or interest in Provider to receive any such information.
12. **Miscellaneous**
  - a. **Governing Law.** This Security 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.

