

## Agreement



Arlington Public Schools

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### PROCUREMENT OFFICE

2110 Washington Blvd., Arlington, VA 22204 • Phone: (703) 228-6123

Website: [www.apsva.us](http://www.apsva.us)

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### **Subject: Contract 03FY21 - Toscano Clements Taylor Term Contracts for Architecture and Engineering Services for Miscellaneous Task Work Order Contracts for Arlington Public Schools**

Contract 03FY21 - Toscano Clements Taylor (“Contract 03FY21” or “Contract”), for the provision of Term Contracts for Architecture and Engineering Services for Miscellaneous Task Work Order Contracts for Arlington Public Schools (“the Work”) is entered into as of the date the Procurement Agent signs this Agreement, this 28<sup>th</sup> day of September, 2022; by and between Toscano Clements Taylor LLC, located at 150 West 30<sup>th</sup> St, Suite 701, New York, NY, 10001, hereinafter called “Contractor” and Arlington County School Board, operating as Arlington Public School hereinafter called “APS” or “Owner.”

The professional services to which this Contract is applicable are identified below (“Specialized Services”).

### **Construction Cost Estimating and Value Engineering**

#### **1. Contract Term**

The Initial Contract Term commences on the date the Procurement Agent signs the Contract and will expire on the earlier of (i) July 31, 2023 or (ii) when the cumulative total project fees reach the maximum authorized by the Virginia Public Procurement Act, whichever occurs first.

The 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 three (3) additional one-year periods at the same terms and conditions.

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 Task Work Order Contract was awarded.

**2. Contract Hourly Rates for Contract Term**

APS will pay the Contractor in accordance with the Hourly Rates shown in the Fee Schedule for the staff classifications who may be required to perform the Work. The Hourly Rates shall not be subject to change during the Initial Contract Term. Where the Contractor provides a Lump Sum to perform Work under this Contract, the Contractor shall provide a breakdown showing the Hourly Rates charged and the number of hours worked by each staff classification.

**3. Increases in Hourly Rates for Renewal Contract Terms**

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 for a Renewal Contract Term 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 below.

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, etc.)

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.

**4. Scope of Work**

The Contractor agrees to perform the services described in the Contract Documents (hereinafter the "Work"). The primary purpose of the Work is to obtain the services of a qualified Contractor to provide and implement the Work for each Task Work Order Contract. The Work is more fully described in Attachment A. The Contract Documents set forth the minimum work estimated by APS and the Contractor to be necessary to complete the Work. It shall be the Contractor's responsibility, at the Contractor's sole cost, to provide all Work required by the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of its Work. The Contractor shall be responsible for providing the Work.

**5. Task Work Orders**

Task Work Order Contracts may be issued at any time during the Initial Contract Term and any Renewal Contract Term. A Task Work Order Contract will authorize the Contractor to perform the Work for a lump sum amount at the marked up hourly rates agreed to and set forth in the Fee Schedule. The maximum fee allowed by law for any individual Task Work Order Contract, which includes all fees and reimbursable expenses and contingencies, shall not exceed the total set in Section 4-102 (2) A. of the APS Procurement Resolution, as amended or the Virginia Public Procurement Act. Provided, however, the Contractor shall not commence work under any Task Work Order Contract until a Purchase Order from the Procurement Agent or designee has been received.

It is understood that more than one Task Work Order Contract may, at the Owner's sole discretion, be offered to the Contractor during the Initial Contract Term and any Renewal Contract Terms. Although the potential exists for multiple Task Work Order Contracts being offered to the Contractor during the Initial Contract Term and Renewal Contract Terms, the maximum fees allowed by law for the aggregate of all individual Task Work Order Contracts, which includes all fees and reimbursable expenses and contingencies, shall not exceed the total set in Section 4-102 (2) A. of the APS Procurement Resolution, as amended or the Virginia Public Procurement Act.

APS does not represent or guarantee that the Contractor will receive any Task Work Order Contracts.

## **6. Documents**

The Contract consists of the following documents (“Contract Documents”) all of which are incorporated into and are part of the Contract, and which, in the event of a conflict, shall be given precedence in the order listed, with any Amendment or Modification having precedence over preceding provisions. Any reference to the Contract shall be deemed to include all Contract Documents whether or not so stated. In the event of a conflict within a Contract Document at the same level of precedence, that provision requiring the higher quality of performance or quantity shall prevail. In the event of a conflict which is not resolved by the foregoing, APS shall determine the provision having precedence.

- 1 Agreement #03FY21 and all modifications properly incorporated into the Agreement
- 2 For the requirements and obligations applicable to any particular Task Work Order Contract, the Task Work Order Contract, the detailed Scope of Work, the Task Work Order Contract Proposal, and documentation incorporated in each of the foregoing.
- 3 Attachment A – Scope of Work
- 4 Attachment B – Fee Schedule
- 5 Attachment C – Contractor Certification Regarding Criminal Convictions
- 6 Attachment D – Contract Terms & Conditions
- 7 Attachment E – Non-Disclosure and Data Security Agreement
- 8 Attachment F – Certificate(s) of Insurance

The following are incorporated by reference:

- 9 The Request for Proposal (RFP) and all Addenda, and
- 10 The Proposal Response from the Contractor

Where the terms and provisions of the Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of the Agreement shall prevail over the other Contract Documents.

The Contract Documents set forth the entire Contract between APS and the Contractor. APS and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to this Contract which is not contained in the Contract Documents. The Contract Documents are referred to herein below as the “Contract.”

## **7. 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.

## **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. 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.

**10. Assignments**

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 the Work under any Purchase Order shall be deemed an assignment subject to the restrictions of this Section.

**11. Notices**

Unless otherwise provided herein, all notices and other communications hereunder shall be deemed to have been given when (a) if delivered in person on the date of delivery, (b) if delivered to an agent, such as an overnight or similar delivery service, on the date of delivery, (c) if deposited in the United States mail, postage prepaid, certified or registered, addressed as provided below, upon the date of delivery to the last delivery address provided by the party receiving the notice; or (d) if delivered by email, at 9:00 A.M. on the first business day following the date of transmission if accompanied by proof of receipt. Notice information for the foregoing means of providing notice are follows:

To the Contractor:        Jeannine Nelson  
Principal, Sales & Marketing  
Toscano Clements Taylor, LLC  
16 Oakwood Road  
Huntington, NY 11743  
[j.nelson@tctcost.com](mailto:j.nelson@tctcost.com)

To APS:                     Jeffrey D. Chambers  
Director, Office of Design and Construction  
Arlington Public Schools  
2770 South Taylor Street.  
Arlington, Virginia 22206  
[jeffrey.chambers@apsva.us](mailto:jeffrey.chambers@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](mailto:david.webb@apsva.us)

**12. Binding Agreement**

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

The Work shall be performed in accordance with the above-referenced Contract Documents and is the

complete agreement between APS and the Contractor and may not be altered except by written amendment to the Contract signed by APS and the Contractor signed by APS and the Contractor in compliance with the requirements of the Contract Documents.

The signatures of APS and the Contractor, or their authorized representatives, are set out below in acknowledgment and acceptance of this Contract.

IN WITNESS WHEREOF, APS and Contractor have executed this Agreement as of the date written above.

**Acceptance:**

**Arlington Public Schools**  
Authorized  
Signature: David J. Webb  
Printed Name David J. Webb, C.P.M.  
Title: Procurement Director/Agent  
Date: September 28, 2022

**Toscano Clements Taylor, LLC**  
Authorized  
Signature: Deborah J. Raw  
Printed Name: Deborah Raw  
Title: Contracts Administrator  
Date: September 21, 2022

## **Attachment A**

### **Scope of Work**

During the Contract Term, APS will identify various projects for which Specialized Services will be required under any resulting Contract. Work directed by any given Task Work Order Contract may include one or more tasks as well as any combination or sequence of tasks identified below. Task Work Order Contracts may include coordination with departments internal to APS and may also involve presentations and meetings with citizen groups and review authorities external to APS. Work will be performed primarily on APS owned or leased buildings, or potential purchase or lease buildings.

Where Contracts are awarded to more than one Contractor, APS will determine which Contractor is to be selected on a Task Work Order in accordance with Section 64 of the Contract Terms and Conditions, Contractor Selection and Award of Task Work Orders. APS provides no guarantee that any Contractor awarded a Contract resulting from this RFP will be selected for a Task Work Order Contract.

Once the need for a Specialized Service is determined, a scope of services will be prepared by APS to specify the Specialized Services required, to identify the criteria, limitations and parameters for the Specialized Services and to describe the work product(s) expected. The scope may range from very general to very specific and will reference any related requirements. The Contractor shall provide a written proposal identifying the labor categories, the number of hours of each labor category, and the hourly rate of each labor category for itself and any sub-consultant organization, required to complete the Task Work Order Contract. APS shall create a separate Purchase Order for each Task Work Order Contract and the Contractor shall not commence work prior to receipt of an authorized Purchase Order.

The scope of services for each Task Work Order Contract could include, but is not limited to, one or more of the following project phases/activities:

- A. Feasibility Studies
- B. Educational Specifications
- C. Program Development
- D. Community Engagement
- E. Assessment of Existing Conditions and Building Surveys
- F. Peer Review of Contract Documents
- G. Quality Control/Quality Review
- H. Development of Alternative Concept Designs
- I. Typical Design Phases (Schematic, Design Development, and Construction Documents)
- J. Bidding and Contract Negotiation
- K. Construction Administration
- L. Construction Visits, Inspection, and Closeout
- M. Post Construction

The architectural, civil/surveying, structural, mechanical, plumbing, and electrical portions of the Task Work Order Contract shall be planned and designed by, or under the immediate supervision of, a licensed architect or engineer who has expertise in the particular discipline involved. Any sub-contracted work shall be performed by the consultants, associates, or subcontractors proposed by the Contractor during the selection process as part of the Contractor's team. The Contractor

shall be solely responsible for any Work performed under the Contract by its consultants, associates or subcontractors.

In each awarded Task Work Order Contract, the Contractor must:

- N. Furnish the number of final sets, interim sets, and copies of the work specified in each Task Work Order Contract.
- O. Assure complete, competent, properly coordinated, and thoroughly-checked deliverables.
- P. Maintain security practices to prevent disclosure of information about Task Work Order Contracts to any individual or firm other than to APS except as may be required to obtain quotations for materials and supplies for subcontract work.
- Q. Perform specific tasks and provide applicable drawings, maps, illustrations, and other necessary data as specified in each Task Work Order Contract.

### **Specialized Services**

#### **Construction Cost Estimating and Value Engineering**

Work may include, but is not limited to, preparation of cost estimates that reflect the anticipated cost of the project as reflected in and consistent with the scope of the services provided and review/analysis of alternative design solutions including evaluation of life cycle costing.

Toscano Clements Taylor, LLC  
Arlington Public Schools  
Contract 03FY21



June 14, 2022

**Attachment B**

**Fee Schedule**

**Categories of Staff Classifications, Materials, and Rates**

The hourly rates shall not be subject to change during the Initial Contract Term. Should the Contract be extended ("Renewal Contract Term(s)"), any changes in the hourly rates shall be in accordance with Section 3 of the Agreement, Increase in Hourly Rates for Renewal Contract Terms.

Rates are valid through June 30, 2023

Item No.	Staff Classification	Hourly Rate
1	Principal of Construction Cost Estimating Firm	\$ 327.83
2	Project Manager	\$ 285.88
3	Senior Cost Estimator	\$ 266.36
4	Project Cost Estimator	\$ 204.89
5	Junior Cost Estimator	\$ 129.00
		\$
		\$

**Travel Costs:**

See Contract Terms and Conditions Section 9 Reimbursable Travel-Related Expenses.

**Motor Mileage:**

See Contract Terms and Conditions Section 9 Reimbursable Travel-Related Expenses.

**Other Reimbursable Costs:**

See Contract Terms and Conditions Section 8 Reimbursable Expenses.



## Attachment C

### **Contractor Certification Regarding Criminal Convictions**

Arlington Public Schools  
Request for Proposal (RFP) 03FY21



#### VII. Appendix A

#### 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 sub-contractor(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.**

Toscano Clements Taylor, LLC  
Name of Offeror

*Jeannine M. Nelson*  
Signature

16 Oakwood Road

Jeannine M. Nelson, Principal, Sales + Marketing  
Name and Title (please type or print)

Huntington, NY 11743  
Address of Offeror

631.392.1400  
Telephone

June 17, 2021  
Date

## Attachment D

### Contract Terms and Conditions

1. Standard of Care

In the performance or furnishing of services hereunder, the Contractor and all its agents shall exercise the highest degree of skill and care normally accepted as practices and procedures by members of the same profession for provision of the Work.

2. Responsibility of the Contractor

The Contractor shall be responsible for the quality, technical accuracy, and the coordination of all deliverables and other services furnished by the Contractor under this Contract. The Contractor shall, without additional compensation, correct, or revise any errors or deficiencies in the Work which are discovered within a twelve-month period of final completion of Work.

3. Responsibility for Claims and Liabilities

APS' review, approval, or acceptance of, or payment for, any services or deliverables required under this Contract shall not be construed to operate as a waiver by APS of any rights or of any cause of action arising out of the Contract. The Contractor shall be and remains liable to APS for the accuracy and competency of deliverables, plans, specifications, or other documents.

4. Payment

Contractor will be paid either upon the satisfactory completion and acceptance of each Task Work Order, if the Task Work Order is anticipated to be completed within ninety (90) days, or on a monthly basis if it is anticipated completion of the Task Work Order will take greater than ninety (90) days, and upon the submission of a complete invoice satisfactory to the Project Officer which meets the requirements of this section and other applicable provisions of the Contract Documents. APS will pay the Contractor within thirty (30) calendar days after the date of receipt of a correct (as determined by the Project Officer) invoice approved by the Project Officer. The number of the Purchase Order shall appear on all invoices.

For an invoice to be considered for payment it must be submitted no later than six (6) months following the completion of the Contract Term within which the services were rendered. APS shall have no obligation to make payment of any invoice submitted more than six (6) months following the completion of the Contract Term within which the services were rendered.

5. APS Project Officer

The performance of the Contractor is subject to the review and approval of the APS Project Officer ("Project Officer") who shall be appointed by the Director of the APS department requesting the Work under this Contract. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its Work under the Contract Documents.

6. Adjustments for Change in Scope

APS may order changes in the Work within the general scope of the Work consisting of additions, deletions, or other revisions. No claim may be made by the Contractor that the scope of the Work or of the Contractor's services has been changed requiring adjustments to the amount of compensation due the Contractor unless such adjustments have been made by a written amendment to the Contract signed by APS and the Contractor. If the Contractor proceeds with what it considers to be additional or changed Work for which it is entitled to additional compensation prior to either (i) receiving a written amendment to the Contract signed by APS and the Contractor or (ii) having submitted a timely claim for additional compensation and thereafter receiving a written directive from APS to proceed with the Work, any claim for additional compensation for such Work shall be conclusively barred.

If the Contractor believes that any particular work is not within the scope of the Work or is a material change or otherwise will call for more compensation to the Contractor, the Contractor must immediately notify the Project Officer after the change or event occurs and within ten (10) calendar days thereafter must provide written notice to the Project Officer. The Contractor's notice must provide to the Project Officer the amount of additional compensation claimed, together with the basis therefore and supportive documentation for the amount. The Contractor will not be compensated for performing any work unless a Proposal complying with this subsection has been submitted in the time specified above and a written amendment to the Contract has been signed by APS and the Contractor and a Purchase Order is issued covering the cost of the services to be provided under the Contract Amendment.

7. Additional Services

The Contractor shall not be compensated for any goods or services provided except those included in the Contract Documents and included in the Contract Amount unless those goods or services are covered by a written amendment to this Contract signed by APS and the Contractor and a Purchase Order is issued covering the expected cost of such additional services.

APS may determine the need for additional work by the Contractor. Upon a request from APS, the Contractor shall prepare a cost proposal for any such additional work. No Additional Services shall be performed unless a written amendment to this Contract has been executed by both parties.

Additional services agreed upon by the parties will be billed at the rates set forth in the Fee Schedule.

If the Contractor believes that any particular Work requested by APS or otherwise arising is not within the Scope of Work or is a material change, the Contractor must immediately after the occurrence upon which such contention is based and before beginning such Work notify the Project Officer and the Procurement Agent. The Contractor shall not commence such asserted extra Work until a written amendment to the Contract is signed by APS and the Contractor and APS has issued a Purchase Order for the extra Work, or the Project Officer directs the Contractor in writing to proceed with such asserted extra Work. If APS so directs the Contractor to proceed with the asserted additional Work and no estimate of the cost of such asserted extra Work has been provided to APS the Contractor shall (i) within ten (10) calendar days following written direction from APS to proceed provide to the Project Officer and the Procurement Agent an estimate of the amount claimed; (ii) submit to the Project Officer and the Procurement Agent a statement of the actual costs incurred in performing the asserted extra Work every fourteen (14) days while such Work is ongoing; and (iii) within fourteen (14) days following completion of such Work submit to the Project Officer and the Procurement Agent the actual amount claimed together with the basis therefore and documentary evidence of all costs incurred supporting the amount claimed. Strict compliance with the foregoing requirements is a condition precedent to any right to recover costs claimed for asserted extra Work, but strict compliance alone shall not establish entitlement. Claims for extra Work shall be resolved pursuant to the provisions of Section 41, Dispute Resolution.

8. Reimbursable Expenses

Reimbursable expenses include expenses incurred by the Contractor (including consultants) in performing the Work under a Task Work Order Contract. A maximum of three percent (3%) markup may be applied to reimbursable expenses, except for expense of copying, printing, telephone charges, reproduction of drawings, specifications, and other documents, to which no markup may be applied.

The following expenses incurred by the Contractor, and its subcontractors and consultants, in performing its responsibilities under the Contract will be reimbursed:

- A. Reproduction, incurred by the Contractor using the APS authorized reproduction service providers, of drawings, specifications, and other documents, as required for formal submission to APS or the Arlington County offices. Reproduction services shall be authorized by APS prior to execution of this service.
- B. Models requested by APS.

The cost of any required training materials shall be included in the hourly rates. APS will not pay separately for training materials.

If a Contractor has expenses which it deems to be reimbursable in nature outside the items noted above, the Contractor shall bring these items to the attention of the Project Officer prior to the final negotiation of the Contractor's fees for a Task Work Order Contract and also provide justification for consideration to the Project Officer for approval on such expenses. Any costs or expenses not identified in the Task Work Order Contract as reimbursable are not reimbursable.

9. Reimbursable Travel-Related Expenses

All local travel-related expenses (mileage, parking, bike or car rental; communications and Internet connectivity; meals and entertainment, ) shall be included in the Loaded Hourly Rates of the Work for APS. Local travel is travel commencing inside Virginia, Maryland, and the District of Columbia and finishing inside of Virginia, Maryland, and the District Columbia.

Long distance travel, as authorized by APS, is a reimbursable expense. Long distance travel is considered to be travel commencing inside Virginia, Maryland, or the District of Columbia and finishing outside of Virginia, Maryland or the District Columbia. In these circumstances, travel expenses will be reimbursed in accordance with the GSA Per Diem Rates for the location visited. Mode of transportation shall be the most economic available without upgrades in class or accommodation. APS shall not approve any request for reimbursement of unauthorized long-distance travel. . Reimbursement of reimbursable long distance travel mileage shall be at the current IRS rate.

Non-reimbursable Expenses: The following expenses are not allowable for reimbursement and should not be included in firm fixed price:

1. Alcoholic beverages;
2. Personal phone calls;
3. Self-entertainment activities (including but not limited to pay TV, movies, night clubs, health clubs, theaters, bowling);
4. Personal expenses (including but not limited to laundry, valet, haircuts);
5. Personal travel insurance (including but not limited to life, medical, or property insurance) for air fare or rental cars;
6. Auto repairs, maintenance, and insurance costs for personal vehicles;
7. Travel expenses incurred to obtain or maintain training and/or certificates that are not associated with an employee's job requirements.

If a Contractor has expenses which it deems to be reimbursable in nature outside the items noted above, the Contractor shall bring these items to the attention of the Project Officer prior to the final negotiation of the Contractor's fees for a Task Work Order and also provide justification for consideration to the Project Officer for approval on such expenses. Any costs or expenses not identified in the Task Work Order Contract as reimbursable are not reimbursable.

10. Payment of Subcontractors\*

The Contractor is obligated to take one of the two following actions within seven (7) calendar days after receipt of amounts paid to the Contractor by APS for work performed by any subcontractor under this Contract:

- a. Pay all subcontractors for the proportionate share of the total payment received from APS attributable to the Work performed by the subcontractor under this Contract; or
- b. Notify APS and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after seven (7) calendar days following receipt by the Contractor of payment from APS for Work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subparagraph b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the above provisions may not be construed to be an obligation of APS. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

11. Non-Appropriation\*

All funds for payments by APS under this Contract are subject to the availability of an annual appropriation for this purpose by Arlington County School Board (School Board). In the event of non-appropriation of funds by the School Board for the goods or services provided under this Contract, or substitutes for such goods or services which are as advanced or more advanced in their technology, 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. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) calendar 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 specified in APS's written notice.

12. APS Purchase Order Requirement\*

APS purchases are authorized only if an APS Purchase Order ("Purchase Order") is issued in advance of the transaction, indicating that the ordering school or department has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the order agency. APS will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by APS Procurement Agent. Receipt of a signed Purchase Order issued by APS Procurement Agent before the Work is performed or goods are provided is a condition precedent to any obligation of APS to make payment to the Contractor for such goods or services.

13. Replacement or Augmentation of Key Personnel and Subcontractors

The key personnel and subcontractors submitted by the Contractor in its Proposal and thereafter accepted by APS are considered essential to the Contractor's qualifications. The Contractor may not replace, substitute or augment any key personnel or subcontractor without prior written approval of

APS. A request to replace or substitute any key personnel or subcontractor for any reason, shall be provided to the Project Officer at least fifteen (15) calendar days in advance of such proposed replacement or substitution and the request shall contain sufficient justification, including identification of the proposed replacement or substitute and their qualifications, in sufficient detail to permit evaluation by APS. APS shall be under no obligation to make payment for any Work performed by any replacement or supplemental subcontractor if APS approval for such replacement or supplementation was required but not obtained prior the Work being performed.

Additionally, the Contractor shall not remove or replace the approved key personnel or subcontractor without written approval of APS. In cases of the approved key personnel or subcontractor's prolonged illness or other extended leave of absence, Contractor shall provide an interim key personnel or subcontractor whose continued work on the Work shall be subject to approval by APS.

In the event of the key personnel or subcontractor's resignation or termination from the Contractor's employment, the Contractor shall replace the key personnel or subcontractor with an individual with similar qualifications and experience and only with APS' prior written approval.

Any replacement or substitution of key personnel or subcontractor shall be provided at no cost to APS, including an up to thirty (30) day transition period. APS may deem repeated failure or excessive delay by the Contractor to provide qualified personnel, or qualified replacement personnel, sufficient reason to terminate the Contract in whole or in part.

14. Project Staff

APS has the right of reasonable rejection and approval of staff or subcontractors assigned to the Work by the Contractor. If APS reasonably rejects staff or subcontractors, the Contractor must 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 employees, and employees of any of its subcontractors, shall be the sole responsibility of the Contractor. APS reserves the right to remove immediately any staff or subcontractor at any time during the duration of the Contract if it determines, in its sole discretion, that the employee is not of the level of competence or ability required, is incompetent, careless, or not working in harmony with others, or if the staff or subcontractor is for any other reason found to be unsuitable for the Work. APS reserves the right to reject suggested staff or subcontractor who, in its sole discretion, is not adequately qualified to perform the Work. APS may direct replacement staff or subcontractor when, in its sole discretion, the one currently in an assignment is not adequately qualified to perform the Work. No additional cost shall be payable by APS as the result of the rejection, removal, or directed replacement of any staff or subcontractor.

15. Supervision by Contractor

The Contractor shall enforce strict discipline and good order among the workers performing under this Contract and shall only employ on the Work persons reasonably proficient in the Work assigned.

16. 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, status as a service disabled veteran, or any other basis prohibited by state law related 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 nondiscrimination 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 comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.
- E. The Contractor will include the provisions of the foregoing subsections in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontract or vendor.

17. Employment of Unauthorized Aliens Prohibited\*

In accordance with §2.2-4311.1 of the Virginia Code, the Contractor acknowledges that it does not, and shall not during the performance of this Contract for goods and/or services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

18. Drug-Free Workplace to be Maintained by Contractor\*

During the performance of the Work pursuant to this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of Work done in connection with a specific contract awarded to a Contractor by APS in accordance with the Procurement Resolution, the employees of which Contractor 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.

19. Default, Cure and Termination

- A. The Contract shall remain in force for the Initial Contract Term or any Renewal Contract Term(s) and until APS determines that all of the following requirements and conditions have been satisfactorily met: APS has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, APS shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by APS in its discretion, or for the convenience of APS as provided in these Terms and Conditions.
- B. If APS determines that the Contractor has failed to perform satisfactorily, then APS will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within

at least fifteen (15) days before termination of the Contract takes effect (“Cure Period”). If the Contractor fails to cure within the Cure Period or as otherwise specified in the notice, the Contract may be terminated for the Contractor’s failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by APS prior to such termination unless otherwise barred by the Contract (“Termination Costs”). To be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the Project Officer within fifteen (15) calendar days after the expiration of the Cure Period. Timely submission of Termination Costs is a condition precedent to any obligation of APS to make payment thereof. APS may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

1. If APS terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from APS to the Contractor.
2. Upon any termination for default or breach, the Contractor shall be liable to APS for all costs incurred by APS after the effective date of termination expended by APS to complete the Work covered by the Contract, and for all other costs incurred by APS as a consequence of such default, including but not limited to costs of delay in completing the Work or the cost of repairing or correcting any unsatisfactory or non-compliant Work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to APS upon demand by APS. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to APS, and APS shall be entitled to recover, all damages to which APS is entitled by this Contract or by law, including, and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, and all attorney fees and court costs, and reasonable and customary costs of litigation including but not limited to expert witness fees incurred by APS to enforce or defend any provision of this Contract.
3. Except as otherwise directed by APS in the notice, the Contractor shall stop Work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.
4. In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

#### C. Contractor Responsibility for Damages Without Termination

1. Reimbursement of damages resulting from the Contractor’s errors, omissions or negligent performance of the Work, breaches of the Contractor’s Contract, and failures by the Contractor to comply with the applicable standard of care shall be pursued actively by APS. Within a reasonable time after APS has actual knowledge of such error, omission or negligent performance or breach and has made a determination that there



may be Contractor financial responsibility, the Contractor shall be given Notice of the error, omission, negligent performance or breach and that APS intends to hold the Contractor financially responsible. The Contractor shall in no more than fourteen (14) Days from the date of the Notice provide a technical solution to the identified problem, including cost estimate. The Contractor also shall coordinate with APS to determine required technical support and timing to minimize delays and costs to the construction project for which the Work is being provided (“Project”) resulting from the issue. Pending final decision by the Owner, the Contractor will be invited to attend all price negotiations for the corrective work with the person or entity under contract with APS to perform the construction work on the Project (“Construction Contractor”).

2. The Contractor shall provide any required design and administrative services which may arise as the result of the Contractor’s errors, omission, negligence or breach at no additional cost to APS.
3. If the Contractor refuses to cooperate in the negotiations or disputes its responsibility, the Owner shall have the right to proceed with the remedial and corrective action, including necessary revisions, construction and/or Change Order negotiations with the Construction Contractor and another design professional without participation by or further Notice to the Contractor.
4. The Contractor shall not be responsible for the actual cost to purchase correct equipment or systems which should have been originally specified in the Contract Documents for the project, nor for the cost of installation thereof. The Contractor shall, however, be responsible for any increased costs of performance of the Construction Contractor’s costs of performance related to the error, omission, negligence or breach, including but not limited to costs arising from re-work of or correction of damage to previously performed Work, costs of delay which could have been avoided had the error, omission, negligence or breach not occurred, inflation, reordering, restocking, plan resubmissions or otherwise, and design and administrative services incorporated into the Construction Contractor’s Change Order or into any design professionals contract or Change Order as a result of the Contractor’s errors, omissions, negligence or breach.
5. For the purposes of determining the Contractor’s share of such costs for Work which has not yet been performed, the cost of Work performed under a Construction Contract Change Order or under a contract or Change Order with another design professional shall be presumed to be fifteen percent (15%) greater than if the work had been included in the original Contract Documents. The Contractor shall have the burden of disproving this presumption.

#### 20. Termination for the Convenience of APS

Notwithstanding the rights of the Owner or defaults outlined above, 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 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 Paragraph. The Owner shall have the right of audit and the Contractor shall provide all information and documentation reasonably requested for such purposes

insofar as they pertain to amounts claimed to be due hereunder. 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 CMR's remedies shall be limited as provided in this Paragraph 24.

After receipt of a notice of termination for convenience and except as otherwise directed, the Contractor shall stop all work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the Work not terminated; immediately transfer all documentation and paperwork for terminated work to APS; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

21. Indemnification\* ((NOTE: Virginia does not permit a public body to agree to the indemnification of others; cross indemnity provisions are not acceptable)

The Contractor covenants for itself, its employees, and subcontractors to save, hold harmless, and indemnify APS, and all of its elected and appointed officials, officers, current and former employees, agents, Offices, agencies, boards, and commissions (collectively and including APS the "APS Indemnitees" for purposes of this section) from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including but not limited to court costs, reasonable attorneys' fees and costs of litigation including but not limited to expert witness fees and costs), , charges, liability, demands or exposure (hereinafter collectively "Indemnification Costs"), however caused unless caused by an APS Indemnatee, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions or errors in performance or nonperformance of its Work, whether such act or omission or error is attributable to Contractor, a subcontractor, any material supplier, or anyone directly or indirectly employed by them for performance of the Work. This duty to save, hold harmless and indemnify shall survive the termination of this Contract.

If any action or proceeding relating to the indemnification required by this Section is brought against an APS Indemnatee, then upon written notice from APS to the Contractor, Contractor shall have the option to elect, at Contractor's sole discretion and expense, to resist or defend such action or proceeding by counsel approved by APS in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend same. Contractor shall be under no obligation to elect to resist or defend such action and may elect to allow APS or the APS Indemnatee to so resist or defend, subject to the indemnification obligations set forth herein.

If, after Notice by APS, the Contractor elects not to resist or defend or fails or refuses to save, hold harmless and/or indemnify APS or the APS Indemnatee, the Contractor shall be liable for and reimburse APS for any and all Indemnification Costs as defined above and 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.

Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to APS pursuant to this section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

22. Intellectual Property Indemnification\*

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.

The Contractor further covenants for itself, its employees, and subcontractors to save, hold harmless, and indemnify APS, and all of its officers, officials, Offices, agencies, agents, and employees (collectively and including APS the "APS Indemnitees" for purposes of this section) from and against any and all Indemnification Costs however caused unless knowingly caused by an APS Indemnitee, 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 or an APS Indemnitee without knowledge of the intellectual property right. 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 hourly rates payable to Contractor include 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, 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 Indemnification Costs 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.

23. Copyright

The Contractor hereby irrevocably transfers, assigns, sets over and conveys to APS all right, title and interest, including the sole exclusive and complete copyright interest, in all copyrightable works created pursuant to this Contract. The Contractor further agrees to execute such documents as APS may request to effect such transfer or assignment.

Further, the Contractor agrees that the rights granted to APS by this subsection are irrevocable. Notwithstanding anything else in this Contract, the Contractor's remedy in the event of termination of or dispute over the terms of this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this subsection. Similarly, no termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" subsection.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of this Contract is prohibited unless APS approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this subsection as part of any contract they enter into with the Contractor for work related to Work pursuant to this Contract.

24. Ownership and Return of Records

This Contract confers no ownership rights to the Contractor nor any rights or interests to use or disclose APS' data or inputs.

The Contractor agrees that all drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of APS' request for services under this Contract, are the exclusive property of APS ("Record" or "Records"), and all such Records shall be provided to and/or returned to APS upon completion, termination, or cancellation of this Contract. The Contractor shall not use, willingly allow, or cause such materials to be used for any other purpose other than performance of all obligations under the Contract without the written consent of APS. Additionally, the Contractor agrees that the Records are confidential records and neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the Project Officer or his or her designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Officer or his or her designee for response. At APS' request, the Contractor shall deliver all Records to the

Project Officer, including "hard copies" of computer records, and at APS's request, shall destroy all computer records created as a result of APS' request for services pursuant to this Contract.

The Contractor agrees to include the provisions of this section as part of any contract or agreement the Contractor enters into with subcontractors or other third parties for work related to Work pursuant to this Contract. No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section of the Contract.

25. 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, proprietary systems, addresses, dates of birth, other contact information or medical information about a person's, 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 its employees, agents, and subcontractors are informed of, and abide by, this requirement.

All student data is considered to be confidential under any resulting Contract as well as under the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. §1232g et seq., and any other federal or state statutes or regulations pertaining to student records, and will only be released in accordance with the applicable laws and regulations. Student data shall include all metadata, forms, logs, cookies, tracking pixels, user content, and 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. All student data received by the Contractor shall be maintained by the Contractor in a secure location, in accordance with the Student Data Usage and Privacy Agreement.

The Contractor also agrees that it will not directly or indirectly use or facilitate the use or dissemination of student data (whether intentionally or by inadvertence, negligence or omission verbally electronically, through paper transmission or otherwise), for any purpose other than that directly associated with its officially assigned duties pursuant to any resulting Contract. Contractor is aware that unauthorized use or disclosure of student data is prohibited and, in addition, may also constitute a violation of Virginia law (e. g. the Government Data Collection and Dissemination Practice Act, formerly called the Privacy Protection Act, VA Code §2.2-3800 et seq., and the Secrecy of Information Act, VA Code §58.1-3, which may be punishable by a jail sentence of up to six (6) months and/or a fine of up to \$1,000,000.).

26. HIPAA Compliance

The Contractor shall comply with all applicable legislative and regulatory requirements of the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"). Pursuant to 45 C. F. R. §164.502(e) and §164.504(e), the Contractor shall be designated a Business Associate pursuant and will be required to execute an APS Business Associate Agreement. If Contractor engages a subcontractor or subcontractors in the performance of the Scope of Work under any resulting Contract, the Contractor shall enter into an agreement with each of its subcontractors pursuant to 45 C. F. R. §164.3082(b) and the Health Information Technology for Economic and Clinic Health (HITECH) Act §13401 that is appropriate and sufficient to require each subcontractor to protect the Protected Health Information (PHI) to the same extent required of Contractor under APS's Business Associate Agreement and in a form approved by APS. HITECH defines PHI as individually identifiable and maintained by a covered health care provider, health plan, or health care clearinghouse. See 45 C.F.R.

160.103 and 164.501. The Contractor shall ensure that its subcontractors notify the Contractor, immediately, of any breaches in security regarding the PHI.

The Contractor takes full responsibility for any failure to execute the appropriate agreements with its subcontractors to comply with the existing and or future regulations of HIPAA and/or HITECH and shall indemnify APS in accordance with the Indemnification clause in this section.

27. Data Security

The Contractor agrees that it shall hold all APS data obtained or accessed as a result of its Work under this Contract confidential in accordance with the Nondisclosure and Data Security Agreement attached hereto. If subcontractors of the Contractor are performing Work under this Contract on APS-owned property, then such subcontractors shall be required to sign a separate Nondisclosure and Data Security Agreement, which shall be incorporated by reference into this Contract, prior to performing any Work or being allowed access to APS data.

The Contractor shall hold APS Information in the strictest confidence and comply with all applicable APS security and network resources policies as well as all local, state, and federal laws or regulatory requirements concerning data privacy and security. The Contractor shall develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted APS Information received from, created or maintained on behalf of APS and strictly control access to APS Information. For purposes of this provision, and as more fully described in this Contract and APS's Non-Disclosure and Data Security Agreement (NDA), "APS Information" (also referred to as "APS Data" or "data") includes, but is not limited to, electronic information, documents, data, images, and records including, but not limited to, financial records, personally identifiable information, Personal Health Information (PHI), personnel, educational, voting, registration, tax or assessment records, information related to public safety, APS networked resources, and APS databases, software and security measures which is created, maintained, transmitted or accessed to perform the Work under this Contract.

- (a) APS' Non-Disclosure and Data Security Agreement (NDA). The Contractor shall require that an authorized Contractor designee or subcontractors working on-site at APS facilities or otherwise performing non-incident work under this Contract, sign the NDA (attached as Attachment D) prior to performing any Work or permitting access to APS networked resources, application systems or databases under this Contract. A copy of the signed NDAs shall be available to APS Project Officer upon request.
- (b) Use of Data. The Contractor shall ensure that the use, distribution, disclosure, or access ("use") to APS Information and APS networked resources shall not occur in an unauthorized manner. Use of APS Information for other than as specifically outlined in this Contract is strictly prohibited unless such other use is agreed to in writing by the parties. The Contractor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of APS Information and any non-compliance with this Data Security and Protection provision or any NDA.
- (c) Data Protection. The Contractor agrees that it will protect APS Information in accordance with all applicable APS security and resources policies, as well as local, state and federal laws and regulatory requirements concerning data privacy and security, as applicable, and no less rigorously than it protects its own data, proprietary and/or confidential information. The Contractor agrees that it will comply with the Government Data Collection and Dissemination Practices Act, Chapter 38 of Title 2.2 of the Code of Virginia (i.e., Va. Code § 2.2-3800 et

seq.), and the Virginia Freedom of Information Act (i.e., Va. Code § 3700 et seq., as applicable. The Contractor shall provide to APS a copy of its data security policy and procedures for securing APS Information and a copy of its disaster recovery plan/s. If requested by APS, and, to the extent applicable, the Contractor shall provide, if requested by APS, on an annual basis, results of an internal Information Security Risk Assessment provided by an outside firm.

- (d) Data Sharing. Except as otherwise specifically provided for in this Contract, the Contractor agrees that it shall not share, disclose, sell or grant access to APS Information to any third party without the express written authorization of the APS Chief Information Security Officer or designee.
- (e) Security Requirements. The Contractor shall maintain the most up to date anti-virus, industry accepted firewalls and/or other protections on its systems and networking equipment. The Contractor certifies that all systems and networking equipment that support, interact or store APS Information meet the above standards and industry best practices for physical, network and system security requirements. Printers, copiers, or fax machines that store APS Data into hard drives must provide data at rest encryption. Significant deviation from these standards must be approved by the APS Chief Information Security Officer or designee, the downloading of APS information onto laptops or other portable storage medium is prohibited without the express written authorization of the APS Chief Information Security Officer or designee.
- (f) Data Protection Upon Conclusion of Contract. Upon termination, cancellation, expiration or other conclusion of this Contract, the Contractor shall return all APS Information to APS unless APS requests that such data be destroyed. This provision shall also apply to all APS Information that is in the possession of subcontractors or agents of the Contractor. The Contractor shall complete such return or destruction not less than thirty (30) calendar days after the conclusion of this Contract and shall certify completion of this task, in writing, to Project Officer.
- (g) Notification of Security Incidents. The Contractor shall notify the APS Chief Information Officer and Project Officer within twenty-four (24) hours of the discovery of any unintended access to, use or disclosure of APS Information.
- (h) Subcontractors. To the extent the use of subcontractors is permitted under this Contract, the requirements of this entire section shall be incorporated into any subcontractor agreement entered into by the Contractor and any data sharing shall be compliant with these security and protection requirements and the NDA. In the event of data sharing, subcontractors shall provide to the Contractor a copy of their data security policy and procedures for securing APS Information and a copy of their disaster recovery plan/s.

28. Ethics in Public Contracting\*

This Contract incorporates by reference Article 9 of the APS Procurement Resolution, as well as any state or federal law related to ethics, conflicts of interest, or bribery, including by way of illustration and not limitation, Article 6 of the Virginia Public Procurement Act (Va. Code § 2.2-4367 et seq.), the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq., and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this purchase any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

29. 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 there from which is not available to the general public.

30. Force Majeure

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, epidemics, pandemics, or other public health emergency declared by governmental authority to the extent the impact of such epidemic, pandemic or public health emergency is shown to affect the Work directly, 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.

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, epidemics, pandemics, or other public health emergency declared by governmental authority to the extent the impact of such epidemic, pandemic or public health emergency is shown to affect any obligation of APS, or an act of God beyond control of APS that make performance impossible or illegal, unless otherwise specified in the Contract.

No such extension of time shall be deemed a waiver by APS 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.

31. Authority to Transact Business\*

The Contractor shall pursuant to Code of Virginia §2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Contract Term and any Renewal Contract Term(s) of this Contract. A contract entered into by a Contractor in violation of this requirement is voidable, without any cost or expense, at the sole option of APS.

32. Relation to APS\*

The Contractor will be legally considered as an independent contractor and neither the Contractor nor its employees will, under any circumstances, be considered employees, servants, or agents of APS. APS will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants, or agents. APS will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Furthermore, APS will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by APS for its employees.

33. 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.

34. 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.

35. Audit

The Contractor agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. APS or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the Initial Contract Term or any Renewal Contract Term. If the Contractor wishes to destroy or dispose of records (including confidential records to which APS does not have ready access) within five (5) years after final payment, the Contractor shall notify APS at least thirty (30) days prior to such disposal, and if APS objects, shall not dispose of the records.

36. Amendments

This Contract shall not be modified except by written amendment to the Contract executed by persons duly authorized to bind the Contractor and APS.

37. Arlington Public Schools Procurement Resolution and Policies\*

Notwithstanding any provision to the contrary herein, no provision of the Procurement Resolution or any applicable APS policy is waived in whole or in part.

38. Dispute Resolution\*

All disputes arising under this Contract, or its interpretation, whether involving law or fact, or extra Work, or extra compensation or time, and all claims by Contractor for alleged breach of Contract shall be submitted in writing to the Project Officer and to the Procurement Agent for decision at the time of the occurrence or beginning of the Work upon which the claim is based, whichever occurs first. Such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope, and otherwise comply with the requirements of Articles 6 and 7 of these Terms and Conditions. Final decision on all claims submitted in compliance with the requirements of this Contract shall be made by the Procurement Agent or his designee within ninety (90) calendar days following receipt of the Contractor's last required submission. Failure of the Procurement Agent or his designee to act within such ninety (90) calendar days' time shall be deemed a final decision to deny the claim as of the ninetieth (90<sup>th</sup>) day. A final decision on behalf of APS shall be a condition precedent to institution by the Contractor of any judicial claim for relief on the claim. The Contractor's right to seek judicial appeal of denial of a claim is barred if no suit is filed within six (6) months following the final decision by APS. No consideration by APS of any additional submission by the Contractor in support of any claim shall extend this six (6) month limitation.



Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Procurement Resolution, incorporated herein by reference. A copy of the Procurement Resolution is available upon request from the Office of the Procurement Agent. The Contractor shall not cause a delay in the Work pending any decision by APS or a court of competent jurisdiction.

39. Prohibited Hardware, Software, or Services\*

The Contractor shall not use, whether directly or through any subcontractor or consultant, any hardware, software, or services that have been prohibited by the United States Department of Homeland Security for use on federal systems.

40. Applicable Law, Forum, Venue and Jurisdiction\*

This Contract and the Work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia 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.

41. Arbitration

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

42. Nonexclusivity of Remedies

All remedies available to APS under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to APS at law or in equity.

43. No Waiver

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

44. Severability

The sections, subsections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph, subsection, or section of this Contract shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections, and sections of this Contract.

45. 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.

46. Survival of Terms

It is the intent of the parties that any provision of the Contract Documents which by its content is intended to survive the expiration or termination of this Contract shall so survive, whether or not specifically so stated. Without in any way limiting the foregoing, the following sections if included in this Contract also survive: Indemnification; Relation to APS; Ownership and Return of Records; Audit; Copyright; Intellectual Property Indemnification; Confidential Information, and Data Security and Protection.

47. 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 section to which the heading refers. Provided,

however, non-negotiable, mandatory provisions required by Virginia law or by the Procurement Resolution are indicated by an asterisk “\*”

48. Ambiguities

Each party and its counsel have participated fully in the review and revision of this Contract. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Contract. The language in this Contract shall be interpreted as to its fair meaning and not strictly for or against any party.

49. Non-Discrimination Notice\*

APS does not discriminate against faith-based organizations.

50. Insurance Requirements

**A. Overview**

During the term of this Contract, The Contractor and all of their Subcontractors shall procure and maintain the **types of insurance that are referenced in section D** below. All insurance policies shall be with insurance companies that meet the following criteria:

1. Are authorized to do business under the laws of the Commonwealth of Virginia and acceptable to APS, in its sole discretion.
2. Are rated with an AM Best rating of A- or better. APS reserves the right to require the Contractor and/or its Subcontractors to change their insurance to an insurance company that has the minimum required AM Best rating. This right can be exercised at any time the insurance requirements set forth in the Contract Documents remain applicable. If the AM Best rating of the insurance company changes to a rating under A- during the Contract Term, the Contractor and/or its Subcontractors will notify APS in writing immediately upon discovery and change the insurance immediately to an insurance company that meets or exceeds the AM Best rating of A-.
3. If APS suffers damages under the Contract and makes a claim on the named insurance company by APS, and the claim is not paid in full by the insurance company, Contractor acknowledges that it shall remain wholly liable for the full amount of the claim regardless of the solvency of the insurance company or the insurance company’s willingness to pay the claim in full.
4. The Contractor and/or its Subcontractors must disclose in the Certificate of Insurance the amount of any deductible or self-insurance component applicable to all required insurance policies herein, if any. APS has the right to request additional information to determine if the Contractor and/or its Subcontractors have the financial capacity to meet their obligations under a deductible or self – insurance program. If, in its discretion, APS is not satisfied as to the Contractor and/or its Subcontractors financial capacity to meet its obligations under a proposed deductible or self – insurance program, the Contractor and/or its Subcontractors shall re-submit revised acceptable insurance coverage at the sole discretion of APS and with no obligation to do so agree to alternative approaches proposed by the Contractor and/or its Subcontractors to ensure protection for APS.

**B. Certificates of Insurance & Additional Insured Status:**

**1. Contractor**

The Contractor is required to provide a Certificate of Insurance that names Arlington County School Board, including elected and appointed officials, agents, and employees as additional insureds by

endorsement for all insurance policies except Workers Compensation, Professional Liability, and Cyber Liability coverage.

## **2. Subcontractors**

- All Subcontractors will provide the Contractor with Certificates of Insurance for the policies that are required under this contract. All Certificates of Insurance should by endorsement name Arlington County School Board, including elected and appointed officials, agents, and employees as additional insureds for all contracts of insurance except Workers Compensation & Professional Liability.
- All Subcontractors shall provide the Contractor with a certificate of insurance that will serve as proof of insurance for their Cyber Liability coverage, but APS will not need to be added as an additional insured.
- The Contractor will maintain all certificates of insurance for their subcontractors.
- The Contractor will provide APS with its Subcontractors certificates of insurance at any time upon request.

## **C. Termination & or Augmentation of Insurance Policies:**

1. All required insurance policies must be endorsed through a Certificate of Insurance to provide that the insurance company shall give forty-five (45) days written notice to the Owner if the policies are to be terminated or if any changes are made during the life of the Contract which will affect in any way the insurance requirements set forth herein. Before commencing Work, the Contractor shall provide APS with a Certificate of Insurance referencing each policy which it and each of its Subcontractors shall carry in accordance herewith, together with receipted bills evidencing proof of premium payment. Contractors and or their Subcontractors terminating or augmenting any insurance policy without giving APS forty-five (45) days' notice will be in direct violation of the terms and conditions of the Contract.
2. If insurance coverage is allowed to lapse and a loss occurs, the Contractors and or their Subcontractors will still be required to indemnify and hold APS harmless for all losses sustained. Regardless of whether insurance is present or not.

## **D. Insurance Required by The Contract:**

### **Casualty Insurance:**

#### **1. Commercial General Liability Occurrence-based Insurance:**

Commercial General Liability occurrence-based insurance shall be in place until APS confirms the Contract has expired. Such insurance shall cover claims for bodily injury, property damage and personal injury arising out of operations under the Contract, whether such actions are performed by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them. For work that specifically deals with purchase, construction and or maintenance of physical property the insurance coverage for contractors and subcontractors shall also include coverage for explosions, collapse, underground utilities and completed products and operations. Coverage afforded under this policy shall be primary to all other insurance with respect to Arlington County School Board including its elected and appointed officials, agents, and employees.

<b>Type of Insurance</b>	<b>Per Project Limit Per Occurrence</b>	<b>Per Project Aggregate Limit</b>
Commercial General Liability	\$2,000,000	\$4,000,000

**2. Subcontractor’s Commercial General Liability Insurance:**

The Contractor shall require each of its Subcontractors to procure and maintain during the life of its subcontract, subcontractor’s Commercial General Liability Insurance in amounts satisfactory to the contract.

<b>Type of Insurance</b>	<b>Per Project Limit Per Occurrence</b>	<b>Per Project Aggregate Limit</b>
Subcontractors Commercial General Liability	\$2,000,000	\$4,000,000

**3. Professional Liability / Errors & Omissions:**

The Contractor shall carry Professional/and/or/Miscellaneous Errors and Omissions insurance which will pay for damages arising out of errors or omissions in the rendering, or failure to render professional services under the Contract.

<b>Type of Insurance</b>	<b>Per Project Limit Per Occurrence</b>	<b>Per Project Aggregate Limit</b>
Professional Liability	\$5,000,000	\$5,000,000

**4. Worker's Compensation and Employer's Liability Insurance:**

Worker’s Compensation and Employer’s Liability Insurance is mandatory for the Contractor's employees engaged in the Work under this Contract, in accordance with the laws of the Commonwealth of Virginia. The Contractor shall require each of its Subcontractors to provide Worker's Compensation and Employer's Liability Insurance for all the Subcontractor’s employees engaged on such subcontracts. If any class of employees engaged in work under the Contract is not protected under the Worker's Compensation laws in Virginia, the Contractor shall provide similar protection for these employees in amounts not less than the legal requirements.

<b>Type of Insurance</b>	<b>Per Project Limit Per Occurrence</b>	<b>Per Project Aggregate Limit</b>
Worker’s Compensation	Statutory Limits	Statutory Limits
Employer’s Liability	\$1,000,000	\$1,000,000

**5. Commercial Automobile Liability Insurance:**

Commercial Automobile Liability insurance, including coverage for owned, non-owned and hired vehicles shall be in place for the Contractor and all of its Subcontractors.

<b>Type of Insurance</b>	<b>Per Project Limit Per Occurrence</b>	<b>Per Project Aggregate Limit</b>
Commercial Automobile Liability	\$1,000,000	\$1,000,000

**6. Cyber Liability Insurance: (Intentionally Deleted)**

**E. Receipt of Certificates of Insurance:**

Proof of satisfaction, of insurance for each type of coverage listed herein shall be provided to APS within ten (10) days of the Contractor's receipt of the Notice to Proceed and no work, shall proceed unless all such insurance is in effect. The Contractor shall not allow any Subcontractor to commence work on its subcontract until all insurance required of the Subcontractor has been obtained and approved by the Contractor and found to be in accordance with the requirements set forth herein.

**F. Use of Excess / Umbrella Liability Insurance:**

The use of Excess / Umbrella Liability insurance is permitted. If Excess / Umbrella insurance is used the policy must be endorsed to show that the lines that the policy is bolstering are covered under the policy. All Excess / Umbrella Liability insurance coverage is subject to review by APS' Risk Manager and its use can be denied based on that review.

Type of Insurance	Per Project Limit Per Occurrence	Per Project Aggregate Limit
Umbrella Liability Insurance	\$5,000,000	\$5,000,000

**G. Consideration of Claims Made Insurance Coverage:**

APS will consider claims made insurance coverage on a case-by-case basis **APS reserves the right to accept or deny the use of Claims Made Insurance coverage at any time.**

If the liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Consultant must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:

1. Agree to provide certificates of insurance evidencing the above coverages for a period of two (2) years after final payment for the Contract for General Liability policies five (5) years for Professional Liability & Cyber policies. This certificate shall evidence a "retroactive date" no later than the beginning of the Consultant's work under this Contract.

or

2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this Contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.

If claims made insurance is utilized by the Contractor and or their Subcontractors and a claim occurs that relates back to the vendor's services. The Contractor and or their Subcontractors will indemnify and hold APS harmless of all losses regardless of whether they have insurance coverage in place or not.

## H. Contract Identification:

All certificates of insurance shall state the Contract number and title.

### 51. 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>.

### 52. Arlington County Business License

The Contractor must comply with the provisions of Chapter 11 (Business Licenses) of the Arlington County Code. For further information on the provisions of this chapter and its applicability to this Contract, contact the Arlington County Business License Division, Commissioner of the Revenue of Arlington, Virginia, Telephone Number (703) 228-3060.

### 53. Failure to Deliver

In case of failure to deliver goods or services in accordance with the Contract terms and conditions, APS, after due oral or written notice, may procure the goods or services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which APS may have; provided that if public necessity requires the use of materials or supplies not conforming to the specifications, they may be accepted and payment therefore shall be made at a reduction in price to be determined solely by APS.

### 54. Subcontracts

The Contractor shall not enter into any subcontract with any subcontractor who has been suspended or debarred from doing federal, state, or local government work for any reason.

The Contractor shall not enter into any subcontract with any subcontractor who has been suspended or debarred from participating in contracting programs by any agency of the United States Government, by the Commonwealth of Virginia or any agency or department thereof, or by any public body within the Commonwealth of Virginia.

The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this Contract insofar as they are applicable to the Work of subcontractors.

Nothing contained in this Contract shall create any contractual relationship between any subcontractor and APS.

### 55. Non-Endorsement Clause for Contracts and Agreements

APS may be identified as a "Participant" in the Work with the following statement added: "This shall not constitute an endorsement of any products or services". For further information, please contact the APS Department of Schools and Community Relations.

56. Advertising and Use of Proprietary Marks or Logos

Contractor shall not use the name of APS or any authorized user or refer to APS or any authorized user, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of APS or such authorized user. In no event may Contractor use a proprietary mark of APS or an authorized user without receiving the prior written consent of APS or the authorized user.

57. Student Data Usage and Privacy Agreement (Intentionally Deleted)

58. Contractor Certification Regarding Criminal Convictions\*

All contracts with APS, 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.

The Contractor certification covers its employees, its subcontractors, and the employees thereof. (Submit completed Appendix A).

The Contractor certification shall also cover its employees, its subcontractors, and employees thereof, assigned to the Work after Contract award. The Contractor, upon demand from APS, shall provide all information which allowed for the Contractor's certification.

59. Cooperative Contract for Use by Other Public Bodies (Intentionally Deleted)

60. Contractor Prohibited in Assisting Person for New Job if Engaged in Misconduct with Minor\*

As a condition of awarding 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.

61. Contractor Selection and Award of Individual Task Work Orders

APS may award a Task Work Order Contract to any Contractor awarded a Contract for the required Specialized Service. It is the intent of APS to allocate Task Work Order Contracts in an approximately equal rotation among all Contractors awarded a Contract for the same services. Selection of the Contractor and award of a Task Work Order Contract will, however, be based on the following criteria as applicable to the Task Work Order Contract:

- a. Location of Work and the type of Work being performed.
- b. Evaluation of past and current performance on a Task Work Order Contract, Task Work Order Contract size, manpower availability, responsiveness, performance or capabilities.
- c. Balancing of Task Work Order Contracts dollar volume among Contractors.
- d. Other appropriate criteria as deemed in the best interest of APS.



## Attachment E

### Non-Disclosure and Data Security Agreement

Arlington Public Schools  
Request for Proposal (RFP) 03FY21

#### XII. Appendix F

##### Non-Disclosure and Data Security Agreement

The undersigned, an authorized agent of the Contractor and on behalf of **Toscano Clements Taylor, LLC** (Contractor) hereby agree that the Contractor will hold Arlington Public Schools (APS) provided information, documents, data, images, records and the like (hereafter "Information") confidential and secure and to protect it against loss, misuse, alteration, destruction or disclosure. This includes but is not limited to the Information of the APS, its employees, contractors, residents, clients, patients, taxpayers and property as well as Information that the APS shares with Contractor for testing, support, conversion or other services provided under APS (the "Work" or "APS Contract" as applicable) or which may be accessed through other APS owned or controlled databases (all of the above collectively referred to herein as "Information" or "APS Information").

In addition to the Data Security obligations set in the APS Contract, the Contractor agrees that it will maintain the privacy and security of the APS Information, control and limit internal access and authorization for access to such Information and not divulge or allow or facilitate access to APS Information for any purpose or by anyone unless expressly authorized. This includes but is not limited to Information that in any manner describes, locates or indexes anything about an individual including, but not limited to, his/her (hereinafter "his") Personal Health Information, treatment, disability, services eligibility, services provided, investigations, real or personal property holdings, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, social security number, tax status or payments, date of birth, address, phone number or that affords a basis of inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, and the record of his presence, registration, or membership in an organization or activity, or admission to an institution (also collectively referred to herein as "Information" or "APS Information").

Contractor also agree that it will not directly or indirectly use or facilitate the use or dissemination of Information (whether intentionally or by inadvertence, negligence or omission verbally, electronically, through paper transmission or otherwise) for any purpose other than that directly associated with its work under the Work. Contractor acknowledges that any unauthorized use, dissemination, or disclosure of Information is prohibited and may also constitute a violation of Virginia or federal laws, subjecting it or its employees to civil and/or criminal penalties.

The Contractor agrees that it will not divulge or otherwise facilitate the disclosure, dissemination or access to or by any unauthorized person, for any purpose, of any Information obtained directly, or indirectly, as a result of its work on the Work. Contractor shall coordinate closely with the APS Project Officer to ensure that its authorization to its employees or approved subcontractors is appropriate, tightly controlled and that such person/s also maintain the security and privacy of Information and the integrity of APS networked resources.

Contractor agrees to take strict security measures to ensure that Information is kept secure, properly stored, that if stored that it is encrypted as appropriate, stored in accordance with industry best practices and otherwise protected from retrieval or access by unauthorized persons or unauthorized purpose. Any device or media on which Information is stored, even temporarily, will have strict security and access control. Any Information that is accessible will not leave the Contractor's work site or the APS' physical facility, if working onsite, without written authorization of the APS Project Officer. If remote access or other media storage is authorized, Contractor is responsible for the security of such storage device or paper files.

Contractor will ensure that any laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices, as approved by the APS, and connected to the APS network are secure and free of all computer viruses, or running the latest version of an industry standard virus protection program. Contractor will ensure that all

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Non-Disclosure and Data Security Agreement

Arlington Public Schools

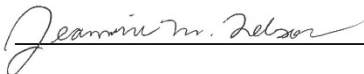
Request for Proposal (RFP) 03FY21

passwords used by its employees or subcontractors are robust, protected and not shared. No Information may be downloaded except as agreed to by the parties and then only onto an APS approved device. Downloading onto a personally owned device is prohibited. Contractor agrees that it will notify the APS Project Officer immediately upon discovery, becoming aware or suspicious of any unauthorized disclosure of Information, security breach, hacking or other breach of this Non-Disclosure and Data Security Agreement, the APS Contract, APS policy, Contractor's security policies, or any other breach of Work protocols. The Contractor will fully cooperate with the APS to regain possession of any Information and to prevent its further disclosure, use or dissemination. The Contractor also agrees, if requested, to promptly notify others of a suspected or actual breach.

Contractor agrees that all duties and obligations enumerated in this Non-Disclosure and Data Security Agreement also extend to its employees, agents or subcontractors who are given access to APS Information. Breach of any of the above conditions by Contractor's employees, agents or subcontractors shall be treated as a breach by Contractor. Contractor agrees that it shall take all reasonable measures to ensure its employees, agents and subcontractors are aware of and abide by the terms and conditions of this Non-Disclosure and Data Security Agreement and related data security provisions in the APS Contract.

It is the intent of this Non-Disclosure and Data Security Agreement to ensure that the Contractor has reasonably strict and prudent administrative safeguards, disaster recovery and industry best practices are in place to ensure confidentiality, protection, privacy and security of APS Information and APS networked resources and to ensure compliance with all applicable local, state and federal law and/or regulatory requirements. Therefore, to the extent that this Non-Disclosure and Data Security Agreement conflicts with the APS Contract or with any applicable local, state, or federal law, regulation or provision, the more stringent APS Contract requirement, law, regulation or provision shall control.

At the conclusion of the Work, Contractor agrees to return all APS Information to the APS Project Officer. These obligations remain in full force and effect throughout the Work and shall survive any termination of the APS Contract.

Authorized Signature:  \_\_\_\_\_

Printed Name and Title: **Jeannine M. Nelson, Principal, Sales + Marketing**

Date: **June 17, 2021**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/22/2022

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 have **ADDITIONAL INSURED** provisions or 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).

<b>PRODUCER</b> Chadwick Brokerage, LLC 350 Main Street - Bldg 2, Suite 3 Bedminster NJ 07921	<b>CONTACT NAME:</b> PHONE (A/C. No. Ext): 844-708-7658		<b>FAX (A/C. No):</b>
	<b>E-MAIL ADDRESS:</b>		
<b>INSURER(S) AFFORDING COVERAGE</b>			<b>NAIC #</b>
<b>INSURER A :</b> RLI Insurance Company			13056
<b>INSURER B :</b> Continental Casualty Company			20443
<b>INSURER C :</b>			
<b>INSURER D :</b>			
<b>INSURER E :</b>			
<b>INSURER F :</b>			

**COVERAGES**

CERTIFICATE NUMBER: 14665344

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	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			PSB0007519	2/21/2022	2/21/2023	EACH OCCURRENCE	\$ 2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 2,000,000
							GENERAL AGGREGATE	\$ 4,000,000
							PRODUCTS - COMP/OP AGG	\$ 4,000,000
							VALUABLE PAPERS	\$ 500,000
A	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			PSA0002502	2/21/2022	2/21/2023	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> <b>EXCESS LIAB</b> <input checked="" type="checkbox"/> RETENTION \$ 0			PSE0003758	2/21/2022	2/21/2023	EACH OCCURRENCE	\$ 5,000,000
							AGGREGATE	\$ 5,000,000
								\$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			PSW0004190	2/21/2022	2/21/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
B	PROFESSIONAL LIABILITY			592371261	2/21/2022	2/21/2023	PER-CLAIM AGGREGATE	\$5,000,000 \$5,000,000

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

21-0307-X  
 RE: Arlington Public Schools Term Contract for AE Services; APS Contract 03FY21

Arlington County School Board, including elected and appointed officials, agents, and employees are included as additional insureds with respect to General Liability, Auto Liability, and Excess Liability, subject to policy terms and conditions.

**CERTIFICATE HOLDER****CANCELLATION**

Arlington Public Schools  
 2110 Washington Blvd.  
 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

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