



REQUEST FOR PROPOSALS

Newport News Public Schools

ISSUING OFFICE:

PURCHASING DEPARTMENT
12465 WARWICK BOULEVARD
NEWPORT NEWS, VA 23606-3041
TELEPHONE: (757) 591-4525
FAX: (757) 591-4593

DATE: October 17, 2019

Attention of Offeror is Directed To Section
2.2-4367 to 2.2-4377 Code of Virginia
(Ethics In Public Contracting)

SEALED PROPOSALS will be received in the Issuing Office above until Closing Date and Closing Time as specified in this solicitation including any addenda issued by this office. Newport News Public Schools is not responsible for late delivery by U.S. Postal mail or other couriers.
All inquiries for information regarding this Request for Proposal are to be directed to the Issuing Office as defined herein.

COMMODITY: Curriculum Management Audit NIGP CODE: 924-05

PLEASE FILL IN OFFEROR'S NAME & ADDRESS
IN THE SPACES PROVIDED BELOW:

THIS IS NOT AN ORDER

RFP ITEM NO. 003-0-2020LC
PROCUREMENT OFFICER Lisa Cumming
CLOSING DATE November 25, 2019
CLOSING TIME 2:00 PM
PREPROPOSAL CONFERENCE N/A

THE SCHOOL BOARD OF THE CITY OF NEWPORT NEWS, HEREAFTER REFERRED TO AS NEWPORT NEWS PUBLIC SCHOOLS (NNPS), RESERVES THE RIGHT TO ACCEPT OR REJECT ANY AND ALL PROPOSALS IN WHOLE OR IN PART AND WAIVE ANY INFORMALITIES IN THE COMPETITIVE NEGOTIATIONS PROCESS. FURTHER, NNPS RESERVES THE RIGHT TO ENTER INTO ANY CONTRACT DEEMED TO BE IN ITS BEST INTEREST. THE ENTIRE CONTENTS OF THE REQUEST FOR PROPOSALS, ANY ADDENDA, OFFEROR'S PROPOSAL AND NEGOTIATED CHANGES SHALL BE INCORPORATED BY REFERENCE INTO ANY RESULTING CONTRACT.

NNPS DOES NOT DISCRIMINATE AGAINST FAITH-BASED ORGANIZATIONS.

DESCRIPTION OF GOODS/SERVICES

Curriculum Management Audit

ACKNOWLEDGE RECEIPT OF ADDENDUM: #1 ___ #2 ___ #3 ___ #4 ___ (Please Initial)

IN COMPLIANCE WITH THIS SOLICITATION AND TO ALL THE CONDITIONS IMPOSED HEREIN, THE UNDERSIGNED AGREES TO PERFORM ANY CONTRACT AWARDED AS A RESULT OF THIS SOLICITATION. THE FOLLOWING SECTION SHALL BE SIGNED BY AN AGENT AUTHORIZED TO BIND THE COMPANY. FAILURE TO EXECUTE THIS PORTION MAY RESULT IN PROPOSAL REJECTION.

Authorized Agent:

_____	_____	_____	_____
	Signature		Type or Print Name
_____	_____	_____	_____
Email Address	Telephone Number	Fax Number	Company FEI/FIN#

ENCLOSURES

ANTI-COLLUSION/NONDISCRIMINATION/DRUG-FREE WORKPLACE REQUIREMENTS

ANTI-COLLUSION CLAUSE:

IN THE PREPARATION AND SUBMISSION OF THIS PROPOSAL, SAID OFFEROR DID NOT EITHER DIRECTLY OR INDIRECTLY ENTER INTO ANY COMBINATION OR ARRANGEMENT WITH ANY PERSON, FIRM OR CORPORATION, OR ENTER INTO ANY AGREEMENT, PARTICIPATE IN ANY COLLUSION, OR OTHERWISE TAKE ANY ACTION IN VIOLATION OF THE SHERMAN ACT (15 U.S.C. SECTION 1), SECTIONS 59.1-9.1 THROUGH 59.1-9.17 OR SECTIONS 59.1-68.6 THROUGH 59.1-68.8 OF THE CODE OF VIRGINIA.

THE UNDERSIGNED OFFEROR HEREBY CERTIFIES THAT THIS AGREEMENT, OR ANY CLAIMS RESULTING THEREFROM, IS NOT THE RESULT OF, OR AFFECTED BY, ANY ACT OF COLLUSION WITH, OR ANY ACT OF, ANOTHER PERSON OR PERSONS, FIRM OR CORPORATION ENGAGED IN THE SAME LINE OF BUSINESS OR COMMERCE; AND, THAT NO PERSON ACTING FOR, OR EMPLOYED BY, NNPS HAS AN INTEREST IN, OR IS CONCERNED WITH, THIS PROPOSAL; AND, THAT NO PERSON OR PERSONS, FIRM OR CORPORATION OTHER THAN THE UNDERSIGNED, HAVE, OR ARE, INTERESTED IN THIS PROPOSAL.

DRUG-FREE WORKPLACE:

DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL OFFEROR AGREES TO (I) PROVIDE A DRUG-FREE WORKPLACE FOR THE SUCCESSFUL OFFEROR'S EMPLOYEES; (II) POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, A STATEMENT NOTIFYING EMPLOYEES THAT THE UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, DISPENSATION, POSSESSION, OR USE OF A CONTROLLED SUBSTANCE OR MARIJUANA IS PROHIBITED IN THE SUCCESSFUL OFFEROR'S WORKPLACE AND SPECIFYING THE ACTIONS THAT WILL BE TAKEN AGAINST EMPLOYEES FOR VIOLATIONS OF SUCH PROHIBITION; (III) STATE IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE SUCCESSFUL OFFEROR THAT THE SUCCESSFUL OFFEROR MAINTAINS A DRUG-FREE WORKPLACE; AND (IV) INCLUDE THE PROVISIONS OF THE FOREGOING CLAUSES IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUSUCCESSFUL OFFEROR OR VENDOR.

FOR THE PURPOSE OF THIS SECTION, "DRUG-FREE WORKPLACE" MEANS A SITE FOR THE PERFORMANCE OR WORK DONE IN CONNECTION WITH A SPECIFIC CONTRACT AWARDED TO A SUCCESSFUL OFFEROR IN ACCORDANCE WITH FEDERAL LAW, THE EMPLOYEES OF WHOM ARE PROHIBITED FROM ENGAGING IN THE UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, DISPENSATION, POSSESSION OR USE OF ANY CONTROLLED SUBSTANCE OR MARIJUANA DURING THE PERFORMANCE OF THE CONTRACT.

EMPLOYMENT DISCRIMINATION BY THE SUCESSFUL OFFEROR SHALL BE PROHIBITED:

- 1. DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL OFFEROR AGREES AS FOLLOWS:
 - a. THE OFFEROR, SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, RELIGION, COLOR, SEX, NATIONAL ORIGIN, AGE, DISABILITY, OR ANY OTHER BASIS PROHIBITED BY STATE LAW RELATING TO DISCRIMINATION IN EMPLOYMENT, EXCEPT WHERE THERE IS A BONA FIDE OCCUPATIONAL QUALIFICATION REASONABLY NECESSARY TO THE NORMAL OPERATION OF THE SUCCESSFUL OFFEROR. THE SUCCESSFUL OFFEROR AGREES TO POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES SETTING FORTH THE PROVISIONS OF THIS NONDISCRIMINATION CLAUSE.
 - b. THE SUCCESSFUL OFFEROR, IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE SUCCESSFUL OFFEROR, SHALL STATE THAT SUCH SUCCESSFUL OFFEROR IS AN EQUAL OPPORTUNITY EMPLOYER.
 - c. NOTICES, ADVERTISEMENTS, AND SOLICITATIONS PLACED IN ACCORDANCE WITH FEDERAL LAW, RULE OR REGULATION SHALL BE DEEMED SUFFICIENT FOR THE PURPOSE OF MEETING THE REQUIREMENTS OF THIS SECTION.
- 2. THE SUCCESSFUL OFFEROR WILL INCLUDE THE PROVISIONS OF THE FOREGOING PARAGRAPHS A, B, AND C IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

Name and Address of OFFEROR: _____ Date: _____ Authorized Signature _____
 Printed Name: _____ Title: _____
 Phone Number: _____ Fax Number: _____
 Email Address: _____

Federal Tax Identification Number/Social Security Number: _____

Is Offeror a "minority" business? Yes No If yes, please indicate the "minority" classification below:
 African American Hispanic American American Indian Eskimo Asian American Aleut Other; Please Explain:
 Is Offeror Woman Owned? Yes No
 Is Offeror a Small Business? Yes No
 Is Offeror a Faith-Based Organization? Yes No

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I. PURPOSE

Newport News Public Schools (NNPS) is soliciting proposals from individuals, consultants, or organizations to provide expert services related to the conducting of an audit of its curriculum, assessment and instructional practices in K-12 Math and in K-12 English/Language Arts content areas.

II. BACKGROUND

Based on the Commonwealth of Virginia Department of Education's (DOE) 2018-2019 Fall Membership Report, NNPS is the ninth largest school division in the Commonwealth with approximately 28,654 students. NNPS is an urban school system educating children in 5 early childhood centers, 24 elementary schools, 8 middle schools, and 6 high schools. NNPS also provides programs for at-risk students in addition to special education programs. A listing of NNPS facilities and its locations may be accessed via NNPS' official web site at <http://sbo.nm.k12.va.us/schools>. NNPS employees approximately 5000 employees in a variety of educational, managerial, professional, technical, clerical, service and maintenance positions.

III. STATEMENT OF NEEDS

- A. Newport News Public Schools (NNPS) is soliciting proposals from individuals, consultants, or organizations to provide expert services related to the conducting of an audit of its curriculum, assessment and instructional practices in K-12 Math and in K-12 English/Language Arts content areas.
- B. NNPS seeks qualified providers who have prior successful experience conducting curriculum and instructional practice audits.
- C. The objectives of this initiative are to establish baseline information about our current instructional practices across our division, and specifically, to evaluate the status of curriculum within each content area and grade level relative to Virginia and National standards, and to determine if our instructional and assessment practices are aligned to the requirements of those standards.
- D. Additionally, we are seeking to evaluate the vertical articulation of content area standards in grades K-12. Components of the curriculum audit must include, but are not limited to:
 - 1. Determining evidence of alignment to state and national content area standards and level of rigor and identify any gaps that may exist
 - 2. Determining the curricular needs of teachers, building level administrators and central level administrators through surveys and focus group meetings
 - 3. Seeking Evidence of vertical and horizontal articulation of standards across the curriculum
 - 4. Seeking evidence of instructional alignment to the curriculum
 - 5. Seeking evidence of differentiated instructional strategies incorporated in to our curriculum and instructional practices
 - 6. Determining evidence of remediation, enrichment and extension strategies in our curriculum
 - 7. Determine the evidence of consistency in the implementation of the curriculum system wide
 - 8. Conduct a review of the policies and controls that govern the curriculum development process. The vendor must provide as part of their proposal, a specific explanation of what they would require from the district (materials, staff support, etc.) to complete the audit as requested.
- E. With this information ascertained, we are looking to partner with a vendor who will create specific actionable recommendations for how we can apply the findings of the audit toward improving or redeveloping curriculum in Newport News Public Schools.

- F. A critical component of the work ahead will using the actionable recommendations to create and update current curriculum to strike the right balance between the need for district-wide coherence, focus on students , while ensuring that there is equity for all Newport News Public Schools students in their access to appropriate, standards-based, high-quality teaching and learning practices regardless of the school they attend.
- G. Following the implementation of the recommendations from the curriculum audit, our expectation is that there will be more continuity, consistency and congruence within the K-12 instructional core (curriculum instruction and assessment). Furthermore, the recommendations from the audit should lead to a fully aligned curriculum and improved teaching and learning experiences across the district.

IV. SPECIAL INSTRUCTIONS TO THE OFFEROR

A. Definitions:

Issuing Office:

Wherever used in this Request for Proposal, Issuing Office will be:

Lisa Cumming, C.P.M., CPPO, VCO Director of Procurement/School Board Purchasing Agent
Newport News Public Schools Purchasing Department
12465 Warwick Boulevard
Newport News, VA 23606-3041
Phone: (757) 597-2820
Fax: (757) 591-4593
Email: lisa.cumming@nn.k12.va.us

NNPS Contract Administrator:

Wherever used in this Request for Proposal and for purposes of any notices under this contract, the NNPS Contract Administrator will be:

Dr. James Pohl, Chief Academic Officer
12465 Warwick Blvd.
Newport News, VA 23606
Phone: (757) 283-7850 x10119
Email: James.Pohl@nn.k12.va.us

B. Contact with NNPS Staff, Representatives, and/or Agents:

Direct contact with NNPS staff, representatives, and/or agents other than Purchasing Department staff on the subject of this RFP or any subject related to this RFP is expressly prohibited except with the prior knowledge and permission of the Purchasing Agent.

C. Offerors of Record:

Offerors receiving a copy of this RFP from a source other than the Issuing Office via www.eVA.virginia.gov must contact the Issuing Office and provide Offeror's name, address, contact person, telephone and email address, and the RFP Item Number. Offeror will be added to the eVA Planholders' list and will receive notification of any addenda to the RFP.

D. Questions:

Offerors must submit questions regarding the Request For Proposal in writing to the Issuing Office at lisa.cumming@nn.k12.va.us no later than **4:00 PM EST, November 5, 2019**. Necessary replies will be issued to all Offerors of record as addenda that shall become part of the contract documents. Oral instructions do not form a part of the Proposal documents.

Offeror is responsible for checking the www.eVA.virginia.gov web site or contacting the Issuing Office within 48 hours prior to Proposal closing to secure any addenda issued for this RFP.

E. Changes or Modifications:

Changes or modifications to this Request for Proposals made prior to the date and time of closing will be addressed by addenda from the Issuing Office. Offerors are to acknowledge receipt of addenda in the space provided on the cover page of this Request for Proposal. Oral communications are not a part of the Proposal documents. This RFP and any addenda shall be incorporated, by reference, into any resulting contract.

F. RFP Closing:

Offeror shall ensure its Proposal is time stamped by the Issuing Office no later than the Closing Date and Time shown on the cover page of this Information for Proposal. Proposals received after the specified date and time (time stamped 2:01 P.M. or later) will not be considered and will be returned to the Offeror unopened.

G. Proposal Submittal Requirements:

1. Each Proposal submission shall be submitted to the Issuing Office and shall include the following documents:
 - a. The cover page of this Request for Proposal, which will contain:
 - 1) Original signature of an agent authorized to bind the company;
 - 2) Requested contact information;
 - 3) Company FEI/TIN number; and,
 - 4) Acknowledgment of any addenda on page one (1);
 - b. Completed and signed anti-collusion/nondiscrimination clauses on page 2;
2. Offerors are encouraged to submit their Proposals on recycled paper and to use double-sided copying.
3. Proposals must be submitted utilizing the following requirements:
 - a. Offerors shall submit proposals in a sealed envelope or package, and label the envelope or package with the Request for Proposal's item number and the name and address of the Offeror. **Proposals received by telephone, telegraph, facsimile, or any other means of electronic transfer shall not be accepted.**
 - b. Submit the original and four (4) hard copy and one (1) electronic copy (CD or USB drive) of the proposal.
 - 1) The CD must be a:
 - a) "standard" compact disk (CD) [using 780 nm wavelength laser diode light]; or a digital video disk or "digital versatile disc" (DVD) [using 650 nm wavelength laser diode light - Note: 'Blue-ray™ disks are not acceptable]. The media shall be capable of being read in a standard personal computer (PC) CD or DVD-drive. The media shall use a "standard" CD-file system format [ISO 9660], be virus-free, and may contain PC-files in any of the following formats:
 - b) Adobe(c) Personal-Document-Files (pdf), version 9.0, or greater
 - c) Microsoft(c) Word 'document' files (doc), version 12, or greater (Word 2007)
 - d) Microsoft(c) Excel 'spreadsheet' files (xls), version 12, or greater (Excel 2007)
 - e) Microsoft (c) PowerPoint 'presentation' files (ppt) , version 12, or greater (PowerPoint 2007)
 - f) American Standard Code for Information Interchange (ASCII) text (txt) (e.g. Microsoft(c) Notepad, any version).
 - g) Tagged Information Format (tif or TIFF) files

H. Evaluation of Proposals:

1. After the proposal opening, NNPS will select for further consideration two or more Offerors deemed to be fully qualified and best suited among those submitting proposals based on Offerors' responses to the information requested in this RFP.
2. The following criteria will be used in the evaluation process:
 - a. Offeror's **Capacity for Completing Scope of Work** (Number of Personnel Dedicated to Project, etc.) **(20 pts)**
 - b. Offeror's **Qualifications, Expertise and Experience (30 pts)**;
 - c. **Professional References (20 pts)** and
 - d. **Proposed Fee Arrangements (30 pts)**.

Total (maximum 100 pts) 100 pts

3. Exceptions/Alternatives will also be considered.
4. Based on the initial evaluation, NNPS may request the selected Offerors to make oral presentations. Thereafter, NNPS will conduct negotiations with each of the selected short-listed Offerors. Individuals representing the Offeror during negotiations shall have the authority to negotiate and contractually bind the company to a contract.

5. After negotiations are completed, NNPS will select the Offeror who, in NNPS's opinion, has made the best proposal and shall award the contract to that Offeror (referred to in this RFP as the Successful Offeror). Should NNPS determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.
6. NNPS is not required to furnish a statement of the reason(s) why a proposal was not deemed to be the most advantageous.

I. Presentation/Demonstration:

If in NNPS's opinion, vendor presentations or demonstrations of the Offeror's proposed system's features and capabilities are warranted, NNPS will notify the appropriate vendors. Such presentation or demonstration will be at an NNPS site at a date and time mutually agreed to between NNPS and Offeror and will be at the Offeror's expense.

J. Preparation of Proposals:

In presenting their proposals, Offerors are encouraged to be thorough in addressing the *Statement of Needs*, and the *Proposal Submittal Requirements* as outlined in this RFP.

To facilitate the NNPS's evaluation of Offeror's proposal, Offeror is to number all pages of its proposal and provide tabs listing the evaluation criteria indicated above.

Offerors should be completely responsive to this RFP, be able to conform to the terms and conditions provided, herein, and provide responses to the evaluation criteria outlined, below. Offeror should not incorporate its standard contract document into its proposal, by reference or in full text, without listing each exception it represents to the terms and conditions of this RFP, as described in the Exceptions/Alternatives section of this paragraph.

Offerors are encouraged to provide thorough and detailed information regarding the product and services being offered, based on the details provided, below.

Offeror must fully address each of the following items and submit proposals using the following format:

1. **Capacity for Completing Scope of Work:** Describe the qualifications and skills of the organization to provide the services. Said description should provide, but not be limited to, the following information:
 - a. Background information about the organization, e.g., philosophy, ownership, size, facilities and locations, etc.
 - b. Offeror's management structure of the firm -- e.g. organization chart of the firm, Project team, etc.
 - c. Size and location of the office that will serve the NNPS;
 - d. Offeror's qualifications to perform the services, including all resources available to Offeror for the performance of the contract.
 - e. Offeror's demonstrated ability to perform requested services.
 - f. Name, title, address, e-mail address, phone and fax numbers, and work hours of the Offeror's Contract Representative for the following functions:
 - 1) Contact for prompt contract administration upon award of the contract;
 - 2) Contact during the period of evaluation;
 - 3) Authorized agent to accept any notices provided for in this contract.
 - g. Indicate the type of organization you represent, i.e. individual, partnership or corporation. If the Offeror is a corporation, list the names of the President, Vice-President, Secretary, Treasurer and all principals. If the Offeror is a partnership, include the names of all principals or partners.
 - h. A detailed history of all mergers or acquisitions.
 - i. A copy of the certificate verifying the firm is registered to do business in the Commonwealth of Virginia.

- j. Offeror's current financial condition. Provide supporting documentation and audited annual reports for the past three (3) years. If company is privately held, supply sufficient information to document the company's financial status and capability to perform under this contract. Include any financial ratings held by the firm.
 - k. If Offeror intends to subcontract any part of the work under this contract, indicate services to be subcontracted and subcontractor(s) to provide said services. NNPS reserves right to reject / change subcontractor(s).
 - l. Provide a detailed description of the services to be provided under this contract. Said description must address, at a minimum:
 - 1) An introduction - An overview of Offeror's understanding of the scope of work and services to be provided.
 - 2) Best practice approaches to providing services to NNPS that enhance efficiency and effectiveness. Innovative solutions will be considered by the NNPS.
2. **Qualifications, Expertise and Experience of Offeror** - Provide a concise description of all work experiences as they relate to the scope of services outlined herein. Said description should include, but not be limited to:
- a. Offeror's prior experience
 - b. Number and types of customers the Offeror has served with comparable services.
 - c. Number of years Offeror has been providing these types of services.
 - d. Qualifications and resumes of the project team and other employees who will be managing and performing the services under this contract. Projects of individual team members may be submitted.
 - e. A statement detailing why the Offeror is the best candidate to provide the NNPS with the services requested in this RFP.
 - f. **Professional References:** A **minimum** of five (5) references for which Offeror has completed services comparable to those described in this RFP. References should be from customers within the past 5 years for whom similar or comparable work has been done. Include references for work performed in an environment comparable to NNPS's. For each reference, detail:
 - 1) Name of firm;
 - 2) Address of firm;
 - 3) Name, title, address, e-mail address, and phone and fax number of a contact for the firm;
 - 4) Number of years Offeror has served the firm; and
 - 5) Brief summary of scope of services provided.
 - 6) Information detailing Projects of similar scope Offeror is currently engaged in, including:
 - a) Name of firm;
 - b) Address of firm;
 - c) Name, title, address, e-mail address, and phone and fax number of a contact for the firm;
 - d) Number of years Offeror has served the firm; and
 - e) Brief summary of scope of services being provided.
 - g. Other available documentation to verify Offeror's experience.
3. **Proposed Fee Arrangements:**
- a. Submit with the proposal proposed fee arrangements that provides a cost breakdown showing the maximum guaranteed cost of the project, as well as specific charges, hourly rates, retainers, and/or any other basis of billing proposed by the consultant.
 - b. Offeror's prices will be subject to negotiations.
 - c. After negotiations and award of this contract, Successful Offeror's pricing for the services provided under this contract shall be a firm fixed-price during the term of the contract and any extensions.

K. Cost of Responding:

This solicitation does not commit NNPS to pay any costs incurred by the Offeror or any other party in the preparation and/or submission of proposals or in making necessary studies or designs for the preparation thereof, nor is NNPS obligated to procure or contract for such services.

V. GENERAL TERMS AND CONDITIONS

L. Contract Document:

This RFP, its addenda, Successful Offeror's proposal, any additional information requested, and negotiated changes and will constitute the final contract hereafter referred to as this "contract". These documents will be incorporated by reference into the NNPS purchase order awarding this contract. This contract shall be governed by the contract documents in the following order of precedence:

This RFP document;

Any negotiated changes to the foregoing documents; and

Offeror's proposal

M. Proposal Binding For One-hundred Twenty (120) Days:

Offeror agrees that its Proposal shall be binding and may not be withdrawn for a period of one-hundred (120) calendar days after the scheduled closing date of this Request For Proposals.

N. Proprietary Information/Non-Disclosure:

Offeror is advised that the Virginia Public Procurement Act (Section 2.2-4342, Code of Virginia, 1950 as amended) shall govern public inspection of all records submitted by Offeror. Specifically, if Offeror seeks to protect any proprietary data or materials, pursuant to Section 2.2-4342, Offeror shall:

1. Invoke the protections of this section prior to or upon submission of the data or other materials,
2. Provide a statement that identifies the data or other materials to be protected and that states the reasons why protection is necessary.
3. Submit trade secrets or other proprietary information under separate cover in a sealed envelope clearly marked "**PROPRIETARY**".
4. Information submitted that does not meet the above requirements will be considered public information in accordance with State statutes.
5. NNPS reserves the right to submit such information to the NNPS attorney for concurrence of the Offeror's claim that it is in fact proprietary.
6. References to the proprietary information may be made within the body of the Proposal; however, all information contained within the body of the Proposal shall be public information in accordance with State statutes.
7. Trade secrets or proprietary information submitted by an Offeror in conjunction with this RFP is not subject to public disclosure under the Virginia Freedom of Information Act (VFOIA).
8. Information submitted that does not meet the above requirements will be considered public information in accordance with the VFOIA.
9. An all-inclusive statement that the entire Proposal is proprietary is unacceptable. A statement that Offeror's costs and/or Proposal pricing are to be protected is unacceptable. Offeror will be requested to remove any such statement(s) in order to be eligible for further consideration.

Contract Modification(s):
After award, any and all modifications to this contract shall be mutually agreed to by both parties, in writing, and authorized by the NNPS Purchasing Agent or his designee via issuance of a change order (purchase order).

O. Offeror Obligation:

Offeror shall carefully examine the contents of this Request for Proposals and any subsequent addenda. Failure to do so shall not relieve the Successful Offeror of its obligation to fulfill the requirements of any contract awarded as a result of this RFP.

P. Conditions of Work:

Offeror shall inform itself fully of the conditions relating to services required herein. Failure to do so will not relieve a Successful Offeror of the obligation to furnish all goods and/or services necessary to carry out the provisions of this contract

Q. Prime Contractor:

If in its performance of this contract, Successful Offeror supplies goods or services by or through another party or subcontractor, Successful Offeror agrees that:

1. Successful Offeror shall act as the prime contractor for the goods and services to be provided under contract and shall be the sole point of contact with regard to all obligations under this contract.
2. Successful Offeror represents and warrants that Successful Offeror has made third parties or subcontractors aware of the proposed use and disposition of the other party's products or services, and that such other party

has agreed in writing that it has no objection and that NNPS is not liable to such third parties or subcontractors for any work performed under this contract.

3. The use of subcontractors and the work they perform must receive the prior written approval of NNPS. NNPS will designate a Contract Administrator to approve such work.
4. Successful Offeror shall be solely responsible for all work performed and materials provided by subcontractors.
5. Successful Offeror shall be responsible for the liability of subcontractors for the types and limits required of the Successful Offeror under this contract.

R. Subcontractors:

Contractor's use of subcontractors and the work they are to perform must receive written approval from the Contract Administrator at least ten (10) calendar days prior to the work being performed. Contractor shall be solely responsible for all work performed and materials provided by subcontractors. Contractor shall be responsible for the liability of subcontractors for the types and limits required of the Contractor.

S. Non-Assignment:

Successful Offeror shall not assign its rights and duties under this Agreement without the prior written consent of the NNPS Contract Administrator.

T. Antitrust:

Any perceived anti-trust violation will be reported to the State Attorney General for possible enforcement of anti-trust laws.

U. Anticollusion/Nondiscrimination Requirements Form:

The attached "Anticollusion/Nondiscrimination Requirements" form, on page 2 of this RFP, shall be executed by Offeror and is to be submitted with Offeror's Proposal. The requirements set forth on said form shall be considered to be binding terms and conditions in any contract resulting from this RFP. A contract will not be awarded to an Offeror who has not signed the anticollusion/nondiscrimination statement.

V. Hold Harmless/Indemnification:

It is understood and agreed that Successful Offeror hereby assumes the entire responsibility and liability for any and all material damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Successful Offeror, its subcontractors, agents or employees under or in connection with this Contract or the performance or failure to perform any work required by this Contract. Successful Offeror agrees to indemnify and hold harmless NNPS and its agents, volunteers, servants, employees and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Contract, and (c) the performance of the work by Successful Offeror or those for whom Successful Offeror is legally liable. Upon written demand by NNPS, Successful Offeror shall assume and defend at Successful Offeror's sole expense any and all such suits or defense of claims made against NNPS, its agents, volunteers, servants, employees or officials.

W. Notices:

All notices, requests, demands, and elections under this contract, other than routine operational communications, shall be in writing and shall be deemed to have been duly given on the date when hand-delivered, or on the date of the confirmed facsimile transmission, or on the date received when delivered by courier that has a reliable system for tracking delivery, or six (6) NNPS business days after the date of mailing when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the following individuals:

To NNPS: NNPS Contract Administrator as designated in this RFP.

To Successful Offeror: Successful Offeror's Contract Administrator as defined in Successful Offeror's Proposal.

Either party may from time to time change the individual(s) to receive notices and/or its address for notification purposes by giving the other party written notice as provided above.

X. Non-Performance:

1. Delivery Delays: NNPS reserves the right to procure goods and/or services to be provided under this contract from other sources in the event Successful Offeror fails to deliver such goods and/or service deliverables in accordance with delivery dates and time frames set forth in this contract.
2. Unacceptable Deliveries (Rejections): Upon notification by NNPS that goods and/or service deliverables provided by the Successful Offeror under this contract are damaged and/or not of the quality specified by NNPS, such goods and/or service deliverables will be rejected. Successful Offeror shall replace such rejected goods and/or service deliverables immediately or within a reasonable time as determined by NNPS.
3. Successful Offeror shall remove all rejected materials, equipment or supplies from the premises of NNPS within ten (10) days of notification. Rejected goods and/or service deliverables not removed from NNPS' premises within ten (10) days will be regarded as abandoned, shall become the property of NNPS, and NNPS shall have the right to dispose of such items.
4. NNPS reserves the right to authorize immediate purchase from other sources against rejections.
5. Liability: Successful Offeror shall be liable to NNPS for all costs incurred by NNPS as a result of Successful Offeror's failure to perform in accordance with the contract. Successful Offeror's liability shall include, but not be limited to:
 - a. Damages and other delay costs, to include costs to procure goods/services from alternate suppliers.
 - b. Increased costs of performance, such as extended overhead and increased performance costs resulting from performance delays caused by Successful Offeror and/or rejections of Successful Offeror's goods and/or service deliverables.
 - c. Warranty and rework costs, liability to third party, excess costs, attorney's fees and related costs incurred by NNPS due to non-responsive performance of Successful Offeror.

Y. Termination Without Cause:

NNPS may at any time, and for any reason, terminate this Contract by written notice to Successful Offeror specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed. Notice shall be given to Successful Offeror by certified mail/return receipt requested, addressed to the Successful Offeror's Contract Administrator. In the event of such termination, Successful Offeror shall be paid such amount as shall compensate Successful Offeror for the work satisfactorily completed, and accepted by NNPS, at the time of termination. If the event NNPS terminates this Contract, Successful Offeror shall withdraw its personnel and equipment, cease performance of any further work under this Contract, and turn over to NNPS any work completed or in process for which payment has been made.

Z. Termination With Cause/Breach:

In the event that Successful Offeror shall for any reason or through any cause be in default of the terms of this Contract, NNPS may give Successful Offeror written notice of such default by certified mail/return receipt requested, addressed to the Successful Offeror's Contract Administrator. Unless otherwise provided, Successful Offeror shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of the Successful Offeror to cure the default, NNPS may immediately cancel and terminate this Contract as of the mailing date of the default notice. Upon termination, Successful Offeror shall withdraw its personnel and equipment, cease performance of any further work under the Contract, and turn over to NNPS any work in process for which payment has been made. In the event of violations of law, safety or health standards and regulations, this Contract may be immediately cancelled and terminated by NNPS and provisions herein with respect to opportunity to cure default shall not be applicable.

AA. Breach of Contract:

Successful Offeror shall be deemed in breach of this contract if the Successful Offeror:

Fails to comply with any terms of this contract;

Fails to cure such noncompliance within ten (10) calendar days from the date of the NNPS written notice or such other time frame, greater than ten (10) calendar days, specified by the NNPS Contract Administrator in the notice.

Fails to submit a written response to NNPS's notification of noncompliance within ten (10) calendar days after the date of the NNPS notice.

All notices under this contract shall be submitted, either by fax or certified mail, return-receipt requested, to the respective contract administrator. Successful Offeror shall not be in breach of this contract as long as its default was due to causes beyond the reasonable control of and occurred without any fault or negligence on the part of both the Successful Offeror and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of NNPS in its sovereign capacity, fires, floods, epidemics, strikes, freight embargoes, and unusually severe catastrophic weather such as hurricanes.

BB. Applicable Law:

This Contract shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Contract shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

CC. Compliance With All Laws:

Successful Offeror shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of this contract. Successful Offeror represents that it possesses all necessary licenses and permits required to conduct its business and/or will acquire any additional licenses and permits necessary for performance of this contract prior to the initiation of work. If the Successful Offeror is a corporation, Successful Offeror further expressly represents that it is a corporation of good standing in the Commonwealth of Virginia and will remain in good standing throughout the term of the contract and any extensions. All City of Newport News business license, personal property, real estate and other applicable tax requirements shall be met by Successful Offeror.

DD. Venue:

Venue shall be in the Circuit Court of the City of Newport News, Virginia, and the United States District Court for the Eastern District of Virginia, Norfolk Division, compliant with applicable laws and regulations, as deemed appropriate by NNPS.

EE. Severability:

If any provision of this contract is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this contract, and all other provisions of this contract shall remain in full force and effect.

FF. Non-Appropriation of Funds:

It is understood and agreed between the parties herein that NNPS shall be bound hereunder only to the extent that the funds shall have been appropriated. In the event no funds or insufficient funds are appropriated, NNPS shall immediately notify the Successful Offeror of such occurrence and this Contract shall terminate on the last day funds are available without penalty or expense to NNPS of any kind whatsoever.

GG. Tax Exemption:

NNPS is exempt from federal excise tax and from all State and local taxes. Successful Offeror shall not include such taxes in any invoices under this agreement. Upon request, NNPS will furnish the Successful Offeror with tax exemption certificates or the NNPS tax exempt number.

HH. Vendor's Invoices:

Successful Offeror shall submit to NNPS all invoices promptly upon completion of the requirements for installation, delivery, and acceptance of the Products and Services required under this contract. Invoices shall not include any costs other than those identified in the executed NNPS purchase order awarding this contract or any subsequent change orders issued by the NNPS Purchasing Division. All shipping costs are the Successful Offeror's responsibility, except to the extent such charges are identified in the executed NNPS purchase order or change orders. Successful Offeror's invoices shall provide at a minimum:

- Type and description of the Product or Service installed, delivered and accepted;
- Serial numbers, if any;
- Quantity delivered;
- Charge for each item;
- Extended total (unit costs x quantity);
- This RFP number and the NNPS Purchase Order Number.

II. Contractual Disputes:

Any dispute concerning a question of fact as a result of a contract with NNPS which is not disposed of by agreement shall be decided by the NNPS Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the contractor within thirty (30) days. The decision of the NNPS Purchasing Agent shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A contractor may not institute legal action, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

JJ. Warranty/Guarantee:

Successful Offeror guarantees against defective or faulty material or workmanship for at least one (1) year or for the manufacturer's standard warranty period, whichever is greater, from date of acceptance by NNPS. To furnish adequate protection from damage for all work and to repair damages of any kind for which Successful Offeror or Successful Offeror's workmen are responsible, to the building or equipment, to Successful Offeror's own work, or to the work of others. Any merchandise or service provided under the contract which is or becomes defective during the warranty period shall be replaced by the Successful Offeror free of charge with the specific understanding that all replacements shall carry the same guarantee as the original equipment or service (one year or manufacturer's standard warranty period, whichever is greater, from the date of acceptance of the replacement). Successful Offeror shall make any such replacement immediately upon receiving notice from NNPS.

KK. Payment Terms:

To be eligible for payment, all labor, equipment and materials covered under Successful Offeror's invoice must be completed and accepted by NNPS. NNPS agrees to make payments under this contract within thirty (30) days after receipt of a correct invoice for such payment. Where payment is made by mail, the date of postmark shall be deemed to be the date of payment. Any amounts due NNPS under the terms of this or any other agreement may be applied against Successful Offeror's invoices with documentation for the basis of the adjustment attached. In no event shall any interest penalty or late fee accrue when payment is delayed because of disagreement between NNPS and Successful Offeror regarding the quantity, quality, time of delivery, or other noncompliance with the contract requirements for any Product or Service or the accuracy or correctness of any invoice. Payment terms offering a "prompt payment discount" of 20 days or greater will be considered in the evaluation of Proposals. All other payment terms shall be net thirty (30) calendar days or greater. Payment terms not specified by Offeror shall be Net 45 days.

Special Educational or Promotional Discounts

Successful Offeror shall extend any special educational or promotional sale prices or discounts immediately to NNPS during the term of the contract. Such notice shall also advise the duration of the specific sale or discount price.

LL. Prompt Payment:

NNPS will promptly pay for completed, delivered goods or services accepted under this Contract by the payment date established. The required payment date will be either: (i) the date on which payment is due under the terms of this Contract for the provision of the goods or services; or (ii) if a date is not established by this Contract, not more than forty-five (45) days after goods or services are received or not more than forty-five (45) days after the invoice is rendered, whichever is later.

Within twenty (20) days after the receipt of the invoice or goods or services, NNPS shall notify the supplier of any defect or impropriety that would prevent payment by the payment date. Should NNPS fail to pay the

Contractor by the pay date, finance charges may be assessed by the Contractor. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of one percent (1%) per month. This will not apply to late payment provisions in any public utility tariffs or public utility negotiated Contracts. Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

In cases where payment to Contractor is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of this Contract.

Individual Contractors shall provide to NNPS their social security numbers and proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

Within seven (7) days after Contractor receives payment from NNPS, Contractor shall take one or more of the following actions:

1. Pay all subcontractors for the proportionate share of the total payment received from NNPS attributable to the work performed by the subcontractors under this Contract;
2. Notify NNPS and all affected subcontractors, in writing, of Contractor's intention to withhold all or a part of each affected subcontractor's payment including the reason for nonpayment.
3. Pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after (7) seven days following receipt by the Contractor of payment from NNPS for work performed by the subcontractor under that Contract, except for amounts withheld, as allowed in #2 above.

A Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of NNPS. A Contract modification will not be made for the purpose of providing reimbursement by NNPS for interest charges owed by Contractor. A cost reimbursement claim to NNPS shall not include any amounts for reimbursement of interest charges owed by Contractor.

MM. Payment by Electronic Funds Transfer (EFT)

(a) Method of payment.

(1) All payments by Newport News Public Schools (NNPS) under this contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event NNPS is unable to release one or more payments by EFT, the Contractor agrees to either—

- (i) Accept payment by check or some other mutually agreeable method of payment; or
- (ii) Request NNPS to extend payment due dates until such time NNPS makes payment by EFT (but see paragraph (d) of this clause).

(b) Mandatory submission of Contractor's EFT information.

(1) The Contractor is required to provide NNPS with the information required to make payment by EFT (see paragraph (j) of this clause). The Contractor shall provide this information directly to the NNPS Accounting Department (hereafter referred to as "Accounting") no later than 15 days prior to submission of the first request for payment. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the Accounting.

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to Accounting.

(c) *Mechanisms for EFT payment.* NNPS may make payment by EFT through the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association

(d) Suspension of payment.

(1) The NNPS is not required to make any payment under this contract until after receipt, by Accounting, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract.

(2) If the EFT information changes after submission of correct EFT information, NNPS shall begin using the changed EFT information no later than 30 days after its receipt by Accounting to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by Accounting. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(e) Liability for uncompleted or erroneous transfers.

(1) If an uncompleted or erroneous transfer occurs because NNPS used the Contractor's EFT information incorrectly, NNPS remains responsible for—

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of NNPS' release of the EFT payment transaction, and—

- (i) If the funds are no longer under the control of Accounting, NNPS is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
- (ii) If the funds remain under the control of Accounting, NNPS shall not make payment and the provisions of paragraph (d) shall apply.

(f) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) of this clause to Accounting, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to NNPS, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) *Liability for change of EFT information by financial agent.* NNPS is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

(i) *Payment information.* Accounting shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. NNPS may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods Accounting is capable of executing. However, NNPS does not guarantee that any particular format or method of delivery is available and retains the latitude to use the format and delivery method most convenient to

NNPS. If NNPS makes payment by check in accordance with paragraph (a) of this clause, NNPS shall mail the payment information to the remittance address in the contract.

(j) *EFT information.* The Contractor shall provide the following information to Accounting. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.

- (1) The contract number (or other procurement identification number).
- (2) The Contractor's name and remittance address, as stated in the contract(s).
- (3) The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.
- (4) The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.
- (5) The Contractor's account number and the type of account (checking, saving, or lockbox).
- (6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the Contractor's financial agent.
- (7) If applicable, the Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the Contractor's financial agent is not directly on-line to the Fedwire Transfer System; and, therefore, not the receiver of the wire transfer payment.

NNPS Accounting Department Designated Contact:

Accounting Department
NNPS Administration Building
12465 Warwick Blvd.
Newport News, Virginia 23606
Tel: (757)591- 4513
Steven Kanehl, Accounting Supervisor
Steve.Kanehl@nn.k12.va.us

NN. Audits:

NNPS shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this Contract (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of Successful Offeror, including, but not limited to those kept by Successful Offeror, its employees, agents, assigns, successors and subcontractors. Successful Offeror shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Contract and for at least three years following the completion of this Contract, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to NNPS, through its employees, agents, representatives, contractors or other designees, during normal business hours at Successful Offeror's office or place of business in Newport News, Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Newport News, Virginia, which is convenient for NNPS. This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which NNPS may have by state, city, or federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are express or implied.

OO. Notice of Award:

Any contract resulting from this RFP will be publicly posted for inspection in the NNPS Purchasing Department, 12465 Warwick Boulevard, Newport News, Virginia.

PP. Award:

NNPS intends to award a contract to a fully qualified Offeror submitting the best proposal based on the criteria set forth herein and as determined by NNPS in its sole discretion. At NNPS' sole discretion, NNPS may reject any or all proposals in whole or in part if such action is determined to be in NNPS' best interest. NNPS reserves the right to enter into any contract deemed to be in its best interest, including the award of this contract to more than one contractor.

QQ. Disposition of Proposals:

All materials submitted in response to this RFP will become the property of the NNPS. One (1) copy of each proposal will be retained for official files, will become a matter of public record after award of the contract, and will be open to public inspection subject to the *Proprietary Information/Disclosure* section of this RFP.

RR. Exclusivity:

Any contract resulting from this RFP shall be exclusive with the following exceptions:

- NNPS reserves the right to procure goods/services under this contract from a third party in the event of the following:
- Contractor is unable to provide required services within the required delivery time.
- Contract is unable to provide the required services requested.
- NNPS volume demands exceed original intent of the contract.

VI. SPECIAL TERMS AND CONDITIONS

SS. Contract Term:

This contract term shall commence on the date of award and remain in effect until completion of services.

TT. Time is of the Essence:

Time is of the essence in this Contract. Successful Offeror expressly acknowledges that in the performance of its obligations, NNPS is relying on timely performance and will schedule operations and incur obligations to third parties in reliance upon timely performance by Successful Offeror and may sustain substantial losses by reason of untimely performance.

UU. Insurance:

1. Contractor shall submit to the NNPS Contract Administrator certificates of insurance, prior to beginning work under the Contract and no later than ten (10) days after award of the Contract.
2. All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to Owner, and shall carry the provision that the insurance will not be cancelled or materially modified without thirty days (30) prior written notice to the Owner or to the extent permitted by Virginia law.
3. The certificates of insurance shall list NNPS, 12465 Warwick Boulevard, Newport News, Virginia, 23606-0130, as the additional insured for the specified project as outlined in this IFB. Copies of actual endorsements to the policy shall be required to confirm any special request, such as, additional insured status. A COI shall not be issued or delivered that gives the impression there are coverage terms the referenced policy does not specifically provide.

IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO IMMEDIATELY NOTIFY THE OWNER SHOULD ANY POLICY BE CANCELLED. FAILURE TO NOTIFY THE OWNER SHALL CONSTITUTE A MATERIAL BREACH OF THE CONTRACT.

Forms	Limits	
Workers' Compensation	Statutory	
Automobile Liability	\$1,000,000 Combined Single Limit	
Commercial General Liability, including Contractual Liability and Products and Completed Operations Coverage	\$1,000,000 Combined Single Limit	
Umbrella/Excess Liability		\$3,000,000

Professional Liability (to include Errors and Omissions)

\$3,000,000 Aggregate

The establishment of minimum limits of insurance by NNPS does not reduce or limit the liability or responsibilities of the Successful Offeror.

VV. Unauthorized Disclosure of Information:

Successful Offeror shall assume the entire responsibility and liability for any and all damages caused by or resulting from or arising out of the negligent or willful unauthorized disclosure of confidential information on the part of the Successful Offeror, its subcontractors, agents or employees under or in connection with this contract. The Successful Offeror shall save harmless and indemnify NNPS and its agents, volunteers, servants, employees and officers from and against any and all claims, losses or expenses, including but not limited to attorney’s fees, which either or both of them may suffer, pay or incur as the result of claims or suits due to, arising out of or in connection with, any and all such unauthorized disclosures, real or alleged. The Successful Offeror shall, upon written demand by NNPS, assume and defend, at the Successful Offeror’s sole expense, any and all such suits or defense of claims alleging unauthorized disclosures of confidential information.

Any negligent or willful unauthorized disclosure of confidential information on the part of the Successful Offeror, its subcontractors, agents or employees under or in connection with this contract shall constitute a breach of the terms of this contract. NNPS may proceed by appropriate court action, including seeking injunctive relief, to prevent continuing unauthorized disclosures, and Successful Offeror shall save harmless and indemnify NNPS for court costs, litigation expenses and attorney’s fees that it may pay or incur as the result of seeking to prevent or stop any and all unauthorized disclosures of confidential information.

WW. CERTIFICATION REGARDING DEBARMENT

This is to certify that this person/firm/corporation is not now debarred by the Federal Government or by the Commonwealth of Virginia or by any other state, or by any town, city, or county, from submitting Bids on contracts for construction covered by this solicitation, nor are they an agent of any person or entity that is now so debarred.

Name of Official

Firm or Corporation

Title

Date

XX. Data Security Clauses

1. Network Security. Vendor agrees at all times to maintain network security that at a minimum includes: network firewall provisioning, intrusion detection, and regular (three or more annually) third party vulnerability assessments. Likewise, Vendor agrees to maintain network security that conforms to generally recognized industry standards. Vendor must sign the ZZ. Data Security Agreement (Exhibit 1)
2. Data Security. Vendor agrees to preserve the confidentiality, integrity and accessibility of NNPS data with administrative, technical and physical measures that conform to generally recognized industry standards (see “11. Industry Standards”) and best practices that Vendor then applies to its own processing environment. Maintenance of a secure processing environment includes but is not limited to the timely application of patches, fixes and updates to operating systems and applications as provided by vendor or open source support.
3. Data Storage. Vendor agrees that any and all NNPS data will be stored, processed, and maintained solely on designated target servers and that no NNPS data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that device or storage medium is in use as part of the Vendor's designated backup and recovery processes and encrypted in accordance with “5. Data Encryption”.

4. Data Transmission. Vendor agrees that any and all electronic transmission or exchange of system and application data with NNPS and/or any other parties expressly designated by NNPS shall take place via secure means (using HTTPS or SFTP or equivalent) and solely in accordance with “6. Data Re-Use”.
5. Data Encryption. Vendor agrees to store all NNPS backup data as part of its designated backup and recovery processes in encrypted form, using a commercially supported encryption solution. Vendor further agrees that any and all NNPS data defined as personally identifiable information under current legislation or regulations stored on any portable or laptop computing device or any portable storage medium be likewise encrypted. Encryption solutions will be deployed with no less than a 128-bit key for symmetric encryption and a 1024 (or larger) bit key length for asymmetric encryption.
6. Data Re-Use. Vendor agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in the Current Agreement and this Addendum. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Vendor. Vendor further agrees that no NNPS data of any kind shall be transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by Newport News Public Schools.
7. End of Agreement Data Handling. Vendor agrees that upon termination of this Agreement it shall erase, destroy, and render unrecoverable all NNPS data and certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 7 days of the request of an agent of NNPS, whichever shall come first. At a minimum, a “Clear” media sanitization is to be performed according to the standards enumerated by the National Institute of Standards, Guidelines for Media Sanitization, SP800-88, Appendix A -see <http://csrc.nist.gov/>.
8. Security Breach Notification. Vendor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of Vendor’s security obligations, or other event requiring notification under applicable law, Vendor agrees to:
 - a. Notify NNPS by telephone and e-mail of such an event within 24 hours of discovery, and;
 - b. Assume responsibility for informing all such individuals in accordance with applicable law, and;
 - c. Indemnify, hold harmless and defend NNPS and its trustees, officers, and employees from and against any claims, damages, or other harm related to such Notification Event.
9. Right to Audit. Newport News Public Schools or an appointed audit firm (Auditors) has the right to audit the Vendor and the Vendor’s sub-vendors or affiliates that provide a service for the processing, transport or storage of Newport News Public Schools’s data. Newport News Public Schools will announce their intent to audit the Vendor by providing at a minimum two weeks (10 business days) notice to the Vendor. This notice will go to the Vendor that this contract is executed with. A scope document along with a request for deliverables will be provided at the time of notification of an audit. If the documentation requested cannot be removed from the Vendor’s premises, the Vendor will allow the Auditors access to their site. Where necessary, the Vendor will provide a personal site guide for the Auditors while on site. The Vendor will provide a private accommodation on site for data analysis and meetings; the accommodation will allow for a reasonable workspace, with appropriate lighting, electrical, a printer and Internet connectivity. The Vendor will make necessary employees or contractors available for interviews in person or on the phone during the time frame of the audit. In lieu of NNPS or its appointed audit firm performing their own audit, if the Vendor has an external audit firm that performs a certified SSAE16 SOC Type II review, NNPS has the right to review the controls tested as well as the results, and has the right to request additional controls to be added to the certified SSAE16 SOC Type II review for testing the controls that have an impact on NNPS data. Audits will be at Newport News Public Schools's sole expense, except where the audit reveals material noncompliance with contract specifications, in which case the cost will be borne by the vendor.

10. Industry Standards. Generally recognized industry standards include but are not limited to the current standards and benchmarks set forth and maintained by the:

Center for Internet Security -see <http://www.cisecurity.org>

Payment Card Industry/Data Security Standards (PCI/DSS) -see <http://www.pcisecuritystandards.org/>

National Institute for Standards and Technology -see <http://csrc.nist.gov>

Federal Information Security Management Act (FISMA) -see <http://csrc.nist.gov>

ISO/IEC 27000-series -see <http://www.iso27001security.com/>

Organization for the Advancement of Structured Information Standards (OASIS) -see <http://www.oasis-open.org/>

11. Vendor agrees to provide SSAE 16 (SOC 1) Standard Type II reports to NNPS Contract Administrator annually which document verification of controls tested. Annual date determined to be thirty (30) days prior to the established contract renewal date.

YY. Data Security Agreement (Exhibit 1)

ZZ. Copyright/Patent Indemnity:

Successful Offeror shall pay all royalty and license fees relating to the items covered by this contract. In the event any third party shall claim that the manufacture, use and sales of the goods supplied under this contract constitute an infringement of any copyright, trademark, or patent, the Successful Offeror shall indemnify NNPS and hold NNPS harmless from any cost, expense, damage or loss incurred in any manner by NNPS on account of any such alleged or actual infringement.

This data sharing agreement ("Agreement") is entered into between Newport News School Board, Virginia (also referred to as Newport News Public Schools ("NNPS")), a political subdivision of the Commonwealth of Virginia and _____ ("Contractor"). Each may be referred to in the singular as, the "Party" or collectively as "Parties" in this Agreement.

The Contractor acknowledges and understands that NNPS is required to safeguard the privacy of its students' educational records in a manner consistent with the mandates of the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g and the applicable regulations promulgated thereunder.

The Family Educational Rights and Privacy Act ("FERPA") prohibits the unauthorized disclosure of personally identifiable information (PII) contained in students' education records to anyone without the express written consent of the student or the student's representative.

WHEREAS, FERPA has regulatory exceptions to the general rule of confidentiality and non-disclosure of individually-identifiable data and information to allow its disclosure and use by organizations acting as school officials under certain circumstances. 20 U.S.C. § 1232g(b)(1)(F) and 34 C.F.R. § 99.31(a)(1)(i)(B).

WHEREAS, should Contractor be identified as satisfying the criteria associated with one or more recognized FERPA exceptions, NNPS, may disclose the requested data to Contractor, provided the purpose, scope and duration are clearly set forth in writing and satisfy the terms and conditions of this Agreement.

WHEREAS, Contractor acknowledges that for the purposes of this Agreement it will be designated as a "school official" with "legitimate educational interests" as those terms have been interpreted and defined under FERPA and similar privacy laws and regulations, and Contractor agrees to abide by FERPA and those laws while performing its service for NNPS.

WHEREAS, the services Contractor will provide to NNPS are described here:

WHEREAS, Contractor represents it has the knowledge, skill and the resources necessary to provide and maintain a data management system that is sufficiently secure and encrypted to protect, maintain and keep the provided data and information confidential.

NOW, THEREFORE, the Parties enter into these Terms of Use governing the disclosure of personally identifiable student information and provision of services described herein.

SECTION I – DEFINITIONS

- A. **“Confidential Information”** is all non-public data, however documented, containing or based, in whole or in part, on reference materials, sketches, drawings, memoranda, disks, documentation and records belonging to either party (and any derivative works thereof or modifications thereto) is and will remain the exclusive property of that party. Neither party shall possess or assert any lien or other right against or to Confidential Information of the other party. **Without prior written permission, no Confidential Information of either party, or any part thereof, may be disclosed, sold, assigned, leased, shared or otherwise distributed to third parties by the other party or commercially exploited by or on behalf of the other party, or its employees or agents except when required by the Virginia Freedom of Information Act (FOIA) or when such information is subject to court order.**
- B. **“Disclosure”** means to permit access to or the release, transfer, or other communication of information contained in a record by any means, including oral, written, or electronic, to any party except the party identified as the party that provided or created the record.
- C. **“District”** means Newport News School Board, Virginia also referred to as Newport News Public Schools (NNPS).
- D. **“District Information”** means any record and all information, in any form, recorded in any way, including, but not limited to, hand writing, print, computer media, video or audio tape, film, microfilm, and microfiche and includes paper and electronic student education record information, or employee record information, furnished or made available directly or indirectly by NNPS or otherwise obtained from NNPS in connection with the Contractor's services and/or any agreement, including all information of NNPS, or any NNPS affiliate to which it has had or will have access to, whether it is in oral, written, graphic or machine-readable form.
- E. **“Educational agency or institution”** means any public or private agency or institution to which funds have been made available by grant, cooperative agreement, contract, sub-grant, or subcontract or are provided to, and may be paid by those students for educational purposes, and any program if it provides educational services or instruction, or both, or is authorized to direct and control public elementary or secondary, or postsecondary educational institutions.
- F. **“Education program”** means any program that is principally engaged in the provision of education, including, but not limited to, childhood, elementary, secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program that is administered by an educational agency or institution.
- G. **“Personally Identifiable Information”** also known as **“PII”**, includes but is not limited to (a) student's name; (b) name of the student's parent or other family members; (c) address of the student or student's family; (d) a personal identifier, such as the student's social security number, student number, or biometric record; and (e) other indirect personal identifiers, such as the student's date of birth, place of birth, and mother's maiden name; (f) Other information that, alone or in combination, is linked or linkable to a specific student that would

allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or (g) "medical information" as may be defined in state law; "protected health information" as that term is defined in the Health Insurance Portability and Accountability Act, 45 CFR Part 160.103; (h) nonpublic personal information as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 USC 6809; (i) credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; (j) other financial account numbers, access codes, driver's license numbers; (k) and state- or federal-identification numbers such as passport, visa or state identity card numbers.

- H. **"Program Agreement"** means a contract to include Purchase Orders, Service Level Agreement (SLA), or any other official commitment between the service provider and Newport News Public Schools.
- I. **"Record"** means any information recorded in any way, including, but not limited to, hand writing, print, computer media, video or audio tape, film, microfilm, and microfiche.
- J. **"Services"** means any goods or services acquired by NNPS, including computer software, mobile applications (apps), and web-based tools accessed by students and/or their parents via the Internet and used as part of a school activity.
- K. **"Student"** except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.
- L. **"User"** means the individuals authorized to access and use the Services provided under this Agreement.

SECTION 2 – STUDENT DATA, INFORMATION & RECORDS

- A. **Purpose.** Contractor, by providing certain institutional services and functions on behalf of NNPS, may require access to a student's educational records to effectively deliver its services. Contractor further agrees to be under the direct control of NNPS with respect to the maintenance of student educational records relating to the governance, use and re-disclosure of personally identifiable information, which will be in accordance with, and contingent upon compliance with the Family Educational Rights and Privacy Act ("FERPA") and its implementing regulations. (34 C.F.R. § 99.30, et seq.).
- B. **Requested Data.** In order to perform the service(s) described herein, the Contractor will collect and/or utilize the following information:

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- C. **Qualified FERPA Exception.** Contractor understands and agrees that the purpose and contemplated use of the data and information disclosed NNPS is solely to provide the educational services for, or on behalf of NNPS described herein. The Contractor shall be designated a "school official" according to FERPA, as an organization to which NNPS has outsourced institutional services or functions for which NNPS would otherwise utilize its own employees. The Contractor acknowledges that it is under the direct control of NNPS for the purposes of use and maintenance of education records disclosed pursuant to this Agreement, and that the Contractor agrees to comply with the applicable provisions of FERPA in order to safeguard the confidentiality of student information. 20 U.S.C. § 1232g(b)(1)(F) and 34 C.F.R. § 99.31(a)(1)(i)(B)
- D. **Ownership of Data and Information.** The disclosure of personally identifiable information from education records to Contractor is not an assignment of ownership of the personally identifiable information or records to Contractor. NNPS retains ownership of all such records. Personally identifiable information from education records may only be re-disclosed by Contractor to a third-party with the prior written approval of NNPS, in accordance with this Agreement or in compliance with FERPA and its regulations.
- E. **Coordination with Contractor Authorized Representative(s).** During the term of this Agreement, Contractor will fully coordinate all of its services provided hereunder with NNPS through its designated authorized representative.
- a. The authorized representative signatory below has authority to bind Contractor to the terms and conditions of this Agreement.
 - b. The authorized representative signatory shall also be responsible for requiring Contractor personnel and other authorized representatives of Contractor accessing information NNPS records to execute affidavits of nondisclosure or other documentation indicating that each person will be held accountable for the proper management, use and protection of all information and records provided to him or her.
- F. **Limited Disclosure, Access and Use.** Contractor will abide by any and all conditions imposed by NNPS on the disclosure of information derived from and provided by NNPS, and agrees to manage and maintain it in accordance with the applicable federal and state privacy laws.
- a. Contractor and its officers, employees, and agents receiving education record information from NNPS agrees to hold information in strict confidence and use the information **only** for the limited purpose for which the disclosure was made.
 - b. Contractor affirms that its services will be conducted in a manner that does not disclose the information to anyone who is not an authorized representative of Contractor

- c. Contractor agrees not to use the information for any purpose other than the purposes for which the disclosure was sought from NNPS and made to Contractor.
- d. The approval to use the information from education records for one purpose does not confer approval to use the data for another or different purpose.
- e. Upon termination, cancellation, expiration or other conclusion of this Agreement, Contractor shall return all personally identifiable student information to NNPS or, if return is not feasible, destroy any and all such information. Contractor may destroy the information when it is no longer needed for purposes for which it was disclosed or as authorized in this Agreement but prior to termination, cancellation, expiration or other conclusion of this Agreement. Contractor shall confirm the date that any information was returned or destroyed by delivering to NNPS the certificate attached hereto.

G. Reporting of Unauthorized Disclosures of Data and Information.

- a. Contractor shall, within 3 (three) business days of discovery, report to NNPS any use or disclosure of information not authorized by this Agreement or in writing by NNPS (a "Breach"). Contractor's written report shall identify (i) the nature of the breach, (ii) what information was used or disclosed, (iii) who or what was the cause of the breach, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the breach, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by NNPS.
- b. If NNPS reasonably determines that Contractor has breached a material condition of this Agreement, NNPS may request Contractor to submit within five business (5) days from the discovery a written report shall identify (i) the nature of the breach, (ii) what information was used or disclosed, (iii) who or what was the cause of the breach, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the breach, and (v) what corrective action Organization has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by NNPS.
- c. Alternatively, NNPS may immediately terminate this Agreement with Contractor, if, in its sole discretion, determines it is not possible to repair or correct the discovered breach. Under either option described in paragraphs A or B, above, NNPS agrees to provide written notice Contractor.

H. **Remedies, Penalties.** The failure to comply with the requirements of FERPA could subject Contractor and any third party to all allowable penalties assessable against Contractor under state and federal law. Contractor acknowledges and agrees that due to the unique nature of the Information there may be no adequate remedy at law for any breach of its obligations hereunder, that any such breach will result in irreparable harm to NNPS, and therefore, that upon any such breach or threatened breach, NNPS shall be entitled to seek appropriate equitable relief including specific performance and any additional remedies the law may allow, including injunctive relief. In the event the Family Policy Compliance Office of the U.S. Department of Education determines that Contractor improperly disclosed

personally identifiable information obtained from NNPS's education records, NNPS may not allow Contractor access to NNPS's education records for at least five years. (Found reference to 5 year access in 34 CFR 99.67)lac

- I. **Other Use of Information.** This Agreement does not contemplate the use of information for any purpose other than for the provision of services identified herein. For any other purposes (studies, surveys, etc.), the Parties must enter into separate terms governing the release of information.

SECTION 3 – CONFIDENTIALITY

- A. Contractor agrees to maintain the confidentiality of business, employment, operational and other information provided by NNPS to Contractor hereunder, provided such information is marked or otherwise identified by NNPS as confidential or proprietary or is of a nature that Contractor knows or should know is confidential or proprietary (also referred to herein as "Proprietary Information"), and will only use it in carrying out its rights and obligations under this Agreement.
- B. Both parties agree to restrict access to the Proprietary Information of the other only to authorized representatives who (i) require access in the course of their assigned duties and responsibilities in connection with this Agreement, and (ii) have been informed of the provisions set forth in this Section

The confidentiality obligations of the parties regarding the Proprietary Information of the other shall not apply to any material or information that (i) is or becomes a part of the public domain through no act or omission by the receiving party, (ii) is independently developed by employees of the receiving party without use or reference to the Proprietary Information of the other party, (iii) is disclosed to the receiving party by a third party that, to the receiving party's knowledge, was not bound by a confidentiality obligation to the other party, (iv) is demanded by a lawful order from any court or anybody empowered to issue such an order, or (v), is requested by operation of law.

- C. This Agreement may include services that require Contractor to collect and analyze student, classroom, school-level, and employment related data. These services include, but are not limited to: Evaluation Services, Distance Consulting, Baseline Analysis, and Summative Analysis (collectively, "Evaluation Services"). In order for Contractor to provide these services NNPS must agree to make reasonable effort to collect and submit all requested data in a timely manner.
- D. Notwithstanding anything herein to the contrary and only to the extent consistent with confidentiality laws, NNPS hereby grants to Contractor a non-exclusive, royalty-free, nontransferable, revocable, limited license during the Term or any Renewal Term of this Agreement to collect, access and use District Information provided Contractor: (1) collects, accesses and uses District Information only as necessary and solely for meeting Contractor's performance obligations under this Agreement; (2) collects, accesses and uses District Information in a manner that does not permit personal identification of "parents" or "students" or "employees" by individuals other than Contractor's employees and contractors who have necessary and legitimate interests in NNPS Information for meeting Contractor's performance obligations under this Agreement; (3) keeps records of any Contractor disclosures of District Information, including the names of the parties to which Contractor may have disclosed District Information and the legitimate interests under this Agreement or confidentiality laws which such parties requested or obtained NNPS Information from Contractor; (4)

destroys NNPS Information when it is no longer needed by Contractor for meeting its performance obligations under this Agreement; and (5) otherwise complies with the confidentiality laws.

- E. Contractor will indemnify, defend and hold harmless District and District's affiliates, officers, directors, and employees from and against any third-party claims, demands, causes of action, judgments, damages, liabilities, costs and expenses (including reasonable attorney's fees) arising from or relating to Contractor's or any of Contractor's employees, agents, contractors, or representatives unauthorized use, misuse, or illegal use of District Information or De-identified Information or any breach of this Agreement by Contractor. The District and any indemnified party shall cooperate and comply with the reasonable requests of Contractor in connection with the defense of any such claim. The receipt or providing such assistance is not a waiver of any alleged breach nor does the acceptance of such assistance constitute a waiver of any such breach by NNPS. Contractor shall control the defense and settlement of any such claim.

SECTION 4 – GENERAL TERMS AND CONDITIONS

A. Examination of Records

- a. Contractor will keep true and complete records of any and all data received, exchanged and shared between and amongst its employees, agents, subcontractors and volunteers pursuant to this Agreement
- b. Contractor will establish and maintain a system of record keeping satisfactory to NNPS and NNPS's authorized representative and, upon reasonable request, provide access to such records either during regular business, at any reasonable mutually agreed upon time.
- c. Contractor agrees that it will keep and preserve all business records and reports created during the course of this Agreement for at least three (3) years from the date of receipt under this Agreement, except that personally identifiable student information shall be returned or destroyed in accordance with the provisions of Section II.F.5 of this Agreement.

- B. **Dispute Resolution.** If either District or Contractor believes in good faith that the other party has failed to perform, provide requested information, or has failed to satisfactorily meet any objective set forth by this Agreement or has otherwise not fulfilled commitments made under this Agreement ("Breach"), then within thirty (30) days from the date the breach occurred, the aggrieved party shall send written notification to the party who has allegedly breached its obligations identifying the allegations and/or reasons the aggrieved party believes the non-performing party has breached this Agreement. Upon receipt of written notice, the alleged non-performing party shall have ten (10) business days, or such additional time as may be agreed to in writing between the parties, to correct or cure the alleged breach or to notify the aggrieved party that the alleged breach of this Agreement has not occurred. Upon finding that the breaching party failed to cure or respond in writing within the agreed upon timeframe, the non-breaching, aggrieved party shall be entitled to terminate this Agreement and pursue any and all remedies available at law or in equity.

- C. **Modification.** This Agreement shall only be modified in writing signed by duly authorized representatives of both Contractor and NNPS. All requests for modifications should be directed to the authorized representative of NNPS and Contractor.

D. **Notice.** Any notice this Agreement requires must be in writing and will be effective only if sent by certified U.S. mail, return receipt requested, or via electronic mail, to an authorized representative at Contractor's address provided in this Agreement, which is as follows:

NNPS Contacts

Chris Jenkins, Director of Technology
Newport News Public Schools
12511 Warwick Boulevard
Newport News, VA 23606
chris.jenkins@nn.k12.va.us

David Saunders, Information Security Analyst
Newport New Public Schools
12511 Warwick Boulevard
Newport News, VA 23606
david.saunders@nn.k12.va.us

With copy to:
Lisa A. Cumming, CPPO, C.P.M., VCO, Purchasing Agent
Newport News Public Schools
12456 Warwick Blvd.
Newport News, VA 23606-3041

Contractor Contacts

E. **Term.** The effective date begins on the next business day that follows after each authorized representatives of Contractor and NNPS executes this Agreement and it shall expires at the time Contractor no longer provides its services or is terminated in accordance with this Agreement, and its Program Agreement; provided, however, a lapse or stoppage of services by Contractor as a result of NNPS's school year ending that timely resumes with the commencement of the next District school year, shall not be construed or interpreted as the termination of this Agreement; furthermore, at the beginning of each school year, upon re-execution by each authorized representative of NNPS and Contractor, the parties mutually agree this Agreement is revived according to the same, or any amended terms and conditions contained herein.

- F. **Termination.** A party may terminate this Agreement upon sending a thirty (30) day written notification with brief description of the reason for the termination to the other party. Termination shall be effective upon the date it is received.
- G. **Compliance with Federal and State Confidentiality, and Privacy Laws.** Contractor and NNPS agree and understand this Agreement must be in compliance with, which for the purposes of illustration, includes but is not limited to: Code of Virginia §22.1-289.01 School Service Providers; Student Personal Information and all applicable federal privacy and confidentiality laws; the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99); Protection of Pupil Rights Amendment ("PPRA") (20 U.S.C. § 1232h; 34 CFR Part 98), all of them which may be in effect or amended from time to time, including any successor statute and its implementing regulations and rules. In the event of a conflict between this Agreement and the Confidentiality Laws, the Confidentiality Laws shall control. In the event of a conflict between FERPA and all other Confidentiality Laws, FERPA will control absent clear statutory authority on controlling law. In the event of conflict or uncertainty interpreting controlling law regarding the collection, access, use, or disclosure of District Information, a party will resolve the uncertainty or conflict in favor of prohibiting the collection, access, use, or disclosure of District Information.
- H. **Compliance with NNPS Policies.** Contractor agrees to comply with the applicable written School Board policies, which hereafter by this reference are incorporated into and enforceable under this Agreement.
- I. **Liability.**
- a. **If Contractor is a "public entity"** It is specifically understood and agreed that nothing contained in this paragraph or elsewhere in this Agreement shall be construed as an express or implied waiver of its governmental immunity or as an express or implied acceptance of liabilities arising as result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under local, state and federal laws.
 - b. **If Contractor is not a "public entity"** then it will be responsible for the negligent acts and omissions of its officers, agents, employees and representatives with respect to its obligations under this Agreement.
- J. **Governing Law and Jurisdiction.** In the event that any disputes arise from this Agreement, the parties agree to submit such disputes to the Circuit Court of the City of Newport News, Virginia or the Newport News/Norfolk office of the United States District Court Eastern District and such court shall have exclusive jurisdiction over the disputes. The parties agree that Virginia law will govern such disputes that arise from this Agreement, without regard to rules regarding conflicts of law.
- K. **Survival of Certain Provisions.** The terms and conditions of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will

continue to be enforceable.

- L. **No Agency Created.** Contractor agrees and understands that no authority exists through this Agreement permitting Contractor to enter into any third party contract, assume any obligation, or makes any representation to third parties on behalf of, or which may bind NNPS.
- M. **No Construction Against Drafting Party.** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because the Agreement or any provisions thereof were prepared by a particular party.
- N. **Authorized Representative.** Contractor certifies that the individual signing below on its behalf is fully authorized to do so, is fully authorized to bind and commit Contractor to the obligations set forth herein, and that no other consents or authorizations are needed to bind Contractor to the terms of this Agreement.
- O. **Contract Documents.** This Agreement consists of the following attachments which are incorporated herein and made a part hereof by reference which are found after the signature page.

Contractor hereby signifies its acceptance of the terms and conditions of this Agreement.

Newport News Public Schools:

[NNPS Representative]

[Position]

[Date]

Contractor:

[Contractor Representative]

[Position]

[Date]