



Agreement

Contract Title: Review of Specific Staffing Allocations (also known as Planning Factors)

This Contract **111FY23** is made and entered into this 7th day of August, 2023, the date the Agreement is fully executed by the Procurement Director/Procurement Agent, by and between Arlington County School Board, operating as Arlington Public Schools (“APS” or “Owner”) and Allovue. Inc(“Contractor”), whose address is: 1014 West 36th Street, Suite 220, Baltimore, MD 21211.

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

1. Contract Term

The Contract Term of this Contract shall commence on the date the Contract is fully executed by the Procurement Director/Procurement Agent and expiring on May 31, 2024, (‘Contract Term’), unless otherwise stated as provided in the Contract Documents.

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

2. 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. 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 the specific services set forth in 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.

3. Contract Price:

APS will pay the Contractor in accordance with the terms of the Payment section below and of Attachment B for the Contractor's completion of the Work as required by the Contract Documents. The Contractor will complete the Work for the total amount specified in this section (“Contract Amount”).

4. Contract Amount:

APS will pay the Contractor in accordance with the firm fixed price(s) shown in Attachment B – Fee Schedule. The firm fixed price shall include all of the Contractor’s fees in performance of the Work under this Contract, including but not limited to, travel, overhead and profit. The firm fixed price(s) shall not be subject to change during the Contract Term.

3. **Contract Documents**

The Contract consists of the following 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. 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, the Owner shall determine the provision having precedence.

- 1 Agreement #111FY23 and all modifications properly incorporated into the Agreement.
- 2 Attachment A – Scope of Work
- 3 Attachment B – Pricing Schedule
- 4 Attachment C – Non-Disclosure and Data Security Agreements
- 5 Attachment D– Contract Terms and Conditions
- 6 Attachment E – Certificate(s) of Insurance
- 7 Attachment F – Sample Purchase Order
- 8 Attachment G – Allovue Customer Agreement

The following are incorporated by reference:

- 9 The Request for Proposal (RFP) documents, 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.”

4. **Definitions**

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

5. **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.

6. **Payment Procedures:**

Payment is on a deliverable basis. Contractor will be paid upon Acceptance of the applicable Deliverables upon its submission of a complete invoice satisfactory to the Project Officer that meets the requirements of this section and other applicable provisions of the Contract. 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 APS Project Officer. The number of the Purchase Order shall appear on all invoices.

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

8. **Notices**

Unless otherwise provided herein, all notices and other communications hereunder shall be deemed to

have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, or emailed addressed as follows:

To the Contractor: Allovue Inc
Founder & CEO
1014 West 36th Street, Suite 220
Baltimore, MD 21211
jess@allovue.com

To APS:
Leslie Peterson,
Assistant Superintendent for Finance and Management Services
Arlington Public Schools
2110 Washington Blvd.
Arlington, Virginia 22204
leslie.peterson@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

9. Binding Agreement

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

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 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		Allovue Inc	
Authorized Signature:	<u><i>David J. Webb</i></u>	Authorized Signature:	<u><i>Jessica L. Gartner</i></u>
Printed Name	<u>David J. Webb, C.P.M.</u>	Printed Name:	<u>Jessica L. Gartner</u>
Title:	<u>Director/Procurement Agent</u>	Title:	<u>Founder & CEO</u>
Date:	<u>August 7, 2023</u>	Date:	<u>August 4, 2023</u>

Attachments:

- 1 Attachment A – Scope of Work
- 2 Attachment B – Pricing Schedule
- 3 Attachment C – Non-Disclosure and Data Security Agreements
- 4 Attachment D – Contract Terms and Conditions
- 5 Attachment E – Certificate(s) of Insurance
- 6 Attachment F – Sample Purchase Order
- 7 Attachment G – Allovue Customer Agreement

Attachment A

Scope of Work

A. Background:

Arlington Public Schools (APS) has identified a need for a comprehensive review and analysis of its current methodologies and systems used to allocate staffing for students with disabilities, English learner students, and to assess equity in the allocation of resources across all schools. The objective of this review is to evaluate the effectiveness of the current staffing allocation practices and identify any obstacles or bottlenecks hindering their effectiveness. The review will consider the alignment between the current staffing allocation practices and the overall goals and priorities of the School Board, including its Strategic Plan, Priorities, budget direction, as well as the Virginia Standards of Quality. The review will also examine staffing allocations for students with disabilities and English learner students in surrounding districts, assess best practices and emerging trends and innovations, and develop recommendations for optimizing the current staffing allocation processes, procedures, and methodologies. The review will propose new planning factors for students with disabilities, changes in planning factors to ensure greater equity in the allocation of staffing to schools, and optimization of staffing allocation processes for English learner students. The review will provide three implementation options for each recommendation and develop a detailed implementation plan, including training programs and supporting documentation and reference materials (**Optional**). The review will also provide an ongoing evaluation of the impact of the new or optimized processes and allocations, including regular monitoring and reporting on the outcomes. Key stakeholders, including the School Board, the APS Executive Leadership Team, and relevant departments, will receive a presentation of the findings and recommendations.

B. General Information:

The Scope of Work (Work) outlines the objectives, tasks, and deliverables of the project Review of Specific Staffing Allocations (also known as Planning Factors). The project aims to identify areas for improvement in the current staffing allocations and provide recommendations for optimization. The project will be completed within the estimated timeline and Contract Price, with a focus on quality control to ensure the deliverables meet the required standards.

C. Objective:

APS is seeking to perform a comprehensive review of specific staffing allocations, called planning factors, provided to schools for a variety of positions. Currently, these planning factors provide staffing allocations to schools primarily based on enrollment (e.g., pre K-12 general education, special education, and English Learner) although other data may also be used (e.g., free & reduced lunch percentage). This project aims to identify any inefficiencies, limitations, or areas for improvement, and provide recommendations for optimization. This comprehensive review seeks to understand what best practices are and how surrounding jurisdictions provide staffing to schools in the specific areas outlined in the Scope section below. The review should also consider the inclusion of factors other than enrollment for calculating how staffing should be allocated including, but not limited to:

1. School status (such as Title I or Title I eligible)
2. Size of the Economically Disadvantaged student reporting group population (numerically rather than on school status)
3. Percentage of students in a school with additional needs based on current and historical data overall (multiple reporting groups)
4. Test scores

D. Special Education Planning Factors:

1. Review and analyze the current methodologies and systems used to allocate staffing for students with disabilities in all categories, including identification of any obstacles or bottlenecks that may be hindering their effectiveness.
2. Assess the alignment between the current staffing allocation practices and the overall goals and priorities of Arlington Public Schools including the Strategic Plan, the School Board's Priorities, and the School Board's budget direction.
3. Assess the alignment between the current staffing allocation practices and the Virginia Standards of Quality.
4. Examine staffing allocations for students with disabilities in surrounding districts. Surrounding districts include Alexandria, Falls Church, Fairfax, Loudoun, and Prince William school systems.
5. Assess best practices and emerging trends and innovations in allocating staffing for students with disabilities, to include a review of recommended staffing allocations from national associations.
6. Review the proposal developed by the Office of Special Education (OSE) to change the planning factors for staffing allocations for students with disabilities.
7. Determine if proposed changes from OSE align with what surrounding jurisdictions are doing.
8. Determine if proposed changes from OSE align with best practices and/or emerging trends and innovations.
9. Determine if proposed changes from OSE align with the Virginia Standards of Quality.
10. Determine if factors other than enrollment, as outlined in the Objectives section, should be used to allocate staffing for students with disabilities.
11. Based on the results of the analysis and review, develop recommendations for optimizing the current staffing allocation processes, procedures, and methodologies.
12. Propose new planning factors for students with disabilities that consider best practices, emerging trends, staffing allocations in surrounding jurisdictions, the Virginia Standards of Quality, and any other factors deemed relevant under Section A.8 above.
13. Provide three options for each implementation of proposed new planning factors:
 - a. Option 1 – full implementation in one budget cycle
 - b. Option 2 – phase in implementation over 2 years
 - c. Option 3 – phase in implementation over 3 years
14. Present the findings and recommendations to key stakeholders, including the School Board, the APS Executive Leadership Team, and relevant departments.

15. Develop a detailed implementation plan for the proposed changes, including training programs and supporting documentation and reference materials. **(Optional)**
16. Provide an ongoing evaluation of the impact of the new or optimized processes and allocations, including regular monitoring and reporting on the outcomes.

E. Equity Analysis

1. Assess the alignment between the current staffing allocation practices and the overall goals and priorities of Arlington Public Schools including the Strategic Plan, the School Board's Priorities, and the School Board's budget direction, with a particular focus on how allocating resources equitably can assist in achieving the goal of eliminating opportunity gaps so all students achieve excellence.
2. Review work done in Fall 2022 by Equity Journey Partners and Allovue around planning factors and equity.
3. Examine surrounding districts to determine how they allocate staffing to ensure equity.
4. Assess best practices and emerging trends and innovations in staffing allocations to ensure equity across schools, to include a review of recommended staffing allocations from national associations.
5. Assess the alignment between the current staffing allocation practices and the Virginia Standards of Quality.
6. Determine if factors other than enrollment, as outlined in the Objectives section, should be used to allocate staffing to ensure equity across schools.
7. Based on the results of the analysis and review, develop recommendations for optimizing the current staffing allocation processes, procedures, and methodologies.
8. Propose new planning factors and/or changes in planning factors to ensure greater equity in the allocation of staffing to schools, especially for economically disadvantaged students, that consider best practices, emerging trends, staffing allocations in surrounding jurisdictions, the Virginia Standards of Quality, and any other factors deemed relevant under Section B.5 above.
9. Provide three options for each implementation of proposed new planning factors:
 - a. Option 1 – full implementation in one budget cycle
 - b. Option 2 – phase in implementation over 2 years
 - c. Option 3 – phase in implementation over 3 years
10. Present the findings and recommendations to key stakeholders, including the School Board, the APS Executive Leadership Team, and relevant departments.
11. Develop a detailed implementation plan for the proposed changes, including training programs and supporting documentation and reference materials. **(Optional)**

12. Provide an ongoing evaluation of the impact of the new or optimized processes and allocations, including regular monitoring and reporting on the outcomes.

F. English Learner Planning Factors

1. Review and analyze the current methodologies and systems used to allocate staffing for English learner students, including identification of any obstacles or bottlenecks that may be hindering their effectiveness.
2. Assess the alignment between the current staffing allocation practices and the overall goals and priorities of Arlington Public Schools including the Strategic Plan, the School Board's Priorities, and the School Board's budget direction.
3. Assess the alignment between the current staffing allocation practices and the Virginia Standards of Quality.
4. Examine staffing allocations for English learner students in surrounding jurisdictions.
5. Assess best practices and emerging trends and innovations in allocating staffing for English learner students, to include a review of recommended staffing allocations from national associations.
6. Review the Department of Justice Settlement Agreement regarding current staffing allocations for English learner students.
7. Determine if factors other than enrollment, as outlined in the Objectives section, should be used to allocate staffing for English learner students.
8. Based on the results of the analysis and review, develop recommendations for optimizing the current staffing allocation processes, procedures, and methodologies.
9. Propose new planning factors for English learner students that consider best practices, emerging trends, staffing allocations in surrounding jurisdictions, the Department of Justice Settlement Agreement, the Virginia Standards of Quality and any other factors deemed relevant under Section C.7 above.
10. Provide three options for each implementation of proposed new planning factors:
 - a. Option 1 – full implementation in one budget cycle
 - b. Option 2 – phase in implementation over 2 years
 - c. Option 3 – phase in implementation over 3 years
11. Present the findings and recommendations to key stakeholders, including the School Board, the APS Executive Leadership Team, and relevant departments.
12. Develop a detailed implementation plan for the proposed changes, including training programs and supporting documentation and reference materials. **(Optional)**
13. Provide an ongoing evaluation of the impact of the new or optimized processes and allocations, including regular monitoring and reporting on the outcomes.

G. Other Planning Factors

1. Review and analyze the current methodologies and systems used to allocate staffing for the positions listed below, including identification of any obstacles or bottlenecks that may be hindering their effectiveness.
 - a. School testing coordinator
 - b. School social worker
 - c. School psychologist
 - d. School counselor
 - e. Resource teacher for the gifted
 - f. Assistant principal
 - g. Dean of students (secondary level only)
 - h. Minimum and maximum class sizes for grades K-5, 6-8, and 9-12
2. Assess the alignment between the current staffing allocation practices and the overall goals and priorities of Arlington Public Schools including the Strategic Plan, the School Board's Priorities, and the School Board's budget direction.
3. Examine staffing allocations for each of the listed positions in surrounding jurisdictions.
4. Assess best practices and emerging trends and innovations in allocating staffing for each of the above-listed positions, to include a review of recommended staffing allocations from national associations.
5. Assess the alignment between the current staffing allocation practices and the Virginia Standards of Quality.
6. Determine if factors other than enrollment, as outlined in the Objectives section, should be used to allocate staffing for the above-listed positions.
7. Based on the results of the analysis and review, develop recommendations for optimizing the current staffing allocation processes, procedures, and methodologies.
8. Propose new planning factors for the above-listed positions that consider best practices, emerging trends, staffing allocations in surrounding jurisdictions, the Virginia Standards of Quality, and any other factors deemed relevant under Section D.6 above.
9. Provide three options for each implementation of proposed new planning factors for each of the above-listed positions.
 - a. Option 1 – full implementation in one budget cycle
 - b. Option 2 – phase in implementation over 2 years

- c. Option 3 – phase in implementation over 3 years
10. Present the findings and recommendations to key stakeholders, including the School Board, the APS Executive Leadership Team, and relevant departments.
 11. Develop a detailed implementation plan for the proposed changes, including training programs and supporting documentation and reference materials. (**Optional**)

H. Deliverables:

At the end of the review, Arlington Public Schools expects to have recommendations for changes to the current planning factors that can be incorporated into the FY 2025 budget and beyond. As outlined in the Scope, the recommendations for changes will encompass proposed changes to the staffing allocations, processes, and procedures for students with disabilities, new or revised staffing allocations that provide greater equity across schools, and proposed changes to the current staffing allocations for school testing coordinators, school social workers, school psychologists, and school counselors, resource teachers for the gifted, assistant principals, and deans of students. APS expects the following deliverables for this project:

1. A detailed analysis of the current processes and procedures, alignment of current staffing allocations with organizational goals as well as industry trends and best practices.
2. Recommendations for optimization with a detailed implementation plan including costs for the proposed changes. The implementation plan should provide options for implementation in one year, over two years, and over three years.
3. A presentation of the findings and recommendations to key stakeholders, including the School Board, the APS Executive Leadership Team, and relevant departments.
4. A final report documenting the outcomes of the project and any additional findings.
5. An evaluation of the effectiveness of the new or optimized staffing allocation processes and procedures after a specified period.
6. **Optional:** APS, at its sole discretion, has the right, but is under no obligation, to exercise this right to utilize this deliverable. APS will make a determination on the execution of this Deliverable by the end of month sixth.
 - o A training program for relevant staff members on the new or optimized staffing allocation processes and procedures.
 - o Supporting documentation and reference materials for the new or optimized staffing allocation processes and procedures.

I. Schedule/Milestones:

The project is expected to begin in August 2023 and end in May 2024.

1. **Initiation:** Kick-off meeting with key stakeholders to define project scope, timeline, and budget, and to establish project governance and communication plans.
2. **Current state analysis:** Completion of the analysis of the current staffing allocation processes, alignment of current staffing allocations with organizational goals as well as industry trends and best practices. Review of staffing allocations in surrounding jurisdictions and comparison with current APS staffing allocations.

3. **Recommendation development:** Development of recommendations for optimizing the current staffing allocation processes, procedures, and methodologies.
4. **Recommendation presentation:** Presentation of the findings and recommendations to key stakeholders, including the School Board, the APS Executive Leadership Team, and relevant departments.
5. **Implementation planning:** Development of a detailed implementation plan for the proposed changes.
6. **Go-live:** Launch of the new or optimized staffing allocation processes and procedures.
7. **Evaluation:** Evaluation of the effectiveness of the new or optimized staffing allocation processes and procedures after a specified period of time.
8. **Closure:** Final project report documenting the outcomes of the project and any additional findings, and closeout of the project.
9. **Optional:** APS, at its sole discretion, has the right, but is under no obligation, to exercise this right to utilize this deliverable. APS will make a determination on the execution of this Deliverable by the end of month sixth.
 - **Training and documentation:** Completion of training and preparation of supporting documentation and reference materials for the new or optimized staffing allocation processes and procedures.

End of Scope of Work

Attachment B

Pricing Schedule

No.	Description	Total Price
1	Review of Specific Staffing Allocations (also known as Planning Factors) (Total Price includes all travel costs)	\$320,215.00

Proposed Milestone Payment Plan

No.	Major Milestone Name/ Description	Deliverable Date	Major Milestone Fee
1	Initiation: Kick-off meeting with key stakeholders to define project scope, timeline, and budget, and to establish project governance and communication plans.	By end of Week 3	\$20,620
2	Current State Analysis: Completion of the analysis of the current staffing allocation processes, alignment of current staffing allocations with organizational goals as well as industry trends and best practices. Review of staffing allocations in surrounding jurisdictions and comparison with current APS staffing allocations.	By end of Month 3	\$144,595
3	Recommendation Development: Development of recommendations for optimizing the current staffing allocation processes, procedures, and methodologies	By end of Month 3.5	\$48,620
4	Recommendation Presentation: Presentation of the findings and recommendations to key stakeholders, including the School Board, the APS Executive Leadership Team, and relevant departments.	By December 18,2023	\$16,740
5	Implementation Planning: Development of a detailed implementation plan for the proposed changes.	By end of Month 4	\$33,300
6	Go-live: Launch of the new or optimized staffing allocation processes and procedures.	By end of Month 8	\$7,920
7	Evaluation: Evaluation of the effectiveness of the new or optimized staffing allocation processes and procedures after a specified period of time.	By end of Month 9	\$23,040
8	Closure: Final project report documenting the outcomes of the project and any additional findings, and closeout of the project.	By end of month 10	\$25,380
	Total		\$320,215

Optional: refer to Section I-9 of Scope of Work

<u>No.</u>	<u>Major Milestone Name/ Description</u>	<u>Deliverable Date</u>	<u>Major Milestone Fee</u>
1	Training and Documentation: Completion of training and preparation of supporting documentation and reference materials for the new or optimized staffing allocation processes and procedures.	By end of Month 6	\$46,620

End of Pricing Schedule

Attachment C

Non-Disclosure and Data Security Agreement

The undersigned, an authorized agent of the Contractor and on behalf of **Allovue Inc** (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 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

Attachment D

Contract Terms and Conditions

The Contract with the successful Offeror (“Contractor”) will contain the following Contract terms and conditions, with incomplete information to be added based upon the final negotiations between APS and the successful Offeror. Offerors who propose to use additional or modified language must include such language with their Proposal. Arlington Public Schools is referred to herein as “APS”. Non-Negotiable, Mandatory Provisions Required by Virginia Law or the Procurement Resolution are Indicated by Aa Asterisk (“*”). The final agreement is subject to review by the APS Attorney prior to being submitted to the successful Offeror for signature.

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 that significantly affect the production environment, as determined by the Project Officer, 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 upon acceptance of 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. 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 APS Project Officer. The number of the issued APS Purchase Order shall appear on all invoices.

5. 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 Arlington 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 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 has been signed by

APS and the Contractor and an APS Purchase Order is issued covering the cost of the services to be provided under the 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 an APS purchase order is issued covering the expected cost of such 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 work. No Additional Services shall be performed unless a written amendment to this Contract has been executed by both parties.

8. Reimbursable Expenses

All expenses shall be included in the firm fixed price for provision of the Work for APS. APS shall not approve any request for reimbursement of travel-related expenses submitted by the Contractor.

9. Reimbursable Travel-Related Expenses

All travel-related expenses shall be included in the firm fixed price for provision of the Work for APS. APS shall not approve any request for reimbursement of travel-related expenses submitted by the Contractor.

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 (i.e. pay TV, movies, night clubs, health clubs, theaters, bowling)
4. Personal expenses (i.e. laundry, valet, haircuts)
5. Personal travel insurance (i.e. 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.

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 the subcontractor 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 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 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. Contractors providing goods or services without a signed APS Purchase Order do so at their own risk and expense.

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 APS 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.

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

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

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.

15. Supervision by Contractor

The Contractor shall at all times 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 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. Termination for Cause, Including Breach and Default; Cure

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.

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”). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to APS Project Officer within fifteen (15) calendar days after the expiration of the Cure Period. 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.

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 (unless APS in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor shall be liable to APS for all costs incurred by APS after the effective date of termination, including costs required to be expended by APS to complete the Work covered by the Contract, including 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, refund of all sums paid by APS to the Contractor under the Contract and all attorney fees and costs incurred by APS to enforce any provision of this Contract.

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.

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.

20. Termination for the Convenience of APS

The performance of work under this Contract may be terminated by the Procurement Agent in whole or in part whenever the Procurement Agent shall determine that such termination is in APS' best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) calendar days before the date of termination, specifying the extent to which performance of the Work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by APS prior to such termination and any other termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

After receipt of a notice of termination 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 the indemnification of others; cross indemnity provisions are not acceptable). The Contractor covenants for itself, its employees, and subcontractor to save, defend, hold harmless, and indemnify APS, and all of their elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the "APS" for purposes of this section) from and against any and all claims made by third parties or by APS for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however caused, 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 called for by the Contract Documents, whether such act or omission or error is attributable to Contractor, subcontractor, any material supplier, or anyone directly or indirectly employed by them, called for by the Contract Documents. This duty to save, defend, 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 APS, then upon written notice from APS to the Contractor, Contractor shall at Contractor's expense, 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.

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

or payments made. The Contractor shall pay such expenses upon demand by APS and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

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 any and all copyrightable works created pursuant to this Contract. The Contractor further agrees to execute such documents as APS may request to affect 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 results 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 of 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 individual employees or subcontractors of the Contractor are performing work under this Contract on APS-owned property, then such individual employees or 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, and all key employees, agents or subcontractors working on-site at APS facilities or otherwise performing non-incident work under this Contract, sign the NDA (attached as an 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 according to standards established by the National Institute of Standards and Technology, including 201 CMR 17.00, Standards for the Protection of Personal Information of Residents of the Commonwealth and the Payment Card Industry Data Security Standard (PCI DSS), as applicable, and no less rigorously than it protects its own data, proprietary and/or confidential information. 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. 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 APS Project Officer.

(g) Notification of Security Incidents. The Contractor agrees to notify the APS Chief Information Officer and APS 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 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, 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 Schools, Virginia, 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, 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, or an act of God beyond control of APS that make performance impossible or illegal, unless otherwise specified in the Contract. The period hereinabove specified for the completion of his Work shall be extended by such time as shall be fixed by the Owner.

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

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 Term and any Subsequent 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 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 for alleged breach of Contract shall be submitted in writing to the Project Officer 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. Claims denied by the Project Officer may be submitted to APS Superintendent or designee in writing no later than sixty (60) days after final payment in accordance with the Procurement Resolution.

The time limit for final written decision by APS Superintendent or designee in the event of a contractual dispute, as that term is defined in the Procurement Resolution, is thirty (30) days. 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 a decision of the Project Officer, APS Superintendent or designee, School Board, or a court of competent jurisdiction.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. Survival of Terms

In addition to any numbered section in this Contract which specifically state that the term, paragraph or subsection survives the expiration of termination of this Contract, 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.

46. Headings

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

47. 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.

48. Non-Discrimination Notice

APS does not discriminate against faith-based organizations.

49. 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 the 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.

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.

2. Sexual Abuse and Molestation (SAM) -Occurrence-Based Insurance:

Sexual Abuse and Molestation (SAM) Coverage must be included if the Contractor and or their Subcontractors are working around students where a 1 on 1 situation is possible.

In addition to providing this coverage the Contractor and or their Subcontractors will run both criminal background checks and sex offender checks on all employees that are interacting with APS students (Upon award and every 2 years afterward) as well as require their employees to receive training upon award and annually on the prevention of abuse and molestation. Criminal background checks should go back at least 5 years. The Contractor and or their Subcontractors further agrees to keep all training records, background and sex offender checks on file and to provide APS with copies whenever APS requests them.

Lastly, the Contractor and or their Subcontractors agrees to abide by the 2-person rule at all times when working with students. If there are times when the 2-person rule cannot be followed APS should be notified immediately and the activity will be evaluated by APS, the Contractor and or their Subcontractors.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Commercial General Liability	\$ 1,000,000.00	\$ 2,000,000.00
Sexual Abuse and Molestation (SAM) Coverage	N/A	N//A

3. 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.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Subcontractors Commercial General Liability	N/A	N/A

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.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Worker’s Compensation	Statutory Limits	Statutory Limits

Employer's Liability	\$ 1,000,000.00	\$ 1,000,000.00
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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.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Commercial Automobile Liability	N/A	N/A

6. Professional Liability / Errors & Omissions:

Vendor 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.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Professional Liability/Errors & Omissions	N/A	N/A

7. Cyber Liability Insurance:

Cyber insurance which shall be in place for all contractors and subcontractors. All cyber insurance policies shall have Arlington County School Board, including elected and appointed officials, agents, and employees as an additional named insured.

Type of Insurance	Per Project Limit Per Occurrence	Per Project Aggregate Limit
Cyber Liability	\$ 2,000,000.00	\$ 2,000,000.00

8. Professional Liability including Network and Privacy Security Liability Insurance ("Tech E&O"):

Tech E&O insurance shall be in place for Contractor and all of its subcontractors. Coverage to include: Economic Loss arising out of Contractor's capacity for which it is being hired, and Coverage resulting from the ability of a third-party to gain access to APS' computer system, Contractor's failure to prevent unauthorized access (e.g., breach) to or use of an Insured's computer system, and unauthorized access (e.g., breach) or use of confidential information (Personally Identifiable Information (PII), Protected Health Information (PHI), and corporate confidential information protected by a confidentiality agreement). Coverage shall include but not be limited to:

- Data Breach & Incident Response
- Network Security, Privacy and Data Breach Liability
- Regulatory Liability
- PCI Fines & Assessments
- Data Restoration

- Cyber Extortion Including Ransomware
- Media Liability
- Social Engineering & Fraud Event
- Forensics

Type of Insurance	Limit Per Claim	Aggregate Limit
Technical Errors & Omissions	N/A	N/A

9. Property Insurance:

Builder's Risk:

The Contractor shall purchase Builder's Risk insurance upon the entire Work at the Project Site to the full value of the Contract Sum of the new improvements thereof. This insurance shall include the interests of APS, Subcontractors and Sub-Subcontractors in the Work, and shall insure against all risks of loss, except for exclusions included in the Certificate of Insurance and approved by Owner. This insurance shall include coverage for the following:

Loss by explosion of boilers during testing (any exclusion applicable to such loss shall be waived).

Partial or complete occupancy by the Owner (any exclusion applicable to occupancy shall be removed).

Loss without coinsurance penalty (coinsurance or similar "insurance to value" requirements shall be eliminated).

Coverage of property in transit and unscheduled locations sufficient in limits to adequately cover maximum anticipated values at risk.

Coverage of Contractor's labor, overhead and profit.

Coverage of materials stored or installed on the Project Site, until said materials are accepted by the Owner per Substantial Completion and Acceptance requirements. Payment by Owner for materials stored or installed on the Project Site does not eliminate Contractor's responsibility or liability with regards to theft and vandalism or other damage.

Please Note: At APS's sole discretion, Builder's Risk insurance may be purchased by the Owner as specified above. In this event, cost for such coverage shall be deducted from the Contract Sum.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Builder's Risk	N/A	N/A

All risk insurance covering damage, loss or injury to the Work, excluding earthquake damage. The policy shall be payable to the Owner, and the proceeds thereof, when paid, shall be retained by APS as security for the performance by the Contractor of its obligations under this Contract and, upon such performance, shall be released to the Contractor. Such policy shall be in an amount equal to the Contract Sum.

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.

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	Limit Per Occurrence	Aggregate Limit
Use of Excess / Umbrella Liability Insurance	\$ 1,000,000.00	\$ 1,000,000.00

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.

Contract Identification:

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

50. 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>.

51. 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.

52. 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.

53. 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 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.

54. 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.

55. 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.

56. Extension of Contract Term

The Procurement Office, at its sole and absolute discretion, may extend the Contract Term or final Renewal Contract Term of the resultant Contract for a period of not more than six (6) months, unless specifically stated otherwise in the solicitation.

57. Student Data Usage and Privacy Agreement: Intentionally Deleted

58. Contractor Certification Regarding Criminal Convictions: Intentionally Deleted

59. Cooperative Contract for Use by Other Public Bodies

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

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. Vaccine Requirement

All employees and students, all employees and subcontractors of the Contractor who are assigned to this Contract, must be fully vaccinated against COVID-19. Any Contractor employee or subcontractor who is not fully vaccinated, must follow a weekly testing protocol as established by the Contractor unless exempt pursuant to a valid reasonable accommodation under state or federal law. During the Contract Term, the Contractor certifies that it will comply with this provision and will ensure that its subcontractors, if any, will as well.

End of Contract Terms and Condition

Attachments E
Certificate(s) of Insurance

Attachment F

Sample Purchase Order



**Standard Purchase Order
Arlington Public Schools**

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

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

Please note that our billing address has changed.

Unless otherwise instructed, please email invoices to: aps.payables@apsva.us.

Purchase Order	1234567
Purchase Order Date	01-02-3456
Change Order Number	0
Change Order Date	
Procurement Specialist/Phone	Procurement Specialist
Requisitioner/Ph#/Email	Requestor
FEIN	54-6001128
Website:	https://www.apsva.us/procurement-office/

SUPPLIER: ABC INC
1234 ABC ST
XYZ VA 5678

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

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

Payment Terms	Freight Terms	FOB
NET 30	Prepaid	Destination

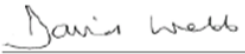
Line	Vendor Part	Item Description	Due Date	Quantity	UOM	Unit Price	Amount
1		Sample Purchase Order	01-02-3456	1	XYZ	\$123.00	\$123.00

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

For current APS Purchase Order Terms and Conditions, please refer to:

<https://www.apsva.us/procurement-office/procurement-regulations/>

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

Authorized by: 
David J. Webb, C.P.M.
Director of Procurement

Purchase Order Total: \$123.00

End of Sample Purchase Order

Attachment F
Allovue Customer Agreement

This cover page and the attached documents describe the relationship between **Allovue, Inc**, a company located at 1014 West 36th Street, Suite 220, Baltimore, MD 21211 (“**Allovue**”) and the entity identified below (“**Customer**”) (each of Allovue and Customer, a “**Party**” and collectively, the “**Parties**”) and shall be effective as of date of signature (the “**Effective Date**”). The documents attached to this cover page will consist of the Terms and Conditions (“**Terms**”), which describe and set forth the general legal terms governing the relationship, the Customer specific terms, describing and setting forth the subscription terms and fees for Customer’s use of the Service (“**Specific Terms**”), and one (1) or more statement(s) of work describing and setting forth detail about that relationship (each, a “**Statement of Work**”), depending upon the particular services to be provided to Customer (collectively, the “**Agreement**”). This Agreement includes this cover page, the attached Terms, the Specific Terms, and all Statements of Work that are attached to the Terms and that are executed by both Parties.

CUSTOMER INFORMATION (to be completed by Customer)	
Name/ Customer:	Arlington County School Board operating as Arlington Public Schools (APS)
Address:	2110 Washington Boulevard, Arlington, VA 22204
Finance System:	Oracle
Primary Contact:	Leslie Peterson
Title:	Assistant Superintendent for Finance and Management Services
Email:	leslie.peterson@apsva.us
Phone:	703-228-0747
Implementation Lead <i>(if different than Primary Contact)</i>	
Title:	
Email:	
Phone:	
CUSTOMER ACCOUNTS PAYABLE INFORMATION (to be completed by Customer)	
Invoicing Address:	
Invoicing Contact:	
Title:	
Email:	
Phone:	
PO Required?	Yes <input type="checkbox"/> No <input type="checkbox"/> PO Number (If required):

The Parties have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

CUSTOMER:

Allovue, Inc.

By (Signature): David J. Webb
 Name (Printed): David Webb
 Title: Procurement Agent/Director
 Date: August 7, 2023

By (Signature): Jessica G. Gartner
 Name (Printed): Jessica Gartner
 Title: Chief Executive Officer
 Date: August 4, 2023

TERMS AND CONDITIONS

1. DEFINITIONS.

1.1 "Access Protocols" means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Customer or any User to access the Service.

1.2 "Allovue Technology" means: (i) the Service, Documentation, and all other proprietary and Allovue technology, documents, software, hardware, products, processes, algorithms, user interfaces, know-how, trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information used or provided by Allovue in connection with the Service or Services; and (ii) any modifications, improvements to, or derivative works of, any of the foregoing.

1.3 "Confidential Information" means all written or oral information, disclosed by either Party to the other, related to the operations of such Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential.

1.4 "Customer Data" means electronic data and information submitted or provided by or on behalf of the Customer.

1.5 "Documentation" means Allovue-provided standard user manuals and documentation for the Service.

1.6 "Dynamic Data" means Customer Data to be provided by, or on behalf of, Customer to Allovue and stored on Allovue servers as part of the Service. Such Dynamic Data shall be fully accessible by Customer and may be modified, deleted, or stored freely by Customer, in its sole discretion.

1.7 "Service" means Allovue's proprietary Balance solution that it makes available electronically on a software-as-a-service basis.

1.8 "Users" mean Customer's employees who are authorized to utilize the Service on Customer's behalf and who are provided with access to the Service by virtue of a password or the equivalent thereof.

2. SERVICE ACCESS.

2.1 **Order.** Customer will be able to order access to the Service, and other related training and professional development services, as set forth in more detail on the Specific Terms executed by the Parties. The Specific Terms shall set out a description of the Service, the fees and payment schedule associated with access to such Service, and other related terms. The Specific Terms will be attached to this Agreement and incorporated herein by reference.

2.2 **Access Grant.** Subject to the terms and conditions of the Agreement, Allovue grants Customer a limited, non-exclusive, non-transferable, non-sub-licensable right to permit Users to access the features and functions of the Service as set forth on the Specific Terms and to use the Documentation solely for Customer's internal business purposes. Customer will access and use the Service solely in accordance with the Documentation and any usage limitations set forth on the Service Agreement. Subject to Customer's payment of the fees set forth in Appendix B-Pricing Schedule, Allovue will provide Customer with access to the Service during the Term of this Agreement. On or as soon as reasonably practicable after the Effective Date, Allovue shall provide to Customer the necessary passwords, security protocols, and policies, and network links or connections and Access Protocols to allow Customer and its Users to access the Service in accordance with the Access Protocols. Customer shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify Allovue promptly of any such unauthorized use known to Customer.

2.3 **Limitations.** Customer agrees that it and its Users will not: (a) permit any third party to access and/or use the Service, other than the Users; (b) rent, lease, loan, or sell access to the Service to any third party; (c) interfere with, disrupt, alter, translate, or modify the Service or any part thereof, or create an undue burden on the Service or the networks or services connected to the Service, including any external websites that are linked to via the Service; (d) reverse engineer, decompile, disassemble or otherwise attempt to obtain or perceive the source code from which any software component of the Service is compiled or interpreted, and Customer acknowledges that nothing in this Agreement will be construed to grant Customer any right to obtain or use such code; (e) access the Service in order to build or create a derivative, competitive or similar product or Service or copy any ideas, features, functions or graphics of the Service; (f) access or use the Service in any manner that could damage, disable, overburden or impair any Allovue server or the networks connected to any Allovue server; (g) disable or circumvent any access control or related device, process or procedure established with respect to the Service; (h) use any robot, spider, site search/retrieval application, or other device to retrieve or index any portion of the Service or collect information for any unauthorized purpose; or (i) use, or allow the use of, the Service for any unfair or deceptive practices or in contravention of any federal, state, local, foreign, or other applicable law, or rules and regulations of regulatory or administrative organizations. Customer shall undertake reasonable efforts to make all Users aware of the provisions of this Section 2.2. Customer will be responsible for acquiring, installing, and maintaining all connectivity equipment, hardware, software and other equipment as may be necessary for it and its Users to connect to, access, and use the Service.

2.4 Usage. Allovue will authorize access to the number of Users procured by Customer on the Service Agreement and/or by subsequent amendment by assigning unique passwords and user names. User logins are for designated Users and cannot be shared or used by more than one User, but any User login may be reassigned to another User as needed. Customer will be responsible for the confidentiality and use of User's passwords and user names. The Service may be accessed by no more than the specified number of Users. Additional User subscriptions that are added during the subscription term will be prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added and the added User subscriptions shall be co-terminous. Customer will notify Allovue promptly of any actual or suspected unauthorized use of Customer's account, usernames or passwords, or any other breach or suspected breach of the Agreement. Allovue reserves the right to terminate any username and password which Allovue reasonably determines may have been used by an unauthorized third party or for an unlawful purpose. Any act or omission by a User which, if undertaken by Customer, would constitute a breach of the Agreement, will be deemed a breach of this Agreement by Customer. Customer will be responsible for all activity occurring under User accounts.

2.5 Availability. Allovue will use commercially reasonable efforts to provide support in accordance with its then- current support policies, which will at all times include phone and email assistance for basic usage questions concerning the Service during normal business hours (7:00 a.m. – 8:00 p.m. eastern time zone).

2.6 Cooperation. Customer acknowledges and agrees that the timely performance by Allovue hereunder is dependent upon Customer performing its obligations under this Agreement, and that any delay or failure to perform by Customer will extend the time for Allovue to perform. Customer will make available in a timely manner at no charge to Allovue all Customer Data and other technical data, files, documentation, and information and resources of Customer required by Allovue for performance.

2.7 Professional Services. Where the Parties have agreed to Allovue's provision of integration, research, analysis, development, design, operational and/or other professional services ("**Professional Services**"), they will enter into a mutually executed statement of work ("**SOW**") governing the provision of the initially required Professional Services. Each SOW will incorporate the Terms and Conditions of this Agreement and be attached hereto as Exhibit B. To the extent that a conflict arises between the Terms and Conditions of the SOW and the APS Contract Terms and Condition, the APS Contract Terms and Conditions will govern. The SOW will include (i) a description of the Professional Services; (ii) the schedule for the performance of the Professional Services; (iii) the ownership rights with respect to the work product resulting from the performance of the Professional Services (and if no such provision is provided, all ownership rights are and shall be vested in Allovue immediately); and (iv) Allovue's then-current rates for the performance of the Professional Services.

3. CUSTOMER DATA.

3.1 Usage. Customer acknowledges that Allovue may use, and Customer hereby grants to Allovue a limited, nonexclusive, irrevocable license to use, reproduce, modify, display, perform, and create derivative works of any Customer Data provided by Customer for the duration of the contract to provide the Service and any Professional Services to Customer. Customer further grants Allovue the right to create anonymous profiles and derivative insights, analysis, and statistics based on the Customer Data (the "Insights") that it may use as part of the Service for Customer and other customers of Allovue, as well as for Allovue's business purposes; provided, however, that such Insights do not disclose any Customer Confidential Information or otherwise disclose the identity of Customer, any users, or any of Customer's customers. To the extent that any Insights are created by Allovue, such Insights may be used by Allovue for any lawful purpose, even following the expiration or termination of this Agreement, provided that Allovue agrees to comply with applicable privacy and other laws and regulations respecting the dissemination and use of such Insights.

3.2 Customer Commitment. Customer will use the Service and Documentation in compliance with all applicable laws and regulations. Customer will procure all rights, consents and privileges to: (a) obtain and transfer Customer Data to Allovue; (b) permit Allovue to collect, access, and use Customer Data in accordance with the terms of this Agreement; and (c) grant the rights and licenses in Section 3.1 (Usage). Customer will ensure that the provision of Customer Data to Allovue and Allovue's collection, access, and usage of Customer Data will comply with all applicable laws and regulations, including all privacy laws and regulations. Customer shall be responsible for and assumes the risk, responsibility and expense of any problems resulting from, the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. The delivery of the Customer Data shall not, under any circumstances, create any implication that the information contained therein is correct, and Allovue does not undertake an obligation to update such information at any time after the date noted therein.

3.3 Dynamic Services. The transition of the Service to one that accommodates the use by Customer of Dynamic Data shall be accompanied by a new module that allows the user to interactively utilize the Dynamic Data. The use of the new module and associated Dynamic Data shall be governed by all terms and conditions applicable to Customer Data, along with the following additional terms and conditions:

- (a) Allovue agrees to provide adequate storage for and protect the Dynamic Data in accordance with the Agreement.

- (b) Customer shall be responsible at all times for the accuracy and quality of all Dynamic Data submitted via the Service to Allovue. For the avoidance of any doubt, Customer shall be responsible for the quality of all Dynamic Data and any changes made to the Dynamic Data

4. CONFIDENTIALITY.

4.1 Confidentiality. Each Party agrees to: (a) use the Confidential Information of the other Party only as permitted herein; and (b) restrict access to the Confidential Information to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing or are otherwise bound to treat such information in accordance with the terms of this Agreement. The foregoing provision will not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction.

4.2 Exceptions. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (a) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order will first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (b) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

5. OWNERSHIP

5.1 IP Ownership. The Allovue Technology is the exclusive property of Allovue or its suppliers. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Allovue Technology, or any part thereof, including any right to obtain possession of any source code, data or other technical material relating to the Allovue Technology. All rights not expressly granted to Customer are reserved to Allovue. Ownership of all work product, developments, inventions, technology or materials provided by Allovue under this Agreement will be solely owned by Allovue, unless expressly stated otherwise pursuant to an SOW.

5.2 Third Party Software. The Service may utilize, contain, or otherwise use certain third party software (collectively, the "Third Party Software"). Third Party Software may be subject to additional licensing terms, which Allovue may deliver or make available from time to time to Customer, which are incorporated herein by reference, and which supersede any contradictory terms in this Agreement. Certain items of Third Party Software delivered with the Licensed Software are "open source" or "free software" licenses ("Open Source Software"). The Open Source Software is not subject to the terms and conditions of Sections 2.2, 2.3, 8, 9 or 10. Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software.

5.3 Customer Data. As between Allovue and Customer, Customer owns the Customer Data. All rights in Customer Data not expressly granted herein are reserved to Customer. Notwithstanding the foregoing: (a) Allovue will retain the ownership of any report template, report structure, and the like but not any Customer Data therein; and (b) Allovue may have other rights in publicly available aspects of the Customer Data.

5.4 Feedback. Allovue, in its sole discretion, may utilize all comments and suggestions, whether written or oral, furnished by Customer or Users to Allovue in connection with the Service (all such comments and suggestions, collectively, "Feedback"). Customer grants Allovue a worldwide, non-exclusive, irrevocable, perpetual, royalty-free right and license to incorporate the Feedback into Allovue products and services. Customer will provide written evaluations of the Service upon Allovue's reasonable request.

6. PAYMENT.

6.1 Fees. In consideration for the access rights granted to Customer and the Professional Services performed by Allovue under this Agreement, Customer shall pay all fees or charges set forth in the Exhibit (Fees) and any SOW. Unless otherwise set forth on an SOW, all payments for Professional Services are due within thirty (30) days of the date of an approved invoice by APS. Any annual or subscription fee(s) for the first period (either month or year, as applicable) of the term of this Agreement shall be paid within 30 days of the date of an approved invoice by APS. Allovue's fees are exclusive of all taxes, levies or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies, or duties, excluding only United States taxes based solely on Allovue's income.

6.2 Billing. Any amounts not paid when due shall bear interest at the rate of six percent (6%) per annum.

6.3 Suspension. Allovue will have the right, in addition to any of its other rights or remedies, to immediately suspend Customer's access to the Service, without liability to Customer, if any undisputed amount due under this Agreement is not received by Allovue within fifteen (15) days after Allovue provided notice that such amount was overdue. Allovue will notify

Customer of any suspension under this Section 6.3 as soon as reasonably practicable.

6.4 Non-Delivered Licenses/Services. Intentionally Deleted

7. CUSTOMER CONTENT AND RESPONSIBILITIES

7.1 Customer Warranty. Customer represents and warrants that any Customer Data hosted by Allovue as part of the Service shall not (a) infringe, misappropriate or violate any intellectual property rights, publicity/privacy rights, law or regulation; (b) be deceptive, defamatory, or unlawful; (c) contain any viruses, worms or other malicious computer programming codes intended to damage, surreptitiously intercept or expropriate any system, data or personal or personally identifiable information; or (d) otherwise violate the rights of a third party. Allovue is not obligated to back up any Customer Data; the Customer is solely responsible for creating backup copies of any Customer Data at Customer's sole cost and expense. Customer agrees that any use of the Service contrary to or in violation of the representations and warranties of Customer in this section constitutes unauthorized and improper use of the Service.

7.2 Customer Responsibility for Data and Security. Customer and its Users shall have access to the Customer Data and shall be responsible for all changes to and/or deletions of Customer Data and the security of all passwords and other Access Protocols required in order to access the Service. Customer shall have the ability to export Customer Data out of the Service and is encouraged to make its own back-ups of the Customer Data. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data.

8. LIMITED WARRANTY AND DISCLAIMER.

8.1 Warranty. Allovue warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will materially conform to Allovue's then current Documentation for the Service under normal use and circumstances. If Customer notifies Allovue of a breach, Allovue will re-perform the nonconforming portion of the Service. The foregoing constitutes Customer's sole and exclusive remedy for any breach of warranty.

8.2 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE, DOCUMENTATION AND ANY PROFESSIONAL SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND WITH ALL FAULTS, AND ALLOVUE, ITS AFFILIATES, SUPPLIERS, CONTRACTORS AND LICENSORS MAKE NO (AND HEREBY DISCLAIM ALL) WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE SERVICE (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO CUSTOMER BY ALLOVUE. ALLOVUE DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SERVICE SHALL BE UNINTERRUPTED OR ERROR-FREE. Customer acknowledges and agrees that the Service will not be used, and is not licensed for use, in connection with any time-critical or mission-critical functions. The Service is not, nor is it intended to be, legal, financial, investment or other professional advice or a substitute for advice of an attorney, accountant or any other professional. To make sure that any information or suggestions fit Customer's particular circumstances, Customer should consult with an appropriate tax, investment or legal professional, or with the appropriate district decision-making authorities before taking action based on any data on the Service.

8.3 Internet Delays. THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. ALLOVUE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS OR ANY OTHER FORCE MAJEURE EVENT.

9. LIMITATION OF LIABILITY.

9.1 Types of Damages. Intentionally Deleted Intentionally Deleted

9.2 Amount of Damages. Intentionally Deleted

9.3 Additional Rights. Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to Customer.

9.4 Basis of the Bargain. The Parties agree that the limitations of liability set forth in this section shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The Parties acknowledge that the prices have been set and this Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the Parties.

10. INDEMNIFICATION.

10.1 By Allovue. Allovue will defend, indemnify and hold Customer harmless against any third-party loss or damage (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("**Claims**") made or brought against Customer by a third party alleging that the Licensed Software infringes such third party's U.S. patents or copyrights or trade secret rights under applicable laws of any jurisdiction within the United States. Notwithstanding the foregoing, Allovue will have no liability for any Claim under this Section 10.1 to the extent that such Claim is based on: (a) Customer's unauthorized use or combination of the Licensed Software; (b) any use of the Licensed Software not in accordance with the Documentation; (c) modifications to the Allovue Technology, which modifications are not made by Allovue; or (d) use of a superseded release of the Licensed Software, where Allovue had provided Customer with a subsequent release of the Licensed Software at no charge (each of (a) through (d), a "**Customer Indemnity Responsibility**"). If the Licensed Software is or, in Allovue's opinion, likely to become the subject of any infringement-related Claim, then Allovue will, at its expense and in its discretion: (i) procure the right to continue to use the Licensed Software, as applicable; or (ii) modify or replace any such infringing material to make it non-infringing. If Allovue determines that neither of these alternatives is commercially practicable, then Allovue may terminate the Agreement and all outstanding Specific Terms and Statements of Work without further liability, except that Allovue will refund any prepaid but unused amounts.

By Customer Intentionally Deleted

10.2 Procedures. Any indemnification obligations set forth in this Agreement will be subject to the following conditions: (a) the indemnified Party will notify the indemnifying Party in writing promptly upon learning of any claim or suit for which indemnification is sought; (b) the indemnifying Party will have sole control of the defense or settlement, provided that the indemnified Party will have the right to participate in such defense or settlement with counsel at its selection and at its sole expense; and (c) the indemnified Party will reasonably cooperate with the defense, at the indemnifying Party's expense.

10.3 Additional Indemnification Intentionally Deleted

11. TERMINATION.

11.1 Term. Intentionally Deleted

11.2 Termination for Breach. Intentionally Deleted

11.3 Effect of Termination. Upon expiration or termination, Customer shall discontinue use of the Service and all rights granted to Customer hereunder will immediately terminate. Sections 3, 4, 5, 6, 9, 10, 11.3, and 12 will survive any termination of the Agreement.

12. MISCELLANEOUS.

12.1 Entire Agreement. This Agreement is the final, complete and exclusive agreement of the Parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the Parties with respect to such subject matters. Unless otherwise specifically stated: (a) the word "including" shall not be construed as terms of limitation, and shall mean "including without limitation" and (b) any reference to days shall mean calendar days.

12.2 Governing Law. Intentionally Deleted

12.3 Publicity. Allovue may publicly refer to Customer, including on Allovue's website and in sales presentations, as an Allovue customer and may use Allovue's logo for such purposes. Similarly, Customer may publicly refer to itself as a customer of Allovue. Each Party hereby grants the other a limited, worldwide license to use the other's logo in conformance with such Party's trademark usage guidelines and solely for the purposes of fulfilling its obligations hereunder and as set forth in this Section 11.3 and provided no such shall be disparaging to the other Party. Allovue may also issue a press release announcing the relationship with Customer.

12.4 Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

12.5 Waiver. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

12.6 Remedies. Any actual or threatened breach of the Section 2.2 (Limitations) will constitute immediate, irreparable harm to the non-breaching Party for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought to enforce this Agreement, the prevailing Party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

12.7 No Assignment. Neither Party shall assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other Party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that either Party may assign this Agreement in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without any consent of the other Party after giving written notice to the other party sixty (60) days prior to the assignment. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

12.8 Force Majeure. Any delay in the performance of any duties or obligations of either Party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such Party, provided that such Party uses reasonable efforts, under the circumstances, to notify the other Party of the cause of such delay and to resume performance as soon as possible.

12.9 Relationship. Customer's relationship to Allovue is that of an independent contractor, and neither Party is an agent or partner of the other. Customer will not have, and will not represent to any third party that it has, authority to act on behalf of Allovue.

12.10 Notices. All notices required or permitted hereunder will be in writing, delivered personally, by email, or by nationally recognized overnight courier (e.g., FedEx) at the Parties' respective addresses set forth in the preamble. All notices will be deemed effective upon personal delivery, or when received if sent by email or overnight courier. The communications between Customer and Allovue relating to the Service may use electronic means. For contractual purposes, Customer: (a) consents to receive communications from Allovue in an electronic form, whether via email or posting on the Service or other reasonable means; and (b) agrees that all terms and conditions, agreements, notices, disclosures, and other communications that Allovue provides to Customer electronically satisfy any legal requirement that such communications would satisfy if they were in a print-on-paper writing.

12.11 Terms of Use & Privacy Policy. All users will be obligated to review and agree to Allovue's Terms of Use, available at <https://demo.allovue.com/terms-of-use>, and Privacy Policy, available at <https://demo.allovue.com/privacy-policy> prior to accessing and using the Service. Allovue retains the right to modify and update those documents as necessary.

12.12 Arlington Public Schools Contract Terms and Conditions. The Arlington Public Schools (APS) Contract Terms and Conditions shall apply to this Purchase. WHEREAS any language in this Agreement which conflicts with any APS Contract Terms and Condition, then such conflicting language in this Agreement shall not apply.