Agreement

Arlington Public Schools
Procurement Office
2110 Washington Blvd., Arlington, VA 22204 • Phone: (703) 228-6123 • Fax: (703) 841-0681
www.apsva.us

Contract Title: Nursing Services (RN, LPN, and CNA)

This Contract 45FY20-4 is made and entered into this 22nd day of December 2020, the date the Agreement is fully executed by the Procurement Director/Procurement Agent, by and between Arlington County School Board, operating as Arlington Public Schools ("APS" or "Owner") and 22nd Century Technologies, Inc. ("Contractor"), whose address is 220 Davidson Ave., Suite 118, Somerset, NJ 08873.

In consideration of the mutual stipulations, agreements and covenants contained herein, the parties herby agree as follows:

1. **Scope of Work:**
The Scope of Work for this Contract generally is described as to provide as requested by APS the Goods and Services necessary for Nursing Services (RN, LPN, and CNA) ("the Work"), as set forth in greater detail in Attachment A, Scope of Work.

2. **Contract Price:**
The Contract Price shall be as set forth in Attachment B – Pricing Schedule.

APS will not compensate the Contractor for any Goods or Services beyond those included in Attachment B unless those additional Goods or Services are covered by a written Change Order amending this Contract

The Contract Prices set forth in Attachment B include all costs, expenses, including reimbursable expenses, to provide the Goods or Services described in this Contract.

3. **Contract Documents:**
The documents which form the entire Contract between APS and the Contractor ("Contract Documents") are as defined either in this Agreement, in the Instructions to Bidders, or in the Terms and Conditions and are as set forth below.

3.1. In the case of a conflict, the order of precedence shall be as follows:

3.1.1. Agreement and all modifications properly incorporated in the Agreement
3.1.2. Attachment A – Scope of Work
3.1.3. Attachment B – Pricing Schedule
3.1.4. Attachment C – Special Terms and Conditions
3.1.5 Attachment H – Student Data Usage and Privacy Agreement
3.1.6. Attachment D – Terms and Conditions
3.1.7. Attachment E – Contractor Certification Regarding Criminal Convictions
3.1.8. Attachment F – Sample Purchase Order
3.1.8. Attachment G – Certificate(s) of Insurance
3.1.9. ITB/Associated Documents

3.2. All provisions required by law to be included in this Contract or otherwise applicable to this Contract shall be deemed to be a part of this Contract, whether actually set forth herein or not.

3.3. The Contract Documents are complementary and what is called for by one is as binding as if called for by all. If the Contractor finds a conflict, error, ambiguity or discrepancy in the Contract Documents, it shall immediately, in writing call such conflict, error, ambiguity or discrepancy to the attention of the Owner before proceeding with the Work affected thereby. The Owner will promptly resolve the matter in writing. Work done by the Contractor after such conflicts, errors, ambiguities or discrepancies are discovered, or in the exercise of reasonable care reasonably should have been discovered, prior to written resolution thereof by the Owner shall be done at the Contractor's expense and risk. Any Work that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

3.4. The Contractor will be held to a standard of strict compliance with the requirements of the Contract Documents in the performance of the Work, for giving Notice of any type to the Owner, and for making any submittal required for any purpose. The Contractor acknowledges and agrees that all time requirements set forth in the Contract Documents for any purpose are of the essence.

4. Definitions:

All words and terms shall have the meanings and terms assigned to them in the Contract Documents, unless a different meaning is clear from the context.

5. Contract Term:

5.1. The initial term of this Contract shall commence on the date the Contract is fully executed by the Procurement Director/Procurement Agent and expiring on the last day of the twelfth (12^{th}) month following execution of the Contract by the Procurement Director/Procurement Agent ('Initial Contract Term'), unless otherwise stated as provided in the Contract Documents.

5.2. This Contract may be renewed for a term not to exceed one (1) year ('Renewal Contract Term') by written notice given by APS at any time prior to thirty (30) Days after expiration of the preceding Initial Contract Term or Renewal Contract Term. No representative of APS has any authority to order, direct, or request work after expiration of the Initial Contract Term or Renewal Contract Term and prior to a Renewal Contract Term in strict compliance with the renewal terms herein APS, at its sole discretion, has the right, but is under no obligation, to exercise this right to renewal not to exceed four (4) additional one-year periods at the same terms and conditions.

5.3. Unless directed otherwise by APS, any Work in progress at the time of expiration of a Contract term may continue and be completed under the terms of the Contract in existence at the time the Purchase Order for the Work was issued, but must be completed no later than six (6) months following expiration of the Contract term in which the Purchase Order was issued.

6. Contract Price Adjustment:

6.1. The Contractor agrees that prices shall remain firm for the Initial Contract Term. If consideration is to be given to adjusting the price after the Initial Contract Term or a Renewal Contract Term, the price may be adjusted only upon approval of a written request to the Procurement Agent. Upon receipt of the Contractor's request, APS shall make a determination to approve or adjust the requested price increase based upon its investigations and the information provided by the Contractor. Any price adjustment agreed to shall take place only in accordance with the schedule defined above.

6.2. The request for an adjustment in the price shall include as a minimum, (1) the cause for the adjustment; (2) proposed effective date; and, (3) the amount of the adjustment requested with documentation to support the requested adjustment (i.e., appropriate Bureau of Labor Statistics index, change in manufacturer's price, etc.)

6.3. The request must be received at least thirty (30) days prior to the effective date of the expiration of the Initial Contract Term or Renewal Contract Term and shall become effective only upon approval by the

Procurement Agent. The adjusted price shall not apply to orders received by the Contractor prior to the effective date of the approved increased price. Orders placed via Purchase Order, shall be considered to have been received by the Contractor after the fifth (5th) calendar day following the date issuance. The Procurement Agent may cancel, without liability to either party, any portion of the Contract affected by the requested adjustment and any materials, supplies or Services undelivered at the time of such cancellation.

7. Non-Appropriation:

All funds for payments by APS under any Contract awarded are subject to the availability of an annual appropriation for this purpose by the APS. In the event of non-appropriation of funds by the APS for the Goods or Services provided under the Contract, APS will terminate the Contract, without termination charge or other liability to APS, on the last day of the then current fiscal year or when the appropriation made for the then current year for the Services covered by this Contract is spent, whichever event occurs first. APS will endeavor to provide reasonable Notice of such termination, but no formal notice of such termination is required of APS, and APS shall not order any Goods or Services to be provided after such termination date.

8. Right to Terminate Contract:

APS has the right to terminate this Contract for convenience at any time, or for default, all pursuant to the provisions of the Terms and Conditions.

9. Direction to Proceed:

9.1. For Work to be performed by Contractor under this Contract, the Procurement Director/Procurement Agent will issue a Purchase Order. The Purchase Order will define the location of the Work to be performed and will define or, where specific definition cannot be provided, will estimate, the scope of the Work to be performed, the dates within which that Work is to be performed, and the price for that Work (collectively "Purchase Order Work"). A sample Purchase Order form is attached as Attachment F. Contractor shall not commence any Work until a written Purchase Order has been issued by the Procurement Director/Procurement Agent, and if it does so APS will be under no obligation to make payment for any Work performed prior to the issuance of the required Purchase Order. No employee or agent of APS other than the Procurement Director/Procurement Agent or his properly authorized designee has authority to make any purchases or otherwise bind APS contractually. If a Purchase Order is issued by anyone other than the Procurement Director/Procurement Agent, it shall be the responsibility of the Contractor to confirm the authority of that person to bind APS. Provided, however, if the Contractor has received from the Procurement Director/Procurement Agent prior written confirmation of a person's authority to bind APS, the Contractor may rely upon all Purchase Orders issued by that person within the scope of the stated authority as authorized.

9.2. Notwithstanding the foregoing, if the circumstances are such that there is not sufficient time for issuance of a Purchase Order, APS through the Procurement Director/Procurement Agent or his authorized designee may direct the Contractor to proceed by less formal writing or electronic communication, to be replaced by a Purchase Order by 5:00 P.M. on the next regular APS working Day following issuance of such Owner directive. Further, if emergency conditions exist which necessitate that the Contractor act to avoid or mitigate damage to person or property, the Contractor shall proceed and give written Notice to APS of such emergency Work by 5:00 P.M. on the next regular APS Working Day following commencement of such emergency Work.

10. Estimated Quantities; No Guaranteed Minimum:

During the Initial Contract Term or any Renewal Contract Term, the Contractor will furnish all of the Goods or Services described in the Contract Documents of Contractor by APS. The Contractor understands and agrees that there are no guaranteed minimum purchases and that APS has no obligation to the Contractor if no, or fewer, items or Services than any quantities estimated are required or requested by APS. Any quantities which are included in the Contract Documents are the reasonable present expectations of those who are planning for APS for the period of the Contract. The amount is only an estimate and the Contractor understands and agrees that APS is under no obligation to the Contractor to buy that amount, or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The Contractor further understands that

APS may require Goods and/or Services in excess of the estimated annual Contract amount and that such excess shall not give rise to any claim for compensation other than at the unit prices and/or rates set forth in this Contract

11. Payment Procedures:

Contractor shall submit invoices for its Work, and such invoices will be processed by APS, all in accordance with the provisions of the Terms and Conditions.

12. Assignments:

12.1. This Contract is not assignable by Contractor without the express written consent of APS, and APS shall be under no obligation to grant such consent. Sale, assignment or transfer of a controlling interest in the Contractor shall be deemed an assignment for purposes of this provision and shall be grounds for termination of this Contract if consent of APS is not obtained. It is understood by APS that Contractor may use Subcontractors for performance of parts of the Work. However, it is expected that Contractor will be performing the Work, and subcontracting of all or substantially all of the Work under any Purchase Order shall be deemed an assignment subject to the restrictions of this Section.

12.2. Contractor acknowledges that, if so stated in the Bid Documents, this Contract is subject to the joint procurement or cooperative procurement provisions of Va. Code Ann. § 2.2-4304.

13. Notices:

Unless otherwise provided herein, all notices and other communications hereunder shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

To the Contractor:
Anna Jones
Account Manager
22nd Century Technologies, Inc.
220 Davidson Ave., Suite 118
Somerset, NJ 08873
annaj@tscti.com

To APS:
Heather Rothenbuescher
Supervisor, Special Education Programs
Arlington Public Schools
2110 Washington Blvd.
Arlington, Virginia 22204
Heather.rothenbuescher@apsva.us

And
David J. Webb, C.P.M.
Procurement Director / Procurement Agent
Arlington Public Schools
2110 Washington Blvd.
Arlington, Virginia 22204
David.webb@apsva.us

14. Governing Law:

This Contract, the Bid Documents, and the Contract Documents shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without reference to conflict of laws principles. The exclusive jurisdiction, forum and venue for any litigation with respect to this Contract, the Bid Documents, or the Contract Documents shall be in the state courts of Arlington County, Virginia.

15. Cooperative Contract for Use by Other Public Bodies:

This procurement was conducted by APS not only for its benefit but for the benefit of any other public body eligible to participate in use of the services herein solicited by means of cooperative procurement as provided by, and to the extent permitted by, §2.2-4304 of the Virginia Public Procurement Act.

16. Binding Agreement:

The Owner and the Contractor each binds itself, its successors and assigns to the other, its successors and assigns, in respect of all covenants, terms, conditions and obligations contained in each of the Contract Documents.

Signature Appears on Following Page

Arlington Public Schools

By: David J. Webb

David J. Webb, C.P.M.
Procurement Director/Procurement Agent

Date: December 22, 2020

Attachments:

Attachment A	Scope of Work
Attachment B	Pricing Schedule
Attachment C	Special Terms and Conditions
Attachment D	Terms and Conditions
Attachment E	Contractor Certification Regarding Criminal Convictions
Attachment F	Sample Purchase Order
Attachment G	Certificate(s) of Insurance
Attachment H	Student Data Usage and Privacy Agreement

End of Agreement

Attachment A

Scope of Work

All Services shall be provided to eligible students, in accordance with the student's Individualized Education Program (IEP) or 504 plan, if such plan exists, or in accordance with the student's participation in the Teen Parenting Program.

A. Nursing Qualifications

1. To be considered qualified for an APS assignment a candidate must be either a Registered Nurse, (RN), Licensed Practical Nurse, (LPN), or Certified Nursing Assistant (CNA) (hereafter referred to as "Nurse") with current Virginia nursing license, and
   a) If the Nurse's license permits them to work outside of the state in which they are licensed APS would consider the provider licensed to perform the work in Virginia.
2. Must have recent pediatric nursing experience working within parameters established by Virginia School Health Guidelines. http://www.vdh.virginia.gov/school-age-health-and-forms/school-health-guidelines-and-resources/. The experience required will be dependent on the case.

B. Nurse Required Skills and Duties

1. The Nurse must be able to recognize respiratory distress and immediately initiate resuscitative measures, such as suctioning, CPR, and reinsertion of tracheotomy tube.
2. Skills and duties in other nursing procedures may be necessary including, but not limited to the following:
   a) Tracheotomy care
   b) Care of a ventilator-dependent student
   c) Gastrostomy care and feeding including feeding pumps
   d) Reinsertion of a gastrostomy tube
   e) Proper use of a bag-valve mask (Ambu bag)
   f) Suctioning

C. Nurse Responsibilities

1. Obtain physician's orders for the student's care at school.
2. Administer care to the student according to physician's orders and document such care.
3. Each Nurse will be responsible for creating a documentation system for charting.
4. Ascertain that all required equipment is clean, in good working order, and with the student at school.
5. Ensure that sterile items are in intact bags and within the expiration date.
6. Maintain and check oxygen cylinder daily if used or stored in the school.
7. Work within the school rules, in addition to the applicable APS School Board policies which can be viewed at https://www.boarddocs.com/vsba/arlington/Board.nsf/goto?open&id=B26QVF6B23A6..
8. Wear Contractor-issued photo identification for the duration of the assignment.
9. Report to the assignment appropriately dressed to perform the Work.
10. Avoid disruptions to instructional time or teachers.
11. Discharge their duties and responsibilities without providing educational expertise.
12. Alert APS resource nurse or school nurse immediately of any situation that jeopardizes the assigned student's health or safety.
13. Provide nursing notes to the Contractor for billing purposes.
14. Typically, a Nurse placed under the resulting Contracts will not be required to ride the bus with the student, but there are cases where the Nurse will be required to ride the bus with the student.

D. Bilingual Teen Parenting Program Nursing (RN/LPN) Responsibilities

1. The following requirements apply to only to the Teen Parenting Program Nurse and will not apply to other nursing assignments.
   a) The Nurse must be fluent in both English and Spanish.

b) The Nurse will provide nursing services to the pregnant and parenting students of the Arlington Teen Parenting Program. These students may be attending the Arlington Career Center or other APS high schools.
c) The Nurse will provide supportive services to teens during pregnancy, labor, and childbirth, and provides postpartum education and support.
d) The Nurse will provide supports to teens as they transition to motherhood, to include providing breastfeeding counseling, instruction on newborn and pediatric care, immunization and medical needs of infants and young children as well as child growth and development.
e) Support services and instruction may be delivered individually or to groups of teens.
f) The Nurse will provide teens with training and health education on physical and emotional changes associated with pregnancy and parenthood, and will educate on subsequent pregnancy prevention.
g) The Nurse will serve as a resource on wellness, maintenance of good health and disease prevention and will promote this specific population's health and ensure student's access to health services and information.
h) The Nurse will collaborate and communicate with teen's primary care provider, family caregiver, parent(s) or guardian(s) and other service providers to meet the psycho/social/physical needs of the participants.
i) The Nurse will work effectively as part of an interdisciplinary team referring teens to community resources.
j) The Nurse will establish and maintain effective and cooperative relationships with teens and families with diverse ethnic, cultural, and economic backgrounds. **Services and interventions include school visits for pregnant teens and teen parents attending other schools; home visits for students that have recently delivered their babies, or that may be out of school and in the process of re-enrolling.**
k) This Nurse will be required to 8 hours per week, preferably two (2) 4-hour days, with occasional hours after-school hours.

E. Contractor Responsibilities

1. For each case reflected on an invoice, include the Nurse's notes as an attachment.
2. Provide RN supervision if the Nurse providing the care is an LPN or a CNA.
3. The Nursing Supervisors will review the plans of care and ensure that the Nurse assigned has the training and ability to implement the plan. The Nursing Supervisor also makes routine visits to the schools to ensure that the plan is being implemented routinely and correctly.
4. The Nurse's training should include using any equipment or procedures required for students.
5. The Nursing Supervisor is responsible for managing the plan of care.
6. The Nursing Supervisor is responsible for updating the orders.
7. Prior to a Nurse commencing an assignment, provide the following information to APS Project Manager or their designee.
    a) Current Virginia nursing license
        i. All licenses and certifications shall be kept current through the entire Contract term, including renewals. Documentation of all licenses and certifications is required within three (3) business days of its request by APS.
    b) Tuberculosis screening completed within the past one year
        i. The tuberculosis screening documentation shall state that the person is free of communicable tuberculosis
    c) Criminal history record including results of background check including fingerprints
    d) Documentation of Hepatitis B vaccination
    e) Current CPR and First Aid certification pertinent to the age of the student case
        i. All certifications shall be kept current through the entire Contract term, including renewals. Documentation of all certifications is required within three (3) business days of its request by APS.
8. Provide resumés of potential candidate Nurses within three (3) business days of their request by APS.

a) Candidates may be required to undergo a pre-acceptance interview by APS staff. If the candidate is deemed unacceptable, the Contractor shall offer additional candidates until an acceptable candidate is selected, at no additional cost to APS.

F. Staffing Requirements

1. Any actions by a Nurse deemed to be inappropriate may be cause for not allowing a Nurse to provide services for APS assignments.
   a. The Nurse agrees to work, normally, a 7 hour work day **if** required by APS. The Nurse's day cannot exceed a 7 hour work day unless written permission is obtained from APS. However, depending on the frequency that invoices are submitted, this can be an average, based on total number of days worked per invoice period.
   b. The Contractor agrees that APS shall not provide paid lunch or travel mileage.
      i. Nurses that are is required to travel to multiple sites during the work day shall document travel time on their timesheets and shall note travel time on their schedules.
      ii. Travel to and from work is not paid time. No portal-to-portal charges or fuel surcharges are permitted under any resulting Contract.
   c. The Contractor agrees to provide a written two (2) week termination notice to APS in the event an assigned Nurse separates from the Contractor.
      i. In these instances, the Contractor agrees to provide resumés of potential replacement candidates to APS for its consideration with its written two (2) week termination notice.

G. APS Responsibilities

1. APS will provide Nurse with WiFi access, computers/laptops and printers, but not testing material or office supplies.
2. APS will provide Nurse access to nursing/medical materials, supplies, equipment, evaluation kits, and protocols.

H. Cancellations and Inclement Weather

1. Any and all requests for cancelation of services must be submitted in writing from an authorized employee of the Contractor to APS.

2. If the person requiring services ("client") does not show up for the assignment, the scheduled Nurse (hereafter in this Section referred to as "Provider") is required to remain at the assignment site for 15 minutes for every hour of the scheduled assignment **or** until dismissed by an authorized APS employee. The Contractor will be entitled to receive compensation equal to the full amount of the original assignment. No other fees may be added.

   In these situations, APS will work with the scheduled Nurse to redirect their scheduled assignment to another client and/or site to otherwise utilize the Nurse for the assignment time scheduled. For this reason, it is beneficial for candidates to be skilled at working with students in grades K-12, as assignment may be adjusted and the scheduled Nurse may be tasked with servicing a different client than the originally booked on the assignment.

3. APS closings can be found at the APS home page https://www.apsva.us, the emergency alerts page https://www.apsva.us/emergency-alerts/, the recorded telephone hot line 703-228-4277, in English and in Spanish, as well as through local television stations (Verizon channel 41 or Comcast channel 70), radio stations and social media (Facebook https://www.facebook.com/ArlingtonPublicSchools/ and Twitter @APSVirginia).

   a. If APS declares **administrative leave/closes school** or the facility where the assignment is to take place is closed on the day of the assignment, the assignment will be canceled and Contractor may bill for 25% the total amount for the day's assignment. For example, if an assignment is for 7 hours and APS

declares administrative leave whereby schools are closed, the Contractor may seek compensation for 1.75 hours of work for that day. This section takes precedence over Section G paragraphs 2 and 3 above.

b. If APS declares **unscheduled leave/dismisses early** for weather related conditions or other reason(s) on the day of an assignment, it is the responsibility of the APS department requesting the service and the Contractor to contact one another to verify how the assignment will be adjusted. APS and the Contractor may mutually choose to adjust the assignment to align with the unscheduled leave/early dismissal. If this is the case, the Contractor shall be compensated equal to 25% of the assignment that ended early due to the unscheduled leave/early dismissal plus the full amount for the portion of the assignment that is completed prior to the unscheduled leave/early dismissal. This section takes precedence over Section G paragraphs 2 and 3 above.

c. If APS issues a **delayed start** to the school day on the day of an assignment, the Contractor is expected to adjust their scheduled arrival based on the delayed start. The Contractor shall be compensated only for the portion of the assignment completed and not for any portion of the assignment not completed due to the delayed start.

4. If the Contractor cancels a previously scheduled assignment, the following will apply:

a. If a request is submitted to the APS department which requested the service at least two (2) business Days before the start time of the scheduled assignment, the assignment will be canceled and no payment of any kind may be expected for that assignment.

b. If a request is submitted to the APS department which requested the service with less than two (2) business Days before the start time of the scheduled assignment, the assignment will be canceled by APS may seek reimbursement for additional fees incurred because of the cancellation. If replacement services are able to be secured for the canceled assignment but replacement assignment rates are higher than in the original assignment, APS may invoice the difference in rates for the assignment to the Contractor who canceled the original assignment. Additionally, if the canceled assignment is filled by APS employees, APS may submit an invoice to the Contractor who canceled the original assignment at the salary rate of the person who performed the work under the assignment for the amount of time spent performing the originally requested services. APS reserves the right to seek reimbursement for any additional fees incurred because of the cancelation.

5. If the scheduled Nurse does not show up for a scheduled assignment and no notice was provided in writing prior to the start time of the scheduled assignment, a warning notice will be sent to the Contractor. After a second time that a scheduled Nurse does not show up for a scheduled assignment and no notice was provided in writing prior to the start time of the scheduled assignment, a letter of nonperformance will be issued and APS may begin the process to terminate the contract for cause. APS reserves the right to seek reimbursement for any additional fees incurred because of the absence of the scheduled Nurse.

6. Aside from instances covered by Section G.4 if a scheduled Nurse is late or fails to appear at the agreed upon time for the scheduled meeting for which Nurse's services are requested; the Contractor will not invoice APS for the time the Nurse was absent and will assume responsibility for APS' inability to comply with Title II requirements of the ADA ensuring that services is provided. APS may seek reimbursement for additional fees incurred because of the absence or later arrival.

End of Scope of Work

Attachment B

Pricing Schedule

Category A – Registered Nurse (RN)	
Description of Service Fee	**Hourly Rate**
In-Person Registered Nurses	**$59.00**

Category B – Licensed Practical Nurse (LPN)	
Description of Service Fee	**Hourly Rate**
In-Person Licensed Practical Nurses	**$42.00**

Category C – Certified Nursing Assistant (CNA)	
Description of Service Fee	**Hourly Rate**
In-Person Certified Nursing Assistants	**$30.00**

Category D –Bilingual Teen Parenting Program Nurse (RN/LPN)	
Description of Service Fee	**Hourly Rate**
In-Person Bilingual Teen Parenting Program Nurses	**$39.00**

Attachment C

Special Terms and Conditions

1. Permanent Placement

After the completion of 350 billable hours of contract assignments with APS, APS may hire Contractor personnel as an APS employee at no fee to APS.

If APS elects to hire Contractor personnel prior to the completion of 350 billable hours of contract assignments with APS, APS will pay Contractor according to the following schedule.

Hours of Service	**Conversion Fees**
1 – 125	15% of starting annual salary
126 – 250	10% of starting annual salary
251 – 350	5% of starting annual salary
351 or more	$0

Any Conversion Fees paid by APS are subject to the following refund schedule for any Contractor personnel who leaves APS' employment for any reason with or without cause, voluntarily or otherwise.

Timing of Separation	**Refund Amount**
0 – 90 days	100% of the Conversion Fee
91 – 120 days	75% of the Conversion Fee
121 – 180 days	50% of the Conversion Fee
181 days or later	No refund

End of Special Terms and Conditions

Attachment D

Terms and Conditions

1. Definitions:

1.1. **Addendum**: A change to the Bid Documents or Contract Documents issued by the Owner prior to Bid Closing.

1.2. **APS**: Arlington Public Schools, the owner of the property upon which the Work is to be performed or the entity for which the Work is to be performed. See also "Owner."

1.3 **Apparent Low Bidder**: The responsible Bidder submitting the lowest responsive Bid.

1.4. **Bid:** The offer of a Bidder to provide specific Goods or Services at specified prices and/or other conditions specified in the solicitation.

1.5. **Bidder:** Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Procurement Director/Procurement Agent and offering to enter into Contracts with APS. The term "Bidder" will be used throughout the Bid Documents and the Contract Documents and shall be construed to mean "offeror" where appropriate.

1.6. **Bid Closing**: The time and date set by the Invitation for the deadline for receipt of Bids.

1.7. **Bid Opening:** The time and date set by the Invitation for the opening of Bids.

1.8. **Change Order**: A written order to the Contractor, signed by the Owner, which authorizes a change in the Work, and any resulting adjustment to the Contract Price and/or the Contract Time. A **Unilateral Change Order** is a Change Order signed only by the Owner addressing any Modification to the Contract Sum or the Contract Time to which the Owner agrees. A **Mutual Change Order** is a Change Order signed by both the Owner and by the Contractor reflecting agreement on all terms, conditions and requirements set forth therein. A Unilateral Change Order may be converted to a Mutual Change Order upon agreement being reached between the parties. Change Orders shall be initiated and processed as set forth in the Changes provisions of these Terms and Conditions. A Unilateral Change Order or a Mutual Change Order may affect the Contract, an individual Purchase Order, or both, depending on its terms.

1.9. **Complete or Completion:** Work for which a Purchase Order has been issued will not be deemed complete until the subject of the Work is functioning as intended, cleanup has been completed, any required or applicable inspections or governmental approvals have been accomplished, and the Work is accepted by the Owner. More specific requirements for Completion may be set forth in the Scope of Work or the Purchase Order.

1.10. **Contract:** The signed Contract between Owner and Contractor is the Contract.

1.11. **Contract Documents**: The Contract Documents and the order of precedence in the event of a conflict therein are as defined in the Contract.

1.12. **Contract Period:** See "Contract Time."

1.13. **Contract Price**: The total amount payable to the Contractor for performance of the Work. The Work under this Contract will involve multiple discrete Projects. The Contract Price is stated in the Purchase Order for the particular Work included in a discrete Project and shall include any adjustments granted in accordance with the provisions of the Contract Documents. The Contract Price may be determined based on unit prices or rates and quantities as provided in the Contract. May also be referred to as "Contract Sum."

1.14. Contract Sum: See “Contract Price.”

1.15. Contract Time: The period allotted in the Purchase Order for Completion of the Work directed by that Purchase Order, together with any extension of time granted in accordance with the provisions of the Contract Documents. May also be referred to as “Contract Period.”

1.16. Contractor: The individual, firm, or organization which Contracts with the Owner to perform the Work. As employed herein, the term "Contractor" may refer to an individual, firm or organization, or to the Contractor's authorized representative.

1.17. Day: The term "day" or “Day” shall mean "calendar day" unless otherwise noted. When any provision in the Contract Documents establishes a time within which an action must be taken or a right must be exercised, if the last Day falls on a Saturday, Sunday, or holiday recognized by Arlington Public Schools, or on a day when Arlington Public Schools administrative offices are closed for any other reason, the deadline thereby established shall be extended to the first Arlington Public Schools Working Day thereafter when the Arlington Public Schools administrative offices are open.

1.18. Drawings: The term “Drawings” or “Plans” shall mean any drawing, plan, sketch, photograph or similar document intended to provide to the Contractor graphic instruction or guidance regarding the Work to be performed.

1.19. Gender and Plural: Whenever the Contract so admits or requires, all references to one number shall be deemed to extend to and include the other number, whether singular or plural, and the use of any gender shall be applicable to all genders. The terms “his” or “hers” or “he” or “she” shall include “its” if the referenced party is an entity rather than a person.

1.20. Goods: All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.

1.21. Holiday: Holidays recognized by the Owner which shall not be considered Normal Working Hours are as follows: New Year’s Eve Day, New Year’s Day, Martin Luther King, Jr. Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and the following Friday, Christmas Eve Day, and Christmas Day. In the event any of the days designated as a Holiday fall on a Saturday, the Holiday shall be the preceding Friday; in the event any of the days designated as a Holiday fall on a Sunday, the Holiday shall be the following Monday.

1.22. Informality: A minor defect or variation of a Bid or proposal from the exact requirements of the Invitation to Bid or the Request for Proposal which does not affect the price, quality, quantity or delivery schedule for the Goods and Services being procured.

1.23. Invitation to Bid (ITB): A request which is made to prospective Bidders for their Bids on Goods or Services desired by APS. The issuance of an ITB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

1.24. Modification: Any written change to any provision of the Contract Documents made after Bid Closing, whether by Work Order, Change Order or other means provided by the Contract Documents.

1.25. Normal Working Hours: Unless otherwise specified in the Purchase Order Normal Working Hours shall be 6:00 A.M. through 2:30 P.M., Monday through Friday, excluding Holidays. See also Working Day.

1.26. Notice: Notice or a requirement to “Notify” shall mean written notice. Written notice shall be deemed to have been duly served if:

A. Written Notice to Contractor shall be deemed to have been fully served if delivered by United States Postal Service registered or certified return receipt mail, courier, generally recognized private mail or delivery service providing proof of delivery, e-mail, or facsimile transmission to the Contractor's office at the Project Site or to the business address of the Contractor as stated in its Proposal; or if delivered in person to the Contractor's foreman or superintendent for the Project, or to any officer or director of the Contractor.

B. Written Notice to APS shall be deemed to have been fully served if delivered by United States Postal Service registered or certified return receipt mail, courier, generally recognized private mail or delivery service providing proof of delivery, or hand delivered to the office of the Procurement Director/Procurement Agent, Arlington Public Schools, Syphax Education Center, 2110 Washington Blvd, Arlington, Virginia 22204.

C. Notice by registered or certified return receipt mail, courier, generally recognized private mail or delivery service, or by courier, will be deemed received on the date shown on the written delivery receipt. Notice given by email or facsimile transmission will be deemed received at 9:00 A.M. on the first business day after the date of transmission.

D. Attempted Notice given in any manner other than as designated herein shall not satisfy any Notice requirement.

1.27. Notice of Intent to Award: A writing issued by the Owner which states the Owner's intent to award the Apparent Low Bidder a Contract to execute the Work. The Notice of Intent to Award will be publicized as provided in the Bid Documents.

1.28. Notice to Proceed: See Purchase Order.

1.29. Owner: APS and employees authorized to represent APS. Reference to Owner requiring action by Owner or Notice to Owner shall be deemed to mean the Procurement Director/Procurement Agent unless otherwise stated specifically.

1.30. Pricing Schedule: The pricing information appearing as Attachment B to the Contract setting the unit prices, rates, or other means of agreed pricing for performance of Work by the Contractor.

1.31 Procurement Director/Procurement Agent: The employee of APS authorized to act on behalf of the Owner in this Contract. The Procurement Director/Procurement Agent may designate in writing others to act on his behalf, and such designation shall state any limitations on the authority of such designee. Contractor shall not rely upon and Owner shall not be bound by any statement or representation made on behalf of APS by any person not designated to the Contractor in writing as authorized to so act on behalf of the Procurement Director/Procurement Agent. It shall be the responsibility of the Bidder, and thereafter the Contractor, to establish the authority to act regarding any communication or action by any person other than the Procurement Director/Procurement Agent. Use of the term Procurement Agent or Procurement Director/Procurement Agent in the Contract Documents shall be deemed to include such properly authorized designee within the scope of that designee's authorization.

1.32 Project: The Goods and/or Services provided or performed by the Contractor at any location as directed by Purchase Order, in accordance with the Contract Documents; collectively all of the Goods and Services contemplated by the Contract; synonymous with the term "Work" as the context may require.

1.33. Project Manager: The Owner's representative for Contract coordination

1.34. Project Site or Site: The location at which any Goods or Services are provided, delivered or performed by Contractor under this Contract.

1.35. **Purchase Order:** A written directive issued by the Procurement Director/Procurement Agent or authorized designee directing the performance of a particular item or items of Work to be performed in accordance with the Pricing Schedule. A Purchase Order shall serve as the Contractor's Notice to Proceed with the specified portion of the Work as specified in the Purchase Order.

1.36. **Responsible Bidder:** A person who has the capability, in all respects, to perform fully the Contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.

1.37. **Responsive Bidder:** A person or entity who or which has submitted a Bid that conforms in all material respects to the Invitation to Bid.

1.38. **Services:** means any work performed by an independent Contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

1.39. **Specifications:** Written details provided to the Contractor by the Owner providing performance requirements, data instructions and guidance for performance of the Work.

1.40. **Subcontractor**: Any individual, firm or organization other than an employee of the Contractor, who Contracts with the Contractor to furnish or who actually furnishes labor, materials, Services or equipment, or any combination thereof to the Contractor in connection with the Work.

1.41. **Sub-Subcontractor**: Any individual, firm or organization, other than an employee of the Contractor or of a Subcontractor, who Contracts with a Subcontractor to furnish, or who actually furnishes labor, materials, service or equipment, or any combination thereof to a Subcontractor. The Contractor shall be responsible for the performance of the Work by any person or entity below the level of Sub-subcontractor.

1.42. **Warranty Period:** All warranties and guarantees against any defect in the Work shall apply from the date of acceptance by APS of the Completed Work and shall continue for a period of one (1) year thereafter, or the manufacturer's standard warranty, whichever is longer Provided, however, in the event the Contract Documents require a Warranty in excess of one (1) year, the longer term shall apply as applicable.

1.43. **Work**: Everything explicitly or implicitly required to be furnished or performed to complete performance of any Purchase Order.

1.44. **Work Order**: A written directive to the Contractor issued on or after issuance of the Purchase Order the Effective Date of the Agreement and signed by the Procurement Director/Procurement Agent ordering an addition, deletion, or revision in the Work described in a Purchase Order issued when in the sole discretion of the Owner the terms thereof do not impact the Contract Price or the Contract Time, or when in the sole discretion of the Owner the circumstances do not allow sufficient time for issuance of a Change Order.

1.45. **Working Day**: See Normal Working Hours.

2. **Independent Contractor:**

In the performance of this Contract and for all purposes related to APS, Contractor shall be an independent Contractor and neither the Contractor nor any of its employees will under any circumstances, be considered servants or agents of APS. Under no circumstances shall APS (i) be responsible for any failing or wrongdoing by the Contractor, its servants or agents; (ii) be under any obligation to withhold from the Contract payments to the Contractor or otherwise any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits of any kind; or (iii) provide any insurance coverage or other benefits, including but not limited to workers' compensation, to any employees or agents of Contractor.

3. Intent of the Contract Documents:

The intent of the Contract Documents is to include all items necessary for the proper management, execution and completion of the Work, including without limitation, all labor, materials, equipment and furnishings required in connection therewith, whether or not specifically identified in the Contract Documents. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Any doubt as to whether any work is within the scope of the Contract shall be resolved in favor of an interpretation that the work is within the scope of the Contract. Use of the term "include" or "including" shall be deemed to mean "include without limitation," "including but not limited to," and similar expansive intent.

4. Drawings and Specifications: (Intentionally Deleted)

5. Replacement of Personnel and Subcontractors:

APS has the right to reasonably reject staff or Subcontractors whom the Contractor assigns to the Contract. The Contractor must then provide replacement staff or Subcontractors satisfactory to APS in a timely manner and at no additional cost to APS. The day-to-day supervision and control of the Contractor's and its Subcontractor's employees is the sole responsibility of the Contractor.

The Contractor may not replace key personnel or Subcontractors identified in its Bid, including the project manager, without APS's written approval. The Contractor must submit any request to remove or replace key personnel or Subcontractors to the Owner's Project Manager at least fifteen (15) Days in advance of the proposed action. The request must contain a detailed justification, including the proposed replacement and his or her qualifications.

If the approved project manager resigns or is terminated by the Contractor, the Contractor will replace the project manager with an individual with similar qualifications and experience, subject to APS' written approval.

6. Contract Interpretations:

The Contractor may request Contract interpretations in writing from the Owner. Such requests for interpretations must be submitted sufficiently in advance of the date upon which the interpretation is actually required by the Contractor to allow the Owner to issue the interpretation so as not to delay the Work. Contractor shall be responsible for any delay resulting from failure to submit a request for interpretation in a timely manner. Written interpretations so requested shall be issued by the Owner in a manner commensurate with the timely execution of the Work, shall be consistent with the intent of the Contract Documents, and shall be in accordance with established time requirements for performance of the Work, but Owner shall be under no obligation to expedite its review and analysis of the question raised or to issue a response if the Contractor does not submit the request for interpretation in a timely manner.

7. Copies and Ownership of Contract Documents:

A. The Contractor will be provided with either electronic or hard copies of any Drawings, Specifications, or other documents referenced in a Purchase Order.

B. All Drawings, Specifications, or similar technical data provided to the Contractor by the Owner are the property of the Owner, and the Contractor may not use such information for any purpose not relating to performance of the Work.

8. General Review of Contract Documents:

A. The Contractor shall perform all Work and shall furnish, at its own cost and expense, all labor, materials, equipment, and other facilities, except as herein otherwise provided, as may be necessary and proper for performing and completing the Work. The Contractor shall be responsible for the entire Work until Completion of all Work has been achieved.

B. Unless otherwise provided herein, the Work shall be performed in accordance with the best modern practice and with materials and workmanship of highest quality.

C. Supervision and Coordination of the Work: The Contractor shall supervise and direct the Work and coordinate the Work with that of separate Contractors using Contractor's best skill and attention. Unless otherwise provided in the Contract Documents, the Contractor shall be solely responsible for and have control over means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract; provided, however, that the Contractor shall employ adequate and safe procedures, methods, structures and equipment. No approval or failure to exercise its right of approval by Owner shall relieve the Contractor of its obligation to accomplish the result intended by the Contract, or create a cause of action for damages against the Owner, or provide a defense by the Contractor in any case of action by the Owner against the Contractor.

D. The Contractor shall study and review the Contract Documents and shall compare them with each other and with such information made available by the Owner. The Contractor shall be responsible for giving Notice to the Owner of any errors, inconsistencies or omissions discovered or which in the exercise of due diligence as a reasonably competent Contractor reasonably should have been discovered by it.

E The Contractor shall be responsible for all costs or delays resulting from the Contractor's or a Subcontractor's failure to obtain and review Contract Documents provided or made available by the Owner, or from the failure to discover any errors, inconsistencies or omissions in the Contract Documents which in the exercise of due diligence as a reasonably competent contractor the Contractor reasonably should have discovered.

9. <u>Substitutions</u>:

A. The name of a certain brand, make, or manufacturer in the Contract Documents is to denote the quality standard of the article desired. The reference to a certain brand, make or manufacturer is to convey the general style, type, character and quality of article desired. If the Contractor desires to provide or use any other brand, make of materials, device, or equipment, it may do so only if it submits sufficient information to satisfy the Procurement Director/Procurement Agent that the proposed substitute is the equal of that specified in quality, workmanship, design and economy of operation, and is suitable for the purpose intended, and obtains the written approval from the Procurement Director/Procurement Agent by Change Order.

B. To obtain approval of a substitute as equal, the Contractor shall submit to the Procurement Director/Procurement Agent all substantiating data upon which the Contractor relies to establish the substitute as an equal. If a sample is requested by the Owner, it shall be provided at the Contractor's expense within seven (7) Days of the request and may be subjected to such testing, examination or analysis, including but not limited to destructive testing, as the Owner in its discretion deems necessary. If the Procurement Director/Procurement Agent approves the proposed substitute, a Change Order approving the change will be issued by the Procurement Director/Procurement Agent. Provided, however, the Contractor shall be fully responsible for all costs or other consequences related to or arising from implementation of the use of the substitute, whether foreseen or unforeseen and including but not limited to any adjustments or revisions which might be required to existing improvements, facilities or operations. Contractor shall not proceed with use of the substitute until the Change Order approving its use has been issued by Owner.

C. Notwithstanding the foregoing, if the identification of a certain brand, make or manufacturer is designated as "required" or "no substitutes permitted" or any similarly clear language, there shall be no substitutions permitted.

10. <u>Changes in the Work</u>:

A. Any change to an existing Purchase Order must be approved by written Change Order issued by the Procurement Director/Procurement Agent prior to the changed Work being performed. APS has no obligation to pay for any changed or extra Work not directed by written Change Order issued by the Procurement Director/Procurement Agent.

B. If the Owner issues a Purchase Order which the Contractor deems to be beyond the scope of the Work so as to entitle the Contractor to compensation or to additional time for performance of the Work beyond the terms set forth in the Purchase Order, the Contractor shall so Notify the Owner within seven (7) Days following issuance of the Purchase Order and before beginning the Work directed by the Purchase Order. If no agreement is reached between the Owner and the Contractor regarding such Work within ten (10) Days after the Contractor gives such Notice, or if the Owner directs the Contractor to proceed immediately, the Contractor shall proceed with the Work as directed and pursue such remedies as it deems appropriate within the claims provisions set forth in these Terms and Conditions. The expiration of such ten (10) Day period, or direction by the Owner to proceed, shall be deemed the occurrence date for any claim the Contractor wishes to pursue related to the Work ordered by the Purchase Order. Performance of and payment for the Work directed by the Purchase Order thereafter shall be governed by the Claims for Damages provisions of these Terms and Conditions.

11. Administration of Contract:

The Owner's Project Manager shall provide administration of the Contract in accordance with the Contract, Contract Documents and Work.

The Owner's Project Manager for this Contract is:

Heather Rothenbuescher, Director of Secondary Special Education
APS Department of Teaching and Learning
2110 Washington Blvd.
Arlington, VA 22204
Telephone: (703) 228-6055
Email: Heather.rothenbuescher@apsva.us

12. Time of Start and Completion:

A. Time is of the essence for any Purchase Order issued under this Contract. The Contractor shall commence Work within ten (10) days after receipt of the Purchase Order, or such lesser time as may be directed in the Purchase Order under circumstances requiring immediate attention. Time being of the essence with respect to this Contract, the Contractor shall prosecute the Work diligently, using such means and methods of performance, scheduling and resources as will secure its full Completion in accordance with the requirements of the Contract Documents, and will Complete the Work within the time stated in the Purchase Order.

B. APS may cancel any Purchase Order, or any part thereof, without obligation to Contractor other than to pay for acceptable Work in place, if completion is not achieved at the time specified in the Purchase Order.

13. Site Visits: (Intentionally Deleted)

14. Warranties:

A. The Contractor warrants to the Owner that all materials and equipment furnished under the Contract will be new unless otherwise specified, free of defects, of the latest model, of the best quality, and in strict compliance with the requirements of the Contract Documents.

B. The Contractor warrants to the Owner that all workmanship will be of the best quality and in strict compliance with the requirements of the Contract Documents.

C. All materials and equipment furnished under the Contract shall be free and clear of all liens or other claims of any type by any third parties.

D. All workmanship, materials or equipment not conforming to the foregoing standards may be deemed defective. APS has no obligation to pay the Contractor for Work, materials or equipment rejected as defective until satisfactory correction has been accomplished by Contractor.

E. All Warranties shall be in effect for the entirety of the Warranty Period, or the manufacturer's standard warranty, whichever is longer. In the event corrective work is required during the Warranty Period, the Warranty on the repaired Work shall extend for one (1) year from the date of acceptance by APS of the completed repairs. The Warranty shall include all parts, labor, transportation, and any other costs necessary to keep the product in good operating condition, but shall not be applicable to damage caused by Owner's misuse of the item or due to normal wear and tear. If seasonal limitations prevent any required performance testing of the completed Work, the Warranty Period for such Work shall begin after the performance tests have been successfully performed.

15. <u>Correction of Defective Work Before and During Warranty Period</u>:

A. In the event the Work, or any portion thereof, is determined during the Warranty Period to be defective, incomplete or to have been improperly performed, the Contractor shall, within three (3) Days after written notice from the Owner, commence to remove all defective and deteriorated Work and materials and replace it at the Contractor's expense with Work and materials in accordance with the requirements of the Contract Documents and to complete all incomplete Work in accordance with the Contract Documents within a reasonable time period.

B. In the event the Contractor fails to commence the removal, replacement, completion or correction of such Work within three Days after the date of written notice from the Owner and to complete such Work within a reasonable time period thereafter, the Owner will cause such Work to be performed by other Contractors and the Contractor will be obligated to pay the Owner all costs incurred in the performance of such Work plus an administrative fee of ten percent (10%) within thirty (30) Days following submission by Owner to Contractor of such demand for payment.

C. The Contractor's Warranty obligations shall remain in full force and effect regardless of whether the Warranty Work was performed by the Contractor or by the Owner.

D. Defects or nonconformities which are remedied as a result of Warranty obligations shall subject the remedied portion of the Work to an extended Warranty Period of one (1) year from the date upon which such defect or nonconformity was fully remedied or from the date of Final Completion of the Project as a whole, whichever is later, whether such Warranty Work was performed by the Contractor or by the Owner. Any repetitive defect, failure or malfunction identified within the Warranty Period shall remain under Warranty until it has been fully corrected and has performed without defect, failure or malfunction for a period of one (1) year.

16. <u>Contractor Requirements</u>:

A. The Contractor and all of its Subcontractors for the duration of the Contract are required to comply with all laws regarding authorization to do business in Virginia, licensing, and other regulatory requirements as applicable; to be financially stable; and to provide for performance of the Work a sufficient work force, all of whom are qualified for and experienced in the Work.

B. The Owner, upon written Notice to the Contractor, and in the Owner's sole discretion, shall have the right to direct the Contractor and its Subcontractors to remove an employee permanently from the Project for any reason. Any individual who is removed from the Project pursuant to this Section may not return without specific permission of the Owner.

C. The Contractor will ensure that no Work shall be performed in occupied areas on a Project Site during school hours unless express written approval has been granted by the Owner and proper safety precautions have been exercised to isolate the area of the Work.

D. Tobacco products, alcoholic beverages, illegal drugs, and weapons are prohibited on the Project Site and will constitute grounds for immediate removal of any employee of the Contractor or of any Subcontractor

from the Project Site. Sexual harassment, profanity, and inappropriate behavior are not permitted on the Project Site and will constitute grounds for immediate removal of any employee of the Contractor or of any of its Subcontractors.

E. No Smoking Policy on Arlington Public Schools' property: Contractors and Subcontractors, including their employees or agents, performing work on APS property shall abide by the no smoking policies applicable to the property.

F. Drug-Free Workplace. For the purposes of this Contract "drug-free workplace" means a Project Site in connection with a specific Purchase Order. All, the employees, Subcontractors and other representatives of Contractor 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 on any Project Site. During the performance of this Contract, the Contractor agrees to:

1. Provide a drug-free workplace for the Contractor's employees;

2. 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 Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

3. State in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free work place; and

4. 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 Subcontractor.

G. Contractor Certification Regarding Criminal Convictions. By signing this Contract, the Contractor affirms the continuing accuracy of the Contractor Certification Regarding Criminal Convictions submitted as Attachment A to its Bid and that it will remain in force throughout the performance of any Work under the Contract. The Contractor acknowledges that its Contractor Certification Regarding Criminal Convictions is applicable not only to Contractor or its employees, but also to its Subcontractors or their employees and Sub-subcontractors or their employees. Contractor shall upon demand from APS provide to APS all information which allowed for the Contractor's certification and which supports that the certification remains current, and further certifies that:

All Contracts with Arlington County School Board, where the Contractor or its employees, or its Subcontractors or their employees, will have direct contact with students on school property during regular school hours, or during school-sponsored activities, shall require the Contractor to certify that neither it nor any of its employees nor any of its Subcontractors' nor any of its Subcontractors' employees, who will have direct contact with students, have been:

(1) convicted of a felony or of a sexually violent offense as defined in Va. Code Ann. § 9.1-902 as mandated by Va. Code Ann. § 18.2-370.5,

(2) convicted of an offense occurring on or after July 1, 2006, where the offender was more than three years older than the victim involving:

(a) the rape of a child under age 13 pursuant to Va. Code Ann. § 18.2-61.A(iii),

(b) forcible sodomy of a child less than 13 years of age pursuant to Va. Code Ann. § 18.2-67.1.A.1,

(c) object sexual penetration of a child under 13 years of age pursuant to Va. Code Ann. § 18.2-67.2.A.1, or

(d) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof.

This requirement is applicable without exception for a person convicted of a felony or of a sexually violent offense as defined in Va. Code Ann. § 9.1-902, but for all other offenses set forth above this requirement does not apply unless the qualifying offense was done in the commission of, or as a part of the same course of conduct of, or as part of a common scheme or plan as a violation of:

(a) abduction or kidnapping in violation of Va. Code Ann. § 18.2-47.A,

(b) abduction with intent to extort money of for immoral purpose in violation of Va. Code Ann. § 18.2-48,

(c) burglary in violation of Va. Code Ann. § 18.2-89,

(d) entering a dwelling house with intent to commit murder, rape, robbery or arson in violation of Va. Code Ann. § 18.2-90,

(e) aggravated malicious wounding in violation of Va. Code Ann. § 18.2-51.2, or

(f) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof.

H. Contractor Prohibited in Assisting Person for New Job if Engaged in Misconduct with Minor.
As a condition of being awarded a Contract, or Contract renewal, the Contractor acknowledges it is prohibited from assisting the elected and appointed officials of APS, its officers, current and former employees?, agents, departments, agencies, boards, and commissions employee, and contractors, including all levels of subcontractors, in obtaining a new job if the Contractor knows or has probable cause to believe that the elected and appointed officials of APS, its officers, current and former employees?, agents, departments, agencies, boards, and commissions employee, and contractors, including all levels of subcontractors, engaged in sexual misconduct regarding a minor or student in violation of law.

17. <u>Permits, Fees and Notices</u>:

A. The Contractor shall comply with all local, state and federal laws, regulations, rules or ordinances applicable to this Contract and the Work to be performed hereunder. The Contractor shall also obtain, at its expense, all permits, inspections, licenses, fees and other authorizations necessary for the prosecution of the Work.

B. The Contractor shall be responsible for giving all notices and complying with all laws, ordinances, rules, regulations and directives of any public authority bearing on the performance of the Work. Should the Contractor determine that the Contract Documents, or any of them, do not conform with such laws, ordinances, rules, regulations and directives in any respect, it shall promptly inform the Owner of such fact in writing. Any required changes shall be made by suitable approved Modification. If the Contractor performs any Work when it knew or in the exercise of reasonable care should have known it to be in conflict with such laws, ordinances, rules or regulations without satisfying its Notice obligations to Owner, such action shall be deemed a failure of this condition precedent to a claim and the Contractor shall accept all responsibility and bear all cost relating thereto.

18. Risk of Loss:

All Work, materials and equipment provided by Contractor shall remain the property of Contractor until accepted by Owner as in compliance with the requirements of the Contract Documents, and all risk of loss prior to acceptance by Owner shall be borne by Contractor.

19. Rejection of Work:

The Owner shall have the authority to reject Work that does not conform strictly to the requirements of the Contract Documents. All costs associated with correction of rejected Work shall be borne by the Contractor.

20. Owner's Right to Stop Work/Right to Correct Deficiencies:

If the Contractor does not correct non-complying Work, or is consistent in not supplying and/or furnishing labor, material, and equipment necessary to Work performance, then the Owner has the right to order the Contractor to stop the Work until such time as the Owner approves the Contractor's written plan to correction of such deficiency. Should the Contractor fail within three (3) working Days following issuance of the stop work order to submit an acceptable corrective plan and thereafter to pursue the corrective plan with due diligence, the Owner has the right, after three (3) days written notice, to correct the deficiencies. In such event the Contractor shall pay to the Owner the Owner's cost of correcting the deficiencies, including any charges for special inspections or tests, plus a markup of ten percent (10%) to cover administrative costs. The Owner's exercise of the right to correct deficiencies shall in no way prejudice or limit any other remedy that the Owner may have.

21. Indemnification:

The Contractor covenants to save, defend, hold harmless, and indemnify the Owner, Arlington County School Board, and all of its elected and appointed officials, officers, employees, agents, departments, agencies, boards, and commissions from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs, and attorney's fees, and all reasonable and customary costs of litigation), charges, liability, or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions in performance or nonperformance of the Work. This indemnification obligation shall survive the termination of this Contract.

22. Payment:

A. Invoices unless otherwise specified in the Contract or in the Purchase Order shall be submitted immediately upon completion of the shipment or Services. If shipment is made by freight or express, the original Bill of Lading properly receipted, must be attached to the invoices. Mail invoices, as applicable, to:

Arlington Public Schools
Syphax Education Center
Finance Office
2110 Washington Blvd., 4th Floor
Arlington, Virginia 22204

B. Upon receipt of an invoice, the Owner shall review the Work to determine if the invoice is consistent with the Work in place. The Contractor shall submit such additional information as may be reasonably requested by the Owner to substantiate the amount billed.

C. Payments will be made within thirty (30) days after the later of receipt of an invoice by APS or receipt of additional documentation as requested by APS of all amounts within the invoice approved for payment. All payments shall be net of any prompt payment discount. In connection with any prompt payment discount, time shall be computed from the date of the invoice. For the purpose of earning the discount, payment shall be considered to have been made on the date that appears on the payment check or the date on which an electronic funds transfer for the payment was made.

D. APS is exempt from the payment of any federal excise tax or Virginia Sales Tax. The APS Federal Excise Tax Number is 54-6001128. Contractors located outside the Commonwealth of Virginia may charge and

collect their local and or state sales tax when the Purchase Order calls for materials to be picked up by APS at the Contractor's place of business outside Virginia.

E. Notwithstanding the foregoing, no less than ninety-five (95%) of the Contract Price stated in the Purchase Order shall be paid until the Owner is satisfied that the Work is Complete.

F. **Price Reduction**. If at any time after the date of Bid Opening the Contractor makes a general price reduction in the comparable price of any Goods or service covered by the Contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to the Contract for the duration thereof, including any extensions. Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of a Good or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers generally comparable to Owner which was used as the basis for Contractor's Bid. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a "general reduction" under this provision. The Contractor shall submit its invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the Contract Documents. The Contractor, in addition, will within ten (10) days of any general price reduction, Notify the Procurement Director/Procurement Agent of such reduction by letter. Failure to do so may lead to termination of the Contract. Upon receipt of any such Notice of a general price reduction all ordering offices will be duly notified by the Procurement Director/Procurement Agent. The Contractor, if requested, shall furnish, within ten (10) days after the expiration or termination of the Contract a statement certifying either (1) that no general price reduction, as defined above, was made after the date of the Bid Opening, or (2) if any such general price reductions were made, that as provided above, they were reported to the Procurement Director/Procurement Agent within ten (10) days, and ordering offices were billed at the reduced prices. Where one or more such general price reductions were made, the statement furnished by the Contractor shall include with respect to each price reduction (1) the date when notice of any such reduction was issued, (2) the effective date of the reduction, and (3) the date when the Procurement Director/Procurement Agent was notified of any such reduction.

23. Audit:

The Owner and its authorized representatives shall have access to all records necessary to perform a complete audit of the Contractor for the purposes of verifying that the certified cost or pricing data submitted were accurate, complete and current. The Owner shall, until the expiration of five (5) years from the date of final payment under this Contract, have the right to examine and copy those books, records, documents, papers and other supporting data which involve transactions related to this Contract or which permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein (the "Records"), and the Contractor hereby covenants to maintain the Records in good order for such time and to deliver promptly the Records to the Owner upon request. There shall be no charge to Owner for conducting any such audit.

24. Award of Subcontracts and Other Contracts for Portions of the Work:

A. The Contractor shall not enter into any Subcontract with any Subcontractor who is suspended or debarred from participating in any contracting programs by the Commonwealth of Virginia, by any public body within the Commonwealth of Virginia, by the United States government, or by any other state or public body within any other state.

B. The Contractor shall not enter into any Subcontract with any Subcontractor who or which is not qualified to do business in Virginia in compliance with applicable law or does not have in effect all licenses and trade certifications required by federal, state or local law to perform the Services or to provide the Goods which are the subject of the Subcontract.

C. Upon request, the Contractor promptly shall file with the Owner a copy of any one or more of its Subcontracts. The Owner has the right to reject any Subcontractor it finds not to be qualified to perform the Work.

D. No action by the Owner shall relieve the Contractor of any of its responsibilities, duties and liabilities under the Contract Documents. The Contractor shall be responsible to the Owner for the acts, defaults, or omissions of the Contractor's Subcontractors and of its Subcontractors' officers, authorized representatives and employees.

E. Nothing contained in the Contract Documents or in any Subcontract shall operate to, or otherwise have the effect of, creating a contractual relationship between the Owner and any Subcontractor.

25. <u>Subcontractor and Sub-Subcontractor Agreements</u>:

Work performed by a Subcontractor or a Sub-subcontractor shall be defined by a signed agreement between a Subcontractor and the Contractor, or between a Sub-subcontractor and a Subcontractor, as applicable. Each such agreement shall:

A. Not contain a provision which purports to negate, conflict with or otherwise compromise the requirements of the Contract Documents.

B. Not contain a provision which purports to adversely affect the rights of the Owner as such rights are defined in the Contract Documents.

C. Contain appropriate provisions to give the Contractor the same power to terminate the Subcontract that the Owner may exercise to terminate the Contractor under the provisions of these Contract Documents. The Contractor shall bear all additional expenses due to its exercising of its rights under this Section.

D. Contain appropriate provisions which bind the Subcontractor to the terms and conditions of this Contract insofar as they are applicable to the Work of the Subcontractor.

E. Contain a requirement that the Subcontractor shall be bound by and subject to the provisions of the payment requirements of the Contractor to the Subcontractor in regard to payments due by the Subcontractor made to its Sub-Subcontractors.

F. Require timely processing of applications for payment and of claims for additional costs, damages, or time in order that the Contractor may in turn promptly process such applications or claims in conformance with the Contract Documents.

G. Contain a provision to the effect that the Owner and its authorized representatives will, until five (5) years from the date of final payment under the Subcontract, have access to and the right to examine and copy those books, records, documents, papers and other supporting data which involve transactions related to the Subcontract.

H. Contain the same Character and Competency requirements as appear in these Terms and Conditions and require the completion by the Subcontractor and its Sub-subcontractors of the Contractor Certification Regarding Criminal Activity and Employee Certification Regarding Criminal Activity.

I. Waive the rights of either party against the other in regard to claims for fire or other peril covered by the property insurance required by these Terms and Conditions. Such waiver shall not exclude either party from rightful access to the proceeds of such insurance.

J. Contain a provision imposing upon the Subcontractor the obligations and restrictions of Section 51of these General Conditions.

26. Responsibility for Those Performing the Work:

The Contractor shall be responsible and accountable to the Owner for the acts and omissions of the Contractor's employees in connection with the performance of the Work and for any Subcontractors or other persons performing any of the Work under a Contract with the Contractor or a Contract with a Subcontractor or Sub-subcontractor.

27. Payment of Subcontractors:

A. Within seven (7) days after receipt of payment from the Owner, the Contractor shall:

1. Pay each Subcontractor an amount equal to the percentage of the Work attributable to such Subcontractor; or

2. Notify the Owner and the Subcontractor in writing of the intention to withhold all or part of the amount due a Subcontractor and state the reason for such withholding.

3. In the event the Contractor fails to submit a timely Application for Payment, and that failure is due exclusively to the actions of the Contractor, the Subcontractor shall have the right to be paid by the Contractor upon demand of the amounts due.

4. The Contractor shall pay interest on amounts owed to the Subcontractor which remain unpaid seven (7) days after the Contractor's receipt of payment from the Owner. Interest on such amounts shall accrue at the rate of one percent (1.0%) per month. Amounts owed the Subcontractor which have been withheld as permitted herein shall not accrue interest. Interest on amounts otherwise not paid to the Subcontractor when due under the terms of the Subcontract shall bear interest at the rate of one percent (1%) per month unless the written Subcontract otherwise provides.

B. Information concerning percentages of completion of work performed by a Subcontractor as shown in an Application for Payment may be made available to that Subcontractor at the sole discretion of the Owner.

C. Insurance proceeds received by the Contractor under the insurance policies required by these Terms and Conditions shall be equitably distributed to the Subcontractors affected by the insured loss.

D. The Contractor's obligation to pay an interest charge to a Subcontractor is not an obligation of the Owner. A Contract Modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

28. Owner's Right to Award Separate Contracts:

A. The Owner has the right to award separate Contracts of the same or a similar nature on the same or similar Project Sites, or for other work on the same Project Sites.

B. When separate Contracts are awarded, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Contract for construction.

C. At no additional cost to the Owner, the Contractor shall coordinate the Work with the activities of each separate Contractor with the intent of each Contractor being able to complete its Work in the most time efficient and cost efficient manner under the circumstances.

D. If part of the Contractor's Work depends for proper execution or results upon construction or operations by a separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner in writing any apparent discrepancies or defects in such construction or operations performed by a separate Contractor that would render it unsuitable for such proper execution and results. Failure of the Contractor to report such apparent discrepancies and/or defects, or to discover such defects or discrepancies which in the exercise of due diligence as a reasonably competent contractor reasonably should have been discovered, shall constitute an acknowledgment that the separate Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work.

29. Royalties and Patents:

The Contract Price includes all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the Work. Whenever the Contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the use thereof is understood to have been included in the Contract Price and the Contractor shall indemnify and save harmless the Owner and Owner's Representative, their officers, agents and employees from any and all claims for infringement by reason of the use of any such patented design, device, tool, material, equipment, or process to be performed under the Contract, and shall indemnify the Owner, its officers, agents, authorized representatives, and employees for any costs, expenses and damages which may be incurred by reason of any such infringement at any time during the prosecution and after the completion of the Work. This obligation to defend, hold harmless and indemnify shall include but is not limited to attorneys' fees and all customary and reasonable costs of litigation and expert consultation and testimony. If a Purchase Order contains a direction requiring use of any design, device, material or process which is subject to patent, trademark or copyright protection which Contractor contends was not contemplated by and included in the Pricing Schedule, the Contractor shall give Notice thereof to Owner prior to proceeding with the Work and await direction from the Owner. If the Contractor proceeds with the Work without giving such Notice or without receiving direction from the Owner, the Contractor shall be responsible for all royalties and costs as provided in this Section.

30. Acceptance of Defective or Non-Conforming Work:

The Owner may accept any defective or non-conforming Work; provided, however, that in such event the Purchase Order Price shall be reduced by an appropriate and equitable amount to account for such defect or nonconformity. Such adjustment shall be effected whether or not final payment has been made. Any such acceptance shall not constitute a waiver of approval of the performance requirements of the Contract Documents.

31. Force Majeure:

A. The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond control of the Contractor, and outside and beyond the scope of the Contractor's then current, by industry standards, disaster plan, that make performance impossible or illegal, unless otherwise specified in the Contract.

B. APS shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond control of APS that make performance impossible or illegal, unless otherwise specified in the Contract. The period hereinabove specified for the completion of his Work shall be extended by such time as shall be fixed by the Owner.

C. No such extension of time shall be deemed a waiver by the Owner of its right to terminate the Contract for abandonment or delay by the Contractor as herein provided or to relieve the Contractor from full responsibility for performance of his obligations hereunder.

32. Contractor's Insurance:

A. Prior to commencing any Work, and as a condition precedent to any obligation of the Owner to make any payment to the Contractor, the Contractor shall provide a Certificate of Insurance to the Procurement Director/Procurement Agent confirming that the Contractor has in force the coverage required below prior to the start of any Work under the Contract, and shall maintain such insurance until the expiration or termination of the Contract. All required insurance must be provided by insurers authorized to do business in the Commonwealth of Virginia and acceptable to APS. The minimum insurance coverage shall be:

1. Workers Compensation – Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employer's liability at the state statutory limits. For construction Contracts, if any Subcontractors are involved, the Subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or Offeror further certifies that the Contractor and any Subcontractors will maintain these insurance coverages

during the entire term of the Contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the Contract shall be in noncompliance with the Contract.

2. Commercial General Liability - $1,000,000 per occurrence with $2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.

3. Additional Insured – Arlington Public Schools and Arlington County School Board shall be named as additional insureds in the Contractor's Commercial General Liability policy; confirmation of the Additional Insured shall be typed on the certificate.

4. Sexual Abuse and Molestation coverage in the amount of $500,000 per occurrence with $1,000,000 annual aggregate.

5. Cancellation – A thirty (30) day notice of cancellation or non-renewal in writing shall be furnished by the Contractor's insurance carrier(s) or insurance agent(s) to Procurement Director/Procurement Agent.

6. Contract Identification – The insurance certificate shall state the Contract number and title.

7. Business Automobile Liability - $1,000,000 Combined Single Limit (Owned, Non-owned, and Hired). Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)

B. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work, and for all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the Work, until final acceptance of the Work by APS.

C. No acceptance or approval of any insurance by APS shall be construed as relieving or excusing the Contractor from any liability of obligation under the Contract Documents.

D. The Contractor shall be responsible for the Work and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the Work.

E. The Contractor shall be as fully responsible to APS for the acts and omissions of its Subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by Contractor.

33. <u>Default and Termination</u>:

A. Contractor's Default

1. The following shall constitute Event of Default by Contractor:

a. If the Contractor fails to begin the Work when required to do so; or

b. If, at any time during the progress of the Work, the Owner determines that the Contractor is not prosecuting the Work with reasonable speed and diligence, or is delaying the Work unreasonably or unnecessarily; or

c. If the force of workmen or the quality or quantity of material furnished is not sufficient to ensure completion of the Work within the specified time and in accordance with the Contract Documents; or

d. If the Contractor fails to make prompt payments to suppliers or to Subcontractors for Work performed in connection with the Contract; or

e. If the Contractor fails in any manner of substance to observe the provisions of this Contract.

2. Upon the occurrence of an Event of Default by Contractor, the Owner may declare the Contractor in default, in whole or in part, and give to the Contractor three (3) Days written Notice to cure such default. If Contractor fails to cure such default within such three (3) day period, or within such longer time as the Owner, in its sole discretion, may prescribe, the Owner shall have the right to do any one or more of the following in any combination:

a. Have the defaulted Work performed by others and charge the Contractor the cost thereof, plus an administrative fee of ten percent (10%) to cover all associated costs of administration and overhead;

b. Supplement Contractor's workforce and charge the Contractor the cost thereof, plus an administrative fee of ten percent (10%) to cover all associated costs of administration and overhead;

c. Repair or replace any defective Work and charge the Contractor the cost thereof, plus an administrative fee of ten percent (10%) to cover all associated costs of administration and overhead;

d. Withhold payments due the Contractor and use such payments to satisfy any claims for moneys owed by the Contractor in connection with the Contract, in accordance with any provisions of the Contract Documents;

e. Terminate the Contractor's performance of the Contract in whole or in part.

3. Without prejudice to any other rights or remedies the Owner may have, the Owner shall have the right to terminate the Contract immediately upon written notice to the Contractor or, in the Owner's sole discretion, exercise any other rights available to it for default, upon the occurrence of any of the following:

a. Institution of legal proceedings by others than the Owner in such manner as to interfere with the progress of the Work and to potentially subject the Owner to the peril of litigation or outside claims; or

b. Adjudication of the Contractor as a bankrupt or an assignment for the benefit of creditors by Contractor, the dissolution of the Contractor, or if a sole proprietorship the death or determination of incompetence of the Contractor; or

c. Entry of an order in any proceeding instituted by or against the Contractor granting an extension of the time of payment, composition, adjustment, modification, settlement or satisfaction of its debts or liabilities; or

d. Appointment of a receiver or trustee for the Contractor or the Contractor's property; or

e. Assignment of the Contract or any part thereof without the prior written consent of the Owner; or

f. Assignment by the Contractor of any rights, moneys, or claims hereunder in whole or in part, otherwise than as herein specified; or

g. Abandonment of the Work to be done under this Contract.

4. Immediately, but no later than three (3) days after receipt of Notice that it is in default hereunder, the Contractor shall discontinue all further operations in connection with the Work, or such specified part thereof, and shall immediately vacate the Project Site, or such specified part thereof, leaving untouched all plant, materials, equipment, tools, supplies and job site records.

5. In the event the Owner declares the Contractor in default in accordance with the provisions of the Contract Documents with respect to a portion of the Work but not the Work as a whole, the Contractor shall discontinue such portion of the Work declared in default, shall continue performing the remainder of the Work in strict conformity with the terms of the Contract and shall not hinder or interfere with any other Contractor or persons whom the Owner may engage to complete the Work for which the Contractor was declared in default. The expense of such completion, plus an administrative fee of ten percent (10%) to cover overhead and administrative costs, shall be paid by the Contractor to the Owner as provided in the Contract Documents.

6. In the event the Owner terminates the Contract for default and it subsequently is determined by any means that the termination was without sufficient justification, the termination shall be deemed to have been a termination for convenience and the Contractor's damages shall be limited to the provisions of Section 33.C. Termination for Convenience.

B. Termination for Failure of Funding: All funds for payments by APS under this Contract are subject to the availability of an annual appropriation for this purpose by the Arlington County School Board. In the event of non-appropriation of funds for the Goods or Services provided under this Contract, APS will terminate this Contract, without termination charge or other liability to APS, on the last day of the then current fiscal year or when the appropriation made for the current year for the Services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor. APS will exert reasonable effort to give thirty (30) Days prior written notice, but failure to give such Notice shall be of no effect and APS shall not be obligated under this Contract beyond the date of termination.

C. Termination for Convenience: Notwithstanding any other rights of the Owner to terminate this Contract, the Owner shall have the right to terminate this Contract, in whole or in part, at its own convenience for any reason by giving seven (7) days prior written notice of termination to the Contractor. In such event, the Contractor shall be paid an amount equal to the lesser of: (1) the actual cost of any Work actually performed or in place and the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof, plus 10%. Each subcontract shall contain a similar termination provision for the benefit of the Contractor and the Owner. The Contractor shall not be entitled to receive anticipated profits on unperformed portions of the Work. The Owner shall have the right to employ an independent accounting firm to verify any amounts claimed by the Contractor to be due under this Section. In the event a termination by the Owner for default, in whole or in part, subsequently is determined to have been without sufficient justification, such termination shall be deemed a termination for convenience and the Contractor's remedies shall be limited as provided in this Section.

34. Hazardous Substances: (Intentionally Deleted)

35. Conflict of Interest:

This Contract incorporates by reference Article 9 of the Arlington Public Schools Procurement Resolution as well as all state and federal laws relating to ethics, conflict of interest, or bribery, including but not limited to Va. Code Ann. § 2.2-4367 through § 2.2-4377, Ethics in Public Contracting; the State and Local Government Conflict of Interests Act (§ 2.23100, et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438, et seq.), and 3 (§ 18.2-446, et seq.) of Chapter 10 of Title 18.2.

36. Immigration Reform and Control Act of 1986:

The Contractor certifies that it does not and will not during the performance of the Contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986.

37. Employment Discrimination by Contractor Prohibited:

During the performance of this Contract the Contractor agrees as follows:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, sexual orientation or 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 Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor 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.

D. The Contractor will include the provisions of the foregoing Sections A, B, and C in every Subcontract of over $10,000.00, so that the provisions will be binding upon each Subcontractor or vendor.

E. Nothing contained in this provision shall be deemed to require the Contractor to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex, age, sexual orientation or national origin on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, age, sexual orientation or national origin employed by such Contractor in comparison with the total number or percentage of persons of such race, color, religion, sex age or sexual orientation or national origin in any community or in the state.

38. Assurances of Compliance:

The Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended and Title VI of the Civil Rights Act.

39. Small, Minority, Women Owned and Service Disabled Veterans Business Enterprises and Employment Services Organizations:

A. The Arlington County Human Rights Ordinance, the Virginia Public Procurement Act, and relevant Federal and State Laws, orders and regulations, require Arlington Public Schools to ensure that its procurement practices are non-discriminatory and promote equality of opportunity for Small and Minority Business Enterprises.

B. In seeking Subcontractors, suppliers and vendors necessary to perform the Work, the Contractor shall encourage the participation of small businesses, women-owned businesses, minority-owned businesses, service disabled veteran-owned businesses, and employment services organizations as follows:

1. At a minimum, for any portion of the Work the Contractor is not going to perform with its own forces, the Contractor shall contact the Commonwealth of Virginia Department of Minority

Business Enterprise to obtain a list of certified businesses in these categories available to perform such work or provide such materials or equipment. The Contractor shall directly solicit bids from at least one certified business in each category to perform such work or provide such materials or equipment, but shall not be obligated to give any preference to any such business in the award of Subcontracts or materials/equipment supply Subcontracts.

2. Identification and direct solicitation of other such businesses by other means is strongly encouraged.

3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such businesses.

4. Establishing delivery schedules, where the requirements of the Contract permit, which encourage participation of such businesses.

C. As used in this Section:

1. "Minority individual" means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

   a. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

   b. "Asian American" means a person having origins in any of the original peoples of the far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

   c. "Hispanic American" means a person having origins in any of the Spanish speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

   d. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

1. "Employment Service Organization" means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

3. "Minority-owned business" means a business that is at least 51 percent owned by one or more minority individuals who are United States citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are United States citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.

4. "Service disabled veteran" means a veteran who (i) served on active duty in the United States military ground, naval or air service, (ii) was discharged or released under conditions other than

dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

5. "Service disabled veteran-owned business" means a business that is at least 51 percent owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

6. "Small business" means a business, independently owned and controlled by one or more individuals who are United States citizens or legal resident aliens, and together with affiliates has 250 or fewer employees, or annual gross receipts of $10,000,000 or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

7. "Women-owned business" means a business that is at least 51 percent owned by one or more women who are United States citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more women who are United States citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

40. HIPAA Compliance:

Contractor shall be responsible for determining the applicability of, and shall comply with as applicable, all legislative and regulatory requirements of privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

41. Governing Law:

The Contract Documents shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of laws principles, and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing the Work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

42. Successors, Assigns and Legal Representatives:

This Agreement shall not be assigned, sublet or transferred, in whole or in part, by operation of law or otherwise, by either of the parties hereto except with the prior written consent of the other or as otherwise provided in the Contract Documents. Owner shall be under no obligation to agree to any requested assignment, sublet or transfer. Owner will not consent to any requested assignment, sublet or transfer to any entity who was an unsuccessful Bidder, who was deemed not to be qualified, or who was or is deemed not to be responsible. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall operate to release or discharge the assignor from any duty or responsibility under this Agreement.

43. Non-Endorsement Clause for Contracts & Agreements:

Arlington Public Schools may be identified as a "Participant" in the Goods or Services with the following statement added, "This shall not constitute an endorsement of any products or Services". For further information, please contact the Arlington Public Schools School and Community Relations office.

44. Advertising and Use of Proprietary Marks or Logos:

Contractor shall not use the name of Arlington Public Schools (APS) or refer to APS, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of APS. In no event may Contractor use a proprietary mark of APS without receiving the prior written consent of APS.

45. Student Data Usage and Privacy Agreement:

As a condition of awarding a Contract for Work that requires the Contractor to have access to student data, the Contractor is required to sign the Student Data Usage and Privacy Agreement (SDUPA).

46. Confidential Information:

The Contractor, and its employees, agents, and Subcontractors, hereby agree to hold as confidential all APS information obtained as a result of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall take reasonable measures to ensure that all of its employees, agents, and Subcontractors are informed of, and abide by, this requirement.

47. APS Employees:

No employee of APS shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

48. Survival of Terms:

Any provision of this Contract which by its terms or as necessary to carry out its purpose or intent is intended to survive the expiration or termination of this Contract shall so survive. The specific statement of survival in any provision shall not affect the survivable nature of any other provision.

49. Arbitration:

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and that any references to arbitration are expressly deleted from the Contract.

50. ADA Compliance:

Compliance with the Americans with Disabilities Act of 1990 ("ADA") shall be the sole responsibility of the Contractor. The Contractor shall defend and hold APS harmless from any expense or liability arising from the Contractor's non-compliance therewith. The Contractor's responsibilities related to ADA compliance shall include, but not be limited to, the following:

A. Access to Programs, Services and/or Facilities: The Contractor shall ensure its programs; Services and facilities are accessible to persons with disabilities. If a particular facility or program is not accessible, the Contractor shall provide equivalent Services in an accessible alternate location or manner to ensure that persons with disabilities are not denied access to Services.

B. Effective Communication: The Contractor, upon request, shall provide appropriate aids and Services leading to effective communication for qualified persons with disabilities so they can participate equally in the Contractor's programs, Services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments, as required by the ADA.

C. Modifications to Policies and Procedures: The Contractor shall make the necessary modifications to its policies and procedures to ensure that people with disabilities have an equal opportunity to enjoy the Contractor's programs, Services, and activities, as may be required by the ADA. For example, individuals with service animals are welcomed in the Contractor's offices or facilities, even where pets are generally prohibited.

D. The Contractor shall not place a surcharge on a person with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/Services or reasonable modifications of policy.

E. Employment: The Contractor shall not discriminate on the basis of disability in its hiring or employment practices.

F. Responding to inquiries from the U.S. Department of Labor.

51. Intellectual Property Indemnification:

A. The Contractor warrants and guarantees that no intellectual property rights (including, but not limited to, copyright, patent, mask rights and trademark) of third parties are infringed or in any manner involved in or related to the Services provided hereunder.

B. The Contractor further covenants for itself, its employees, and Subcontractors to save, defend, hold harmless, and indemnify APS, and all of its officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by APS. If the Contractor, or any of its employees or subcontractors, uses any design, device, work, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Amount includes all royalties, licensing fees, and any other costs arising from the use of such design, device, work, or materials in any way involved with the Work. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after Notice by APS, the Contractor fails or refuses to fulfill its obligations contained in this Section, the Contractor shall be liable for and reimburse APS for any and all expenses, including but not limited to, reasonable attorney's fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by APS and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

52. Antitrust:

By entering into this Contract, the Contractor conveys, sells, assigns and transfers to APS all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the Goods or Services purchased or acquired by APS under this Contract.

53. Report Standards:

Reports or written material prepared by the Contractor in response to the requirements of this Contract or request of the Project Officer shall, unless otherwise provided for in the Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Project Officer, and shall be submitted for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with these requirements shall be borne by the Contractor.

When submitting documents to APS, The Contractor shall comply with the following guidelines:

All submittals and copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;

All submittals must be in the required tabular format in a binder.

Report covers / binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable);

The use of plastic covers or dividers should be avoided; and

Unnecessary attachments or documents not specifically asked for should not be submitted, and superfluous use of paper should be avoided.

54. Arlington Public Schools Procurement Resolution and Policies:

The Procurement Agent has no power to change or waive any provision or requirement of the Procurement Resolution, any policies or regulations of the Arlington County School Board, or any applicable provisions of Arlington County ordinances or regulations, all of which are incorporated herein.

55. No Waiver of Sovereign Immunity:

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by APS pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of APS. The parties intend for this provision to be read as broadly as possible.

56. Headings:

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading refers.

57. Accessibility of Web Site:

If any work performed under this Contract results in design, development, maintenance or responsibility for content and/or format of any APS websites, or APS' presence on other party websites, the Contractor shall perform such work in compliance with the requirements set forth in the U.S. Department of Justice document entitled "Accessibility of State and Local Government Websites to People with Disabilities." The document is located at: http://www.ada.gov/websites2.htm.

58. Entire Agreement:

The Contract Documents constitute the entire agreement between the parties pertaining to the Work and supersedes all prior and contemporaneous agreements, statements and understandings of the parties in connection therewith.

End of Terms and Conditions

Attachment E

Contractor Certification

Regarding Criminal Convictions

The completed form from the Contractor is a condition precedent to the award of the Contract.

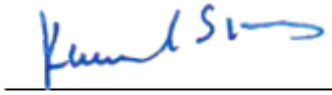
As the official authorized to enter into this Contract on behalf of my organization, I certify that the Contractor, its employees, its Subcontractor(s) and their employees, who will have direct contact with students either on or off school property either during regular school hours or during school-sponsored activities during the performance of this Contract, has not been convicted of:

1. A felony or of any offense involving the sexual molestation, physical or sexual abuse, or rape of a child;
2. A sexually violent offense as defined in Va. Code Ann. § 9.1-902;
3. Any of the offense listed below occurring on or after July 1, 2006 in which the offender was more than three years older than the victim, when the offense was done in the commission of, or as a part of the same course of conduct of, or as part of a common scheme or plan to commit, (i) abduction or kidnaping in violation of Va. Code Ann. § 18.2-47 or § 18.2-48, (ii) burglary in violation of Va. Code Ann. § 18.2-89, (iii) entering a dwelling house with intent to commit crimes in violation of Va. Code Ann. § 18.2-90 or Va. Code Ann. § 18.2-91, or (iv) aggravated malicious wounding in violation of Va. Code Ann. § 18.2-51.2., or (v) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof:

    a. Rape of a child under 13 in violation of Va. Code Ann. § 18.2-61;
    b. Forcible sodomy with a child under 13 in violation of Va. Code Ann. § 18.2-67.1; or
    c. Object sexual penetration with a child under 13 in violation of Va. Code Ann. § 18.2-67.2; or
4. A conviction for a crime of moral turpitude.

I understand that a materially false statement regarding this certification is a Class 1 misdemeanor and that conviction of such misdemeanor shall result in the revocation of this Contract and of any related license that I may hold. I declare under penalty of perjury that the foregoing statements are true and correct.

This form must be completed by an authorized official for any organization contracting to provide services under a contract with the Arlington Public Schools or any of its schools or departments, or any subcontractor under such contractor.

22nd Century Technologies, Inc.	
Name of Bidder	Signature
220 Davidson Avenue, Suite 118, Somerset, NJ 08873	Kulpreet Singh - Business Development Manager
Address of Bidder	Name and Title (please type or print)
888-998-7284	April 15, 2020
Telephone	Date

Attachment F

Sample Purchase Order

Standard Purchase Order
Arlington Public Schools

PROCUREMENT OFFICE
2110 Washington Blvd
Arlington, Virginia 22204
Telephone: (703) 228-6123

ACCOUNTS PAYABLE
2110 Washington Blvd
Arlington, Virginia 22204
Telephone: (703) 228-6121
Email: aps.payables@apsva.us

Please note that our billing address has changed.

Unless otherwise instructed, please send invoices to the address above, Attn: Accounts Payable.

Purchase Order	2100000
Purchase Order Date	08-JUL-2020
Change Order Number	0
Change Order Date	
Procurement Specialist/Phone	Thanh Thai 703-228-2411
Requisitioner/Ph#/Email	O'Grady, Matthew Liam 703-228-6012 matt.ogrady@apsva.us
FEIN	54-6001128
Website: https://www.apsva.us/procurement-office/	

This PURCHASE ORDER NUMBER shown above must appear on all invoices, packing slips & related correspondence. For questions regarding the order, contact the REQUISITIONER shown above.

SUPPLIER: SLATE ROCK & GRAVEL COMPANY
301 COBBLESTONE WAY
Bedrock AZ 86001

Ship To: Arlington Public Schools
Finance
2110 Washington Blvd
Arlington, VA 22204

Payment Terms	Freight Terms	FOB
NET 30	Prepaid	Destination

Line	Vendor Part	Item Description	Due Date	Quantity	UOM	Unit Price	Amount
1		Rocks	09-JUL-2020	100.00	Each	$1.00	$100.00

The Purchase Order Terms and Conditions found on the Arlington Public Schools Procurement Office Website, at the link provided below, are incorporated in, and become part of, this contract. It is the responsibility of the Vendor to carefully read and understand the Purchase Order Terms and Conditions.

1 of 1

https://www.apsva.us/wp-content/uploads/2020/07/2020-07-01-Purchase-Order-TsCs.pdf

IMPORTANT: There have been incidents of scammers pretending to be school representatives and ordering thousands of dollars of goods. Purchases by APS are authorized only if an APS Purchase Order is issued in advance of the transaction, indicating that the ordering agency has sufficient funds available to pay for the purchase. Vendors providing goods or services without a signed APS Purchase Order, do so at their own risk.

Authorized by:

David J. Webb, C.P.M.
Director of Procurement

Purchase Order Total: $100.00

Attachment G

Certificate(s) of Insurance

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 12/17/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER InsureYourCompany.com An ISU Network Member 225 Gordons Corner Road Suite 1H Manalapan NJ 07726	CONTACT NAME: Benjamin Levenson PHONE (A/C, No, Ext): (888) 242-4675 FAX (A/C, No): (732) 862-1177 E-MAIL ADDRESS: Ben@insureyourcompany.com
INSURED 22nd Century Technologies Inc 220 Davidson Avenue, Suite 118 Somerset NJ 08873	INSURER(S) AFFORDING COVERAGE / NAIC # INSURER A: Atlantic Specialty Insurance Company 27154 INSURER B: Wesco Insurance Company 25011 INSURER C: Hartford Insurance 30104 INSURER D: INSURER E: INSURER F:

COVERAGES **CERTIFICATE NUMBER:** 116535 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR X CGL/Auto Deductible $2500 X Contractual Liability GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY X PRO-JECT X LOC OTHER:	X	X	711016584-0001	02/07/2020	02/07/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 300,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
A	AUTOMOBILE LIABILITY ANY AUTO X ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS	X	X	711016584-0001	02/07/2020	02/07/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) Deductible	$ 1,000,000 $ $ $ 50,000 $ 1,000
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 10,000	X	X	711016584-0001	02/07/2020	02/07/2021	EACH OCCURRENCE AGGREGATE	$ 12,000,000 $ 12,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: N If yes, describe under DESCRIPTION OF OPERATIONS below	N / A	X	WWC3483989	07/31/2020	07/31/2021	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000
A	Professional Liability			760010565-0001	02/07/2020	02/07/2021	$10,000,000 Each Claim / $10,000,000 Aggregate	
C	3rd Party Fidelity Crime Bond			13TP0322385	02/07/2020	02/07/2021	$5,000,000 Each Loss / $5,000,000 Aggregate	
A	Cyber Liability			760010565-0001	02/07/2020	02/07/2021	$5,000,000 Each Claim / $5,000,000 Aggregate	
C	EPL-Employment Practices Liab.			13KB0343846	11/18/2020	11/18/2021	$1,000,000 Each Claim / $1,000,000 Aggregate	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Contract 45FY20-4 Nursing Services (RN, LPN, & CNA)

CERTIFICATE HOLDER	CANCELLATION
Arlington Public Schools Syphax Education Center 2110 Washington Blvd., 4th Floor Arlington VA 22204	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Benjamin Levenson

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Attachment H

Student Data Usage and Privacy Agreement

This Student Data Usage and Privacy Agreement ("SDUPA") dated 12/22/2020 is between **Arlington Public Schools**, located at 2110 Washington Boulevard, Arlington, VA 22204 ("APS" or "Customer") and **22nd Century Technologies, Inc.** located at 220 Davidson Ave., Suite 118, Somerset, NJ 08873 ("Provider")' hereinafter individually a "Party" and collectively "the Parties", APS and Provider mutually agree to the terms of this SDUPA whereby APS will provide the following Data to Provider for the Approved Purposes only.

The Parties hereby agree as follows:

1.0 Definitions

1.1. "Agreement" or "Agreements" shall mean any contract or contracts between APS and the Provider for the provision of any Authorized Services.

1.2 "Approved Purposes" shall mean the use of Data by the Provider for the purposes of providing services authorized by APS in Agreements entered into between APS and the Provider ("Authorized Services") during the term of the SDUPA., and for no other purpose.

1.3 "Data" shall include all Personally Identifiable Information (PII), Education Records as defined by the Family Educational Rights and Privacy Act ("FERPA"), and other non-public information relating directly to APS students. Data include, but are not limited to, student data, metadata, forms, logs, cookies, tracking pixels, and user content.

1.4 "Subcontractors" shall include Provider subcontractors, subcontractors of Providers subcontractors, their subcontractors, and all successor entities.

2 Security Controls

2.1 Provider will store and process Data in accordance with commercially reasonable practices. This includes appropriate administrative, physical, and technical safeguards to secure Data from unauthorized access, disclosure, and use.

2.2 Provider will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.

2.3 Provider will also have a written incident response plan, to include notifying APS, immediately (within one (1) business day) of becoming aware of a security or privacy incident involving Data . Provider agrees to share its incident response plan upon request.

3 Access and Control

3.1 Any Data held by Provider will be made available to APS upon request by APS.

3.2 All Data must remain under the direct control of APS to the extent required by FERPA. Where Data is in possession of Provider, APS may direct Provider to take certain actions with regards to the Data, in conformity with the SDUPA and applicable law.

3.3 Parents and eligible students must be able to access the Data upon request. This request shall occur through APS to ensure only authorized individuals have access to the Data.

3.4 Provider shall use Data solely as necessary to perform Authorized Services. Provider may not access, collect, store, process, or use Data for any reason other than as necessary to provide the Authorized Services.

4 Marketing and Advertising

4.1 Provider may not use any Data to advertise or market to students or their parents.

4.2 Provider may not use Data to target individual students with directed advertisements, and may never directly collect personal information from students under the age of 13.

5 Collection and use of Data

5.1 Solely for purposes of this SDUPA with respect to Data, Provider is deemed a 'School Official' within the meaning of that term as defined in 20 USC §1232g et seq., with a legitimate educational interest to the Data performing services and providing functions which would otherwise be performed by APS staff, for the sole purpose of providing Authorized Services.

5.1.1 No relationship of employer and employee is created by this SDUPA or any Agreement. Provider its sub- contractors, and its employees shall not be employees of APS and shall not have any claim under this SDUPA or any Agreement or otherwise against APS for vacation pay, sick leave, retirement benefits, social security contribution, worker's compensation, disability or unemployment insurance benefits or any other employee benefit of any kind. Provider shall not be the agent of APS, nor shall Provider make any representation to the contrary to any third parties.

5.2 Provider may not sell Data or disclose Data to third parties except under provision 5.4.

5.3 Provider will collect and use Data only for the purpose of fulfilling its duties and providing Authorized Services under any Agreement and for improving Authorized Services under such Agreement.

5.4 APS understands that Provider may rely on one or more Subcontractors to perform Authorized Services under an Agreement. Provider shall share the names of these Subcontractors, including sub-subcontractors, with APS upon request. If Provider intends to provide any

Data which was received from, or created for APS, to a Subcontractor, then Provider shall require such Subcontractor and sub-subcontractor to countersign this SDUPA. APS reserves the right to reject any Subcontractor if, in its sole discretion, APS determines that such subcontractor or sub-subcontractor is unsuitable for performance of the SDUPA. Provider acknowledges and agrees that the Provider's obligations under this SDUPA shall not be assigned to any other person or entity without the prior written consent of APS, which APS shall be under no obligation to grant. Provider shall include in all subcontracts, and require that its subcontractors include in all sub-subcontracts, acknowledgement and agreement that the subcontractor and sub-subcontractor are bound by the terms of this SDUPA, and if so requested by APS, will execute a separate SDUPA as a condition of acceptance by APS as a subcontractor or sub-subcontractor.

6 Data Transfer or Destruction

6.1 Provider will ensure that all Data in its possession and in the possession of any Subcontractors, or agents to which the Provider may have transferred Data, are destroyed or transferred to APS under the direction of APS when the Data are no longer needed to provide Authorized Services, at the request of APS within one (1) month, or as agreed upon between the Parties. Where there is a conflict between applicable law and this SDUPA, the applicable law will prevail.

7 Rights and License in and to use Data

7.1 Parties agree that all rights, including all intellectual property rights, shall remain the exclusive property of APS and Provider has a limited, nonexclusive license solely for the purpose of performing its obligations.

7.2 This SDUPA shall not be construed to give the Provider any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in this SDUPA to provide Approves Services. This includes the right to sell or trade Data.

8 Data De-Identification

8.1 Provider may use de-identified Data for product development, research, or other purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID.

8.2 Provider agrees not to attempt to re-identify de-identified Data and not to transfer de-identified Data to any third party unless that third party agrees not to attempt re-identification.

8.3 De-identified data may be used to improve the Provider's products or services, but may not be provided to third parties or sold.

9 Data Mining

9.1 Provider is prohibited from mining Data for any purposes except as expressly authorized by APS in any Agreement or in this SDUPA. Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited.

10 Modification of Terms of Service

10.1 During the term of the SDUPA, Provider will not materially change its methods for the collection, use, and sharing of Data, including its storage and destruction protocols, without advance notice to and consent from APS.

11 Precedence Over Agreements

11.1 Unless this SDUPA is specifically amended, in the event of a discrepancy between this SDUPA language and the terms and conditions of any Agreements between APS and the Provider relating to Data, the SDUPA language shall take precedence.

ACCEPTED AND AGREED:

ARLINGTON PUBLIC SCHOOLS		CONTRACTOR	
Authorized Signature:	David Webb	Authorized Signature:	Kulpreet Singh
Printed Name	David J. Webb, C.P.M.	Printed Name:	Kulpreet Singh
Title:	Procurement Director / Procurement Agent	Title:	Director- Sales
Date:	December 22, 2020	Date:	12/17/2020