

FAUQUIER COUNTY SCHOOLS
a political subdivision of the Commonwealth of Virginia

Contract # 25-021-S-R

Riding Fairfax County Contract (RFP2000003650) **The Stepping Stones Group, LLC**

This Agreement is made and entered into this ___ day of **September 2024**, by the Fauquier County Government, a political subdivision of the Commonwealth of Virginia (hereinafter referred to as "Owner") and **The Stepping Stones Group, LLC**, having its principal place of business at **2300 Windy Ridge Pkwy, Suite 825, Atlanta, GA. 30339** hereinafter referred to as "**Contractor**".

WITNESSETH that the Contractor and the Owner, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF SERVICES: The Contractor shall provide Speech Therapy Intervention Services

COMPENSATION: The Owner will pay, and the Contractor will accept in full consideration for the performance during the contract term "pricing as negotiated and attached".


CONTRACT PERIOD: Date of execution, through September 30, 2028, with the automatic renewals for 3 1-year renewals, at the mutual agreement of both parties.

The contract documents shall consist of **and for the purpose of resolving ambiguity or conflicts shall be interpreted in the following order of priority:**

- (1) This signed form;
- (2) Fauquier County General Terms & Conditions;
- (3) RFP2000003650, dated March 29, 2023, including any Addendums and Notice of Award dated October 12, 2023; and,
- (4) Acceptance Agreement dated October 12, 2023, including all Attachments and documents incorporated by reference.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

The Stepping Stones Group, LLC

By: 

Title: Client Services Director

Date: 09/18/2024

Fauquier County Government
a political subdivision of the Commonwealth
of Virginia

By: 
Kristen Hylton

Title: Procurement Manager

Date: 9/19/2024

GENERAL TERMS, CONDITIONS AND INSTRUCTIONS TO BIDDERS/OFFERORS

Revised 08/05/2021

Vendor: These general rules and conditions shall apply to all purchases and be a part of each solicitation and every contract awarded by the Procurement Division, unless otherwise specified. The Procurement Division is responsible for the purchasing activity of Fauquier County, which is comprised of the Fauquier County Board of Supervisors, a body politic and political subdivision of the Commonwealth of Virginia, and the Constitutional Officers of Fauquier County, Virginia, and the Fauquier County School Board, a body corporate. The term "Owner" as used herein refers to the contracting entity which is the signatory on the contract and may be either Fauquier County or the Fauquier County School Board, or both. Bidder/Offeror or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids/proposals: failure to do so will be at the bidder's/Offeror's own risk and except as provided by law, relief cannot be secured on the plea of error.

Subject to all Federal, State and local laws, policies, resolutions, regulations, rules, limitations and legislation, bids/proposals on all solicitations issued by the Procurement Division will bind bidders/Offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

1. **AUTHORITY**-Except as delegated in the Procurement Procedures Manual, the Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order issued by the Owner. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned buyers. Unless specifically delegated by the Purchasing Agent, no other Owner officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the Owner for an indebtedness. Any purchase order or contract made which is contrary to these provisions and authorities shall be of no effect and void and the Owner shall not be bound thereby.
2. **COMPETITION INTENDED:** It is the Owner's intent that this solicitation permit competition. It shall be the Bidder's/Offeror's responsibility to advise the Purchasing Agent in writing if any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in this solicitation to a single source. The Purchasing Agent must receive such notification not later than five (5) business days prior to the deadline set for acceptance of the bids/proposals.

CONDITIONS OF BIDDING

3. **CLARIFICATION OF TERMS:** Unless otherwise specified, if any Bidder/Offeror has questions about the specifications or other solicitation documents, the prospective Bidder/Offeror should contact the buyer whose name appears on the face of the solicitation no later than five (5) business days prior to the date set for the opening of bids or receipt of proposals. Any revisions to the solicitation will be made only by addendum issued by the Buyer. Notifications regarding specifications may not be considered if received in less than five (5) business days of the date set for opening of bids/receipt of proposals.
4. **MANDATORY USE OF OWNER FORMS AND TERMS AND CONDITIONS:** Failure to submit a bid/proposal on the official Owner forms provided for that purpose shall be a cause for rejection of the bid/proposal. Unauthorized modification of or additions to any portion of the Invitation to Bid or Request for Proposal may be cause for rejection of the bid/proposal. However, the Owner reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject any bid or proposal which has been modified.
5. **LATE BIDS/PROPOSALS & MODIFICATION OF BIDS/PROPOSALS:**

Any bid/proposal/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/proposal/modification is considered a late bid/proposal/modification. The Owner is not responsible for delays in the delivery of the mail by the U.S. Postal Service, private carriers or the inter-office mail system. It is the sole responsibility of the Bidder/Offeror to ensure their bid/proposal reaches the Procurement Division by the designated date and hour.

 - a. The official time used in the receipt of bids/proposals is that time stamp within the Bonfire Portal.
 - b. Late bids/proposals/modifications will be returned to the Bidder/Offeror UNOPENED, if solicitation number, acceptance date and Bidder/Offeror's return address is shown on the container.
 - c. If the Owner closes its offices due to inclement weather or other unforeseen emergency scheduled bid openings or receipt of proposals will be extended to the next business day, same time.
6. **WITHDRAWAL OF BIDS/PROPOSALS:**

A Bidder/Offeror for a contract other than for public construction may request withdrawal of his or her bid/proposal under the following circumstances:

 - a. Bids/Proposals may be withdrawn on written request from the Bidder/Offeror received at the address shown in the solicitation prior to the time of acceptance.
 - b. Requests for withdrawal of bids/proposals after opening of such bids/proposals but prior to award shall be transmitted to the Purchasing Agent, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the Owner may exercise its right of collection.

No Bid/Proposal may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid/Proposal of the same bidder/Offeror or of another bidder/Offeror in which the ownership of the withdrawing bidder/Offeror is more than five percent. In the case of Invitation for Bids, if a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid. No bidder/Offeror that is permitted to withdraw a bid/proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid/proposal was submitted.
7. **ERRORS IN BIDS/PROPOSALS** – When an error is made in extending total prices, the unit bid price will govern. Erasures in bids/proposals must be initialed by the bidder/Offeror. Carelessness in quoting prices, or in preparation of bid/proposal otherwise, will not relieve the Bidder/Offeror. Bidders/Offeror's are cautioned to recheck their bids/proposals for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.
8. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** The signed bid/proposal and requested copies should be returned in a separate envelope or package, sealed and identified with the following information:

ADDRESSED AS INDICATED ON PAGE 1

IFB/RFP NUMBER
TITLE
BID/PROPOSAL DUE DATE AND TIME
VENDOR NAME AND COMPLETE MAILING ADDRESS (RETURN ADDRESS)

If a bid/proposal is not addressed with the information as shown above, the Bidder/Offeree takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the bid/proposal to be disqualified. Bids/Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

9. **ACCEPTANCE OF BIDS/PROPOSALS:** Unless otherwise specified, all formal bids/proposals submitted shall be valid for a minimum period of one hundred twenty (120) calendar days following the date established for acceptance. At the end of the one hundred twenty (120) calendar days the bid/proposal may be withdrawn at the written request of the Bidder/Offeree. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
10. **CONDITIONAL BIDS:** Conditional bids are subject to rejection in whole or in part.
11. **BIDDERS PRESENT:** At the time fixed for the opening of responses to a bid, bid contents will be made public for the information of bidders and other interested parties who may be present either in person or by representative. All bids will be opened at the time and place specified and read publicly. Bid tabulations are posted on the Procurement Division's Bulletin Board for a minimum of 10 days from award date. At the time fixed for the receipt of responses for Request for Proposals, only the names of the Offerors will be read and made available to the public.
12. **RESPONSE TO SOLICITATIONS:** In the event a vendor cannot submit a bid on a solicitation, the vendor is requested to return the solicitation cover sheet with an explanation as to why the vendor is unable to bid on these requirements. Because of the large number of firms listed on the Owner's Bidders List, it may be necessary to delete from this list the names of those persons, firms or corporations who fail to respond after having been invited to bid for three (3) successive solicitations. Such deletion will be made only after formal notification of the intent to remove the firm from the Owner's Bidders List.
13. **BIDDER INTERESTED IN MORE THAN ONE BID:** If more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.
14. **TAX EXEMPTION:** The Owner is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested by the Bidder/Offeree.
15. **DEBARMENT STATUS:** By submitting their bids/proposals, Bidders/Offerees certify that they are not currently debarred from submitting bids/proposals on contracts by the Owner, nor are they an agent of any person or entity that is currently debarred from submitting bids or proposals on contracts by the Owner or any agency, public entity/locality or authority of the Commonwealth of Virginia.
16. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in *Code of Virginia* §§ 2.2-4367 through 2.2-4377 (the Virginia Public Procurement Act), as amended from time to time, shall be applicable to all contracts solicited or entered into by the Owner. By submitting their bids/proposals, all Bidders/Offerees certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, Offeror, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction 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.
17. **NO CONTACT POLICY:** No Bidder/Offeree shall initiate or otherwise have contact related to the solicitation with any Owner representative or employee, other than the Procurement Division, after the date and time established for receipt of bids/proposals. Any contact initiated by a Bidder/Offeree with any Owner representative, other than the Procurement Division, concerning this solicitation is prohibited and may cause the disqualification of the Bidder/Offeree from this procurement process.
18. **VIRGINIA FREEDOM OF INFORMATION ACT:** All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (*Code of Virginia* § 2.2-3700 *et. seq.*) and § 2.2-4342 of the Virginia Public Procurement Act except as provided below:
 - a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
 - b. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of bids but prior to award, except in the event that the Owner decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation Offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the Owner decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
 - c. Trade secrets or proprietary information submitted by a bidder, Offeror or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information and Virginia Public Procurement Acts; however, the bidder, Offeror or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.
 - d. Nothing contained in this section shall be construed to require the Owner, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of reasons why a particular proposal was not deemed to be the most advantageous to the Owner.
19. **CONFLICT OF INTEREST:** Contractor certifies by signing bid to the Owner that no conflict of interest exists between Contractor and Owner that interferes with fair competition and no conflict of interest exists between Contractor and any other person or organization that constitutes a conflict of interest with respect to the contract with the Owner.

SPECIFICATIONS

20. **BRAND NAME OR EQUAL ITEMS:** Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the Owner

in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Bidder is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Owner to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding, only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid non-responsive. Unless the Bidder clearly indicates in its bid/proposal that the product offered is "equal" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.

21. **FORMAL SPECIFICATIONS:** When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.
22. **OMISSIONS & DISCREPANCIES:** Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications.

The Bidder/Offeree shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

23. **CONDITION OF ITEMS:** Unless otherwise specified in the solicitation, all items shall be new, in first class condition.

AWARD

24. **AWARD OR REJECTION OF BIDS:** The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the Owner to accept it. Awards made in response to a RFP will be made to the highest qualified Offeror whose proposal is determined, in writing, to be the most advantageous to the Owner taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids/proposals and to waive any informality in bids/proposals received whenever such rejection or waiver is in the best interest of the Owner. Award may be made to as many bidders/Offeror's as deemed necessary to fulfill the anticipated requirements of the Owner. The Purchasing Agent also reserves the right to reject the bid if a bidder is deemed to be a non-responsible bidder.
25. **ANNOUNCEMENT OF AWARD:** Upon the award or announcement of the decision to award a contract as a result of this solicitation, the Procurement Division will publicly post such notice on the Procurement Website at <http://www.fauquiercounty.gov/government/departments-h-z/procurement>
26. **QUALIFICATIONS OF BIDDERS OR OFFERORS:** The Owner may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder/Offeree to perform the work/furnish the item(s) and the Bidder/Offeree shall furnish to the Owner all such information and data for this purpose as may be requested. The Owner reserves the right to inspect Bidder's/Offeror's physical facilities prior to award to satisfy questions regarding the Bidder's/Offeror's capabilities. The Owner further reserves the right to reject any bid or proposal if the evidence submitted by or investigations of, such Bidder/Offeree fails to satisfy the Owner that such Bidder/Offeree is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.
27. **TIE BIDS:** In the case of a tie bid, the Owner may give preference to goods, services and construction produced in Fauquier County or provided by persons, firms or corporations having principal places of business in the County. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth pursuant to *Code of Virginia* § 2.2-4324. If no County or Commonwealth choice is available, the tie shall be decided by lot.

CONTRACT PROVISIONS

28. **APPLICABLE LAW AND COURTS:** Any contract resulting from this solicitation shall be governed and construed in all respects by the laws of Virginia, and any litigation with respect thereto shall only be brought in the appropriate General District or Circuit Court of Fauquier County, Virginia. The Contractor shall comply with all applicable federal, state and local laws and regulations.
29. **ANTITRUST:** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Owner all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Owner under said contract. This includes, but is not limited to, overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations that arise under United States' or the Commonwealth's antitrust laws. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Agent and/or investigation for antitrust violations.
30. **INVOICING AND PAYMENT TERMS:** Unless otherwise provided in the solicitation payment will be made forty-five (45) days after receipt of a proper invoice, or forty-five (45) days after receipt of all goods or acceptance of work, whichever is the latter.
 - a. Invoices for items/services ordered, delivered/performed and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the contract number, purchase order number, and any federal employer identification number.
 - b. Any payment terms requiring payment in less than 45 days will be regarded as requiring payment 45 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 45 days, however.
 - c. The date of payment shall be deemed the date of postmark in all cases where payment is made by mail.
 - d. The Owner's fiscal year is July 1 - June 30. Contractors must submit invoices, especially for goods and/or services provided in the month of JUNE, for the entire month i.e. June 1 - June 30, so that expenses are recognized in the appropriate fiscal year.
 - e. Any payment made by the Contractor to the Owner shall only be made in U.S. Dollars. If payment is received in foreign currency the Owner may, in its sole discretion, reject such payment and require immediate compensation in U.S. Dollars.
31. **PAYMENT TO SUBCONTRACTORS:** A contractor awarded a contract under this solicitation is hereby obligated:
 - a. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Owner for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - b. To notify the Owner and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month compounded monthly (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Owner, except for amounts withheld as stated in 2 above. The date of mailing of any payment by postage prepaid U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Owner.

32. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Purchasing Agent.
33. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Owner, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to another remedies which the Owner may have.
34. **ANTI-DISCRIMINATION:** By submitting their bids/proposals, Bidders/Offeror's certify to the Owner that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians with Disabilities Act, the Americans with Disabilities Act, the Virginia Human Rights Act (*Code of Virginia* § 2.2-3900 *et seq.*) and § 2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1(E)).

In every contract over \$10,000 the provisions in A and B below apply:

- a. During the performance of this contract, the Contractor agrees as follows:
- 1) 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 relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - 2) 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.
 - 3) 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.
- b. The Contractor will include the provisions of a. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
35. **CHANGES TO THE CONTRACT:** Changes can only be made to the contract in one of the following ways:
- a. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
- b. The Owner may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Owner a credit for any savings. Said compensation shall be determined by one of the following methods.
- 1) By mutual agreement between the parties in writing; or
 - 2) By agreeing in writing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Owner's right to audit the Contractor's records and/or determine the correct number of units independently; or
 - 3) By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Owner with all vouchers and records of expenses incurred and savings realized. The Owner shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Procurement Division within thirty (30) days from the date of receipt of the written order from the Procurement Division. If the parties fail to agree on an amount of adjustment, the questions of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for relieving disputes provided by the Disputes Clause of this contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Owner or with the performance of the contract generally.
- c. No modification for a fixed price contract may be increased by more than 25% or \$50,000, whichever is greater without the advanced written approval of the Board of Supervisors or the School Board, as applicable.
- 36.. **INDEMNIFICATION:** Contractor shall indemnify, keep and save harmless the Owner, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the Owner in consequence of the granting of a contract or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the Owner in any such action, the Contractor shall, at his or her own expenses, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Owner as herein provided.
37. **DRUG-FREE WORKPLACE:** During the performance of 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 in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

38. **TERMINATION:** Subject to the provisions below, the contract may be terminated by the Owner upon thirty (30) days advance written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- Termination for Convenience:** In the event that the contract is terminated upon request and for the convenience of the Owner, without the required thirty (30) days advance notice, then the Owner shall be responsible for payment of services up to the termination date.
 - Termination for Cause:** Termination by the Owner for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provision; termination costs, if any shall not apply. However, pursuant to the Default provision of these General Conditions, the Owner may hold the contractor responsible for any resulting additional purchase and administrative costs. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause.
 - Termination Due to Unavailability of Funds in Succeeding Fiscal Years:** When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be canceled without any liability or penalty to Owner.

39. USE OF CONTRACT BY OTHER PUBLIC BODIES: Except as prohibited by the current *Code of Virginia*, all resultant contracts will be extended, with the authorization of the Contractor, to other public bodies of the Commonwealth of Virginia and all currently active members of the Metropolitan-Washington Council of Governments (MWCOG) or, Mid-Atlantic Purchasing Team, to permit their ordering of supplies and/or services at the prices and terms of the resulting contract. If any other public body decides to use the final contract, the Contractor must deal directly with that public body concerning the placement or orders, issuance of the purchase order, contractual disputes, invoicing and payment. Fauquier County acts only as the “Contracting Agent” for these public bodies. Any resulting contract with other public bodies shall be governed by the laws of that specific entity. It is the Contractor’s responsibility to notify the public bodies of the availability of the contract. Fauquier County shall not be held liable for any costs or damage incurred by another public body as a result of any award extended to that public body by the Contractor.

40. **AUDIT:** The Contractor hereby agrees to retain all books, records and other documents relative to this contract for five years after final payment, or until audited by the Owner, whichever is sooner. The agency, its authorized agents, and/or Owner auditors shall have full access to and right to examine any of said materials during said period.
41. **SEX OFFENDER REGISTRY NOTIFICATION:** The Contractor shall not employ on school property any employee who is a registered sex offender and shall enforce the same restriction upon all sub-contractors and agents of Contractor. Prior to starting work and quarterly during performance of the work, the Contractor shall check the Virginia State Police Sex Offender Registry to verify sex offender status of all employees and agents of Contractor and Sub-Contractors who are employed on school property by the Contractor or Sub-Contractor. The Contractor shall furnish the Owner with evidence verifying compliance with the services.

Prior to starting work on-site, the Contractor shall submit a completed Fauquier County Public Schools “CERTIFICATION OF NO CRIMES AGAINST CHILDREN” form, a copy of which is included in this solicitation.

42. **COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND FEDERAL IMMIGRATION LAW:** During the term of any contract, the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth of Virginia, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
43. **ASBESTOS NOTIFICATION:** As required by the Environmental Protection Agency Asbestos Hazard Emergency Response Act 40 CFR, subpart E, 763.93, information regarding asbestos inspections, response actions, and post response activities is on file in a full asbestos report located in the main office of each school. Contractors bear full responsibility to review this material prior to commencing any activity at a school site.
44. **VIRGINIA STATE CORPORATION COMMISSION:** If required by law, the Contractor shall maintain a valid certificate of authority or registration to transact business in Virginia with the Virginia State Corporation Commission as required by Title 13.1 of the *Code of Virginia*, during the term of the Contract or any Contract renewal. The Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the terms of the contract. If the Contractor fails to remain in compliance with the provisions of this section, the contract is voidable at the option of Owner.
45. **ADA WEBSITE-RELATED ACCESSIBILITY:** Any Contractor who performs services, designs, develops content, maintains or otherwise bears responsibility for the content and format of Owner’s website(s) or third-party programs accessed through Owner’s website(s), acknowledges receipt of, and responsibility to implement the accessibility standards found in the U.S. Department of Justice publication entitled “Accessibility of State and Local Government Websites to People with Disabilities,” available at www.ada.gov/websites2.htm or, as attached directly to the solicitation. Contractor services as noted, shall conform to § 508 of Title III of the Americans with Disabilities Act (ADA) and the World Wide Web Consortium’s (W3C) Web Content Accessibility Guidelines (WCAG 2.0 AA), most current versions, in addition to the Owner’s web accessibility policy.

DELIVERY PROVISION

46. **SHIPPING INSTRUCTIONS-CONSIGNMENT:** Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor’s name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of 8:00 a.m. – 2:30 p.m. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the designated individual at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays unless previous arrangements have been made. It shall be the responsibility of the contractor to insure compliance with these instructions for items that are drop-shipped.
47. **RESPONSIBILITY FOR SUPPLIES TENDERED:** The Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the Owner may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.

48. **INSPECTIONS:** The Owner reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification. Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the Owner will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the Owner for such materials or supplies as are not in accordance with the specifications.
49. **COMPLIANCE:** Delivery must be made as ordered and in accordance with the solicitation or as directed by the Procurement Division when not in conflict with the bid/contract. The decision as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Procurement Division, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the Owner, there shall be added to the time of completion a time equal to the period of such delay caused by the Owner. However, the contractor shall not be entitled to claim damages of extra compensation for such delay or suspension. These conditions may vary for construction contracts.
50. **POINT OF DESTINATION:** All materials shipped to the Owner must be shipped F.O.B. DESTINATION unless otherwise stated in the contract. The materials must be delivered to the "Ship To" address indicated on the purchase order.
51. **REPLACEMENT:** Materials or components that have been rejected by the Procurement Division, in accordance with the terms of the contract, shall be replaced by the Contractor at no cost to the Owner.
52. **PACKING SLIPS OR DELIVERY TICKETS:** All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:
- Purchase Order Number,
 - Name of Article and Stock Number,
 - Quantity Ordered,
 - Quantity Shipped,
 - Quantity Back Ordered,
 - The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

BIDDER/CONTRACTOR REMEDIES

53. **PROTEST OF AWARD OR DECISION TO AWARD:** Any Bidder/Offeror who desires to protest the award or decision to award a contract, by either Fauquier County or the Fauquier County School Board, shall submit such protest in writing to the County Administrator (if the award or decision to award was made by Fauquier County) or the Superintendent of Schools (if the award or decision to award was made by the Fauquier County School Board), no later than ten (10) days after public notice of the award or announcement of the decision to award, whichever comes first. No protest shall lie for a claim that the selected bidder/Offeror is not a responsible bidder/Offeror. The written protest shall include the basis for the protest and the relief sought. The County Administrator or the Superintendent of Schools, as the case may be, shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder/Offeror appeals within ten (10) days of the written decision by instituting legal action as provided in § VIII.H.3 of the County's Procurement Policy. Nothing in this paragraph shall be construed to permit an Offeror to challenge the validity of the terms or conditions of the solicitation.
- 54.. **DISPUTES:** Contractual claims, whether for money or other relief, shall be submitted in writing to the Superintendent of Schools (if the claim is against the Fauquier County School Board) or the County Administrator (if the claim is against Fauquier County) no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amount agreed due in the final payment. A written decision upon any such claims will be made by the School Board (if the claim is against the Fauquier County School Board) or the County Board of Supervisors (if the claim is against Fauquier County) within sixty (60) days after submittal of the claim. The Contractor may not institute legal action prior to receipt of the School Board or Board of Supervisors (whichever is applicable) decision on the claim unless the applicable party fails to render such decision within sixty (60) days. The decision of the School Board or Board of Supervisors (as applicable) shall be final and conclusive unless the Contractor within six (6) months of the date of the final decision on a claim, initiates legal action as provided in *Code of Virginia* § 2.2-4364. Failure of the School Board or Board of Supervisors to render a decision within sixty (60) days shall not result in the Contractor being awarded the relief claimed nor shall it result in any other relief or penalty. Should the School Board or Board of Supervisors (as applicable) fail to render a decision within sixty (60) days after submittal of the claim, the Contractor may institute legal action within six (6) months after such 60-day period shall have expired, or the claim shall be deemed finally resolved. No administrative appeals procedure pursuant to *Code of Virginia* § 2.2-4365 has been established for contractual claims under this contract.

NOTE: Fairfax County Public Schools conducts all procurement activities in accordance with delegated authority from the Purchasing Agent of Fairfax County Government. Bids and proposals in response to FCPS solicitations must be submitted electronically through Bonfire on or before the date and time stipulated in the solicitation.

RFP 2000003650

Speech Therapy Intervention Services

IMPORTANT NOTICE
THIS IS AN ELECTRONIC PROCUREMENT (eBID)
SUBMISSIONS WILL ONLY BE ACCEPTED ELECTRONICALLY VIA THE BONFIRE PORTAL
(<https://fcps.bonfirehub.com>)

Fairfax County Public Schools (FCPS) uses a procurement portal powered by Bonfire Interactive for accepting and evaluating proposals. To register, visit <https://fcps.bonfirehub.com>. Additional assistance is also available at Support@GoBonfire.com. Submitting proposals via the Bonfire portal is **mandatory**. FCPS will not accept proposals submitted by paper, telephone, facsimile ("FAX") transmission, or electronic mail (e-mail) in response to this RFP. Reference Special Provisions, Section 16 for additional information.

FCPS strongly encourages offerors to submit proposals well in advance of the proposal submission deadline. A proposal submission is not considered successful unless all necessary files have been uploaded and the 'Submit & Finalize' step has been completed. Offerors are responsible for the consequences of any failure to plan ahead in the submission of its Proposal.

An optional **pre-proposal conference** will be held on Tuesday, April 11, 2023 at 11:00 a.m. Eastern Time via Zoom Video Conference. Those interested in attending the pre-proposal conference must contact the Contract Specialist Adrien Walker at awalker@fcps.edu to obtain the Zoom link. Refer to Special Provisions, Para. 3 for additional information.

All questions pertaining to this RFP should be submitted in writing to the Contract Specialist Adrien Walker at awalker@fcps.edu no later than April 19, 2023 at 5:00 p.m. Eastern Time.

ISSUE DATE: 3/29/2023	REQUEST FOR PROPOSAL NUMBER: 2000003650	TITLE: Speech Therapy Intervention Services
DEPARTMENT: Special Services	DUE DATE/TIME: April 26, 2023 at 5:00 PM EST	CONTRACT ADMINISTRATOR: 571-423-3593 or awalker@fcps.edu

Proposals - In accordance with the following and in compliance with all terms and conditions, unless otherwise noted, the undersigned offers and agrees, if the proposal is accepted, to furnish items or services for which prices are quoted, delivered or furnished to designated points within the time specified. It is understood and agreed that with respect to all terms and conditions accepted by Fairfax County the items or services offered and accompanying attachments shall constitute a contract.

Note: Fairfax County does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.

NAME AND ADDRESS OF FIRM: _____ Telephone/Fax No.: _____

_____ E-Mail Address: _____

_____ Federal Employer Identification No: _____

_____ **OR** _____

_____ Federal Social Security No. _____

_____ (Sole Proprietor) _____

_____ Prompt Payment Discount: ___% for payment within _____

_____ days/net_____days

_____ State Corporation Commission _____

_____ (SCC) Identification No. _____

By signing this proposal, Offeror certifies, acknowledges, understands, and agrees to be bound by the conditions set forth in the General Conditions and Instructions to Bidders as described in Appendix A, the Certification Regarding Ethics in Public Contracting set forth in Appendix B, and by any other relevant certification set forth in Appendix B.

Failure to sign and date this form shall deem the submitted proposal non-responsive.

BUSINESS CLASSIFICATION – Described in Appendix B - CHECK ONE: LARGE (Y) SMALL (B)

MINORITY-OWNED SMALL (X) MINORITY OWNED LARGE (V) WOMEN-OWNED SMALL (C)

WOMEN OWNED LARGE (A) NON PROFIT (9)

CHECK ONE: INDIVIDUAL PARTNERSHIP CORPORATION

Vendor Legally Authorized Signature _____ Date _____

Print Name and Title _____

Sealed proposals subject to terms and conditions of this Request for Proposal shall be submitted through Bonfire at <http://fcps.bonfirehub.com>

AN EQUAL OPPORTUNITY PURCHASING ORGANIZATION



SPECIAL PROVISIONS

1. SCOPE OF SERVICES:

1.1. The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to establish a contract or contracts through competitive negotiation for the provision of speech therapy intervention services by qualified Speech-Language Pathologists (SLPs) on an as-needed basis to supplement and support existing resources. Fairfax County Public Schools will consider Virginia Board of Audiology and Speech Language Pathology (BASLP) licensed Speech-Language Pathologists (SLPs), BASLP licensed Clinical Fellows, BASLP licensed virtual SLPs, Speech-Language Pathology Assistants (SLPAs) and Paraprofessionals such as E-Helpers. The resulting contract(s) will be used by Fairfax County Public Schools (“FCPS”) and Fairfax County Government (“FCG”).

1.2. Offerors shall ensure that a representative who can bind the firm is available for both the finalist interviews and negotiations.

1.3. RFP Documents

RFP 2000003650 is comprised of the following documents:

- Announcement sheet
- DPMM32 Cover sheet
- Special Provisions (included herein)
- Appendix A — General Conditions and Instructions to Bidders
- Appendix B — Forms
- Appendix C — Virginia Data Privacy Agreement
- Appendix D — HIPAA Business Associate Agreement
- Appendix E — Minimum Qualifications
- Appendix F — Security Architecture Checklist
- Appendix G — Price Summary Sheet

1.4. Schedule

The following tentative schedule is provided to the Offerors as a means of planning. Offerors are advised that this schedule may change during the solicitation process.

Milestones	Target Date
Pre-Proposal Conference:	April 11, 2023
Questions from Offerors Due:	April 19, 2023
RFP Closing Date and Time:	April 26, 2023 @5:00 pm EST
Finalists Interviews:	June 5 - 9, 2023

Milestones	Target Date
Negotiations:	June 19 – June 23, 2023
Contract Award:	July 2023
Contract Begins:	July 2023

2. MINIMUM QUALIFICATIONS

2.1. The following are the minimum qualifications an Offeror must meet or exceed, at the time of submission, in order for FCPS to accept a proposal as responsive. Each Offeror must address how it meets each of the below minimum qualifications when submitting its Technical Proposal (refer to Appendix E). If an Offeror fails to respond to each qualification, or if FCPS determines from the response that an Offeror does not meet any one of the minimum qualifications, its proposal may be deemed non-responsive and disqualified from further consideration.

2.1.1. Offeror shall provide Verification of Board of Audiology and Speech Language Pathology (BASLP) license to practice Speech Pathology in Virginia for each contracted employee.

3. PRE-PROPOSAL CONFERENCE:

3.1. An optional pre-proposal conference will be held on Tuesday, April 11, 2023 at 11:00 a.m. via Zoom Conference. Those interested in attending the pre-proposal conference must contact the Contract Specialist at awalker@fcps.edu to obtain the Zoom link. Attendees requiring special services are asked to provide their requirements to the Office of Equity and Employee Relations at 571-423-3070, HRequity&empolyeerelations@fcps.edu or TRS at 711. Please allow seven (7) working days in advance of the event to make the necessary arrangements.

3.2. The purpose of the pre-proposal conference is to give potential offerors an opportunity to ask questions and to obtain clarification about any aspect of this Request for Proposal. Offerors may submit any questions pertaining to the RFP, in writing to Adrien Walker awalker@fcps.edu.

4. CONTRACT PERIOD AND RENEWAL:

4.1. This contract will begin on date of award and terminate on July 31, 2028.

4.2. Automatic contract renewals are prohibited. This contract may be renewed at the expiration of its term by agreement of both parties. Contract renewals must be authorized by and coordinated through the Office of Procurement Services. FCPS reserves the right to renew the contract for three (3) additional one-year periods.

4.3. Notice of intent to renew will be given to the Contractor in writing by the Office of Procurement Services, normally 60 days before the expiration date of the current contract. (This notice shall not be deemed to commit the County to a contract renewal.)

4.4. The obligation of the County to pay compensation due the contractor under the contract or any other payment obligations under any contract awarded pursuant to this Request for Proposal is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such

obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice shall not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

5. BACKGROUND:

- 5.1. Fairfax County, Virginia is part of the Greater Washington, D.C. metropolitan area. FCPS is the largest school system in the Commonwealth of Virginia and the 12th largest in the United States. The school system consists of approximately 222 schools and work sites serving approximately 180,000 students in kindergarten-12th grades as well as preschool age special education students.
- 5.2. Fairfax County Public Schools directly employs about 225 full time and part-time Speech-Language Pathologists who provide services to more than 10,000 students annually. Direct supervision and evaluation responsibilities of the SLPs are completed by a central administrative team comprised of one (1) Communication Disorders Program Manager and four (4) Communication Disorders Supervisors, all licensed SLPs with additional educational and administrative experience.
- 5.3. In an educational setting, speech therapy is provided as a primary or related special education service to support student access to and participation in the school environment. Speech and language services must be educationally relevant and be provided in the least restrictive environment as determined by the student's Individualized Education Program (IEP). Services will be limited to students who are eligible for special education services and whose disabilities are identified as speech/language delays or disorders.

6. LANGUAGE CONVENTIONS

- 6.1. An attempt has been made to standardize the language used in this RFP. The words "must", "shall", "mandatory" and the phrase "it is required" are used in connection with a mandatory specification that FCPS expects will be present in the proposed Solution. The words "should" and "may" are used in connection with a specification that is desirable.

7. TASKS TO BE PERFORMED:

- 7.1. Qualified offerors are encouraged to submit a proposal to provide as-needed staffing of Virginia Board of Audiology and Speech Language Pathology BASLP licensed Speech-Language Pathologists (SLPs), BASLP licensed Clinical Fellows, BASLP licensed virtual SLPs, Speech-Language Pathology Assistants (SLPAs) and Paraprofessionals such as E-Helpers Board of Audiology and Speech Language Pathology (BASLP) licensed/eligible Speech-Language Pathologists (SLPs).
- 7.2. Where possible, FCPS will provide the Contractor notification of a staffing need with at least thirty (30) days' notice when a need is anticipated.

- 7.3. The Offeror shall address Speech and Language oral communication disorders/delays that interfere with academic success. The student may demonstrate disorders of articulation, voice, fluency, and/or language skills. The Offeror shall utilize activities, adapted equipment, and environmental modifications to maximize functional skills. Speech therapy may be provided in a variety of service delivery models according to the IEP including, but not limited to, individual and/or group pull-out therapy, inclusion in the general education or special education classroom, consultation, and monitoring.
- 7.4. FCPS prefers delivery of in-person SLP services, but virtual SLP services may be considered when in-person services are not available or cannot meet situational student needs.

8. FUNCTIONAL REQUIREMENTS:

- 8.1. Contractor shall provide licensed SLPs for FCPS assignments. SLPs shall have successfully completed an accredited education program and all required field work and must hold a BASLP license in Speech Pathology. Prior to placement FCPS reserves the right to review the candidate's resume and interview the candidate. If a resume is already on file, an updated version may be specifically requested by FCPS. Prior to placement in a FCPS assignment, the contractor shall provide a copy of the candidate's BASLP license to the Communication Disorders Program Manager.
- 8.2. FCPS reserves the right to reject a suggested SLP who, in their discretion, is not adequately qualified to perform the work. FCPS may, at any time, request a replacement SLP when, in their discretion, the one currently in an assignment is not adequately qualified to perform the work.
- 8.3. FCPS prefers Speech-Language Pathologists (SLPs) with experience in school environments but will consider candidates with experience in other settings. Clinical Fellowship (CF) candidates may be considered with preference given to those CF candidates interested in providing an additional year of services to FCPS students beyond their Clinical Fellowship year.
- 8.4. The Offeror shall provide speech therapy services based on the specific need of the student. Services required may include, but are not limited to the following:
 - a. The Offeror shall provide individual and group therapy sessions. The therapy shall (i) be based on specific needs of student as defined in the student IEP, (ii) focus on interventions to support student IEP goals and objectives, and (iii) meet the IEP requirements for the duration, frequency and setting/location of service.
 - b. The SLP shall implement speech/language interventions that reflect evidence-based practices in the field.
 - c. The SLP shall provide learning activities that are educationally relevant and promote access, participation, and success in the educational setting.
 - d. The SLP shall document speech therapy services as defined in the IEP utilizing and according to current FCPS systems of data management.
 - e. The SLP shall complete and document all program management responsibilities including, but not limited to attending required special education meetings, conducting screenings and assessments using FCPS approved instruments, and serving as a school team

resource in the area of oral communication disorders. The SLP shall complete the FCPS trainings necessary to meet IDEA case manager responsibilities, including SEA STARS' IEP/Eligibility trainings, as well as FCPSMED trainings.

- f. The SLP shall use only video conferencing tools that are adopted by FCPS when meeting with students, staff and parents.
 - g. The SLP shall communicate/collaborate with educational staff, parents, and students regarding speech therapy services and concerns.
 - h. The SLP shall provide requested program information/service data to the Communication Disorders Supervisor to meet FCPS reporting requests and to assure quality services for individual students including support to school teams and parents.
 - i. The SLP shall verify caseloads with the FCPS Communication Disorders Supervisor.
 - j. The SLP shall develop, implement and manage a therapy schedule that can flexibly adapt to meet ongoing and changing student needs.
 - k. The SLP shall follow the current FCPS calendar and follow policies and regulations as outlined by FCPS and the Fairfax County School Board.
- 8.5. FCPS prefers to maintain the SLP for duration of the assignment but staffing changes may occur to meet student needs and caseload demands.
- 8.6. Bilingual SLPs may be requested and should be offered for FCPS assignments if available.
- 8.7. Contractor shall not use currently employed FCPS employees for FCPS assignments.
- 8.8. FCPS shall not place an SLP in an FCPS assignment where a conflict of interest is known to exist due to current or prior advocacy or private practice services with a particular student if FCPS determines that a conflict of interest exists.
- 8.9. SLPs shall be available for split school assignments, in which services to be performed by an individual are needed in more than one location.

9. TECHNICAL PROPOSAL INSTRUCTIONS:

- 9.1. The offeror must submit the Technical Proposal in a separate file in Bonfire containing the following information. This information will be considered the minimum content of the proposal. Proposal contents shall be arranged in the same order and identified with headings as presented herein.
- a. Name of firm submitting proposal; main office address; when organized; if a corporation, when and where incorporated; appropriate Federal, State, and County registration numbers.
 - b. Understanding of the problem and technical approach.
 - 1. Statement and discussion of the requirements as they are analyzed by the offeror.

2. Offeror's proposed definitive Scope of Work with explanation of technical approaches and a detailed outline of the proposed program for executing the requirements of the technical scope and achieving project objectives.
3. Offeror shall demonstrate an awareness of difficulties in the completion of this undertaking, and a plan for surmounting them. Special attention shall be given to methodological issues that will be encountered in such a project.
4. Offeror shall have established processes for correcting/resolving problems that may arise with contracted staff.
5. Offeror shall have the recruiting capacity for ongoing unanticipated school leaves and vacancies.

9.2. Treatment of the Issues:

In this section, the offeror may also comment if deemed appropriate, on any aspect of the Request for Proposal, including suggestions on possible alternative approaches to the coverage, definition, development, and organization of the issues presented in the "Tasks to be Performed" section, and may propose alternative approaches.

9.3. Statement of Qualifications:

The statement of Qualifications must include a description of organizational and staff experience, and resumes of proposed staff.

- a. Organizational and Staff Experience: Offerors must describe their qualifications and experience to perform the work described in this Request for Proposal. Information about experience shall include direct experience with the specific subject matter.
- b. References: Special notation must be made of similar or related programs performed and must include organization names, addresses, names of contact persons, and telephone numbers for such reference.
- c. Personnel: Full-time and part-time staff, proposed consultants and subcontractors who may be assigned direct work on this project shall be identified. Information is required which will show the composition of the task or work group, its specific qualifications, and recent relevant experience. Special mention shall be made of direct technical supervisors and key technical personnel, and approximate percentage of the total time each will be available for this project. The technical areas, character and extent of participation by any subcontractor or consultant activity must be indicated and the anticipated sources will be identified.

Resumes of staff and proposed consultants are required indicating education, background, recent relevant experience with the subject matter of the project. Current telephone numbers must be included.

Vendor/staff shall be accustomed to providing educational-based Speech-Language Services to meet growing needs of a metropolitan area school system.

- d. A staffing plan is required which describes the Offeror's proposed staff distribution to accomplish this work. The staffing plan shall indicate a chart that partitions the time commitment of each professional staff member across the proposed tasks and a timeline for the project. It is mandatory that this section identify the key personnel who are to work on the project, their relationship to the contracting organization, and amount of time to be devoted to the project. This includes Consultants as well as regular employees of the offeror, if relevant.
 - e. Financial Statements: The offeror shall provide an income statement and balance sheet from the most recent reporting period.
- 9.4. This section must include all proposed terms and conditions including sample contracts and Service Level Agreements (SLA) describing service and support for the system and maintenance and support agreements.
- 9.5. Offerors may take exceptions to the terms, however, some of the terms may not be negotiable. The following contract terms of Appendix A are required by law and cannot be varied, revised, amended, changed or otherwise negotiated: para. 34 (Funding), para. 37 (Non-Discrimination), para. 61 (Authorization to Conduct Business in the Commonwealth), para. 58.d (No Indemnification by the County), para. 68 (Contractual Disputes), para. 72 (Drug Free Workplace), para. 73 (Immigration Reform and Control Act) and para. 74 (Audit of Records).
- 9.6. The personnel named in the technical proposal will remain assigned to the project throughout the period of this contract. No diversion or replacement may be made without submission of a resume of the proposed replacement with final approval being granted by the County Purchasing Agent.

10. **CONSULTATION SERVICES:**

- 10.1. The contractor's staff must be available for consultation with County staff on an as-needed basis between 8:00 AM and 5:00 PM, Eastern Time, Monday through Friday.

11. **COST PROPOSAL INSTRUCTIONS:**

- 11.1. The offeror must submit a cost proposal in a separate file in Bonfire fully supported by cost and pricing data adequate to establish the reasonableness of the proposed fee (see Price Summary Sheet – appendix B). The following information shall be submitted as part of the cost proposal:

Offerors must provide a price scale indicating hourly rates for Speech Therapy Intervention Services. Hourly rates are requested for:

- a. Licensed SLPs – in person
 - b. Licensed SLPs – virtual
 - c. SLPAs – in-person
 - d. Paraprofessionals - in-person (E-helpers)
- 11.2. Travel and per diem or subsistence costs, if any supported by breakdown including destination, duration and purpose.

12. **PRICING:**

- 12.1. FCPS shall only pay for time during which services are rendered. Times in which FCPS will not pay include, but are not limited to
 - a. days in which the SLP is sick or otherwise does not report to work
 - b. FCPS school holidays
 - c. school delays or closures due to weather at the assignment location
 - d. school delays or closures for any other reason at the assignment location
- 12.2. The subsequent contract will be a firm-fixed price agreement. The fee(s) will remain firm and will include all charges that may be incurred in fulfilling the requirements of the contract during the first 365 days. Changes in cost for any subsequent contract years may be based on the Consumer Price Index (CPI-U), Table 10, U.S. City Averages, or other relevant indices.
- 12.3. The request for a change in the unit price shall include as a minimum, (1) the cause for the adjustment; (2) proposed effective date; and, (3) the amount of the change requested with documentation to support the requested adjustment (i.e., appropriate Bureau of Labor Statistics, Consumer Price Index (CPI-U), change in manufacturer's price, etc.).
- 12.4. Price decreases shall be made in accordance with paragraph 40 of the General Conditions & Instructions to Offerors. (Appendix A)

13. TRADE SECRETS/PROPRIETARY INFORMATION:

- 13.1. Trade secrets or proprietary information submitted by an offeror in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, offerors must invoke the protections of this section prior to or upon submission of the data or other materials. (Reference Appendix B)
- 13.2. The offeror must identify the data or other materials to be protected and state the reasons why protection is necessary. Disposition of material after award(s) should be stated by the offeror.

14. CONTACT FOR CONTRACTUAL MATTERS:

- 14.1. All communications and requests for information and clarifications shall be directed to the following procurement official:

Adrien Walker, Sr. Contract Specialist
Fairfax County Public Schools
Office of Procurement Services
8115 Gatehouse Road, Suite 4400
Falls Church, Virginia 22042-1203
Telephone: 571-423-3593
Email: awalker@fcps.edu

- 14.2. No attempt shall be made by any offeror to contact members of the Selection Advisory Committee (SAC) about this procurement (see paragraph 20.3).

15. REQUIRED SUBMITTALS:

- 15.1. Each Offeror responding to this Request for Proposal must supply all the documentation required in the RFP. Failure to provide documentation with the Offeror's response to the RFP will result in the disqualification of the Offeror's proposal.

16. **SUBMISSION OF PROPOSAL:**

- 16.1. Proposals must be received electronically through FCPS' online Procurement portal at: <http://fcps.bonfirehub.com>, on or before the Submittal Deadline. Submissions will only be accepted through the portal. FCPS will not accept proposals submitted by paper, telephone, facsimile ("Fax) transmission, or electronic mail (i.e., e-mail) in response to this RFP. Proposal submissions and registration are free of charge. Offerors can register for a free account at : <http://fcps.bonfirehub.com>, which will be required when preparing a submission. Documents may be uploaded at any time during the open period. The official time used for receipt of proposals/modifications is the time stamp within the Bonfire portal. No other clocks, calendars or timepieces are recognized. For technical question related to a submission, contact Bonfire at Support@GoBonfire.com.
- 16.2. If, at the time of the scheduled proposal closing FCPS is closed due to inclement weather or another unforeseeable event, the proposal closing will still proceed electronically through the Bonfire System.
- 16.3. Technical Information: Uploading large documents may take time, depending on the size of the file(s) and your Internet connection speed. You will receive an email confirmation receipt with a unique confirmation number once the submission is finalized. Minimum system requirements for the Bonfire portal- Internet Explorer 11, Microsoft Edge, Good Chrome, or Mozilla Firefox. JavaScript must be enabled. Browser cookies must be enabled.
- 16.4. Unnecessarily elaborate brochures of other presentations beyond that sufficient to present a complete and effective proposal is not desired.
- 16.5. It is the Offeror's responsibility to clearly identify and to describe the services being offered in response to the Request for Proposal. Offerors are cautioned that organization of their response, as well as thoroughness is critical to the County's evaluation process. The RFP forms must be completed legibly and in their entirety; and all required supplemental information must be furnished and presented in an organized, comprehensive and easy to follow manner.
- 16.6. The proposal submission shall consist of:
- a. Cover sheet (DPMM32)
 - b. Technical proposal as required in the Special Provisions, paragraph 9, **TECHNICAL PROPOSAL INSTRUCTIONS**.
 - c. Cost proposal as required in the Special Provisions paragraph 11, **COST PROPOSAL INSTRUCTIONS**.
 - d. One (1) electronic copy of the Technical and Cost proposals with redactions consistent with the requirements of the RFP, Paragraph 13 Trade secrets/Proprietary Information through FCPS' online Procurement Portal at: <http://fcps.bonfirehub.com>.

- e. All required attachments and forms must be included with the submission.
- f. Completed W9 Form (must be the latest version, per [IRS.gov](https://www.irs.gov)).
- g. By executing the cover sheet (DPMM32), Offeror acknowledges that they have read this Request for Proposal, understand it, and agree to be bound by its terms and conditions.

17. ADDENDA:

- 17.1. Offerors are reminded that changes to the solicitation, in the form of addenda, are often issued between the issue date and within three (3) days before the due date. All addenda shall be signed and submitted before the due date/time or must accompany the proposal.
- 16.2 Notice of addenda will be posted on eVA, Bonfire and the DPMM current solicitation webpage. It is the Offeror's responsibility to monitor the web page for the most current addenda at www.fairfaxcounty.gov/solicitation and <https://fcps.bonfirehub.com>.

18. VIRGINIA FREEDOM OF INFORMATION ACT

- 18.1. Except as provided, once an award is announced, all proposals/bids submitted to this RFP will be open to inspection by any citizen, or interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by a firm prior to or as part of its proposal will not be subject to public disclosure under the Virginia Freedom of Information Act only under the following circumstances: (1) the appropriate information is clearly identified by some distinct method such as highlighting or underlining; (2) only the specific words, figures, or paragraphs that constitute trade secrets or proprietary information are identified; and (3) a completed summary page is supplied (Appendix B) that includes (a) the information to be protected, (b) the section(s)/page number(s) where this information is found in the proposal, and (c) a statement why protection is necessary for each section listed. The firm must also provide a separate electronic copy of the proposal (uploaded into Bonfire) with the trade secrets and/or proprietary information redacted. If all of these requirements are not met, then the firm's entire proposal will be available for public inspection.

19. PERIOD THAT PROPOSALS REMAIN VALID:

- 19.1. Any proposal submitted in response to this solicitation shall be valid for 365 days. At the end of the days the proposal may be withdrawn at the written request of the offeror. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

20. BASIS FOR AWARD:

- 20.1. This Request for Proposal is being utilized for competitive negotiation. Under the competitive negotiation process, a contract may be awarded to the responsible offeror whose proposal is determined to be the most advantageous to the County, taking into consideration price and the evaluation factors set forth in the Request for Proposal. The County reserves the right to make multiple awards as a result of this solicitation.

- 20.2. A Selection Advisory Committee has been established to review and evaluate all proposals submitted in response to this Request for Proposal. The Committee shall conduct a preliminary evaluation of all proposals on the basis of the information provided with the proposal, and the evaluation criteria listed below. Based upon this review, the cost proposals of the highest rated offeror(s) will then be reviewed.
- 20.3. No Offeror, including any of their representatives, subcontractors, affiliates and interested parties, shall contact any member of the Selection Advisory Committee or any person involved in the evaluation of the proposals. Selection Advisory Committee members will refer any and all calls related to this procurement to the procurement official named in 14.2 above. Failure to comply with this directive may, at the sole discretion of the County result in the disqualification of an offeror from the procurement process.
- 20.4. Based on the results of the preliminary evaluation, the highest rated offeror(s) may be invited by the County Purchasing Agent to make oral presentations to the Selection Advisory Committee. This committee will then conduct a final evaluation of the proposals. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror.
- 20.5. Should the County determine in writing and at its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The Committee will make appropriate recommendations to the County Executive and School Board, if appropriate, prior to actual award of contract.
- 20.6. Proposal Evaluation Criteria
- The following factors will be considered in the award of this contract:
- a. Qualification of firm with appropriately qualified and experienced personnel **(20 points)**.
 - b. Depth of response to the Special Provisions, Section 6, **FUNCTIONAL REQUIREMENTS (15 points)**.
 - c. Depth of response to Special Provisions, Section 7, **TECHNICAL PROPOSAL INSTRUCTIONS (20 points)**.
 - d. Details of the approach and methodology of program **(25 points)**.
 - e. Reasonableness of cost proposal(s) **(20 points)**.
- 20.7. Fairfax County reserves the right to make on-site visitations to assess the capabilities of individual offerors and to contact references provided with the proposal.
- 20.8. The County Purchasing Agent may arrange for discussions with firms submitting proposals, if required, for the purpose of obtaining additional information or clarification.

- 20.9. Offerors are advised that, in the event of receipt of an adequate number of proposals, which, in the opinion of the County Purchasing Agent, require no clarifications and/or supplementary information, such proposals may be evaluated without further discussion. Consequently, offerors should provide complete, thorough proposals with the offerors most favorable terms. Should proposals require additional clarification and/or supplementary information, offerors should submit such additional material in a timely manner.
- 20.10. Proposals which, after discussion and submission of additional clarification and/or supplementary information, are determined to meet the specifications of this Request for Proposal will be classified as "acceptable". Proposals found not to be acceptable will be classified as "unacceptable" and no further discussion concerning same will be conducted.
- 20.11. The County may cancel this Request for Proposal or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

21. CONTRACT INSURANCE PROVISIONS:

- 21.1. The Contractor shall be responsible for its work and materials, tools, equipment, appliances, and property of any and all description used in connection this contract. The Contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission, or operation under the contract.
- 21.2. The Contractor shall, during the continuance of all work under the contract maintain the following insurance:
- a. Statutory Workers' Compensation and Employer's Liability with limits of at least \$100,000.
 - b. Commercial General Liability insurance with limits of \$1,000,000 each occurrence and \$2,000,000 aggregate including contractual liability, personal and advertising injury, and products and completed operations coverage.
 - c. Automobile Liability insurance with limits of \$1,000,000 Combined Single Limit covering all vehicles operated or in use by the Contractor in the performance of this contract.
 - d. Professional Liability/Errors and Omissions coverage responding to Contractor's errors, acts, or omissions in the amount of \$1,000,000 per claim and annual aggregate.
- 21.3. Fairfax County Public Schools, the Fairfax County School Board, its officers and employees shall be named as an additional insured in the Automobile and General Liability policies.
- 21.4. Additional Requirements
- a. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
 - b. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from the requirement provided

that the contractor's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A:VI or better.

- c. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- d. Prior to commencement of services and during the term of the contract, the contractor will provide a signed Certificate of Insurance citing the contract number and such coverage as required in this section.
- e. The contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to FCPS on demand.

22. METHOD OF ORDERING:

- 22.1. The County may use two (2) different methods of placing orders from the final contract: Purchase Orders (PO's) and approved County procurement cards. The method of payment is at the discretion of the County at no additional surcharges will be accepted for the use of the procurement card.
- 22.2. A Purchase Order (PO) may be issued to the contractor on behalf of the County agency ordering the items/services covered under this contract. An issued PO will become part of the resulting contract. The purchase order indicates that sufficient funds have been obligated as required by Title 15.2-1238 of the Code of the Commonwealth of Virginia.
- 22.3. Procurement Card orders and payments may also be made by the use of a Fairfax County or Fairfax County Public Schools "Procurement" Card. The Procurement Card is currently a Master Card. Contractors are encouraged to accept this method of receiving orders.
- 22.4. Regardless of the method of ordering used, solely the contract and any modification determine performance time and dates.
- 22.5. Performance under this contract is not to begin until receipt of the purchase order, Procurement Card order, or other notification to proceed by the County Purchasing Agent and/or County agency to proceed. Purchase requisitions shall not be used for placing orders.

23. REPORTS AND INVOICING:

- 23.1. The Contractor must invoice each County department using the final contract separately. Invoices for all users of the contract must meet County requirements, unless otherwise indicated. The Contractor must send each department an itemized monthly invoice (or as agreed to between the parties), which must include the information listed below:
 - a. Employee name;
 - b. The name of the County department;
 - c. Date of services
 - d. The type of services; and,
 - e. The itemized cost for each item/service.

23.2. County departments must receive monthly invoices by the 10th of each month following the month the Contractor provided the service. In addition, the Contractor will provide each County department a monthly and year-to-date utilization report which lists all information shown above in paragraph 23.1, a-e. The Contractor will mail the invoices and the utilization reports to the individuals identified in the final contract.

23.3. Invoices shall be emailed at FCPSInvoices@fcps.edu

24. PAYMENTS:

24.1. Each contracted employee shall submit a weekly timesheet to the vendor. Payment will be based on total services hours at the established hourly service rate. Invoices will be sent monthly to FCPS and processed by designated FCPS employee.

25. CHANGES:

25.1. Fairfax County may, at any time, by written order, require changes in the services to be performed by the Contractor. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of any services under this contract, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. The County Purchasing Agent must approve all work that is beyond the scope of this Request for Proposal.

25.2. No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Fairfax County Purchasing Agent.

26. DELAYS AND SUSPENSIONS:

26.1. The County may direct the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time deemed appropriate for the convenience of the County. The County will extend the Contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Contractor.

26.2. If the County does not direct the Contractor, in writing, to suspend, delay, or interrupt the contract, the Contractor must give the County Purchasing Agent written notice if Fairfax County fails to provide data or services that are required for contract completion by the Contractor. The County may extend the Contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Contractor.

26.3. The Contractor shall continue its work on other phases of the project or contract, if in the sole discretion of the Purchasing Agent such work is not impacted by the County's delay, suspension, or interruption. All changes to the work plan or project milestones shall be reflected in writing as a contract amendment.

27. ACCESS TO AND INSPECTION OF WORK:

- 27.1. The Fairfax County Purchasing Agent and using agencies will, at all times, have access to the work being performed under this contract wherever it may be in progress or preparation.

28. PROJECT AUDITS:

- 28.1. The Contractor shall maintain books, records and documents of all costs and data in support of the services provided. Fairfax County or its authorized representative shall have the right to audit the books, records and documents of the contractor under the following conditions:
- a. If the contract is terminated for any reason in accordance with the provisions of these contract documents in order to arrive at equitable termination costs;
 - b. In the event of a disagreement between the contractor and the County on the amount due the Contractor under the terms of this contract;
 - c. To check or substantiate any amounts invoiced or paid which are required to reflect the costs of services, or the Contractor's efficiency or effectiveness under this contract; and,
 - d. If it becomes necessary to determine the County's rights and the contractor's obligations under the contract or to ascertain facts relative to any claim against the Contractor that may result in a charge against the County.
- 28.2. These provisions for an audit shall give Fairfax County unlimited access during normal working hours to the Contractor's books and records under the conditions stated above.
- 28.3. Unless otherwise provided by applicable statute, the contractor, from the effective date of final payment or termination hereunder, shall preserve and make available to Fairfax County for a period of three (3) years thereafter, at all reasonable times at the office of the Contractor but without direct charge to the County, all its books, records documents and other evidence bearing on the costs and expenses of the services relating to the work hereunder.
- 28.4. Fairfax County's right to audit and the preservation of records shall terminate at the end of three (3) years as stated herein. The Contractor shall include this "Right of Audit and Preservation of Records" clause in all subcontracts issued by it and they shall require same to be inserted by all lower tier subcontractors in their subcontracts, for any portion of the work.
- 28.5. Should the Contractor fail to include this clause in any such contract or lower tier contract, or otherwise fail to insure Fairfax County's rights hereunder, the Contractor shall be liable to Fairfax County for all reasonable costs, expenses and attorney's fees which Fairfax County may have to incur in order to obtain an audit or inspection of or the restoration of records which would have otherwise been available to Fairfax County from said persons under this clause. Such audit may be conducted by Fairfax County or its authorized representative.

29. DATA SOURCES:

- 29.1. The County will provide the Contractor all available data possessed by the County that relates to this contract. However, the Contractor is responsible for all costs for acquiring other data or processing, analyzing or evaluating County data.

30. SAFEGUARDS OF INFORMATION:

- 30.1. Unless approved in writing by the County Purchasing Agent, the Contractor may not sell or give to any individual or organization any information, reports, or other materials given to, prepared, or assembled by the Contractor under the final contract.

31. **ORDER OF PRECEDENCE:**

- 31.1. In the event of conflict, the Acceptance Agreement (provided at contract award) and the Special Provisions of this contract shall take precedence over the General Conditions and Instructions to Bidders, (Appendix A).

32. **SUBCONTRACTING:**

- 32.1. If one or more subcontractors are required, the contractor is encouraged to utilize small, minority-owned, and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Business Assistance <http://www.dba.state.va.us>; the Virginia Department of Minority Business Enterprise <http://www.dmb.state.va.us/>; local chambers of commerce and other business organizations.
- 32.2. As part of the contract award, the prime contractor agrees to provide the names and addresses of each subcontractor, that subcontractor's status as defined by Fairfax County, as a small, minority-owned and/or woman-owned business, and the type and dollar value of the subcontracted goods/services provided. Reference Appendix B to this solicitation.

33. **USE OF CONTRACT BY OTHER PUBLIC BODIES:**

- 33.1. Reference Paragraph 71, General Conditions and Instructions to Bidders, Cooperative Purchasing. Offerors are advised that the resultant contract(s) may be extended, with the authorization of the Offeror, to other public bodies, or public agencies or institutions of the United States to permit their use of the contract at the same prices and/or discounts and terms of the resulting contract. If any other public body decides to use the final contract, the Contractor(s) must deal directly with that public body concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing and payment. The County of Fairfax acts only as the "Contracting Agent" for these public bodies. Failure to extend a contract to another public body will have no effect on consideration of your offer. (See Appendix B for sample listing).
- 33.2. It is the Contractors responsibility to notify the public body(s) of the availability of the contract(s).
- 33.3. Other public bodies desiring to use this contract will need to make their own legal determinations as to whether the use of this contract is consistent with their laws, regulations, and other policies.
- 33.4. Each public body shall execute a separate contract with the Contractor(s). Public bodies may add terms and conditions required by statute, ordinances, and regulations, to the extent that they do not conflict with the contracts terms and conditions. If, when preparing such a contract, the general terms and conditions of a public body are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that public body.
- 33.5. Fairfax County **shall not** be held liable for any costs or damages incurred by another public body as a result of any award extended to that public body by the Contractor.

34. NEWS RELEASE BY VENDORS:

- 34.1. As a matter of policy, the County does not endorse the products or services of a contractor. News releases concerning any resultant contract from this solicitation will not be made by a contractor without the prior written approval of the County. All proposed news releases will be routed to the Purchasing Agent for review and approval.

35. AMERICANS WITH DISABILITIES ACT REQUIREMENTS:

- 35.1. Fairfax County Government is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. Fairfax County government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement must make the same commitment. Your acceptance of this contract acknowledges your commitment and compliance with ADA.
- 35.2. Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. Bidders requesting special accommodations should call the Office of Equity and Employee Relations at 571-423-3070, HRequity&empolyeerelations@fcps.edu or TRS at 711. Please allow seven (7) working days in advance of the event to make the necessary arrangements.

36. HIPAA COMPLIANCE:

- 36.1. Fairfax County Government has designated certain health care components as covered by the Health Insurance Portability and Accountability Act of 1996. The successful vendor will be designated a business associate pursuant to 45 CFR part 164.504(e) of those agencies identified as health care components of the County, including the Fairfax-Falls Church Community Services Board, upon award of contract. The successful vendor shall be required to execute a Fairfax County Business Associate Agreement and must adhere to all relevant federal, state, and local confidentiality and privacy laws, regulations, and contractual provisions of that agreement. These laws and regulations include, but are not limited to: (1) HIPAA – 42 USC 201, et seq., and 45 CFR Parts 160 and 164; and (2) Va Code – Title 32.1, Health, § 32.1-1 et seq. The vendor shall have in place appropriate administrative, technical, and physical safeguards to ensure the privacy and confidentiality of protected health information.
- 36.2. Further information regarding HIPAA Compliance is available on the County's website at <http://www.fairfaxcounty.gov/HIPAA>.

37. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:

- 37.1. Pursuant to *Code of Virginia*, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement

describing why the bidder or offeror is not required to be so authorized. Any bidder or offeror that fails to provide the required information may not receive an award.

38. **BACKGROUND CRIMINAL INVESTIGATION/IDENTIFICATION:**

- 38.1. By the signature of its authorized official on the response to this solicitation, the Contractor certifies that neither the contracting official nor any of the Contractor's employees, agents or subcontractors who will have direct contact with students has been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child. The Contractor agrees to remove from the contract any employee, agent or subcontractor who has been determined by the School Board to be disqualified from service due to such convictions or the failure to truthfully report such convictions.
- 38.2. The Contractor shall immediately notify the FCPS Contract Specialist if any Contractor or employee of said Contractor providing services under the contract is arrested or indicted as a defendant in Virginia or any other jurisdiction. FCPS reserves the right to require that the employee be suspended from working on the contract until the charge(s) is adjudicated. This requirement does not apply to minor traffic violations, not requiring the appearance of the employee in court, unless the charge includes the illegal possession, distribution, use or influence of drugs or alcohol.
- 38.3. Due to enhanced security measures, Contractor employees/representatives are required to have photo identification and be able to present same upon request. Contractor employees/representatives shall report to the appropriate administrative and/or main office each time a site is visited. **All Contractor employees will be required to wear a company picture ID badge, or temporary name tag, issued by the County, clearly visible above the waist.** Contractor employees/representatives who arrive at the County/School facility without appropriate identification badges will immediately be dismissed from the job site.
- 38.4. Failure to comply with the above requirements may result in termination of the contract.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

COUNTY OF FAIRFAX
COMMONWEALTH OF VIRGINIA

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

BIDS ON SOLICITATIONS ISSUED BY THE COUNTY WILL BIND BIDDERS TO THE APPLICABLE CONDITIONS AND REQUIREMENTS IN THE GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS (GCIB) UNLESS OTHERWISE SPECIFIED IN THE SOLICITATION AND SUBJECT TO APPLICABLE STATE, LOCAL, AND FEDERAL LAWS.

BIDDERS OR THEIR AUTHORIZED REPRESENTATIVES SHOULD INFORM THEMSELVES FULLY AS TO THE CONDITIONS, REQUIREMENTS, AND SPECIFICATIONS OF EACH COUNTY PROCUREMENT BEFORE SUBMITTING BIDS. FAILURE TO DO SO WILL BE AT THE BIDDER'S OWN RISK AND RELIEF CANNOT BE SECURED ON THE PLEA OF ERROR.

1. **AUTHORITY**-The Purchasing Agent has the sole responsibility and authority for purchasing supplies, materials, equipment, and services, except as excluded in the Fairfax County Purchasing Resolution. The Purchasing Agent's responsibility and authority includes, but is not limited to, issuing and modifying solicitations, negotiating and executing contracts, and placing purchase orders. In discharging these responsibilities, the Purchasing Agent may be assisted by contract specialists. Unless specifically delegated by the Purchasing Agent, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Fairfax for an indebtedness. Any purchase ordered or contract made that is contrary to these provisions and authorities shall be of no effect, void, and does not bind the County.
2. **DEFINITIONS**- Unless otherwise defined in the GCIB, capitalized terms shall have the meanings defined by the Fairfax County Purchasing Resolution.

AGENCY: Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the County.

BID: The offer of a bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

BIDDER/OFFEROR: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the County. The term "bidder" will be used throughout this document and shall be construed to mean "offeror" where appropriate.

CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the County.

INVITATION FOR BID (IFB): A request which is made to prospective suppliers (bidders) for their quotation on goods or services desired by the County. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

PURCHASING AGENT: The Purchasing Agent employed by the Board of Supervisors of Fairfax County, Virginia.

REQUEST FOR PROPOSAL (RFP): A request for an offer from prospective offerors which will indicate the general terms which are sought to be procured from the offeror. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.

SOLICITATION: The process of notifying prospective bidders that the County wishes to receive bids on a set of requirements to provide goods or services. The notification of County requirements may consist of public advertising (newspaper, County Web Site, or other electronic notification), the mailing of Notices of Solicitation, Invitation for Bid (IFB) or Request for Proposal (RFP), the public posting of notices, issuance of an informal solicitation to include telephone calls to prospective bidders.

CONDITIONS OF BIDDING

3. **BID FORMS**-Unless otherwise specified in the solicitation, all bids must be (i) submitted on the forms provided by the County, including the bid Cover Sheet and Pricing Schedule(s); (ii) properly signed in ink in the identified spaces; and (iii) submitted in a sealed envelope or package.

If the bid prices or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.

4. **LATE BIDS & MODIFICATIONS OF BIDS**-
 - a. Bids or proposals received after the date and time specified for receipt in the solicitation will not be considered.
 - b. If an emergency, unanticipated event, or closing of County offices interrupts or suspends normal County business operations so that bids cannot be received at the County office designated for receipt of bids by the exact time specified in the solicitation, then bids will be due at the same time of day specified in the solicitation on the first work day that normal County business operations resume.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

- c. The official time used for receipt of bids/modifications is the time and date stamp clock located in the Department of Procurement & Material Management. No other clocks, calendars or timepieces are recognized. All bidders must ensure all bids/modifications are received prior to the scheduled due date/time.
5. **WITHDRAWAL OF BIDS**- Bids shall be withdrawn only as set forth in the Fairfax County Purchasing Resolution.
 6. **ERRORS IN BIDS**-When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initialed by the bidder. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if its bid is accepted.
 7. **LABELING OF BIDS** – All bids and proposals submitted in response to a County solicitation must be submitted in a sealed envelope or package identified with the solicitation number, title, and bidder's name and address clearly marked on the outside of the envelope or package.
 8. **ACCEPTANCE OF BIDS/BINDING 90 DAYS**-Unless otherwise specified, all formal bids submitted shall be binding for ninety (90) calendar days following bid opening date, unless extended by mutual consent of all parties.
 9. **CONDITIONAL BIDS**-Conditional bids may be rejected in whole or in part.
 10. **BIDS FOR ALL OR PART**-The Purchasing Agent reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the County. A bidder may restrict its bid to consideration in the group aggregate by so stating, but must name a single unit price on each item bid. Any bid in which the bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.
 11. **AREA BIDS**-For the purchase and delivery of certain goods and services the County may be divided into Areas (e.g., Areas I, II, III, and IV). When such goods and services are included in the Pricing Schedule, bidders may bid on all areas or an individual area. A map showing the areas of the County will be furnished with the solicitation when required.
 12. **RECEIPT OF BIDS**-Bids received prior to the time of opening will be securely kept, unopened by the County. No responsibility will attach to the Purchasing Agent or her representative for the premature opening of a bid not properly addressed and identified. Unless specifically authorized in the solicitation, telegraphic, electronic, or facsimile bids/modifications will not be considered by the County.
 13. **BID OPENING**-All bids received in response to an Invitation for Bid (IFB) will be opened at the date, time and place specified, read publicly, and made available for inspection as provided in paragraph 64, General Conditions and Instructions to Bidders. The Purchasing Agent's representative assigned to open the bids will decide when the specified time for bid opening has arrived. Tabulations of bids received are posted on the County's website at: <https://www.fairfaxcounty.gov/procurement/bid-tab>

Proposals received in response to a Request for Proposal (RFP) will be made available as provided in Paragraph 63, General Conditions and Instructions to Bidders.
 14. **OMISSIONS & DISCREPANCIES**-Any items or parts of any equipment listed in this solicitation that clearly necessary for the operation and completion of such equipment, but are: (i) not fully described by the County; or (ii) are omitted by the County from such specification, shall be considered a part of such equipment even if not directly specified or called for in the specifications.

If a bidder finds discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, it shall notify the Purchasing Agent at least five (5) days prior to the date set for the opening of bids. If necessary, the Purchasing Agent will send a written addendum for clarification to all bidders no later than three (3) days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.
 15. **BIDDER INTERESTED IN MORE THAN ONE BID**-If more than one bid is offered by a bidder, directly or indirectly, all such bids may be rejected. A bidder who has quoted prices on work, materials, or supplies to a bidder is not disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.
 16. **TAX EXEMPTION**-The County is exempt from the payment of any federal excise or any Virginia sales tax. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K.
 17. **PROHIBITION AGAINST UNIFORM PRICING**-The Purchasing Agent encourages open and competitive bidding by all possible means and endeavors to obtain the maximum degree of open competition on all purchase transactions using the methods of procurement authorized by the Fairfax County Purchasing Resolution. Each bidder, by virtue of submitting a bid, guarantees that it has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.
 18. **UNBALANCED BIDS**—A Bid shall be mathematically unbalanced if the Bid contains unit pricing that does not reflect reasonable costs (including actual labor and material cost, overhead and profit) for the performance of the bid item(s) in question. A Bid shall be materially unbalanced if there is a reasonable doubt that award of the mathematically unbalanced Bid will result in the lowest ultimate cost to the County. A Bid that is, in the sole discretion of the County Purchasing Agent, both mathematically and materially unbalanced, may be rejected as non-responsive.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

SPECIFICATIONS

19. **CLARIFICATION OF TERMS**—If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder should contact the contract specialist whose name appears on the face of the solicitation no later than five working dates before the due date. Any revisions to the solicitation will be made only by addendum issued by the contract specialist.
20. **BRAND NAME OR EQUAL ITEMS**—Unless otherwise provided in the Invitation for Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired. Any article that the County in its sole discretion determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder is responsible for clearly and specifically identifying the product being offered and providing sufficient descriptive literature, catalog cuts and technical detail to enable the County to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make, or manufacturer specified. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder clearly indicates in its bid that the product is an equivalent product, such bid will be considered to offer the brand name product referenced in the solicitation.
21. **SPECIFICATIONS**—When a solicitation contains a specification that states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.

The bidder must abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

AWARD

22. **AWARD OR REJECTION OF BIDS**—The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many bidders as deemed necessary to fulfill the anticipated requirements of Fairfax County. The Purchasing Agent also reserves the right to reject the bid of a bidder deemed to be a non-responsible bidder.

In determining the responsibility of a bidder, the following criteria will be considered:

- a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
 - b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
 - c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
 - d. The quality of performance of previous contracts or services;
 - e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
 - f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
 - g. The quality, availability and adaptability of the goods or services to the particular use required;
 - h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
 - i. Whether the bidder is in arrears to the County on debt or contract or is a defaulter on surety to the County or whether the bidder's County taxes or assessments are delinquent; and
 - j. Such other information as may be secured by the Purchasing Agent having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of non-responsibility, the Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.
23. **NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS**—A written award (or Acceptance Agreement) mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the solicitation shall result in a binding contract. The following documents, which are included in the solicitation, are incorporated by reference in and made part of the resulting contract:
- a. County of Fairfax Solicitation Form (Cover Sheet) and other documents which may be incorporated by reference, if applicable
 - b. Acceptance Agreement
 - c. General Conditions and Instructions to Bidders
 - d. Special Provisions and Specifications
 - e. Pricing Schedule
 - f. Any Addenda/Amendments/Memoranda of Negotiations

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

24. **TIE-BIDS** – If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of re-advertisement for bids, the Purchasing Agent is authorized to award the contract to the tie bidder that has its principal place of business in the County, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public; or the Purchasing Agent may purchase the goods or services in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services. The decision of the County to make award to one or more such bidders shall be final.
25. **PROMPT PAYMENT DISCOUNT-**
- Unless otherwise specified in the solicitation, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a bid for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.
 - If a discount for prompt payment is allowed, the discount period will begin on the date of receipt of a properly completed invoice or acceptance of materials or services, whichever is later.
 - For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements.
- For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the County check or issuance of an Electronic Funds Transfer, or completion of a credit card transaction.
26. **INSPECTION-ACCEPTANCE-** Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time. The County reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
27. **DEFINITE BID QUANTITIES-**Where definite quantities are specifically stated, acceptance will bind the County to order quantities specified and to pay for, at contract prices, all such supplies or services delivered that meet specifications and conditions of the contract. However, the County will not be required to accept delivery of any balances unordered, as of the contract expiration date, unless the Contractor furnished the Purchasing Agent with a statement of unordered balances not later than ten (10) days after the termination date of the contract.
28. **REQUIREMENT BID QUANTITIES-**On "Requirement" bids, acceptance will bind the County to pay for, at unit bid prices, only quantities ordered and delivered. Where the County specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon.

CONTRACT PROVISIONS

29. **TERMINATION OF CONTRACTS-**Contracts will remain in force for (i) the full period specified or (ii) until all articles ordered before date of termination, but arriving after the termination date, are satisfactorily delivered, accepted, and any further requirements and conditions are met, unless the Contract is:
- Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.
 - Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.
30. **TERMINATION FOR CONVENIENCE-**
- A contract may be terminated in whole or in part by the County in accordance with this clause whenever the Purchasing Agent determines that such a termination is in the best interest of the County. Any such termination will be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance is terminated and the date upon which termination becomes effective.
 - An equitable adjustment in the contract price shall be made by the Purchasing Agent for completed service, but no amount shall be allowed for anticipated profit on unperformed services. Paragraph 30.b shall survive termination of the contract.
31. **TERMINATION OF CONTRACT FOR CAUSE-**
- If, through any cause, the Contractor fails to fulfill in a timely and proper manner its obligations under this contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, the County has the right to terminate the contract. Any such termination will be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance is terminated and the date upon which termination becomes effective. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become the County's property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
 - Termination of the Contract for Cause does not relieve the Contractor of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.
32. **CONTRACT ALTERATIONS-**No alterations in the terms of a contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or her authorized agent.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

33. **SUBLETTING OR ASSIGNMENT** -It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign its right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from its obligations or change the terms of the contract.
34. **FUNDING-** The obligation of the County to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this contract is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.
35. **DELIVERY/SERVICE FAILURES**-If a Contractor (i) fails to deliver goods or services within the time specified or within a reasonable time as interpreted by the Purchasing Agent; or (ii) fails to make replacements or corrections of rejected articles or services when so requested, immediately or as directed by the Purchasing Agent, then the Purchasing Agent shall have the authority to purchase in the open market goods or services of comparable grade or quality to replace goods or services not delivered or rejected. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the Purchasing Agent, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.
36. **NON-LIABILITY**-The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion, are beyond the reasonable control of the Contractor. Under such circumstances, however, the Purchasing Agent may, at her discretion terminate the contract.
37. **NON-DISCRIMINATION**-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 other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. The Contractor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.
 - e. Contractor shall, throughout the term of this contract, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended. Contractor shall further require that all of its subcontractors will comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended
38. **SMALL, WOMEN-OWNED, AND MINORITY-OWNED BUSINESS USE-**
- a. It is the declared policy of the County of Fairfax, through its Small and Minority Business Enterprise Program, that Fairfax County and its employees undertake every effort to increase opportunity for use of small or minority businesses in all aspects of procurement to the maximum extent feasible.
 - b. Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to small, women and minority businesses.
 - c. Where Federal grants or monies are involved, it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as they pertain to small and minority business use.
39. **GUARANTEES & WARRANTIES**-All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before contract execution. Unless otherwise stated, manufacturer's standard warranty applies.
40. **PRICE REDUCTION**-If the Contractor makes a general price reduction for any material covered by the solicitation to customers generally, an equivalent price reduction shall apply to this contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers (i.e., wholesalers, jobbers, or retailers), which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price is not a "general price reduction" under this provision. The Contractor shall submit its invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor will also within ten days of any general price reduction notify the Purchasing Agent of such reduction by letter. **FAILURE TO DO SO MAY RESULT IN TERMINATION OF THE CONTRACT.**
41. **CHANGES**-If in the Purchasing Agent's opinion, it becomes proper or necessary in the execution of this contract to make any

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

change in design, or to make any alterations that will increase the expense, the Purchasing Agent shall determine an equitable adjustment to the Contractor's compensation.

No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor are first expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.

42. **PLACING OF ORDERS**-Orders against contracts will be placed with the Contractor by Purchase Order or Procurement Card (P-Card) executed and released by the Purchasing Agent or their designee. When a Blanket Purchase Order has been released by the Purchasing Agent, telephonic orders may be placed directly with the Contractor by authorized personnel in the ordering Agency.

DELIVERY PROVISIONS

43. **SHIPPING INSTRUCTIONS - CONSIGNMENT**-Unless otherwise specified in the solicitation each case, container, package, etc., delivered under the contract must be plainly marked, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Deliveries must be made within the hours of 8:00 AM - 3:00 PM. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the receiver at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays, unless previous arrangements have been made. It shall be the responsibility of the Contractor to insure compliance with these instructions for items that are drop-shipped.
44. **RESPONSIBILITY FOR MATERIALS OR GOODS TENDERED**-Unless otherwise specified in the solicitation, the Contractor is responsible for the materials or supplies covered by the contract until they are delivered at the delivery point designated by the County. The Contractor bears all risk of loss on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at its risk and expense or dispose of them as the County's own property.
45. **INSPECTIONS**-Inspection and acceptance of materials or supplies will be made after delivery at the designated destinations unless otherwise stated. If inspection is made after delivery at the designated destination, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection is conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.
46. **COMPLIANCE**-Delivery must be made as ordered and in accordance with the contract or as directed by the Purchasing Agent when not in conflict with the contract. The decision of the Purchasing Agent as to reasonable compliance with delivery terms shall be final. If the Contractor claims the delay in receipt of goods was caused by the County, the Contractor must provide evidence satisfactory to the Purchasing Agent supporting the Contractor's claim. Any request for extension of delivery time from that specified in the contract must be approved by the Purchasing Agent, such extension applying only to the particular item or shipment affected. If the Contractor is delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the Contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See contract for the individual instructions.
47. **POINT OF DESTINATION**-All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.
48. **ADDITIONAL CHARGES**-Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.
49. **METHOD AND CONTAINERS**-Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers that are constructed to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the County unless otherwise specified by bidder.
50. **REPLACEMENT**-Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of a contract, shall be replaced by the Contractor at no cost to the County.
51. **PACKING SLIPS OR DELIVERY TICKETS**-All shipments must be accompanied by Packing Slips or Delivery Tickets and must contain the following information for each item delivered:
- a. The Purchase Order Number,
 - b. The Name of the Article and Stock Number (Supplier's),
 - c. The Quantity Ordered,
 - d. The Quantity Shipped,
 - e. The Quantity Back Ordered,
 - f. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions is sufficient reason for the County's refusal to accept the goods.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

BILLING

52. **BILLING**-Billing for the Fairfax County Public Schools and for County agencies: Unless otherwise specified on the contract or purchase order (PO), invoices are to be submitted for each purchase order immediately upon completion of the shipment or services. Invoices should be mailed to the "BILL TO" address on the PO or to the appropriate address specified in the contract.

PAYMENTS

53. **PAYMENT**-Payment shall be made after satisfactory performance that is in accordance with all provisions of the contract, and upon receipt of a properly completed invoice. The County reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any subsequent modifications.
54. **PARTIAL PAYMENTS**-Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.
55. **PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING**-When equipment requires installation (which includes erection, setting up or placing in position, service, or use) and testing, and the installation or testing is delayed, payment may be made on the basis of 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made on the basis of 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

GENERAL

56. **GENERAL GUARANTY**-Contractor agrees to:
- a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
 - b. Warrant that when the contract includes a software license, or use of licensed software, the Contractor is the owner of the Software or otherwise has the right to grant to the County the license to use the Software granted through the Contract without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
 - c. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
 - d. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
 - e. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, regulations, and policies of the County.
 - f. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.
57. **SERVICE CONTRACT GUARANTY**-Contractor agrees to:
- a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions of those documents provided that the County may reduce the said services at any time.
 - b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
 - c. All work and services rendered in strict conformance to all laws, statues, and ordinances and the applicable government rules, regulations, methods, and procedures.
 - d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. The County is under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
 - e. Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

58. INDEMNIFICATION-

- a. **General Indemnification.** Contractor must indemnify, keep and save harmless, and defend the County, its agents, officials, employees and volunteers against Claims that may accrue or arise against the County as a result of the granting a contract, if the Claim was caused by the negligence or error, or omission of the Contractor, its employees, its subcontractor, or its subcontractor's employees. As used in this Section, a Claim includes: injuries, death, damage to property, breach of data security, suits, liabilities, judgments, or costs and expenses. Upon request by the County, the Contractor must at its own expense: appear, defend, and pay all attorney's fees and all costs and other expenses related to the Claim. If, related to a Claim, any judgment is rendered against the County or a settlement reached that requires the County to pay money, the Contractor must at its own expense satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this Contract, or otherwise provided by the Contractor, does not limit the Contractor's responsibility to indemnify, keep and save harmless, and defend the County as provided in this Contract.
- b. **Intellectual Property Indemnification.** In addition to the General Indemnification, Contractor will indemnify the County for and defend the County against third-party claims for infringement of any valid United States patent, trademark or copyright by the Contractor's products, software, services, or deliverables. Contractor must indemnify the County for any loss, damage, expense or liability, including costs and reasonable attorney's fees that may result by reason of any such claim.

In the event of a claim covered by this subparagraph, and in addition to all other obligations of Contractor in this Paragraph 58, Contractor must at its expense and within a reasonable time: (a) obtain a right for the County to continue using such products and software, or allow Contractor to continue performing the Services; (b) modify such products, software, services or deliverables to make them non-infringing; or (c) replace such products or software with a non-infringing equivalent. If, in the Contractor's reasonable opinion, none of the foregoing options is feasible Contractor must immediately notify the County and accept the return of the products, software, services, or deliverables, along with any other components rendered unusable as a result of the infringement or claimed infringement, and refund to the County the price paid to Contractor for such components as well as any pre-paid fees for the allegedly infringing services, including license, subscription fees, or both. Nothing in Paragraph 59, however, relieves the Contractor of liability to the County for damages sustained by the County by virtue of any breach of contract related to a third-party infringement claim.

- c. **Right to Participate in Defense.** The County may, at its sole expense, participate in the defense or resolution of a Claim. Contractor will have primary control of the defense and resolution of the Claim, except when such defense or resolution requires the County to (i) admit liability or wrongdoing; or (ii) to pay money. In either of these cases Contractor must obtain the County's prior written consent before raising such defense or entering into such resolution.
- d. **No Indemnification by the County.** The parties agree that under applicable law the County cannot indemnify or defend the Contractor. To the extent any promise or term contained in this Contract, including any exhibits, attachments, or other documents incorporated by reference therein, includes an indemnification or obligation to defend by the County, that promise or term is stricken from this Contract and of no effect.

59. OFFICIALS NOT TO BENEFIT-

- a. Each bidder, offeror, or contractor shall certify, upon signing a bid, proposal, or contract, that to the best of their knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of their immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. For purposes of this Paragraph, "financial benefit" means any payment, loan, subscription, advance, deposit of money, services personal use rebates or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. If a financial benefit has been received or will be received, this fact must be disclosed with the bid or proposal or as soon thereafter as it appears that a financial benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid, proposal or contract, and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
- c. In the event the bidder or offeror has knowledge of financial benefits as outlined above, this information should be submitted with the bid or proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the bidder or offeror must disclose such facts to the Fairfax County Purchasing Agent, 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013. Relevant Invitation/Request for Proposal Number (see cover sheet) should be referenced in the disclosure.

60. **LICENSE REQUIREMENT-**All firms doing business in Fairfax County, shall obtain a license as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: <https://www.fairfaxcounty.gov/taxes/business/understanding-bpol-tax>. The BPOL Tax number must be indicated in the space provided on the Cover Sheet, "Fairfax License Tax No." when appropriate.

61. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

contract with a Fairfax County pursuant to the Fairfax County Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

62. **COVENANT AGAINST CONTINGENT FEES**-The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
63. **VIRGINIA FREEDOM OF INFORMATION ACT**-All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:
- a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
 - b. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
 - c. Trade secrets or proprietary information submitted by a bidder, offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.
 - d. Nothing contained in this section shall be construed to require the County, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the County.
 - e. The County cannot maintain as confidential any information, data, or records obtainable through the Virginia Freedom of Information or similar law. This includes records or information that have not been properly designated as trade secret or proprietary information pursuant to Va. Code Ann. § 2.2-4342(F).
 - f. A bidder or offeror shall not designate as trade secrets or proprietary information (a) an entire bid, proposal, or prequalification application; (b) any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information; or (c) line item prices or total bid, proposal, or prequalification application prices.

BIDDER/CONTRACTOR REMEDIES

64. INELIGIBILITY-

- a. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the Purchasing Agent.
 1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within ten (10) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
 2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within ten (10) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
- b. The Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:
 1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County Contractor;
 3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;
 4. Violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify suspension or debarment action:
 - a. failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for suspension or debarment;
 5. Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a Contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

6. The contractor has abandoned performance, been terminated for default on a Fairfax County project, or has taken any actions that inure to the detriment of Fairfax County or a Fairfax County project ;
7. The Contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.
- c. If, upon appeal, it is determined that the action taken by the Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

65. APPEAL OF DENIAL OF WITHDRAWAL OF BID-

- a. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.
- b. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 5.A.8, of the Fairfax County Purchasing Resolution, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
- c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

66. APPEAL OF DETERMINATION OF NONRESPONSIBILITY-

- a. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular County contract shall be notified in writing by the Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.
- b. If, upon appeal, it is determined that the decision of the Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made and performance has begun, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

67. PROTEST OF AWARD OR DECISION TO AWARD-

- a. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 2, Section 2, of the Fairfax County Purchasing Resolution. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 5.C of the Fairfax County Purchasing Resolution, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Article 2, Section 5.C, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia. Nothing in this section shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation for Bid or Request for Proposal.
- b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.
- c. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.
- d. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

68. CONTRACTUAL DISPUTES-

- a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the Purchasing Agent, who shall reduce her decision to writing and mail or otherwise forward a copy to the Contractor within ninety (90) days. The decision of the Purchasing Agent shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action, prior to receipt of the Purchasing Agent's decision on the claim, unless the Purchasing Agent fails to render such decision within the time specified.
- b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

69. **LEGAL ACTION**-No bidder, offeror, potential bidder or offeror, or Contractor shall institute any legal action until all statutory requirements have been met. Statutory requirements include, but are not limited to, the requirements of the Virginia Public Procurement Act, as reflected in the Fairfax County Purchasing Resolution and the requirement that any contractor seeking monetary relief or damages from the County must submit its claim to the Board of Supervisors in compliance with Virginia Code § 15.2-1243 through 1249.

70. **VENUE**: This contract and its terms, including but not limited to, the parties' obligations, the performance due, and the remedies available to each party, are governed, construed, and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law, conflicts of laws, rules, or provisions that would cause the application of any laws other than those of the Commonwealth of Virginia do not apply. Any and all disputes, claims, and causes of action arising out of or in any way connected with this contract or its performance must be brought in the applicable court of Fairfax County, or in the United States District Court for the Eastern District of Virginia, Alexandria Division.

71. **COOPERATIVE PURCHASING**-The County or any entity identified in the Fairfax County Purchasing Resolution, Article 1, Section 3 may participate in, sponsor, conduct or administer a cooperative procurement agreement as set forth in the Fairfax County Purchasing Resolution.

72. **DRUG FREE WORKPLACE**-During the performance of a 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 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 conjunction with a specific contract awarded to a Contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

73. **IMMIGRATION REFORM AND CONTROL ACT**-Contractor agrees that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

74. **AUDIT OF RECORDS** The parties agree that the County or its agent must have reasonable access to and the right to examine any records of the contractor involving transactions related to the contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The contractor shall include these same provisions in all related subcontracts. For purposes of this clause, the term "records" includes documents, and papers regardless of whether they are in written form, electronic form, or any other form.

75. **PERSONALLY IDENTIFIABLE INFORMATION**: Contractor will comply with all applicable laws regarding safeguarding and protection of personally identifiable information made available through this Contract. Contractor must report to the County all breaches that result in exposure of the County's data or other incidents compromising the security of the County's data. For purposes of this section "County data" means data that the Contractor accesses, stores, or hosts pursuant to this Contract and includes "personal information" defined by Virginia Code § 18.2-186.6 or "medical information" defined by Virginia Code § 32.1-127.1:05. Such reports must be made to the County immediately upon discovery of the breach and no later than three days from when Contractor discovered the breach. The requirements of this paragraph are in addition to and do not relieve Contractor of its obligation to comply with any requirements imposed by law regarding data breaches. If any notices to individuals or third parties are required by applicable law due to a data breach, the parties will cooperate to ensure that such notice is timely provided. If Contractor experiences a breach of protected health information governed under HIPAA, or substance use disorder information governed under 42 CFR Part 2, the terms of any Business Associate or Qualified Service Organization Agreement between the parties will control.

76. **NONVISUAL ACCESS**-All information technology, which is purchased or upgraded by the County under this contract, must comply with the following access standards from the date of purchase or upgrade until the expiration of the Contract:

- a. Effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means;

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

- b. the technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;
- c. Nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and
- d. The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.
- e. Compliance with the nonvisual access standards set out this Section is not required if the Board of Supervisors determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available.

APPROVED:

/S/ Elizabeth D. Teare
COUNTY ATTORNEY

/S/ LeeAnne Pender
ACTING COUNTY PURCHASING AGENT

BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE

All firms located or operating in Fairfax County must obtain a Business, Professional and Occupational License (BPOL) as required by Chapter 4, Article 7, of the Code of the County of Fairfax, Virginia. In order for the Department of Tax Administration to determine your BPOL requirement prior to contract award, it is necessary for you to provide the following information:

- If you currently have a Fairfax County business license, please submit a copy with your proposal.
- Do you have an office in: Virginia Yes No
 Fairfax County Yes No
- Date business began/will begin work in Fairfax County: _____

A detailed description of the business activity that will take place in Fairfax County. If business is located outside of Fairfax County, give the percentage of work actually to be done in the County.

Signature_____
Date

Complete and return this form or submit a copy of your current Fairfax County Business License with your proposal.

BUSINESS CLASSIFICATION

DEFINITIONS

Small Business – means a business, independently owned or operated by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

Minority-Owned Business – means a business concern that is at least 51% owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.

Woman-Owned Business – means a business that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

YOU MUST CLASSIFY YOUR BUSINESS/ORGANIZATION BY MARKING THE APPROPRIATE BOXES ON THE COVER SHEET (DPSM32). This designation is required of all business/organizations including publicly traded corporations, non-profits, sheltered workshops, government organizations, partnerships, sole proprietorships, etc.

CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

In compliance with contracts and grants agreements applicable under the U.S. Federal Awards Program, the following certification is required by all offerors submitting a proposal in response to this Request for Proposal:

1. The Offeror certifies, to the best of its knowledge and belief, that neither the Offeror nor its Principals are suspended, debarred, proposed for debarment, or declared ineligible for the award of contracts from the United States federal government procurement or nonprocurement programs, or are listed in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* issued by the General Services Administration.
2. "Principals," for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).
3. The Offeror shall provide immediate written notice to the Fairfax County Purchasing Agent if, at any time prior to award, the Offeror learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. This certification is a material representation of fact upon which reliance will be placed when making the award. If it is later determined that the Offeror rendered an erroneous certification, in addition to other remedies available to Fairfax County government, the Fairfax County Purchasing Agent may terminate the contract resulting from this solicitation for default.

Printed Name of Representative: _____

Signature: _____ Date: _____

Company Name: _____

Address: _____

City: _____ State: _____ Zip: _____

SSN or TIN No: _____

Certification Regarding Ethics in Public Contracting

In submitting this proposal and signing below, Offeror certifies the following in connection with a bid, proposal, or contract:

Check one:

1. I have not given any payment, loan, subscription, advance, monetary deposit, services or anything of more than nominal value to any public employee or official who has official responsibility and authority for procurement transactions.

2. I have given a payment, loan, subscription, advance, monetary deposit, services or anything of more than nominal value to a public employee or official who has official responsibility and authority for procurement transactions, and in exchange I received consideration of substantially equal or greater value.

3. I have given a payment, loan, subscription, advance, monetary deposit, services or anything of more than nominal value to a public employee or official who has official responsibility and authority for procurement transactions, but in exchange I have not received consideration of substantially equal or greater value.

If #2 above is selected, please complete the following:

Recipient: _____

Date of Gift: _____

Description of the gift and its value: _____

Description of the consideration received in exchange and its value: _____

Printed Name of Bidder/Offeror Representative: _____

Signature: _____ Date: _____

Company Name: _____

Company Address: _____

City: _____ State: _____ Zip: _____

This certification supplements but does not replace the requirements set forth in paragraph 59 (OFFICIALS NOT TO BENEFIT) of the General Conditions and Instructions to Bidders included in this solicitation.

OFFEROR DATA SHEET

NAME OF OFFEROR: _____

ADDRESS: _____

E-MAIL ADDRESS: _____

*Name and e-mail addresses of both service and fiscal representatives (Key Personnel) who would handle this account.

Service representative: _____
Telephone number: () _____
Email address: _____

Fiscal representative: _____
Telephone number: () _____
Email address: _____

Payment address, if different from above:

PROPRIETARY INFORMATION:

Ownership of all data, materials, and documentation originated and prepared for the Owner pursuant to the REQUEST FOR PROPOSAL shall belong exclusively to the Owner and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act, however, the Offeror must invoke the protections of Section 2.2-4342F of the Code of Virginia, in writing, either before or at the time the data or other material is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information.

NOTICE OF PROPRIETARY INFORMATION*
Confidentiality References Protection in Accordance with the Code of Virginia,
Section 2.2-4342F

Section Title	Page Number	Reason(s) for Withholding from Disclosure

INSTRUCTIONS:

Identify the data or other materials to be protected and state the reasons by using the codes listed below. Indicate the specific words, figures, or paragraphs that constitute trade secrets or proprietary materials.

- A. This page contains information relating to "trade secrets", and "proprietary information" including processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income... of any person (or) partnership. "Reference the Virginia Public Procurement Act, Section 2.2-4342F. Unauthorized disclosure of such information would violate the Trade Secrets Act 18 U.S.C. 1905.
- B. This page contains proprietary information including confidential, commercial or financial information which was provided to the Government on a voluntary basis and is of the type that would not customarily be released to the public. See Virginia Public Procurement Act, Section 2.2-4342F; 5 U.S.C. 552 (b)(4); 12 C.F.R. 309.5(c)(4).
- C. This page contains proprietary information including confidential, commercial or financial information. This disclosure of such information would cause substantial harm to competitive position and impair the Government's ability to obtain necessary information from contractors in die future. 5 U.S.C. See Virginia Public Procurement Act. Section 2.2-4342F; 552 (b)(4); 12 C. F. R 309.5(c)(4).

***PLEASE MARK "NOT APPLICABLE" IN TABLE, IF NO EXCEPTIONS ARE TAKEN.**

Sample Listing of Local Public Bodies

REFERENCE, SPECIAL PROVISIONS, PARAGRAPH TITLED "USE OF CONTRACTS BY OTHER PUBLIC BODIES." You may select those public bodies that this contract may be extended to; a "blank" will signify a "NO" response:

	Alexandria Public Schools, VA		Manassas Park, Virginia
	Alexandria Sanitation Authority		Maryland-National Capital Park & Planning Commission
	Alexandria, Virginia		Maryland Transit Administration
	Arlington County, Virginia		Metropolitan Washington Airports Authority
	Arlington Public Schools, Virginia		Metropolitan Washington Council of Governments
	Bladensburg, Maryland		Montgomery College
	Bowie, Maryland		Montgomery County, Maryland
	Charles County Public Schools, MD		Montgomery County Public Schools
	College Park, Maryland		Northern Virginia Community College
	Culpeper County, Virginia		Omni Ride
	District of Columbia		Potomac & Rappahannock Trans. Commission
	District of Columbia Courts		Prince George's County, Maryland
	District of Columbia Public Schools		Prince George's County Public Schools
	DC Water and Sewer Authority		Prince William County, Virginia
	Fairfax County Water Authority		Prince William County Public Schools, VA
	Fairfax, Virginia (City)		Prince William County Service Authority
	Falls Church, Virginia		Rockville, Maryland
	Fauquier County Government and Schools, Virginia		Spotsylvania County Schools, Virginia
	Frederick, Maryland		Stafford County, Virginia
	Frederick County Maryland		Takoma Park, Maryland
	Gaithersburg, Maryland		Upper Occoquan Sewage Authority
	Greenbelt, Maryland		Vienna, Virginia
	Herndon, Virginia		Virginia Railway Express
	Leesburg, Virginia		Washington Metropolitan Area Transit Authority
	Loudoun County, Virginia		Washington Suburban Sanitary Commission
	Loudoun County Public Schools		Winchester, Virginia
	Loudoun County Sanitation Authority		Winchester Public Schools
	Manassas, Virginia		Manassas City Public Schools, Virginia

Complete and return this form with your proposal.

Vendor Name

VIRGINIA STATE CORPORATION COMMISSION (SCC)
REGISTRATION INFORMATION

The bidder:

is a corporation or other business entity with the following SCC identification number:
_____ **-OR-**

is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**

is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the bidder in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder's out-of-state location) **-OR-**

is an out-of-state business entity that is including with this bid/proposal an opinion of legal counsel which accurately and completely discloses the undersigned bidder's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

Please check the following box if you have not checked any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for bids:



Office of Procurement Services
8115 Gatehouse Road, Suite 4400
Falls Church, VA 22042

SUBCONTRACTOR (S) NOTIFICATION FORM

Contract Number/Title: _____

Prime Contractors Name: _____

Prime Contractor's Classification: _____

You are required to provide the County with names, addresses, anticipated dollar amount and small/minority classification of each first-tier subcontractor (ref. Special Provisions, titled "Subcontracting"). Please complete this form and return it with your submission.

Please check here if you are not using a subcontractor: _____

SUBCONTRACTOR(S) NAME	STREET ADDRESS	CITY	STATE	ZIP CODE	ANTICIPATED DOLLAR AMOUNT	VENDOR CLASSIFICATION

Complete and return this form with your proposal.

Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	<p>1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.</p> <hr/> <p>2 Business name/disregarded entity name, if different from above</p> <hr/> <p>3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.</p> <p> <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate </p> <p> <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____ </p> <p>Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.</p> <p> <input type="checkbox"/> Other (see instructions) ▶ _____ </p>		<p>4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from FATCA reporting code (if any) _____</p> <p style="font-size: small;">(Applies to accounts maintained outside the U.S.)</p>
	<p>5 Address (number, street, and apt. or suite no.) See instructions.</p> <hr/> <p>6 City, state, and ZIP code</p> <hr/> <p>7 List account number(s) here (optional)</p>	<p>Requester's name and address (optional)</p> <hr/>	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number											
				-			-				
or											
Employer identification number											
				-							

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or “doing business as” (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity’s name as shown on the entity’s tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a “disregarded entity.” See Regulations section 301.7701-2(c)(2)(iii). Enter the owner’s name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner’s name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity’s name on line 2, “Business name/disregarded entity name.” If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys’ fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.SSA.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/Businesses and clicking on Employer Identification Number (EIN) under Starting a Business. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.

You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.

You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions.

You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor ²
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
6. Sole proprietorship or disregarded entity owned by an individual	The owner ³
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity ⁴
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

*Note: The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Visit www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

This Virginia School Data Privacy Agreement (“DPA”) is entered into by and between the _____ (hereinafter referred to as “Division”) and _____ (hereinafter referred to as “Provider”) on _____. The Parties agree to the terms as stated herein.

RECITALS

WHEREAS, the Provider has agreed to provide the Division with certain digital educational services (“Services”) as described in Article I and Exhibit “A.”

WHEREAS, in order to provide the Services described in Article 1 and Appendix A, the Provider may receive or create and the Division may provide documents or data that are covered by several federal statutes, among them, the Federal Educational Rights and Privacy Act (“FERPA”) at 20 U.S.C. 1232g and 34 CFR Part 99, Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. 6501-6502; Protection of Pupil Rights Amendment (“PPRA”) 20 U.S.C. 1232h; the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400 *et. seq.*

WHEREAS, the documents and data transferred from Virginia Divisions and created by the Provider’s Services are also subject to several Virginia student privacy laws, including Code of Virginia § 22.1-289.01. *School service providers; school-affiliated entities; student personal information*; and § 22.1-287.02. *Students' personally identifiable information*;

WHEREAS, the Parties wish to enter into this DPA to ensure that the Services provided conform to the requirements of the privacy laws referred to above and to establish implementing procedures and duties; and

WHEREAS, the Provider may, by signing the “General Offer of Privacy Terms” (Exhibit “E”), agree to allow other Local Educational Agencies (LEAs) in Virginia the opportunity to accept and enjoy the benefits of this DPA for the Services described herein, without the need to negotiate terms in a separate DPA.

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

ARTICLE I: PURPOSE AND SCOPE

1. Purpose of DPA. The purpose of this DPA is to describe the duties and responsibilities to protect Division Data (as defined in Exhibit “C”) transmitted to Provider from the Division pursuant to Exhibit “A”, including compliance with all applicable state privacy statutes, including the FERPA, PPRA, COPPA, IDEA, 603 C.M.R. 23.00, 603 CMR 28.00, and Code of Virginia § 22.1-289.01. *School service providers; school-affiliated entities; student personal information*; and § 22.1-287.02. *Students' personally identifiable information*. In performing these services, to the extent Personally Identifiable Information (as defined in Exhibit “C”) from Pupil Records (as defined in Exhibit “C”) are transmitted to Provider from Division, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the Division. Providers shall be under the direct control and supervision of the Division.

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

2. **Nature of Services Provided.** The Provider has agreed to provide the following digital educational services described below and as may be further outlined in Exhibit “A” hereto:

3. **Division Data to Be Provided.** In order to perform the Services described in this Article and Exhibit “A”, Provider shall list the categories of data collected, managed or shared as described below or as indicated in the Schedule of Data, attached hereto as Exhibit “B”:

4. **DPA Definitions.** The definition of terms used in this DPA is found in Exhibit “C”. In the event of a conflict, definitions used this DPA shall prevail over terms used in all the other writings, including, but not limited to, a service agreement, privacy policies or any terms of service.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Division Data Property of Division.** All Division Data, user generated content or any other Pupil Records transmitted to the Provider pursuant to this Agreement is and will continue to be the property of and under the control of the Division, or to the party who provided such data (such as the student, in the case of user generated content.). The Provider further acknowledges and agrees that all copies of such Division Data or any other Pupil Records transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are also subject to the provisions of this Agreement in the same manner as the original Division Data or Pupil Records. The Parties agree that as between them, all rights, including all intellectual property rights in and to Division Data or any other Pupil Records contemplated per this Agreement shall remain the exclusive property of the Division. For the purposes of FERPA and state law, the Provider shall be considered a School Official, under the control and direction of the Divisions as it pertains to the use of Division Data notwithstanding the above. The Provider will cooperate and provide Division Data within ten (10) days at the Division’s request. Provider may transfer pupil-generated content to a separate account, according to the procedures set forth below.

2. **Parent Access.** Provider shall cooperate and respond within ten (10) days to the Division’s request for personally identifiable information in a pupil’s records held by the Provider to view or correct as necessary. In the event that a parent of a pupil or other individual contacts the Provider to review any of the Pupil Records of Division Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the Division, who will follow the necessary and proper procedures regarding the requested information.

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

3. **Separate Account.** Provider shall, at the request of the Division, transfer Student Generated Content to a separate student account when required by the Code of Virginia § 22.1-289.01. School service providers; school-affiliated entities.
4. **Third Party Request.** Provider shall notify the Division in advance of a compelled disclosure to a Third Party, unless legally prohibited.
5. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions pursuant to this DPA, whereby the Subprocessors agree to protect Division Data in a manner consistent with the terms of this DPA.

ARTICLE III: DUTIES OF DIVISION

1. **Privacy Compliance.** Division shall provide data for the purposes of the DPA and any related contract in compliance with the FERPA, PPRa, IDEA, Code of Virginia § 22.1-289.01. School service providers; school-affiliated entities; student personal information; and § 22.1-287.02. Students' personally identifiable information, and all other applicable Virginia statutes.
2. **Parent Notification of Rights.** Division shall ensure that its annual notice under FERPA defines vendors, such as the Provider, as “School Officials” and what constitutes a legitimate educational interest. The Division will provide parents with a notice of the websites and online services under this agreement for which it has consented to student data collection to on behalf of the parent, as permitted under COPPA.
3. **Unauthorized Access Notification.** Division shall notify Provider promptly of any known or suspected unauthorized access. Division will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance.** The Provider shall comply with all Virginia and Federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRa, Code of Virginia § 22.1-289.01. and § 22.1-287.02.
2. **Authorized Use.** Division Data shared pursuant to this DPA, including persistent unique identifiers, shall be used for no purpose other than the Services stated in this DPA and as authorized under the statutes referred to in subsection (1), above. Provider also acknowledges and agrees that it shall not make any re-disclosure of any Division Data or any portion thereof, including without limitation, any Division Data, metadata, user content or other non-public information and/or personally identifiable information contained in the Division Data, without the express written consent of the Division, unless it fits into the de-identified information exception in Article IV, Section 4, or there is a court order or lawfully issued subpoena for the information.
3. **Employee Obligations.** Provider shall require all employees and agents who have access to Division data to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement.
4. **Use of De-identified Information.** De-identified information, as defined in Exhibit “C”,

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

may be used by the Provider for the purposes of development, research, and improvement of educational sites, services, or applications, as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). The Provider and Division agree that the Provider cannot successfully de-identify information if there are fewer than twenty (20) students in the samples of a particular field or category of information collected, *i.e.*, twenty students in a particular grade, twenty students of a particular race, or twenty students with a particular disability. Provider agrees not to attempt to re-identify de-identified Division Data and not to transfer de-identified Division Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to the Division who has provided prior written consent for such transfer.

5. **Disposition of Data.** Upon written request and in accordance with the applicable terms in subsections below, Provider shall dispose or delete all Division data obtained under this agreement when it is no longer needed for the purposes for which it was obtained. Disposition will include (1) the shredding of any hard copies of any Division data, (2) erasing, or (3) otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. Nothing in the service agreement authorizes provider to maintain Division data obtained under the service agreement beyond the time reasonably needed to complete the disposition. Provider shall provide written notification when the division data has been disposed. The duty to dispose of Division data shall not extend to data that has been de-identified or placed in a separate student account, pursuant to the terms of the agreement. The division may employ a request for return or deletion of Division data form, a copy of which is attached hereto as exhibit D. Upon receipt of a request from the division, the provider will immediately provide the division with any specified portion of the division data within ten (10) calendar days of the receipt of said request.
 - a) **Partial Disposal During the Term of Service Agreement.** Throughout the term of the service agreement, Division may request partial disposal of Division data obtained under the service agreement that is no longer needed. Partial disposal of data shall be subject to Division's request to transfer data to a separate account, pursuant to Article II Section 3, above.
 - b) **Complete Disposal upon Termination of Service Agreement.** Upon termination of the service agreement Provider shall dispose or securely destroy all Division data obtained under the service agreement. Prior to the disposal of the data, Provider shall notify Division in writing of its option to transfer data to a separate account, pursuant to Article 2, Section 3, above. In new event shelters Provider dispose of data pursuant to this provision unless and until provider has received affirmative written confirmation from Division that data will not be transferred to a separate account.
6. **Advertising Prohibition.** Provider is prohibited from using or selling Division Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing or advertising efforts by a Provider; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to Client; or (d) use the Division Data for the development of commercial products or services, other than as necessary to provide the Service to the Client. This section does not prohibit Provider from generating legitimate personalized learning recommendations or other

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

activities permitted under Code of Virginia § 22.1-289.01.

7. **Penalties.** The failure to comply with the requirements of this agreement could subject Provider and any third party to all allowable penalties assessable against Provider under state and federal law. In the event the Family Policy Compliance Office of the U.S. Department of Education determines that Provider improperly disclosed personally identifiable information obtained from the Division's education records, the Division may not allow Provider access to the Division's education records for at least five years.

ARTICLE V: DATA PROVISIONS

1. **Data Security.** The Provider agrees to maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of student personal information and makes use of appropriate administrative, technological, and physical safeguards. The general security duties of Provider are set forth below. These duties shall include, but are not limited to:
 - a. **Passwords and Employee Access.** Provider shall secure and manage usernames, passwords, and any other means of gaining access to the Services or to Division Data, at levels suggested by NIST SP800-171 (Password complexity, encryption, and re-use), NIST SP800-53 (IA control Family), and NIST 800-63-3 (Digital Identity), and NIST SP800-63B (Authenticator and Verifier Requirements) or equivalent industry best practices.
 - b. **Security Protocols.** Both parties agree to maintain security protocols that meet industry best practices in the collection, storage or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. Provider shall maintain all data obtained or generated pursuant to the DPA in a secure computer environment.
 - c. **Provider Employee Training.** The Provider shall provide annual security training to those of its employees who operate or have access to the system.
 - d. **Security Technology.** When the service is accessed using a supported web browser, FIPS 140-2 validated transmission encryption protocols, or equivalent technology shall be employed to protect data from unauthorized access. The service security measures shall follow National Institute of Standards and Technology (NIST) 800-171, or equivalent industry best practices.
 - e. **Periodic Risk Assessment.** Provider further acknowledges and agrees to conduct periodic risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner. Upon Division's written request, Service Provider shall make the results of findings available to the Division. The Division shall treat such audit reports as Provider's Confidential Information under this Agreement.
 - f. **Backups and Audit Trails, Data Authenticity and Integrity.** Provider will take reasonable measures, including all backups and audit trails, to protect Division Data against deterioration or degradation of data quality and authenticity. Provider shall be responsible for ensuring that Division Data is retrievable in a reasonable format.

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g. Subprocessors Bound. Provider shall enter into written agreements whereby Subprocessors agree to secure and protect Division Data in a manner consistent with the terms of this Article V. Provider shall periodically conduct or review compliance monitoring and assessments of Subprocessors to determine their compliance with this Article.

2. Unauthorized Access or Data Breach. In the event that Division Data are reasonably believed by the Provider or school division to have been disclosed (lost, accessed or obtained) in violation of the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) or other federal or state law applicable to such information accessed or obtained by an unauthorized individual, Provider shall follow the following process:

- a. provide immediate notification to Division upon verification of the incident and allow the Division or its authorized representatives to fully participate in the investigation of the incident.
- b. notification will be provided to the contact(s) identified in ARTICLE VII, N: Notice, and sent via email and postal mail. Such notification shall include:
 - i. date, estimated date, or date range of the loss or disclosure;
 - ii. Division data that was or is reasonably believed to have been lost or disclosed;
 - iii. remedial measures taken or planned in response to the loss or disclosure.
- c. immediately take action to prevent further access;
- d. take all legally required, reasonable, and customary measures in working with Division to remediate the breach, which may include toll free telephone support with informed customer services staff to address questions by affected parties and/or provide monitoring services if necessary given the nature and scope of the loss or disclosure;
- e. cooperate with Division efforts to communicate to affected parties;
- f. provider is prohibited from directly contacting parent, legal guardian or eligible pupil unless expressly requested by Division. If Division requests Provider's assistance providing notice of unauthorized access, and such assistance is not unduly burdensome to Provider, Provider shall notify the affected parent, legal guardian or eligible pupil of the unauthorized access, which shall include the information listed in subsections (b) and (c), above. If requested by Division, Provider shall reimburse Division for costs incurred to notify parents/families of a breach not originating from Division's use of the Service;
- g. the Provider shall indemnify and hold harmless the Division from and against any loss, claim, cost (including attorneys' fees) or damage of any nature arising from or in connection with the breach by the Provider or any of its officers, directors, employees, agents or representatives of the obligations of the Provider's or its Authorized Representatives under this provision or under a Confidentiality Agreement, as the case may be.

ARTICLE VI: GENERAL OFFER OF PRIVACY TERMS

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

The Provider may, by signing the attached Form of General Offer of Privacy Terms (General Offer attached hereto as Exhibit "E"), be bound by the terms of this DPA to any other Division who signs the acceptance in said Exhibit. The Form is limited by the terms and conditions described therein.

ARTICLE VII: MISCELLANEOUS

- A. Term.** The Provider shall be bound by this DPA for so long as the Provider maintains or possesses any Division data.
- B. Termination.** In the event that either party seeks to terminate this DPA, they may do so by mutual written consent and as long as any service agreement or terms of service, to the extent one exists, has lapsed or has been terminated. The Division may terminate the DPA and any service agreement or contract in the event of a material breach of the terms of this DPA.
- C. Data Transfer Upon Termination or Expiration.** Provider will notify the Division of impending cessation of its business and any contingency plans. Provider shall implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal disruption to the Division. As mutually agreed upon and as applicable, Provider will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and effect on the Division, all such work to be coordinated and performed in advance of the formal, transition date.
- D. Effect of Termination Survival.** If the DPA is terminated, the Provider shall destroy all of Division's data pursuant to Article V, section 5(b). The Provider's obligations under this agreement shall survive termination of this Agreement until all Division Data has been returned or Securely Destroyed.
- E. Priority of Agreements.** This DPA supersedes all end user and "click-thru" agreements. In the event there is conflict between the terms of the DPA and any other writing, such as service agreement or with any other bid/RFP, terms of service, privacy policy, license agreement, or writing, the terms of this DPA shall apply and take precedence. Except as described in this paragraph herein, all other provisions of any other agreement shall remain in effect.
- F. Amendments:** This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both parties
- G. Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.
- H. Governing Law: Venue and Jurisdiction.** This agreement will be governed by and

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

construed in accordance with the laws of the state of Virginia, without regard to conflicts of law principles. Each party consents and submits to the sole and exclusive jurisdiction to the state and federal courts for the county of the initial subscribing division or the division specified in Exhibit “E” as applicable, for any dispute arising out of or relating to this agreement or the transactions contemplated hereby.

- I. Authority.** Provider represents that it is authorized to bind to the terms of this Agreement, including confidentiality and destruction of Division Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Division Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Division Data and portion thereof stored, maintained or used in any way.
- J. Waiver.** No delay or omission of the Division to exercise any right hereunder shall be construed as a waiver of any such right and the Division reserves the right to exercise any such right from time to time, as often as may be deemed expedient.
- K. Successors Bound:** This DPA is and shall be binding upon the respective successors in interest to provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business.
- L. Electronic Signature:** The parties understand and agree that they have the right to execute this Agreement through paper or through electronic signature technology, which is in compliance with Virginia and Federal law governing electronic signatures. The parties agree that to the extent they sign electronically, their electronic signature is the legally binding equivalent to their hand written signature. Whenever they execute an electronic signature, it has the same validity and meaning as their handwritten signature.
- M. Notice.** All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, facsimile or e-mail transmission (if contact information is provided for the specific mode of delivery), or first class mail, postage prepaid, sent to the designated representatives before:

a. Designated Representatives

The designated representative for the Provider for this Agreement is:

Name: _____
Title: _____
Address: _____
eMail: _____
Phone: _____

The designated representative for the Division for this Agreement is:

Name: _____
Title: _____
Address: _____

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eMail: _____
Phone: _____

- b. Notification of Acceptance of General Offer of Terms.** Upon execution of Exhibit “E” General Offer of Terms, subscribing Division shall provide notice of such acceptance in writing and given by personal delivery or email transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, to the designated representative below the designated representative for the notice of acceptance of the general offer of privacy terms is named title contact information.

Name: _____
Title: _____
Address: _____
eMail: _____
Phone: _____

[Signature Page Follows]

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

IN WITNESS WHEREOF, the parties have executed this Virginia Student Data Privacy Agreement as of the last day noted below.

Provider Signature

Date: _____ Printed Name: _____ Title: _____

Division Signature

Date: _____ Printed Name: _____ Title: _____

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

EXHIBIT "A"

DESCRIPTION OF SERVICES

[INSERT DETAILED DESCRIPTION OF PRODUCTS AND SERVICES HERE. IF MORE THAN ONE PRODUCT OR SERVICE IS INCLUDED, LIST EACH PRODUCT HERE]

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

EXHIBIT “B”

SCHEDULE OF DATA

Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.	
	Other application technology meta data- Please specify:	
Application Use Statistics	Meta data on user interaction with application	
Assessment	Standardized test scores	
	Observation data	
	Other assessment data-Please specify:	
Attendance	Student school (daily) attendance data	
	Student class attendance data	
Communications	Online communications that are captured (emails, blog entries)	

Conduct	Conduct or behavioral data	
Demographics	Date of Birth	
	Place of Birth	
	Gender	
	Ethnicity or race	
	Language information (native, preferred or primary language spoken by student)	
Enrollment	Other demographic information- Please specify:	
	Student school enrollment	
	Student grade level	
	Homeroom	
	Guidance counselor	
	Specific curriculum programs	
	Year of graduation	
Other enrollment information- Please specify:		
Parent/Guardian Contact Information	Address	
	Email	
	Phone	

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Parent/ Guardian ID	Parent ID number (created to link parents to students)	
Parent/ Guardian Name	First and/or Last	
Schedule	Student scheduled courses Teacher names	
Special Indicator	English language learner information	
	Low income status	
	Medical alerts /health data	
	Student disability information	
	Specialized education services (IEP or 504)	
	Living situations (homeless/ foster care)	
	Other indicator information- Please specify:	
Student Contact Information	Address	
	Email	
	Phone	
Student Identifiers	Local (School district) ID	

	number	
	State ID number	
	Provider/App assigned student ID number	
	Student app username	
	Student app passwords	
Student Name	First and/or Last	
Student In App Performance	Program/appli- cation performance (typing program-student types 60 wpm, reading program-student reads below grade level)	
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	
Student Survey Responses	Student responses to surveys or questionnaires	
Student work	Student generated content; writing, pictures etc.	
	Other student	

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

	work data - Please specify:	
Transcript	Student course grades	
	Student course data	
	Student course grades/performance scores	
	Other transcript data -Please specify:	
Transportation	Student bus assignment	
	Student pick up and/or drop off location	
	Student bus card ID number	

	Other transportation data -Please specify:	
Other	Please list each additional data element used, stored or collected by your application	

No Student Data Collected at this time _____.
 *Provider shall immediately notify LEA if this designation is no longer applicable.

OTHER: Use this box, if more space needed.

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

EXHIBIT “C”

DEFINITIONS

Data Breach means an event in which Division Data is exposed to unauthorized disclosure, access, alteration or use.

Division Data includes all business, employment, operational and Personally Identifiable Information that Division provides to Provider and that is not intentionally made generally available by the Division on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and student, employees, and personnel data, user generated content and metadata but specifically excludes Provider Data (as defined in the Contract).

De-Identifiable Information (DII): De-Identification refers to the process by which the Provider removes or obscures any Personally Identifiable Information (“PII”) from student records in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them. Anonymization or de-identification should follow guidance equivalent to that provided by U.S Department of Education publication “Data De-identification: An Overview of Basic Terms” or NISTIR Special Publication (SP) 8053 De-Identification of Personally Identifiable Information. The Provider’s specific steps to de-identify the data will depend on the circumstances, but should be appropriate to protect students. Some potential disclosure limitation methods are blurring, masking, and perturbation. De-identification should ensure that any information when put together cannot indirectly identify the student, not only from the viewpoint of the public, but also from the vantage of those who are familiar with the individual. Information cannot be de- identified if there are fewer than twenty (20) students in the samples of a particular field or category, *i.e.*, twenty students in a particular grade or less than twenty students with a particular disability.

Indirect Identifiers: Any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty.

Personally Identifiable Information (PII): The terms “Personally Identifiable Information” or “PII” shall include, but are not limited to, student data, staff data, parent data, metadata, and user or pupil-generated content obtained by reason of the use of Provider’s software, website, service, or app, including mobile apps, whether gathered by Provider or provided by Division or its users, students, or students’ parents/guardians, including “directory information” as defined by §22.1-287.1 of the Code of Virginia“.

PII includes, without limitation, at least the following:

- Staff, Student or Parent First, Middle and Last Name
- Staff, Student or Parent Telephone Number(s)
- Discipline Records
- Special Education Data
- Grades
- Criminal Records

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- Health Records
- Biometric Information
- Socioeconomic Information
- Political Affiliations
- Text Messages
- Student Identifiers Photos
- Videos
- Grade
- Home Address Subject
- Email Address
- Test Results
- Juvenile Dependency Records Evaluations
- Medical Records
- Social Security Number
- Disabilities
- Food Purchases
- Religious Information Documents
- Search Activity
- Voice Recordings
- Date of Birth
- Classes
- Information in the Student's Educational Record
- Information in the Student's Email

Provider: For purposes of the DPA, the term “Provider” means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records.

Pupil Generated Content: The term “pupil-generated content” means materials or content created by a pupil during and for the purpose of education including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of pupil content.

Pupil Records: Means both of the following: (1) Any information that directly relates to a pupil that is maintained by Division and (2) any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other local educational Division employee.

Securely Destroy: Securely Destroy means taking actions that render data written on physical (e.g., hardcopy, microfiche, etc.) or electronic media unrecoverable by both ordinary and extraordinary means. These actions must meet or exceed those sections of the National Institute of Standards of Technology (NIST) SP 800-88 Appendix A guidelines relevant to sanitization of data categorized as high security. All attempts to overwrite magnetic data for this purpose must utilize DOD approved methodologies.

School Official: For the purposes of this Agreement and pursuant to 34 CFR 99.31 (B), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education

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records; and (3) Is subject to 34 CFR 99.33(a) governing the use and re-disclosure of personally identifiable information from student records.

Student Data: Student Data includes any data, whether gathered by Provider or provided by Division or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, home address, telephone number, email address, or other information allowing online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information text messages, documents, student identifies, search activity, photos, voice recordings or geolocation information.

Student Data shall constitute Pupil Records for the purposes of this Agreement, and for the purposes of Virginia and Federal laws and regulations. Student Data as specified in Exhibit B is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student's use of Provider's services. Anonymization or de-identification should guidance equivalent to that provided by U.S Department of Education publication "Data De-identification: An Overview of Basic Terms" or NISTIR Special Publication (SP) 8053 De-Identification of Personally Identifiable Information.

Student Generated Content: Alternatively known as user-created content (UCC), is any form of content, such as images, videos, text and audio, that have been created and posted by student users on online platforms.

Subscribing Division: A Division that was not party to the original Services Agreement and who accepts the Provider's General Offer of Privacy Terms.

Subprocessor: For the purposes of this Agreement, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than Division or Provider, who Provider uses for data collection, analytics, storage, or other service to operate and/or improve its software, and who has access to PII.

Third Party: The term "Third Party" means an entity that is not the Provider or Division.

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

EXHIBIT “D”
DIRECTIVE FOR DISPOSITION OF DATA

[Name or Division or Division] directs [Name of Company] to dispose of data obtained by Provider pursuant to the terms of the DPA between Division and Provider. The terms of the Disposition are set forth below:

1. Extent of Disposition

Disposition is Complete. Disposition extends to all categories of data.

Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:

[Insert categories of data]

2. Nature of Disposition

Disposition shall be by destruction or secure deletion of data.

Disposition shall be by a transfer of data. The data shall be transferred to the following site as follows:

[Insert or attach special instructions.]

3. Timing of Disposition

Data shall be disposed of by the following date: As soon as commercially practicable
By _____

4. Signature of Authorized Representative of Division

BY: _____

Date: _____

Printed Name: _____

Title/Position: _____

5. Verification of Disposition of Data

BY: _____

Date: _____

Printed Name: _____

Title/Position: _____

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

OPTIONAL: EXHIBIT “E” GENERAL OFFER OF PRIVACY TERMS

1. Offer of Terms

Provider offers the same privacy protections found in this DPA between it and the Division to any other school division (“Subscribing Division”) who accepts this General Offer through its signature below. The Provider agrees that the information on the next page will be replaced throughout the Agreement with the information specific to the Subscribing Division filled on the next page for the Subscribing Division. This General Offer shall extend only to privacy protections and Provider’s signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Provider and the Subscribing Division may also agree to change the data provided by Division to the Provider to suit the unique needs of the Subscribing Division. The Provider may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statues; (2) a material change in the services and products subject listed in the Originating Service Agreement; or (3) after three years from the date of Provider’s signature to this form. Provider shall notify the Division in the event of any withdrawal so that this information may be transmitted to the Subscribing Divisions.

BY: _____ Date: _____

Printed Name: _____ Title/Position: _____

2. Subscribing Division

A Subscribing Division, by signing a separate Service Agreement with Provider, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing Division’s individual information is contained on the next page. The Subscribing Division and the Provider shall therefore be bound by the same terms of this DPA.

BY: _____ Date: _____

Printed Name: _____ Title/Position_ _____

TO ACCEPT THE GENERAL OFFER THE SUBSCRIBING DIVISION MUST DELIVER THIS SIGNED EXHIBIT TO THE PERSON AND EMAIL ADDRESS LISTED BELOW

BY: _____ Date: _____

Printed Name: _____ Title/Position: _____

Email Address _____

**APPENDIX D
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement is entered into by and between (“Business Associate”) and **Fairfax County Public Schools** (the “Covered Entity”), is effective as of _____ (the “Agreement Effective Date”) or other date reflected herein.

RECITALS

WHEREAS, the parties have previously entered into a services agreement (referred to herein as the “Services Agreement”) and business associate agreement for Covered Entity and business associates to meet the requirements of current law concerning the handling and disclosure of individually identifiable health information;

WHEREAS, the parties wish to disclose certain information to each other pursuant to the terms of this Agreement and the Services Agreement, some of which may constitute Protected Health Information (defined below);

WHEREAS, Covered Entity and Business Associate intend to (i) protect the privacy and provide for the security of Protected Health Information disclosed pursuant to this Agreement and the Services Agreement and (ii) comply with applicable transaction and code requirements set forth in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as most recently amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (“HHS”) (collectively “HIPAA”) and other applicable federal and state laws; and

WHEREAS, the parties acknowledge that certain federal or state laws may take precedence over HIPAA and agree that this Agreement, the operational requirements hereunder, and the Services Agreement shall be interpreted to enable the parties to comply with HIPAA, the Privacy Rule (defined below) and other applicable federal or state law.

NOW, THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement and the Services Agreement, the parties agree as follows:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Disclosure, Health Care Operations, Minimum Necessary, Notice of Privacy Practices, Subcontractor and Use.

1. **Definitions.** In addition to the definitions located elsewhere in the Services Agreement, the following shall apply to this Agreement:
 - a. **“Breach”** shall have the same meaning as 45 CRF Section 164.402, which in part is the acquisition, access, use or disclosure of Protected Health Information in a manner not permitted under subpart E of 45 C.F.R. part 164 that compromises the security or privacy of the Protected Health Information.
 - b. **“Business Associate”** shall generally have the same meaning as the term “business associate” at 45 C.F.R. Section 160.103, and in reference to the party to this agreement, shall mean.

- c. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. Section 160.103, and in reference to the party to this agreement, shall mean Fairfax County Public Schools.
- d. “Designated Record Set” or “DRS” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- e. “Electronic Protected Health Information” or “EPHI” shall mean the information identified in subsections (i) and (ii) of the definition of “protected health information” contained in 45 C.F.R. Section 160.103 of the Privacy Rule.
- f. “HHS Transaction Standards Regulation” shall mean 45 C.F.R. Sections 160 and 162.
- g. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
- h. “Information” shall mean any “health information” as defined in 45 C.F.R. Section 160.103.
- i. “Individual” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. Section 164.502(g).
- j. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- k. “Protected Health Information” or “PHI” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 160.103, and is the information created or received by Business Associate from or on behalf of Covered Entity.
- l. “Required by Law” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.103.
- m. “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or designee.
- n. “Security Incident” shall mean, as provided in 45 C.F.R. Section 164.304, any attempted or successful unauthorized access, use, disclosure, modification, or destruction of Electronic Protected Health Information created, received, maintained or transmitted on behalf of the Covered Entity, or any successful interference with system operations in an information system related to such Electronic Protected Health Information.
- o. “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160, 162 and 164.
- p. “Unsecured Protected Health Information” means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals as provided in 45 C.F.R. Section 164.402).

2. Permitted Uses and Disclosures of PHI. Except as otherwise limited in this Agreement or by law, Business Associate may: (i) use or disclose PHI only to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Services Agreement between the parties and in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by a Covered Entity; (ii) use or further disclose PHI to carry out the legal responsibilities of Business Associate; (iii) conduct any other use or disclosure permitted or required by HIPAA or applicable federal or state law; and (iv) use PHI for the proper management and administration of Business Associate, consistent with 45 C.F.R. Section 164.504(e).
3. Data Aggregation Services. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. Section 164.504(e)(2)(i)(B). In addition to other permissible purposes, the Business Associate is authorized to de-identify Protected Health Information in accordance with 45 CFR 164.514(a)-(c). Data aggregation means the combining of PHI created or received by the Business Associate on behalf of Covered Entity with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the Health Care Operations of Covered Entity.
4. Obligations and Activities of Business Associate.

Business Associate agrees not to use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.

- a. Appropriate Safeguards. Business Associate shall use reasonable and appropriate physical, technical, and administrative safeguards (i) to prevent use or disclosure of PHI other than as permitted under this Agreement or Required by Law and (ii) to reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that Business Associate creates, receives, maintains or transmits on behalf of the Covered Entity to comply with Subpart C of 45 C.F.R. Part 164.
- b. Reporting of Improper Use or Disclosure. Business Associate shall promptly report in writing to Covered Entity (i) any use or disclosure of PHI not provided for by this Agreement upon becoming aware of such use or disclosure and (ii) Security Incidents (as described in 45 C.F.R. § 164.314(a)(2)(i)(C)) that result in unauthorized access, use, disclosure, modification or destruction of EPHI or interference with system operations (“Successful Security Incidents”). Contractor will report to Covered Entity any Successful Security Incident of which it becomes aware of within ten (10) business days. At a minimum such report will contain the following information:
 - Date and time when the Security Incident occurred and/or was discovered;
 - Names of systems, programs, or networks affected by the Security Incident;
 - Preliminary impact analysis;
 - Description of and scope of EPHI used, disclosed, modified, or destroyed by the Security Incident; and
 - Description of any mitigation steps taken.

Business Associate will provide the report to the Compliance/Privacy Official at **8115 Gatehouse Road, Suite 2100, Falls Church, VA 22042** and to the individual specified under the Notice provision in the Service Agreement and will send such report by traceable carrier.

To avoid unnecessary burden on either party for Security Incidents that do not result in unauthorized access, use, disclosure, modification or destruction of EPHI or interference with system operations

("Unsuccessful Security Incidents"), Contractor will report to Covered Entity any Unsuccessful Security Incident of which it becomes aware of only upon request of the Covered Entity. The frequency, content and the format of the report of Unsuccessful Security Incidents will be mutually agreed upon by the parties.

Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of (i) any use or disclosure of PHI by Business Associate or its agents or subcontractors in violation of the requirements of HIPAA or this Agreement or (ii) any Security Incidents of Business Associate or its agents or subcontractors.

- c. Reporting of a Breach. Business Associate shall, in accordance with the requirements of 45 C.F.R. § 164.410, promptly notify Covered Entity in writing, but in no case later than ten (10) business days following discovery, of a Breach of Unsecured Protected Health Information. Business Associate also shall, without unreasonable delay, but in no event later than sixty (60) calendar days after the discovery of a Breach of Unsecured Protected Health Information, notify affected Individuals, the Secretary and media of such Breach to the extent required under, and in accordance with the requirements of, 45 C.F.R. Sections 164.400 et seq. (Subpart D). To the extent provided under 45 C.F.R. Section 164.404(a)(2), a Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, subcontractor, or agent of Business Associate. The development and issuance of any required notification to affected Individuals, the Secretary or the media shall be coordinated with, and subject to the prior approval of, Covered Entity, however, if the notification involves data relating to multiple employer groups the parties hereby recognize that Business Associate may proceed with the notification if awaiting final approval would result in a failure to meet the timing requirements of the applicable notification rule.
- d. Business Associate's Agents. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2) Business Associate shall ensure that any agent, including a subcontractor, that creates, receives, maintains, transmits or to whom it provides PHI and Electronic Protected Health Information agrees to the same restrictions and conditions and requirements that apply through this Agreement to Business Associate for such PHI.
- e. Access to PHI. Business Associate shall provide access to an Individual, at the request of the Individual or the Covered Entity, to PHI in a Designated Record Set maintained by, or in the possession of, Business Associate in the time and manner required of a Covered Entity under 45 C.F.R. Section 164.524 or as Required by Law. Any denial of access to such PHI determined by Business Associate shall be the sole responsibility of Business Associate, including, but not limited to, resolution or reporting of all appeals and/or complaints arising therefrom. Business Associate shall promptly report all such requests and their resolution to Covered Entity as mutually agreed by the Parties. Business Associate shall promptly notify the Covered Entity of any request made to the Business Associate that extends to other PHI.
- f. Amendment of PHI. Business Associate shall make a determination on any authorized request by an Individual for amendment(s) to PHI in a Designated Record Set maintained by, or in the possession of, Business Associate in the time and manner required of a Covered Entity under 45 C.F.R. Section 164.526 or as Required by Law. Any denial of such a request for amendment of PHI determined by Business Associate shall be the responsibility of Business Associate, including, but not limited to, resolution and/or reporting of all appeals and/or complaints arising

therefrom. Business Associate shall report all approved amendments or statements of disagreement/rebuttals in accordance with 45 C.F.R. Section 164.526. Business Associate shall also promptly report all such requests and their resolution to Covered Entity.

- g. Documentation of Disclosures. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. Section 164.528, as amended by HITECH. At a minimum, such documentation shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure. Business Associate shall retain such documentation for such period as is set forth in the Privacy Rule or other applicable laws.
- h. Accounting of Disclosures. Business Associate agrees to provide to an Individual or the Covered Entity, in the time and manner required of a Covered Entity, with information collected in accordance with Section 3(f) of this HIPAA Agreement, to respond to a request by an Individual for an accounting of disclosures of PHI (including, but not limited to, PHI contained within an "electronic health record" as defined in HITECH Section 13400(5)) in accordance with 45 C.F.R. Section 164.528 (as amended by HITECH). Business Associate shall promptly report all such requests by an Individual and their resolution to Covered Entity. Beginning on the date required under HITECH (or such later date as may be established in HHS regulations or other guidance), should an Individual make a request for an accounting of disclosures related to electronic health records (or Covered Entity requests that Business Associate respond to such a request), Business Associate shall comply with a request for an accounting of disclosures made for treatment, payment, or health care operations purposes in accordance with HITECH Section 13405(c) and any HHS regulations or other guidance thereunder.
- i. Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity, upon reasonable request by Covered Entity, or to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Rules.
- j. HHS Transaction Standards Regulation. If Business Associate conducts, in whole or part, standard transactions for or on behalf of Covered Entity, Business Associate will comply, and will require any subcontractor or agent involved with the conduct of such standard transactions to comply, with the HHS Standard Transaction Regulation.
- k. Compliance with Security Rules. Business Associate shall:
 - i. use appropriate physical, technical and administrative safeguards to reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity;

- ii. report to Covered Entity any Successful Security Incident of which Business Associate becomes aware, upon becoming aware of such Security Incident;
- iii. ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information received from, or created, maintained, transmitted or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply throughout this Agreement with respect to such information; and
- iv. mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Security Incident relating to Business Associate or any of its agents, including a subcontractor.

I. HITECH Compliance. Business Associate shall:

- i. not receive, directly or indirectly, any impermissible remuneration in exchange for PHI or Electronic Protected Health Information, except as permitted by 45 C.F.R. Sections 164.506(a) and 164.508(a)(4);
- ii. comply with the marketing and other restrictions applicable to business associates contained in 45 C.F.R. Sections 164.506(a) and 164.508(a)(3);
- iii. fully comply with the applicable requirements of 45 C.F.R. Section 164.502 for each use or disclosure of PHI;
- iv. fully comply with 45 C.F.R. Sections 164.306 (security standards), 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), and 164.316 (policies, procedures and documentation requirements); and
- v. to the extent required under HITECH Sections 13401 and 13404, comply with the additional privacy and security requirements enacted in HITECH that apply to covered entities in the same manner and to the same extent as Covered Entity is required to do so.

5. Obligations of Covered Entity

- a. Delegation to Business Associate. As set forth in Sections 3(d), 3(e) and 3(g) of this Agreement, Covered Entity hereby delegates to Business Associate the Covered Entity's responsibility to provide access, amendment, and accounting rights to Individuals with respect to PHI in any Designated Record Set maintained by, or in the possession of, Business Associate. It is understood that Business Associate will interact with the Individual directly, up to and including resolution of any appeals or reporting of complaints under HIPAA or applicable federal or state law. Further, Covered Entity hereby delegates to Business Associate the Covered Entity's obligations with respect to notice of Breaches of Unsecured Protected Health Information. In accordance with Section 3(c) of this Agreement, Business Associate shall notify affected Individuals, Covered Entity, the Secretary, and media (if Required by Law) of such Breach within

sixty (60) calendar days after discovery. Such notice shall comply with the notification requirements set forth in Subpart D of 45 C.F.R. Part 164 (45 C.F.R. Section 164.400 et seq.).

- b. Responsibility for Further Disclosures. Covered Entity shall be responsible for ensuring that any further disclosure by Covered Entity of PHI (including, but not limited to, disclosures to employers, agents, vendors, and group health plans) complies with the requirements of HIPAA and applicable federal and state law.
 - c. Applicable Law. HIPAA requires the Covered Entity and the Business Associate to comply with the Privacy Rule and applicable state privacy laws, based upon application of the preemption principles set forth in 45 C.F.R. Sections 160.201 et seq.
 - d. Notice of Privacy Practices. Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 C.F.R. Section 164.520, as well as any changes to such notice. Business Associate shall not distribute its own notice to Individuals. Business Associate shall not be responsible for the content of Covered Entity's notice of privacy practices nor any error or omission in such notice.
 - e. Changes in Permission by Individual. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
 - f. Restrictions on PHI. Covered Entity shall notify Business Associate of any restriction upon the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. Section 164.522 (as amended by HITECH), to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
 - g. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except for Business Associate's use of PHI for its proper management and administration or to carry out its legal responsibilities under Section 2 of this Agreement.
 - h. Disclosure to Third Parties. Covered Entity may request that Business Associate disclose PHI directly to another party. Covered Entity agrees that all such disclosures requested by Covered Entity shall be for purposes of Covered Entity's treatment, payment or health care operations or otherwise permitted or required under HIPAA or other applicable law.
 - i. Use of Limited Data Sets. The parties agree, for purposes of complying with 45 C.F.R. Section 164.502(b)(1), to limit, to the extent practicable, any use, disclosure and requests of PHI to a "limited data set" (as defined in 45 C.F.R. § 164.514(e)(2)) or, if needed by the Business Associate or Covered Entity, to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure or request. This Section will cease to apply on the effective date of regulations issued by the Secretary in accordance with HITECH Section 13405(b)(2)(C). The parties shall comply with any such regulations promulgated by the Secretary as of their effective date.
6. Compliance Audits. Covered Entity shall have the right to audit Business Associate's compliance with this Agreement. Upon request, Business Associate shall provide Covered Entity representatives reasonable access to Business Associate's relevant records and other

information during normal business hours at Business Associate's place of business. Any such audits shall be conducted in accordance with the terms and conditions (if any) for Covered Entity audits set forth in the Services Agreement.

7. Indemnification. Business Associate agrees to indemnify, defend and hold the Covered Entity harmless from any and all liability, damages, costs (including reasonable attorneys' fees and costs) and expenses imposed upon or asserted against the Covered Entity arising out of any claims, demands, awards, settlements or judgments relating to the use or disclosure of PHI contrary to the provisions of this Agreement or applicable law.
8. Term and Termination
 - a. Term. The term of this Agreement shall commence as of the Agreement Effective Date, and shall terminate when all of the PHI provided by either party to the other, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with Subsection c. of this Section.
 - b. Termination for Cause. If either party breaches a material term of this Agreement, the non-breaching party shall provide a written notice of the breach and a reasonable opportunity to the other party to cure the breach or end the violation within a reasonable period of time specified in the notice. If the breach cannot be cured or is not cured within a reasonable period, this Agreement may be terminated by the non-breaching party. If neither cure nor termination is feasible, the non-breaching party may report the problem to the Secretary.
 - c. Effect of Termination.
 - i. Except as provided in paragraph (ii) of this Section 7(c), upon termination of this Agreement and the Services Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - ii. The parties recognize that Business Associate and Business Associate's Subcontractors and agents may be required to retain PHI to fulfill certain contractual or regulatory requirements, making return or destruction infeasible. Business Associate shall extend the protections of this HIPAA Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate's Subcontractors and agents are likewise contracted to extend such protections to PHI in their possession.
 - iii. In no event shall this Section 7 affect any obligation of Business Associate to transfer Covered Entity information and data to any successor services provider retained by Covered Entity or its successor under the Services Agreement or otherwise.

9. References. A reference in this Agreement to HIPAA means the law or regulation as in effect on the Agreement Effective Date or as subsequently amended, and for which compliance is required on the date of determination.
10. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is required for Covered Entity to comply with the requirements of HIPAA. The parties agree to negotiate in good faith any modification to this Agreement that may be necessary or required to ensure consistency with amendments to and changes in applicable federal and state laws and regulations, including but not limited to, the Privacy Rules or the Security Rules or other regulations promulgated pursuant to HIPAA.
11. Waiver. No delay or omission by either party to exercise any right or remedy under this Agreement will be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.
12. Survival. The respective rights and obligations of Business Associate under Sections 7 and 8(c) of this Agreement shall survive the termination of this Agreement and the underlying Services Agreement.
13. Severability. In the event any part or parts of this Agreement are held to be unenforceable, the remainder of this Agreement will continue in effect, but shall terminate when Business Associate no longer holds any PHI.
14. No Third-Party Beneficiaries. Nothing expressed or implied in this is intended to confer, nor shall anything herein confer upon any person, other than Covered Entity, Business Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
15. Assignment. This Agreement is not assignable by either party without the other party's written consent.
16. Effect of Agreement. Except as specifically required to implement the purposes of this Agreement, or to the extent inconsistent with the Agreement, all other terms of the Services Agreement shall remain in force and effect. This Agreement shall supersede and replace all prior business associate agreements between the parties.
17. No Agency Relationship. For purposes of this Agreement, Business Associate is not the agent of the Covered Entity (as such term is defined under common law).
18. Interpretation. The provisions of this Agreement shall prevail over any provisions in the underlying Services Agreement or any operations activity under the Services Agreement, that conflict or is inconsistent with any provision in this Agreement. Any ambiguity in this Agreement, the Services Agreement or in operations shall be resolved in favor of a meaning that permits Covered Entity or Business Associate to comply with HIPAA or the applicable federal or state rule.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Agreement Effective Date.

Fairfax County Public Schools:

By: _____

Title:

By: _____

Title:

Appendix E
RFP 2000003650 - Speech Therapy Intervention Services

Minimum Qualifications

Offerors must meet or exceed the following minimum qualifications at the time of submission to be considered for further evaluation.

INSTRUCTIONS:

1. Click on the drop-down arrow which appears directly to the bottom right of the cell in the "Response" column and select the response.
2. Offerors shall add a detailed explanation to demonstrate that they meet that qualification.

OFFEROR NAME:

		RESPONSE	EXPLANATION (Required)
2.1.1	Offeror shall provide Verification of Board of Audiology and Speech Language Pathology (BASLP) license to practice Speech Pathology in Virginia for each candidate.		



Security Architecture Checklist

Directions

FCPS' Office of Cybersecurity (OCS) requires that all vendors fill out the below Security Architecture Checklist. This uniform checklist is used by FCPS to evaluate risk across all types of services and products.

The checklist is divided into two sections: 'Vendor Review' and 'Core Security Requirements'. Responses to each item under 'Vendor Review' are mandatory. If you feel that any item under 'Core Security Requirements' is not applicable to you, please indicate N/A and a brief contextual comment.

FCPS will evaluate the response prior to adoption. Evaluations are thorough, and may take up to several months to complete. Detailed, specific responses to each question will facilitate evaluation in a timely manner. Where vendor responses reference documentation, the response should indicate a page number or similar reference. **Please keep this file as an Excel file, and do not convert to a Word document or PDF.**

If the vendor requires a non-disclosure agreement (NDA), please send a copy of the NDA to securityarchitecture@fcps.edu for review. NDAs will increase the time required for a security architecture checklist review.

If you have any questions, please reach out to securityarchitecture@fcps.edu.

Version Details

Version 2.7
 Last Updated: 2023-02-09

Vendor Details

Vendor Name << Requires Response >>
Product Name << Requires Response >>

Product Description << Requires Response >>

Product Use Case Scenario << Describe the anticipated FCPS use of the platform >>

Vendor Contact Name << Requires Response >>
Vendor Contact Title << Requires Response >>
Vendor Contact Email << Requires Response >>

FCPS Assessment (to be filled out by FCPS' Office of Cybersecurity)

Assessed by
 Initial Assessment Date
 Last Assessed
 Completed Assessment Date
 Risk Acceptance Required

Vendor Review Section

Category	Requirement	Requirement Component	Vendor Answer (Drop-down menu)	Vendor Additional Information	FCPS Analysis	FCPS Comments
----------	-------------	-----------------------	--------------------------------	-------------------------------	---------------	---------------

Organizational Structure	Do you have a dedicated in-house or contracted IT department?				
	Do you have a dedicated Information Security staff or office?				
	Do you have a dedicated Software and System Development team(s) (e.g., Customer Support, Implementation, Product Management, etc.)?				
Incident Response	FCPS requires all vendors to maintain an Incident Response plan.	Do you maintain a detailed incident response plan that includes detection, containment methods, and escalation protocols?		Provide a high-level IR plan here or provide reference to an attachment.	
		Do you have either an internal incident response team or retain an external incident response team?			
		Do you have the capability to respond to incidents on a 24x7x365 basis?			
	FCPS requires all vendors to disclose any breaches in the past five years, and agree to notify FCPS of any major incidents moving forward. FCPS considers any incident where an attacker gains an active foothold on your network as a 'major incident'. This is regardless of whether FCPS data was affected or not. FCPS shall be notified within 12 hours, consistent with Virginia Acts Chapters 626 and 627. https://law.lis.virginia.gov/vacode/title2.2/chapter55.3/section2.2-5514/	Do you agree to notify FCPS within 12 hours of a major incident regardless of whether FCPS data is affected or not?			
		Will you comply with applicable breach notification laws?			
		Have you had any breaches in the last five years?			
Environment Segregation	The vendor shall detail various environments (production, development, test, staging, etc.) and how they are segregated. Documentation and diagrams should detail segregation across the stack, including storage.	Do you use segregated environments for production, development, staging, etc.?		Provide detail on various environments (production, development, test, staging, etc.) and how they are segregated. Documentation and diagrams should detail segregation across the stack, including storage.	
Segregation of Roles and Responsibilities	The vendor shall detail how segregation is enforced. If there are instances where roles are blurred (for example, a developer needs production access), explain what compensatory controls are in place to account for the blurring of roles.	Do you enforce role segregation?		If there are instances where roles are blurred (for example, a developer needs production access), explain what compensatory controls are in place to account for the blurring of roles.	
		Do you have a threat and vulnerability management program?			
		Do you subscribe to threat intelligence feeds?			

Threat and Vulnerability Management	The vendor shall explain how they stay abreast of threats and processes to keep systems patched against all vulnerabilities. In addition, provide all details regarding your threat sharing and vulnerability management programs.	Do you use an endpoint detection and response (EDR) solution on all company resources?				
		Do you allow your employees or contractors to use personally-owned machines, or machines not managed by the vendor, to perform work?				
		Do you have a documented and currently implemented strategy for securing employee workstations when they work remotely (i.e., not in a trusted computing environment)?				
		Do you allow your employees or contractors to remotely access company resources from outside the United States?				
Auditing	The vendor shall explain the process and tools to audit all access to the vendor's systems.	Do you leverage a SIEM or other centralized-logging solution?				
DNS	The vendor shall detail all aspects of DNS including servers, resolutions, DNSSEC, and registrar security.	Do you have DNSSEC configured?				
		Do you have DDoS protection?				
Coding Standards	The vendor shall detail secure coding methodology and best practices, automated testing (such as fuzzing), secure development process, etc.	Have your developers been trained in secure coding techniques?				
	FCPS is particularly interested in learning whether you hardcode IP addresses, machine names, etc.	Do you have software testing processes (dynamic or static) that are established and followed?				
Disaster Recovery	The vendor confirms that they have a disaster recovery and business continuity plan.	Do you have a disaster recovery and business continuity plan?				
Email	The vendor shall show proof of valid SPF, DKIM, and DMARC (reject or quarantine) for all email domains, including emails sent between FCPS and vendor employees, as well as automated platform email messages. Please share all email addresses used by the platform or vendor staff to communicate with FCPS.	Do you have DMARC (reject or quarantine) configured for all email domains?				
		Do you have SPF configured for all email domains?				
		Do you have DKIM configured for all email domains?				
Email Scanning	The vendor shall show proof of email security.	Do you have an email security system?				
		Do you scan emails for malicious content?				
		Do you configure link redirection?				
		Do you scan email attachments for malicious content?				
Certifications	The vendor shall provide a full list of privacy and security-related certifications. Please provide a detailed explanation if you cannot produce a SOC 2 Type 2 report.	Do you conform with a specific industry standard security framework (e.g., NIST Cybersecurity Framework, CIS Controls, ISO 27001, etc.)?				
		Do you have any privacy and security-related certifications?		Provide unredacted copies; if an NDA is required, please provide FCPS an NDA.		
	An independent penetration and vulnerability assessment of the vendor's infrastructure	Have your systems and applications had a third party security assessment completed in the last 6 months?				

External Assessments	relevant to the product is required to have been performed in the last six months. FCPS needs to see an unredacted copy of the assessment report.	Will you provide results of application and system vulnerability scans to FCPS?		Provide unredacted copies; if an NDA is required, please provide FCPS an NDA.		
Policies, Procedures, Standards, and Guidelines	The vendor shall detail all policies, procedures, standards, and guidelines about the product's security.	Do you have documented policies, procedures, standards, and guidelines about the product's security?				
Privileged Access Management (PAM)	The vendor shall detail privileged access management procedures for vendor accounts	Do you have a documented, and currently implemented, employee onboarding and offboarding policy?				
		Do you have a fully implemented policy or procedure that details how your employees obtain administrator access to FCPS' instance of the application?				
Transactions	The vendor shall detail the architecture aspects of all database transactions to ensure integrity, availability, and confidentiality.					
Supply Chain	The vendor shall disclose any supply chain risks including software, services, or vendor contractors that do not use multi-factor authentication.	Do all of your contractor and sub-contractor accounts use multi-factor authentication?		Disclose any supply chain risks.		
Remote Monitoring and Management (RMM)	The vendor shall clarify if they use RMM anywhere across your organization, and provide specifics for how, when, and why.	Do you use RMM anywhere across your organization?		If yes, provide specifics for how, when, and why.		
Cyber Insurance	The vendor shall share details about their cyber insurance policy.	Do you carry cyber-risk insurance to protect against unforeseen service outages, data that is lost or stolen, and security incidents?				
Background Checks	The vendor shall participate in FCPS background checks if required.	Do you anticipate engaging or communicating with students?				
		Do you agree to participate in FCPS background checks if required?				
		Do you perform background checks yearly?				
Mergers and Acquisitions	Do you agree to remain compliant in the event of a company merger or acquisition?					
	Do you agree to notify FCPS and submit a new Security Architecture Checklist within 6 months of a company merger or acquisition?					
Product Details						
Does your solution require any on-premise infrastructure?				Please provide details on the infrastructure required.		
Is this product a Software-as-a-Service (SaaS) solution?				Please provide details on where this platform is hosted.		
Does your solution provide messaging/chat functionality with users outside of the FCPS organization (including with the vendor)?				Please provide details on the expected use of this feature		
Does your solution provide video-chat functionality with users outside of the FCPS organization (including with the vendor)?				Please provide details on the expected use of this feature		
Does your solution provide text-messaging functionality?				Please provide details on the expected use of this feature		

Does your solution allow users to engage with users outside of the organization (i.e., forums)?		Please provide details on the expected use of this feature	
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Core Security Requirements

Category	Description	Requirement	Answer(Drop-down)	Additional Information	FCPS Analysis	FCPS Response
Compliance	Do you agree to remain compliant with the FCPS security architecture checklist for the entire duration of your engagement with FCPS, not just for initial deployment?					
Compliance	Do you agree to allow FCPS to perform one-time or periodic assessments, including scans of the vendors' infrastructure to ensure compliance compliance with their assertions?					

Core Security Requirements - Incidents

Root Cause Analysis (RCA) and Corrective Action Plan (CAP)	The vendor agrees to submit detailed RCAs and CAPs for any incidents (including unplanned outages) during the course of their relationship with FCPS.	Do you agree to submit detailed Root Cause Analyses (RCAs)?				
		Do you agree to submit detailed Corrective Action Plans (CAPs)?				
Scenarios	The vendor shall describe expected user use of the platform and associated cybersecurity scenarios and controls to protect from platform abuse.					

Core Security Requirements - Accounts and Authorization

Account Management	<p>Please describe your account rostering process. Accounts within the system must adhere to the following minimum requirements:</p> <ul style="list-style-type: none"> • Unique user ID • The process to verify and onboard users • The process to promptly remove users with the loss of "need-to-know" • Provide a process or reporting for FCPS to conduct an account audit <p>FCPS prohibits the use of domain service accounts and accounts that need domain admin rights.</p>	Do you maintain a password policy for customer accounts?	Provide the password policy including complexity and rotation			
		Do you have a documented process to verify and onboard users?				
		Do you promptly remove users that no longer need access?				
		Can FCPS conduct an account audit?	Provide a process or reporting for FCPS to conduct an account audit.			
		Does your system require domain service accounts and accounts that need domain admin rights?				
		If a vendor's employee has an FCPS account, do you agree to immediately notify FCPS in writing if an employee of the vendor has been terminated or is no longer employed by said vendor?				

Authentication	<p>FCPS requires all vendor applications, regardless of where they are hosted, to integrate with FCPS Single Sign-On using Login with Google, SAML, or Clever. The vendor shall not create an alternate set of user accounts and/or passwords.</p> <p>The vendor must specify if SSO is an additional cost.</p>	Does your solution support Single Sign-On (SSO) protocols for user and administrator authentication?		Detail all SSO options.		
		Is SSO an additional cost?				
		Does your solution utilize bearer tokens, or other technologies, that could be used to circumvent authentication?				
Authorization and Access Control	<p>The vendor is required to provide detailed documentation including diagrams of how an authenticated user accesses information.</p> <p>Vendor must support role-based access control.</p> <p>The vendor must detail how role assignments can be automated within the platform.</p>	Does your application provide separation of duties between security administration, system administration, and standard user functions?		Provide detailed documentation including diagrams of how an authenticated user accesses information.		
Privileged Access Management (PAM)	The vendor shall detail privileged access management procedures for accounts for the proposed solution.	Do you have privileged access management for the proposed solution?				
Auditing	<p>The vendor shall detail all log information maintained by the vendor, the retention period for the logs, and describe the process for requesting log access by FCPS.</p> <p>The log shall, at a minimum, include the following:</p> <ul style="list-style-type: none"> • History of logon/logoff monitoring • History of admin activities • History of important user activities such as grade changes • Log entries must include user ID, timestamp, activity performed, and source IP address. 	Are audit logs available that include AT LEAST all of the the minimum log requirements?				
		How long are logs retained for?		Describe or provide a reference to the retention period for those logs, how logs are protected, and whether they are accessible to the customer (and if so, how).		
		Are APIs or integrations available to send logging information to an FCPS-managed log-management systems (SIEM)?				
Monitoring	The vendor shall detail tools and methods for the proposed solution to monitor and alert on user and entity-based analytics (UEBA).	Does the platform have user and entity based analytics (UEBA)?				

Environment Segregation	The vendor shall detail how environment segregation, including but not limited to, whether FCPS will have a dedicated instance or a shared instance. Please detail how FCPS data will be segregated from other customers' data, and confirm whether FCPS data will be stored logically or physically separated from other customers' data.	Will FCPS data be in a dedicated instance?				
		Will FCPS data be logically, or physically separated from other customers' data?				
DNS	The vendor shall detail all aspects of DNS for the proposed system, including configurations and security controls. The vendor is required to run their product on a fcps.edu subdomain.	Can you run your product on a FCPS.EDU subdomain?				
Email	If the vendor anticipates sending emails on behalf of FCPS, the vendor shall provide a dedicated IP address range and conform to email sending identity alignment to allow for DMARC policy compliance. The vendor shall detail the content, audience of the emails, frequency, encryption methods, and DLP policies.	Do you anticipate sending emails on behalf of FCPS?		Detail the content, audience of the emails, frequency, encryption methods, and DLP policies.		
Interfaces	The vendor shall detail all active and inactive interfaces, as well as mechanisms for other applications to interface with the vendor's product(s). Any adapters, connectors, or related technologies need to be detailed.	Will users, systems, or applications interface with this product?		Detail all active and inactive interfaces, as well as mechanisms for other applications to interface with the vendor's product(s). Any adapters, connectors, or related technologies need to be detailed.		
		Does your system allow customer access from outside of the United States?				
		Are there any geographic locations that are blocked from accessing your platform?				
		Does your solution allow for individual users or systems to connect via API keys?		Detail API key management policies and procedures		
Coupling	The vendor shall detail all components of the application that are tightly coupled or dependent on other components.	Are any components of the system tightly coupled or dependent on other components?		Detail all components of the application that are tightly coupled or dependent on other components.		
Interoperability	For EdTech platforms that use student or classroom data, specify the platform's interoperability with: <ul style="list-style-type: none"> Endpoint Educational Systems, FCPS' SIS platform Schoology, FCPS' LMS platform 	Does the platform provide interoperability with SIS and/or Schoology?				
Dependencies	The vendor shall detail all dependencies that are necessary for the vendor's product(s) to run. In addition, the vendor shall specify any products and/or applications that depend on the vendor's product.	Does the platform have dependencies that are necessary for the product to run?		Detail all dependencies that are necessary for the vendor's product(s) to run. In addition, the vendor shall specify any products and/or applications that depend on the vendor's product.		

VPN/Remote Access	<p>The vendor shall specify if any remote access is needed between FCPS and the vendor to implement or support the proposed solution and provide specifics on:</p> <ul style="list-style-type: none"> • The level of access required • The components that require remote configuration • Port/firewall configurations • The software used for remote access, and how access is established 	<p>Do you need VPN/Remote Access into the FCPS network?</p>				
Remote Monitoring and Management (RMM)	<p>FCPS does not allow any type of remote monitoring and management tools to be deployed on FCPS devices or networks.</p> <p>Please specify how the RMM is managed, authenticated, and maintained.</p> <p>Minimum requirements:</p> <ul style="list-style-type: none"> • Multi-factor authentication • Periodical account audit to ensure “need-to-know” and “least privilege” principles are followed. 	<p>Does the service/platform require Remote Monitoring Management (RMM)?</p>		<p>Specify how the RMM is managed, authenticated, and maintained.</p>		
Core Security Requirements - Business Continuity						
Disaster Recovery	<p>The vendor shall detail SLA, RTO, and RPO capabilities, and detail information regarding the frequency of disaster recovery tests and the last valid test date.</p>	<p>Do you have a disaster recovery plan and emergency mode operation plan? Have the policies/plans mentioned above been tested?</p> <p>Do you have a documented SLA, RTO, and RPO?</p>		<p>Date Last Tested:</p> <p>SLA: RTO: RPO:</p>		
Backups	<p>The vendor shall detail backup methods, procedures, frequency, and encryption methods for the proposed solution, and procedures to restore the solution in the event of a disaster, or a system rollback.</p>	<p>Are you performing off-site backups (i.e., digitally moved off site)?</p> <p>Are physical backups taken off site (i.e., physically moved off site)?</p> <p>Are data backups encrypted?</p>				
Resiliency	<p>The vendor shall detail High Availability (HA) architecture including diagrams and specifications on fault-tolerance</p>	<p>Are all services that support your product fully redundant?</p> <p>Have you experienced unintended downtime in the past year?</p>		<p>Please provide details regarding the unintended down-time, including the length of time and reason</p>		
Autoscaling	<p>The vendor shall detail how the application can automatically scale up or down based on demand</p>	<p>Is the application able to automatically scale up or down based on demand?</p>				
		<p>Do you agree to provide FCPS seven days of advance notice for planned outages where the service will become unavailable? Will FCPS be notified of major changes to your environment that could impact the institution's security posture?</p>				

Change Management	The vendor shall share in-house change management practices and agree to participate in the FCPS change management process.	Do clients have the option to not participate in or postpone an upgrade to a new release?				
		Do you have a release schedule for product updates?				
		Do you have a technology roadmap for enhancements and bug fixes for the product/service being assessed?				
		Are upgrades or system changes installed during off-peak hours or in a manner that does not impact the customer?				
		Is FCPS involvement (i.e., technically or organizationally) required during product updates?				
Escrow	FCPS requires a neutral 3rd party escrow agreement for software and source code escrow service. Details will be established in the contract.	Can you provide your source code in a 3rd party escrow?				
Core Security Requirements - Data Management						
Data	The vendor shall detail all aspects of data management including but not limited to data privacy, data retention, data archival, data purging, data classification, data ownership/export, and data access. FCPS retention requirements are defined in the FCPS Records Management Manual based on record type.	Will you store any FCPS staff or student personally-identifiable information (PII) (i.e., first name, last name, email address, etc.)		Detail what type of Personally-Identifiable Information (PII) is collected and stored by the vendor. (i.e., first name, last name, email address, etc.)		
		Do you have a Data-Loss Prevention program?				
		Is sensitive data encrypted, using secure protocols/algorithms, in transport (e.g., system-to-client)?				
		Is sensitive data encrypted, using secure protocols/algorithms, in storage (e.g., disk encryption, at-rest, files, and within a running database)?				
		Are you generally able to accommodate storing FCPS' data within our geographic region? Please detail how environment segregation, including but not limited to, whether FCPS will have a dedicated instance or a shared instance. Please detail how FCPS data will be segregated from other customers' data, and confirm whether FCPS data will be stored logically or physically separated from other customers' data.				
		Are your servers separated from other companies via a physical barrier, such as a cage or hardened walls?				
		Are your primary and secondary data centers geographically diverse?				
		Do you agree to handle data in a FERPA compliant manner?				
Data Transfer	FCPS requires data transfers with vendors to be PGP-encrypted prior to transfer, and all transfers to take place over an MFA-protected and encrypted channel. Please detail all required data-exchanges for the platform.	Do you anticipate exchanging information outside of the proposed platform (i.e., email, SFTP, etc.)?		Detail all required data-exchanges for the platform.		
	If the engagement requires routine and recurring data exchanges, the vendor will separately respond to FCPS data-exchange requirements.	Do you agree to follow all FCPS data-transfer protocols?				

Data Encryption at Rest	The vendor shall detail how data is encrypted at rest and specify the protocol/method used to encrypt the data. The vendor shall document if any data is not encrypted.	Do you encrypt FCPS data at rest?		Detail how data is encrypted at rest and specify the protocol/method used to encrypt the data. The vendor shall document if any data is not encrypted.		
Data Encryption in Transit	For platforms accessed via a website, FCPS requires Server-Side Enforcement of TLS1.2 and higher for browsers.	Do you encrypt data in transit?				
		Do you disable all versions of TLS below TLS 1.2?				
Information Exchange	<p>information is exchanged between FCPS and the vendor. Acceptable solutions include PGP, secure document collaboration, such as Google Docs, and end-to-end solutions such as Virtru. FCPS does not mandate the use of any specific product.</p> <p>Minimum requirements:</p> <ul style="list-style-type: none"> • The method must be authenticated and encrypted during rest and transit. • Solutions such as Secure FTP require an additional layer of file encryption on top of SFTP to ensure files are protected before and after transmission (at rest). 	Do you anticipate exchanging sensitive information with FCPS outside of the proposed system?		Detail all scenarios that you anticipate exchanging sensitive information.		
Data Destruction	The vendor shall confirm that any data received from FCPS will be deleted from their primary, backup, and e-discovery systems as soon as the data is processed or at the conclusion of the FCPS engagement, whichever comes first.	Do you agree to delete all data received from FCPS from your primary, backup, and e-discovery systems as soon as the data is processed or at the conclusion of the FCPS engagement (whichever comes first), as permitted by law?				
Privacy	Where the platform is storing student records, FCPS has legal requirements to establish the confidentiality of FCPS student information. When establishing contracts where the vendor will house student information, FCPS designates vendors as School Officials through the Virginia Student Data Privacy Agreement.	Do you agree to sign the Virginia Student Data Privacy Agreement or FCPS confidentiality agreement?				

<p>Targeted Advertising</p>	<p>Where the vendor has students individually identifying data, students must not be exposed to targeted advertising platforms per Virginia Code § 22.1-289.01 for EdTech services. Targeted advertising platforms include DoubleClick, Facebook Connect, Twitter, and Bing Ads and cannot be permitted where they receive data FERPA or COPPA considers identifying.</p> <p>https://law.lis.virginia.gov/vacode/title22.1/cchapter14/section22.1-289.01/</p> <p>FCPS cannot permit exceptions to this requirement for students, including websites that use targeted advertising platforms without displaying ads.</p> <p>The vendor must disclose if these advertising platforms are implemented for staff members in the platform.</p>	<p>Do you perform targeted advertising?</p>				
<p>Disposition</p>	<p>FCPS staff or student data must not be sold for profit or distributed for non-business purposes to any 3rd parties unless explicitly disclosed and agreed upon by FCPS.</p>	<p>Do you agree to not sell for profit or distribute any FCPS staff or student data for non-business purposes to any 3rd parties unless explicitly disclosed and agreed upon by FCPS?</p>				
<p>Compliance</p>	<p>If the system accepts credit cards, the vendor shall detail all security controls required for PCI DSS compliance.</p>	<p>Does your platform accept credit card payments or other type of payment?</p> <p>Are you PCI compliant?</p>				
<p>Core Security Requirements - Processes</p>						
<p>Batch processing</p>	<p>The vendor shall detail any batch processes associated with the product.</p>	<p>Are there any anticipated batch processes associated with the product?</p>				
<p>Transactions</p>	<p>The vendor shall detail the security aspects of all database transactions to ensure integrity, availability, and confidentiality.</p>					
<p>Core Security Requirements - Threat and Vulnerability</p>						
<p>Threat and Vulnerability Management</p>	<p>The vendor shall describe the tools, processes, and frequency of which the proposed solution is scanned for vulnerabilities.</p>	<p>Do you agree to patch and/or address critical vulnerabilities within 24 hours?</p>				
	<p>The vendor attests that any vulnerabilities discovered during the course of engagement with FCPS will be patched and/or addressed according to the below SLA once a vendor patch or mitigation is available:</p>	<p>Do you agree to patch and/or address all vulnerabilities discovered during the course of engagement with FCPS within 72 hours?</p>				
	<ul style="list-style-type: none"> Major and critical vulnerabilities need to be patched within 24 hours. 	<p>Are your systems and applications regularly scanned internally and externally for vulnerabilities?</p>		<p>Describe the tools, processes, and frequency of which the proposed solution is scanned for vulnerabilities.</p>		
	<ul style="list-style-type: none"> All other (low, medium, high) vulnerabilities need to be patched within 72 hours. 	<p>Do you monitor and protect against common web application security vulnerabilities (e.g., SQL injection, XSS, XSRF, etc.)?</p>				

Patch and Release Management	Unless patch management has been handed over to FCPS IT, the vendor will ensure the proposed solutions never have any moderate, high, or critical vulnerabilities at the OS or application layers.	Do you have policy and procedure, currently implemented, guiding how security risks are mitigated until patches can be applied?				
		Do you confirm that the proposed solutions never have any moderate, high, or critical vulnerabilities at the OS or application layers?				
Core Security Requirements - Product Security						
Coding	The vendor shall detail secure coding methodology used with the proposed solution, and compliance with industry-standard secure-coding practices, i.e., OWASP.	Was your application developed using secure coding techniques?				
		Do you subject your code to static code analysis and/or static application security testing prior to release?				
		Are there any passwords/passphrases hard coded into your systems or products?				
Documentation	The vendor shall provide detailed documentation and network architecture diagram(s) that clearly describe all aspects of the product.	Do you have product documentation?		Provide relevant product documentation.		
		Do you have a network architecture diagram?		Provide a network diagram.		
Application Security	Describe the methodologies and measures used to protect the application from attacks and minimize risk to AIC (Availability, Integrity, and Confidentiality) of information.	Does your organization have a data privacy policy?		Provide your data privacy policy.		
		Are you using a web application firewall (WAF)?				
		Does your application provide separation of duties between security administration, system administration, and standard user functions?				
	All vendor web applications are required to be configured with HTTP Strict Transport Security (HSTS) and pass an independent penetration test.	Is HTTP Strict Transport Security (HSTS) configured for the product?				
		Does your application automatically lock the session or log-out an account after a period of inactivity?				
		The vendor attests that any product they develop or support is continually kept current with all components they depend on. The list of components in this context includes any hardware or software such as physical servers, operating systems, application servers, web servers, etc.	Are you storing any passwords in plaintext or reversible-encryption?			
Error handling	The vendor shall detail all aspects of error handling including auto-healing, error display, and manual troubleshooting.	Does the system provide data input validation and error messages?				
		Does the system log errors for troubleshooting?				
		Do you suppress actual errors and provide users with generalized errors?				
Core Security Requirements - Compatibility and Accessibility						

Compatibility with FCPS computing	<p>Web applications must be accessible using the current and previous two versions of the Google Chrome browsers. If dependent on browser plugins, extensions, or add-ons, those components must also be actively patched by their developers for security issues.</p>	<p>Is your platform accessible using the current and previous two versions of the Google Chrome browsers?</p>				
	<p>Platforms must also be accessible on the Apple iPad and Android-based mobile platforms, whether via a mobile responsive webpage or an app.</p> <p>SSO options available on mobile devices shall be the same as desktop browsers.</p>	<p>Is your platform accessible on the Apple iPad and Android-based mobile platforms, whether via a mobile responsive webpage or an app?</p>				
Accessibility	<p>Please describe the platform's accessibility regarding Government Section 508 accessibility, such as through a Voluntary Product Accessibility Template (VPAT) or Web Content Accessibility Guidelines (WCAG).</p>	<p>Are you compliant with VPAT, WCAG, or other accessibility standard?</p>		<p>Provide accessibility certifications.</p>		

April 12, 2023

ADDENDUM NO. 1

TO: ALL PROSPECTIVE OFFERORS
REFERENCE: RFP#2000003650
FOR: Speech Therapy Intervention Services
CLOSING DATE/TIME: April 26, 2023 at 5 p.m.

RFP CLARIFICATIONS:

The following are responses to questions received via e-mail, Bonfire, and at the Pre-proposal Conference held on April 11, 2023.

Q.1. What agencies do you currently use for the following services (Licensed Speech Language Pathologists SLPs, CFY's, Audiologists, Paraprofessionals).

A.1. FCPS is currently using The Stepping Stones Group, LLC and Progressus Therapy for all of the services listed.

Q.2. How many contracted hours are permitted in school day?

A.2. 7.5 hours per day are permitted.

Q.3. How many contracted days are permitted per school calendar year?

A.3. 195 days are permitted which is the same as the teacher contracted days length.

Q.4. Will contracted staff be included in professional development days?

A.4. Yes, they will be included.

Q.5. Will contracted staff be able to bill for their time for professional development days?

A.5. Yes, they will.

Q.6. What rates do your current contract agencies charge for SLP Services?

a. Monolingual

b. Bilingual

A.6. The Stepping Stones Group is charging \$75.60 per hour and Progressus Therapy is charging \$77 per hour for SLP services. The same rates apply for Monolingual and Bilingual.

Q.7. What rates do your current contract agencies charge for SLPa Services?

a. Monolingual

b. Bilingual

A.7. The Stepping Stones Group is charging \$62 per hour for SLPa services. The same rate applies for Monolingual and Bilingual.

Q.8. What rates do your current contract agencies charge for CFY Services?

- a. Monolingual
- b. Bilingual

A.8. The Stepping Stones Group is charging \$75.60 per hour for CFY services. The same rate applies for Monolingual and Bilingual.

Q.9. What rates do those agencies charge for Paraprofessional Services?

A.9. The Stepping Stones Group is charging \$35.00 per hour for Paraprofessional services.

Q.10. Will this be a single or multi-award?

A.10. This will be a multi-award contract.

Q.11. What is the annual spend that is projected for 2023-2024 school year?

A.11. The annual spend is still unknown at this time. The use and number of contractors will depend on number of vacancies that cannot be filled from the FCPS direct hire SLP applicant pool.

Q.12. What is the annual spend for 2022-2023 school year?

A.12. The annual spend for the 2022-2023 school year is projected to be \$1,932,033.58. Note, the school year doesn't end until June 2023, so this is a projection.

Q.13. What was the annual spend for 2021-2022 school year?

A.13. The annual spend for 2021-2022 school year was \$2,604,234.86.

Q.14. What is the current number of FTE professionals being utilized presently to service this contract?

- a. Licensed Speech Language Pathologists SLPs
- b. Speech Language Assistants SLPa's
- c. CFY's
- d. Audiologists
- e. Paraprofessionals

A.14. The numbers of FTE professionals are as follows:

- a. Licensed Speech Language Pathologists SLPs: 12.8 FTEs
- b. Speech Language Assistants SLPa's: 4 FTEs
- c. CFY's: 1.8 FTEs
- d. Audiologists: 0
- e. Paraprofessionals: 2 FTEs

Q.15. Does the district provide evaluation/testing materials to providers?

A.15. Yes.

Q.16. Does the district provide a laptop/computer to providers?

A.16. Yes.

Q.17. Does the district provide an email account to the contracted providers during their assignment?

A.17. Yes.

Q.18. Can the vendor incur any penalties or be liable for any damages for not having a contracted provider available upon your school's request in a timely manner OR would your school terminate the RFP contract with the vendor?

A.18. The performance expectations and remedies will be discussed during the negotiations.

Q.19. Will the district pay for mileage traveling between school campuses on the same day? If so, is it the IRS standard rate, or is it dictated by the district?

A.19. Currently FCPS does not pay mileage traveling between school campuses on the same day but FCPS will do so under the new contract. The rate will be based on the IRS standard rate.

Q.20. How will awarded vendors be notified?

A.20. An email will be sent to all vendors that submitted a proposal.

Q.21. Do you anticipate a RFP for OT services or are you currently contracting for OT services?

A.21. No, FCPS does not anticipate an RFP for OT services and does not currently contract for OT services either.

Q.22. Do you anticipate a RFP for PT services or are you currently contracting for PT services?

A.22. No, FCPS does not anticipate an RFP for PT services and does not currently contract for PT services either.

Q.23. Who are the incumbent vendors?

A.23. The incumbent vendors are The Stepping Stones Group and Progressus Therapy.

Q.24. Is the incumbent eligible to bid again?

A.24. Yes, they are eligible.

Q.25. What is the historical value of the procurement?

A.25. As of today, the spend for the current speech therapy contracts is about \$7,919,820.49.

Q.26. Can one use electronic signatures such as Adobe Sign to sign the required documents?

A.26. Yes.

Q.27. Can you provide clarification to Appendix G as to what is the difference in what we can bill between the unit price and extended price?

A.27. The unit price is the amount per indicated Unit of Measure (UOM). The extended price reflects the Quantity x UOM total.

Q.28. As we are primarily a service company that does not make products, how should we fill out Appendix F, Security Architecture Checklist?

A.28. FCPS has determined there is a technology component to this contract and Appendix F, Security Architecture Checklist is required to be submitted with all proposals.

Q.29. What is the anticipated award date for this RFP?

A.29. The anticipated award date is July 2023.

Q.30. We are not providing any technology-related items. Should we just put N/A on Appendix F, Security Architecture Checklist, and submit.

A.30. No, FCPS has determined there is a technology component to this contract and Appendix F, Security Architecture Checklist is required to be submitted with all proposals.

Q.31. Will telepractice therapist for SLP's be included in this particular RFP?

A.31. No, they are not included in this RFP.

Q.32. Will the interviews take place in-person or online.

A.32. Interviews will be held virtually using Zoom.

Q.33. Can you please provide more detail on what is required in the "Explanation (Required) bon on Appendix E – Minimum Qualifications form?

A.33. In Appendix E - Minimum qualifications, Contractor shall respond confirming that you are Board of

Addendum No. 1
RFP#2000003650
Page 4 of 4

Audiology and Speech Language Pathology (BASLP) licensed to practice Speech Pathology in Virginia and to also provide documentation to support your response if it's available.

All other terms and conditions remain unchanged.

Delphine Lambert

Delphine Lambert
Contracts Manager

THIS ADDENDUM IS ACKNOWLEDGED AND IS CONSIDERED A PART OF THE SUBJECT REQUEST FOR PROPOSAL:

Name of Firm

(Signature)

(Date)

RETURN A SIGNED ORIGINAL AND COPIES AS REQUESTED IN THE SOLICITATION.

Note: SIGNATURE ON THIS ADDENDUM DOES NOT SUBSTITUTE FOR YOUR SIGNATURE ON THE ORIGINAL PROPOSAL DOCUMENT. THE ORIGINAL PROPOSAL DOCUMENT MUST BE SIGNED

April 25, 2023

ADDENDUM NO. 2

TO: ALL PROSPECTIVE OFFERORS
REFERENCE: RFP#2000003650
FOR: Speech Therapy Intervention Services
CLOSING DATE/TIME: **April 28, 2023 @ 5 p.m.**

RFP MODIFICATIONS:

The referenced Request for Proposal is amended as follows:

1. The Closing Date and Time have been extended to April 28, 2023 at 5:00 pm EST
2. Section 20.6 – Proposal Evaluation Criteria is replaced in its entirety with the following:

The following factors will be considered in the award of this contract:

- a. Qualification of firm with appropriately qualified and experienced personnel, Section 9.3 **(20 points)**.
- b. Depth of response to the Special Provisions, Section 8, **FUNCTIONAL REQUIREMENTS (15 points)**.
- c. Depth of response to Special Provisions, Section 9, **TECHNICAL PROPOSAL INSTRUCTIONS (20 points)**.
- d. Details of the approach and methodology of program **(25 points)**.
- e. Reasonableness of cost proposal(s) **(20 points)**.

RFP CLARIFICATIONS:

The following are responses to questions received via e-mail and Bonfire.

Q.1. The VA state patrol has removed the option allowing agencies to have an independent account with Fieldprint unless they are already grandfathered in. Since we will not have our own code, will FCPS provide awarded agencies with their code in order for our placed candidates to complete the fingerprinting process?
A.1. Fingerprinting will be completed by FCPS so successful offerors will not be required to have an account with Fieldprint or any other agencies.

Q.2. We are unable to accept payments via a Procurement Card/Master Card. Is there any other way to receive payment for services?

A.2. Yes, payment can also be made by electronic transfers or checks.

Q.3. According to Bonfire, the Security Architecture Checklist is required, but when reading through it most of the questions seem to apply to products and services that are much more IT based. Many of these questions will be challenging to answer. Is this security checklist required and if it is, how should we fill it out?

A.3. Yes, offerors are required to complete and submit the Security Checklist with their proposal. Vendors can answer "N/A" for questions that are not applicable, but vendors will need to indicate why in their response. Such as, "this is not applicable since a software application will not be provided by the vendor".

Q.4. One of the requirements is that the firm must obtain a business, professional and occupational license in the County of Fairfax. I currently do not have one but can apply, can I still be considered for this bid even though my county/city license is pending?

A.4. Yes, your company will still be considered for award with a pending license but your company must have a current license prior to receiving a contract award.

Q.5. Can you please provide a list of incumbent vendors and their bill rates.

A.5. Incumbent vendors are The Stepping Stones Group, LLC and Invo Progressus Therapy. For information about the rates, please refer to Addendum 1.

Q.6. Where can we find previous bid award information for the requested services?

A.6. This information was provided in Addendum 1 for this RFP.

Q.7. What is the total budget/expenditure allotted for this RFP?

A.7. FCPS hasn't determined yet what the total budget will be.

Q.8. Can we provide pricing ranges on select disciplines?

A.8. Offerors can submit a proposal for select speech therapy disciplines, but they must provide specific rates, not price ranges.

Q.9. Please clarify Medicare/Medicaid Billing: Will the vendor be required to bill Medicaid with direct reimbursement going to the vendor through the vendors Medicaid billing number?

A.9. No, vendors will not be required to bill Medicaid for direct reimbursement. Staff service logs are entered into a FCPS tracking system which then allows the FCPS Medicaid Office to provide this data to a billing contractor.

Q.10. How long have the incumbent suppliers held this contract?

A.10. The current contract has been in place for 8 years.

Q.11. Are you satisfied with the incumbent suppliers? If not, what are you unsatisfied with?

A.11. Yes, FCPS is satisfied with the current vendors.

Q.12. What is the expectation and frequency for on-call needs?

A.12. Efforts will be made to honor a 30-day advance notice when requesting a service provider(s). Requests can be expected to be greatest for the opening of school each fall.

Q.13. What is expectation and frequency for replacing a candidate that is ill/calls off?

A.13. SLPs shall communicate their schedules well in advance of any anticipated long-term leave. A two-week notification is required of resignations. For short term SLP absences, the missed service hours can usually be made up with schedule adjustments by the provider over a few weeks of time.

Q.14. Does the district fingerprint and badge?

A.14. Yes, this procedure is completed by FCPS.

Q.15. How long once confirmed does the process take for the clinician to start?

A.15. Before a clinician can start, the scheduling of the background check and fingerprinting must be completed, and clearance obtained prior to reporting to work. Depending on time of school year, the security clearance process may take up to a week.

Q.16. Do you anticipate your current staffing volume to change in the next year or next 2 years? For example, do you have any significant projects coming up (vaccination, screening, new programs, grants, ESSR/III positions, etc.)?

A.16. There are no projects coming up that would impact staffing. However, observed increases in the number of referrals to the Early Childhood Assessment Centers, post COVID, suggests an upward trend in the number of students qualifying for SL services.

Q.17. Please clarify the reporting structure for Supervision of contract staff within the district? What position provides clinical supervision within the district?

A.17. The contracted SLPs report to FCPS' Communication Disorders Supervisor assigned to the school receiving services by the contracted staff. At the same time the contracted staff reports to the school principal regarding day-to-day school operations within the building.

Q.18. Are IEP and 504 documents, plan documents, and students records kept in an online system or hard copy at the district? What system is being used?

A.18. The Official Student Special Education records are maintained on a secure online FCPS tracking system, SEASTARS, a platform developed by Edupoint. Hard copies/working files are maintained at the student's school of attendance in locked file storage units as well.

Q.19. Does the district provide student logs, documentation forms, etc?

A.19. Yes, FCPS has an electronic forms cabinet and the Speech and Language Program also provides online forms to facilitate program management responsibilities such as data sheets, transitioning of students, evaluation formats, schedules, caseload monitoring and due dates.

Q.20. Are the medical personnel's license, CPR card, resume and proof of references/background checks required upon submission of bid or upon award? If required on bid is an excel document acceptable?

A.20. This documentation is required at the time of award.

Q.21. Would you accept bids from a Staffing Agency?

A.21. Yes, proposals from Staff Agencies will be considered.

Q.22. Please clarify if the district or vendor provides materials (i.e. assessments, testing kits, protocols/scoring sheets, computers, printers, PPE, etc.).

A.22. All therapy and testing materials are provided by FCPS.

Q.23. In unexpected situations, would this differ for teletherapy/remote services?

A.23. The difference would be that only FCPS issued computers may be used in the provision of teletherapy. FCPS will further provide access to approved online software that may be used in therapy. Staff owned personal computers may not be used in the delivery of teletherapy to district students. Evidence Based Practices (EBP) will guide the delivery of the Speech Therapy Services.

Q.24. Do you accept new graduates if the vendor provides mentorship?

A.24. Yes, FCPS accepts new graduates and provides the Clinical Fellowship Year supervision as well as mentors for all new hires along with formal training in required processes, procedures, and EBP.

Q.25. How many references are we required to submit with our response?

A.25. Three references are required.

Q.26. Can you please elaborate on the technology component requirement of the contract? What all is required to satisfy this component?

A.26. FCPS doesn't have technology component requirements. Refer to answer to question 3 above.

Q.27. Virginia, much like Missouri and Texas, used to issue fingerprint codes to businesses and businesses could do their own fingerprint codes. However, the State Patrol has now removed the option allowing agencies to do their own fingerprints. Since we are no longer capable of providing such codes, will FCPS be able to provide the codes in order for our talent to complete the fingerprinting process?

A.27. Fingerprinting will be completed by FCPS so codes are not necessary.

All other terms and conditions remain unchanged.

Delphine Lambert

Delphine Lambert
Contracts Manager

THIS ADDENDUM IS ACKNOWLEDGED AND IS CONSIDERED A PART OF THE SUBJECT REQUEST FOR PROPOSAL:

Name of Firm

(Signature)

(Date)

RETURN A SIGNED ORIGINAL AND COPIES AS REQUESTED IN THE SOLICITATION.

Note: SIGNATURE ON THIS ADDENDUM DOES NOT SUBSTITUTE FOR YOUR SIGNATURE ON THE ORIGINAL PROPOSAL DOCUMENT. THE ORIGINAL PROPOSAL DOCUMENT MUST BE SIGNED

OCT 12 2023

NOTICE OF AWARD

CONTRACT TITLE: Speech Therapy Intervention Services

CONTRACT NUMBER(S): 4400012163

NIGP CODE(S): 92474

CONTRACT PERIOD: Date of award Through September 30, 2028

RENEWALS: 3

SOLICITATION NUMBER: RFP 2000003650

SUPERCEDES CONTRACT(S): 4400010581

CONTRACTOR(S): The Stepping Stones Group LLC
2300 Windy Ridge Pkwy Ste 825
Atlanta, GA 30339

SUPPLIER ID(S): 1000046470

Contact: Jessica Little
Telephone: (678) 426-2571
Email: jessica.little@ssg-healthcare.com

TERMS: NET 30

FOB: DESTINATION

PRICES: Refer to most recent amendment or Memorandum of Negotiation

OPS CONTACT: Adrien Walker, Sr. Contract Specialist
Phone: (703) 423-3593
E-Mail: awalker@fcps.edu

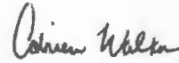
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10/12/23

Notice of Award
Contract 4400012163
Page 2 of 2

ORDERING INSTRUCTIONS:

Any county department may create a shopping cart into FOCUS (Fairfax County Unified System) indicating the item/service required, the quantity, the payment terms and the delivery date. The shopping cart must be annotated with the contract number.

Requests exceeding the small purchase threshold will be routed to OPS and a purchase order will be executed.



Adrien Walker
Senior Contract Specialist

DISTRIBUTION:

FCPS – Mike Bloom, Judy Duprey, Barbara Fee
FCPS – Risk Management - Certificates@fcps.edu

OCT 12 2023

The Stepping Stones Group LLC
Attn: John Gumpert
2300 Windy Ridge Pkwy Ste 825
Atlanta, GA 30339

Reference: RFP# 2000003650 - Speech Therapy Intervention Services

Dear John Gumpert:

Acceptance Agreement

Contract Number: 4400012163

This Acceptance Agreement signifies a contract award to The Stepping Stones Group LLC for Speech Therapy Intervention Services. The period of the contract shall be from date of award through September 30, 2028 with the option to renew for three (3) one-year periods.

The contract award shall be in accordance with:

1. This Acceptance Agreement;
2. The Terms and Conditions of RFP#2000003650, and all addenda;
3. Your proposal signed and dated on April 12, 2023;
4. The signed Memorandum of Negotiations; and

Please note that this is not an order to proceed. A purchase order, which constitutes your notice to proceed, will be issued to your company. Please provide your Insurance Certificate according to Special Provisions Paragraph 21 within two (2) days after receipt of this letter. Contract award documents may be viewed on the Fairfax County, Department of Purchasing and Supply Management website at: www.fairfaxcounty.gov/cregister.

Sincerely,



Michelle R. Pratt
Director

MRP/abw

FD
10/12/23

MEMORANDUM OF NEGOTIATION

RFP# 2000003650 - Speech Therapy Intervention Services

The County of Fairfax, Fairfax County Public Schools (hereinafter called the County or FCPS) and The Stepping Stones Group (hereinafter called the Contractor) hereby agree to the following in the execution of Contract 4400012163. The final contract contains the following items:

- a. Fairfax County's Request for Proposal 2000003650 and all Addenda;
- b. The Stepping Stones Group Technical and Cost proposal as amended by this Memorandum of Negotiations;
- c. Response to clarifications dated June 8, 2023;
- d. The Memorandum of Negotiations;
- e. The Best and Final Offer (BAFO) dated September 1, 2023;
- f. The Virginia School Data Privacy Agreement (Appendix C);
- g. The Confidentiality Provisions Employee Records Appendix H);
- h. HIPAA Business Associate Agreement (Appendix D); and
- i. All subsequent amendments to the contract.
- j. The following documents are incorporated by reference:
 - a. The Stepping Stones Group Response to IT Security Architecture Checklist dated April 27, 2023

Contractor agrees that it will (a) comply with all laws, rules, and regulations applicable to the Services provided hereunder; and (b) will maintain throughout the term of this Agreement the same or functionally-equivalent or substantially similar (or more stringent) practices, procedures, methodologies, and certifications as are described in its completed Security Architecture Checklist (the "Security Practices") which is incorporated herein by reference, except if required by law or reasonable business need.

In the event of a conflict or ambiguity between and among the contract documents listed above, except as otherwise set forth herein, the order of precedence of documents comprising the agreement of the parties is the following:

- The Memorandum of Negotiations (MON)
- Fairfax County's Request for Proposal 2000003650 and all Addenda
- The Virginia School Data Privacy Agreement (Appendix C)
- The Confidentiality Provisions Employee Records (Appendix H)
- The HIPAA Business Associate Agreement (Appendix D)
- The Stepping Stones Group Technical and Cost Proposal
- The Best and Final Offer (BAFO)
- All Subsequent Amendments to the contract

The following are to be included in the contract:

1. The courses below are available on Bridge Academy, which is The Stepping Stones Groups (SSG) online learning platform for internal SSG employees and access for FCPS employees will be available on "SSG Elevate U". These courses are also available to be offered for Continuing Education Units (CEUs):
 - a. A Practical Guide to Difficult Conversations - This webinar will deconstruct the anatomy of difficult conversations and provide strategies for engaging in more productive and less stressful conversations.
 - b. Framework for Difficult Conversations This webinar focused on understanding the factors influencing difficult conversations and providing strategies to enhance consultation/collaboration.
 - c. Becoming Your Best Professional Part 1, A Panel Discussion - A panel discussion on the topics not taught in graduate school. Soft skills are the personal attributes, inherent social cues, and communication abilities that characterize how a person interacts in relationships. Panelists discuss how honing one's soft skill awareness and development enhances success within the workplace.
 - d. Becoming Your Best Professional 2.0, A Panel Discussion - A panel discussion on the topics not taught in graduate school. Soft skills are the personal attributes, inherent social cues, and communication abilities that characterize how a person interacts in relationships. Panelists discuss how honing one's soft skill awareness and development enhances success within the workplace.
2. The screening procedures that SSG follows in selecting candidates prior to their presentation to FCPS as potential candidates includes the following:
 - a. SSG's recruiting teams utilize interview tools and resources to gain additional information about a candidate's experience in the field with specific focus on skills that would be beneficial to the school-based and pediatric settings. The recruiting teams verify licensure status, conduct reference checks, and review candidate resumes. If there are any additional areas to further explore, the team completes a clinical interview from a Clinical Manager.
 - b. When screening/interviewing virtual SLP candidates versus onsite SLP candidates, SSG focuses on platform familiarity (Zoom, Microsoft Teams, GoogleMeet, etc.), collaboration and communication techniques, and experience with Tele-Therapy outside of COVID, as well as their on-site experience.
 - c. SSG requires a virtual clinical interview for all virtual candidates to assess basic technology skills with screen sharing and virtual assessment experience. SSG asks behavioral based questions to assess candidates' soft skills: case management, communication, scheduling, problem solving, and adaptability.
 - d. Virtual providers get other service support and resources to ensure home/virtual environment is conducive to a positive and effective therapy session.
3. SSG takes the following steps when hiring SLPAs and E-Helpers:
 - a. The SSG Recruiting teams utilize the same interview tools and resources as they would for other disciplines/specialties to recruit high quality clinicians. Since there is variation in the ways in which districts are utilizing SLPAs and E-Helpers/Para Facilitators, SSG will make decisions around candidate selection based on FCPS' preferences and specific needs. (I.E. - Preferences for Bachelor's level candidates, completion of college-level speech programs, Associate's degree completion, pediatric and/or school experience, etc.)

4. The steps that SSG follows between the time of FCPS request for candidates and the time of release of the new SSG employee includes the following:
 - a. SSG extends an offer for the position as outlined by FCPS.
 - b. If the candidate accepts the offer and they subsequently sign their employment agreement, SSG will begin the onboarding and compliance processes (FCPS and SSG new hire requirements)
 - c. After onboarding and compliance processes are completed and the candidate is cleared to begin working, the SSG Account Executive coordinates start date instructions with FCPS Speech Dept.
5. SSG shall follow FCPS Onboarding Procedures to include:
 - a. The SSG employee shall complete the FCPS Background and Fingerprinting procedures as outlined in FCPS Regulation 4119.6 – Background Checks: Volunteers and Mentors.
 - i. This process requires that SSG employees follow procedures to visit the FCPS Gatehouse Administration Center where the Background Check and Fingerprinting is completed.
 - ii. SSG employees must be cleared by FCPS prior to the start of providing services to students.
6. SSG employees shall use only video conferencing tools that are adopted by FCPS when meeting with students, staff, and parents.
 - a. Accessing these tools shall be on a FCPS-owned device. Acquiring this device will be accomplished by an onsite visit to a FCPS facility. IT Security Requirements shall be met at the time of acquisition of the FCPS device.
 - b. SSG employees shall complete required FCPS trainings necessary to implement FCPS Special Education IDEA requirements (SEASTARS) and FCPSMED Medicaid documentation systems.
7. SSG understands that FCPS will provide a mentor to assist new SSG employees with program practice expectations, policies, and procedures.
8. Child Abuse and Neglect Reporting to Child Protective Services by all school personnel is mandated when there is a suspicion of child abuse. SSG employees are required to provide evidence of completing a course that meets the requirement of understanding steps to be taken when there is suspicion of child abuse.
 - a. The current required training is: Department of Social Services/Child Protective Services CWSE 5691 – Recognizing and Reporting Child Abuse & Neglect (For Educators) and Dept. of Education webinar: Preventing Child Maltreatment in a Virtual Learning Environment.
9. FCPS retains the right to make final determination of any proposed services or candidates and may reject proposed candidate submitted by SSG.
10. Direct supervision and evaluation responsibilities of the SLPs shall be completed by FCPS central administrative team comprised of the Communication Disorders Program Manager, and the four Communication Disorders Supervisors.
11. FCPS student information may not be shared outside of FCPS security walls.
12. SSG employees shall provide services identified within the scope of practice of Speech and Language Pathology at assigned sites. School level requests to perform duties that fall outside of the scope of Speech Therapy Intervention services should be limited and infrequent in nature.
13. FCPS will pay mileage traveling between school campuses on the same day. The rate will be based on the IRS standard rate. No additional travel expenses will be reimbursed.
14. While FCPS priority is to implement in person services, when in-person is not available, FCPS will consider virtual therapy in order to meet school compliance.

15. FCPS can reach out directly to the references provided by candidates, however, SSG cautions that some candidates do not wish to have their references contacted multiple times as they have already completed an in-depth electronic reference form for SSG prior to their hire. If the potential employee does not meet the SSG minimum score requirements, they are not cleared for contract. Comments from the SSG reference checks will be made available to FCPS upon request.

All other prices, terms, and conditions remain the same.

ACCEPTED BY:



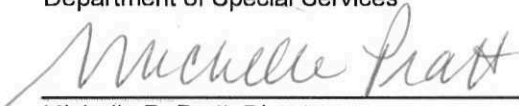
John Gumpert, RFP & Contracts Manager
The Stepping Stones Group

9/22/2023
Date



Mike Bloom, Director III, Special Education
Department of Special Services

9-27-2023
Date



Michelle R. Pratt, Director
Office of Procurement Services

10/12/2023
Date

PRICING SCHEDULE

Description	UOM	Unit Price Year 1	Unit Price Year 2	Unit Price Year 3	Unit Price Year 4	Unit Price Year 5
Licensed Speech Language Pathologist (SLP) – In Person	Per hour	\$77.87	\$80.20	\$82.61	\$85.09	\$87.64
Licensed Speech Language Pathologist (SLP) – In Person	Per day (assumes 7.5 hour workday)	\$584.02	\$601.50	\$619.57	\$638.17	\$657.30
Licensed Speech Language Pathologist (SLP) – In Person	Per week (assumes 37.5 hour week)	\$2,920.12	\$3,007.50	\$3,097.87	\$3,190.87	\$3,286.50
Licensed Speech Language Pathologist (SLP) - Virtual	Per hour	\$77.87	\$80.20	\$82.61	\$85.09	\$87.64
Licensed Speech Language Pathologist (SLP) - Virtual	Per day (assumes 7.5 hour workday)	\$584.02	\$601.50	\$619.57	\$638.17	\$657.30
Licensed Speech Language Pathologist (SLP) - Virtual	Per week (assumes 37.5 hour week)	\$2,920.12	\$3,007.50	\$3,097.87	\$3,190.87	\$3,286.50
Speech Language Pathologist Assistant (SLPA) - In Person	Per hour	\$65.00	\$65.00	\$65.00	\$67.60	\$67.60
Speech Language Pathologist Assistant (SLPA) - In Person	Per day (assumes 7.5 hour workday)	\$487.50	\$487.50	\$487.50	\$507.00	\$507.00
Speech Language Pathologist Assistant (SLPA) - In Person	Per week (assumes 37.5 hour week)	\$2,437.50	\$2,437.50	\$2,437.50	\$2,535.00	\$2,535.00
Paraprofessionals (E-Helpers) - In Person	Per hour	\$36.50	\$36.50	\$36.50	\$40.00	\$40.00
Paraprofessionals (E-Helpers) - In Person	Per day (assumes 7.5 hour workday)	\$273.75	\$273.75	\$273.75	\$300.00	\$300.00
Paraprofessionals (E-Helpers) - In Person	Per week (assumes 37.5 hour week)	\$1,368.75	\$1,368.75	\$1,368.75	\$1,500.00	\$1,500.00

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

This Virginia School Data Privacy Agreement (“DPA”) is entered into by and between the
Fairfax County Public Schools (hereinafter referred to as “Division”) and
The Stepping Stones Group, LLC (hereinafter referred to as “Provider”) on
4/12/2023. The Parties agree to the terms as stated herein.

RECITALS

WHEREAS, the Provider has agreed to provide the Division with certain digital educational services (“Services”) as described in Article I and Exhibit “A.”

WHEREAS, in order to provide the Services described in Article 1 and Appendix A, the Provider may receive or create and the Division may provide documents or data that are covered by several federal statutes, among them, the Federal Educational Rights and Privacy Act (“FERPA”) at 20 U.S.C. 1232g and 34 CFR Part 99, Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. 6501-6502; Protection of Pupil Rights Amendment (“PPRA”) 20 U.S.C. 1232h; the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400 *et. seq.*

WHEREAS, the documents and data transferred from Virginia Divisions and created by the Provider’s Services are also subject to several Virginia student privacy laws, including Code of Virginia § 22.1-289.01. *School service providers; school-affiliated entities; student personal information;* and § 22.1-287.02. *Students' personally identifiable information;*

WHEREAS, the Parties wish to enter into this DPA to ensure that the Services provided conform to the requirements of the privacy laws referred to above and to establish implementing procedures and duties; and

WHEREAS, the Provider may, by signing the “General Offer of Privacy Terms” (Exhibit “E”), agree to allow other Local Educational Agencies (LEAs) in Virginia the opportunity to accept and enjoy the benefits of this DPA for the Services described herein, without the need to negotiate terms in a separate DPA.

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

ARTICLE I: PURPOSE AND SCOPE

1. Purpose of DPA. The purpose of this DPA is to describe the duties and responsibilities to protect Division Data (as defined in Exhibit “C”) transmitted to Provider from the Division pursuant to Exhibit “A”, including compliance with all applicable state privacy statutes, including the FERPA, PPRA, COPPA, IDEA, 603 C.M.R. 23.00, 603 CMR 28.00, and Code of Virginia § 22.1-289.01. *School service providers; school-affiliated entities; student personal information;* and § 22.1-287.02. *Students' personally identifiable information.* In performing these services, to the extent Personally Identifiable Information (as defined in Exhibit “C”) from Pupil Records (as defined in Exhibit “C”) are transmitted to Provider from Division, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the Division. Providers shall be under the direct control and supervision of the Division.

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

2. **Nature of Services Provided.** The Provider has agreed to provide the following digital educational services described below and as may be further outlined in Exhibit "A" hereto:

The Stepping Stones Group will work with Fairfax County Public Schools to provide on-site Speech Language Pathology services to the district's students that require the service.

3. **Division Data to Be Provided.** In order to perform the Services described in this Article and Exhibit "A", Provider shall list the categories of data collected, managed or shared as described below or as indicated in the Schedule of Data, attached hereto as Exhibit "B":

The Stepping Stones Group will collect data on the student during therapy sessions. In addition, our therapists will require all data related to the student's Individualized Education Plan (IEP).

4. **DPA Definitions.** The definition of terms used in this DPA is found in Exhibit "C". In the event of a conflict, definitions used this DPA shall prevail over terms used in all the other writings, including, but not limited to, a service agreement, privacy policies or any terms of service.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Division Data Property of Division.** All Division Data, user generated content or any other Pupil Records transmitted to the Provider pursuant to this Agreement is and will continue to be the property of and under the control of the Division, or to the party who provided such data (such as the student, in the case of user generated content.). The Provider further acknowledges and agrees that all copies of such Division Data or any other Pupil Records transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are also subject to the provisions of this Agreement in the same manner as the original Division Data or Pupil Records. The Parties agree that as between them, all rights, including all intellectual property rights in and to Division Data or any other Pupil Records contemplated per this Agreement shall remain the exclusive property of the Division. For the purposes of FERPA and state law, the Provider shall be considered a School Official, under the control and direction of the Divisions as it pertains to the use of Division Data notwithstanding the above. The Provider will cooperate and provide Division Data within ten (10) days at the Division's request. Provider may transfer pupil-generated content to a separate account, according to the procedures set forth below.
2. **Parent Access.** Provider shall cooperate and respond within ten (10) days to the Division's request for personally identifiable information in a pupil's records held by the Provider to view or correct as necessary. In the event that a parent of a pupil or other individual contacts the Provider to review any of the Pupil Records of Division Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the Division, who will follow the necessary and proper procedures regarding the requested information.

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3. **Separate Account.** Provider shall, at the request of the Division, transfer Student Generated Content to a separate student account when required by the Code of Virginia § 22.1-289.01. School service providers; school-affiliated entities.
4. **Third Party Request.** Provider shall notify the Division in advance of a compelled disclosure to a Third Party, unless legally prohibited.
5. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions pursuant to this DPA, whereby the Subprocessors agree to protect Division Data in a manner consistent with the terms of this DPA.

ARTICLE III: DUTIES OF DIVISION

1. **Privacy Compliance.** Division shall provide data for the purposes of the DPA and any related contract in compliance with the FERPA, PPRRA, IDEA, Code of Virginia § 22.1-289.01. School service providers; school-affiliated entities; student personal information; and § 22.1-287.02. Students' personally identifiable information, and all other applicable Virginia statutes.
2. **Parent Notification of Rights.** Division shall ensure that its annual notice under FERPA defines vendors, such as the Provider, as "School Officials" and what constitutes a legitimate educational interest. The Division will provide parents with a notice of the websites and online services under this agreement for which it has consented to student data collection to on behalf of the parent, as permitted under COPPA.
3. **Unauthorized Access Notification.** Division shall notify Provider promptly of any known or suspected unauthorized access. Division will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance.** The Provider shall comply with all Virginia and Federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRRA, Code of Virginia § 22.1-289.01. and § 22.1-287.02.
2. **Authorized Use.** Division Data shared pursuant to this DPA, including persistent unique identifiers, shall be used for no purpose other than the Services stated in this DPA and as authorized under the statutes referred to in subsection (1), above. Provider also acknowledges and agrees that it shall not make any re-disclosure of any Division Data or any portion thereof, including without limitation, any Division Data, metadata, user content or other non-public information and/or personally identifiable information contained in the Division Data, without the express written consent of the Division, unless it fits into the de-identified information exception in Article IV, Section 4, or there is a court order or lawfully issued subpoena for the information.
3. **Employee Obligations.** Provider shall require all employees and agents who have access to Division data to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement.
4. **Use of De-identified Information.** De-identified information, as defined in Exhibit "C",

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

may be used by the Provider for the purposes of development, research, and improvement of educational sites, services, or applications, as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). The Provider and Division agree that the Provider cannot successfully de-identify information if there are fewer than twenty (20) students in the samples of a particular field or category of information collected, *i.e.*, twenty students in a particular grade, twenty students of a particular race, or twenty students with a particular disability. Provider agrees not to attempt to re-identify de-identified Division Data and not to transfer de-identified Division Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to the Division who has provided prior written consent for such transfer.

5. **Disposition of Data.** Upon written request and in accordance with the applicable terms in subsections below, Provider shall dispose or delete all Division data obtained under this agreement when it is no longer needed for the purposes for which it was obtained. Disposition will include (1) the shredding of any hard copies of any Division data, (2) erasing, or (3) otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. Nothing in the service agreement authorizes provider to maintain Division data obtained under the service agreement beyond the time reasonably needed to complete the disposition. Provider shall provide written notification when the division data has been disposed. The duty to dispose of Division data shall not extend to data that has been de-identified or placed in a separate student account, pursuant to the terms of the agreement. The division may employ a request for return or deletion of Division data form, a copy of which is attached hereto as exhibit D. Upon receipt of a request from the division, the provider will immediately provide the division with any specified portion of the division data within ten (10) calendar days of the receipt of said request.
- a) **Partial Disposal During the Term of Service Agreement.** Throughout the term of the service agreement, Division may request partial disposal of Division data obtained under the service agreement that is no longer needed. Partial disposal of data shall be subject to Division's request to transfer data to a separate account, pursuant to Article II Section 3, above.
- b) **Complete Disposal upon Termination of Service Agreement.** Upon termination of the service agreement Provider shall dispose or securely destroy all Division data obtained under the service agreement. Prior to the disposal of the data, Provider shall notify Division in writing of its option to transfer data to a separate account, pursuant to Article 2, Section 3, above. In new event shelters Provider dispose of data pursuant to this provision unless and until provider has received affirmative written confirmation from Division that data will not be transferred to a separate account.
6. **Advertising Prohibition.** Provider is prohibited from using or selling Division Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing or advertising efforts by a Provider; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to Client; or (d) use the Division Data for the development of commercial products or services, other than as necessary to provide the Service to the Client. This section does not prohibit Provider from generating legitimate personalized learning recommendations or other

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activities permitted under Code of Virginia § 22.1-289.01.

7. **Penalties.** The failure to comply with the requirements of this agreement could subject Provider and any third party to all allowable penalties assessable against Provider under state and federal law. In the event the Family Policy Compliance Office of the U.S. Department of Education determines that Provider improperly disclosed personally identifiable information obtained from the Division's education records, the Division may not allow Provider access to the Division's education records for at least five years.

ARTICLE V: DATA PROVISIONS

1. **Data Security.** The Provider agrees to maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of student personal information and makes use of appropriate administrative, technological, and physical safeguards. The general security duties of Provider are set forth below. These duties shall include, but are not limited to:
 - a. **Passwords and Employee Access.** Provider shall secure and manage usernames, passwords, and any other means of gaining access to the Services or to Division Data, at levels suggested by NIST SP800-171 (Password complexity, encryption, and re-use), NIST SP800-53 (IA control Family), and NIST 800-63-3 (Digital Identity), and NIST SP800-63B (Authenticator and Verifier Requirements) or equivalent industry best practices.
 - b. **Security Protocols.** Both parties agree to maintain security protocols that meet industry best practices in the collection, storage or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. Provider shall maintain all data obtained or generated pursuant to the DPA in a secure computer environment.
 - c. **Provider Employee Training.** The Provider shall provide annual security training to those of its employees who operate or have access to the system.
 - d. **Security Technology.** When the service is accessed using a supported web browser, FIPS 140-2 validated transmission encryption protocols, or equivalent technology shall be employed to protect data from unauthorized access. The service security measures shall follow National Institute of Standards and Technology (NIST) 800-171, or equivalent industry best practices.
 - e. **Periodic Risk Assessment.** Provider further acknowledges and agrees to conduct periodic risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner. Upon Division's written request, Service Provider shall make the results of findings available to the Division. The Division shall treat such audit reports as Provider's Confidential Information under this Agreement.
 - f. **Backups and Audit Trails, Data Authenticity and Integrity.** Provider will take reasonable measures, including all backups and audit trails, to protect Division Data against deterioration or degradation of data quality and authenticity. Provider shall be responsible for ensuring that Division Data is retrievable in a reasonable format.

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g. Subprocessors Bound. Provider shall enter into written agreements whereby Subprocessors agree to secure and protect Division Data in a manner consistent with the terms of this Article V. Provider shall periodically conduct or review compliance monitoring and assessments of Subprocessors to determine their compliance with this Article.

- 2. Unauthorized Access or Data Breach.** In the event that Division Data are reasonably believed by the Provider or school division to have been disclosed (lost, accessed or obtained) in violation of the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) or other federal or state law applicable to such information accessed or obtained by an unauthorized individual, Provider shall follow the following process:
- a. provide immediate notification to Division upon verification of the incident and allow the Division or its authorized representatives to fully participate in the investigation of the incident.
 - b. notification will be provided to the contact(s) identified in ARTICLE VII, N: Notice, and sent via email and postal mail. Such notification shall include:
 - i. date, estimated date, or date range of the loss or disclosure;
 - ii. Division data that was or is reasonably believed to have been lost or disclosed;
 - iii. remedial measures taken or planned in response to the loss or disclosure.
 - c. immediately take action to prevent further access;
 - d. take all legally required, reasonable, and customary measures in working with Division to remediate the breach, which may include toll free telephone support with informed customer services staff to address questions by affected parties and/or provide monitoring services if necessary given the nature and scope of the loss or disclosure;
 - e. cooperate with Division efforts to communicate to affected parties;
 - f. provider is prohibited from directly contacting parent, legal guardian or eligible pupil unless expressly requested by Division. If Division requests Provider's assistance providing notice of unauthorized access, and such assistance is not unduly burdensome to Provider, Provider shall notify the affected parent, legal guardian or eligible pupil of the unauthorized access, which shall include the information listed in subsections (b) and (c), above. If requested by Division, Provider shall reimburse Division for costs incurred to notify parents/families of a breach not originating from Division's use of the Service;
 - g. the Provider shall indemnify and hold harmless the Division from and against any loss, claim, cost (including attorneys' fees) or damage of any nature arising from or in connection with the breach by the Provider or any of its officers, directors, employees, agents or representatives of the obligations of the Provider's or its Authorized Representatives under this provision or under a Confidentiality Agreement, as the case may be.

ARTICLE VI: GENERAL OFFER OF PRIVACY TERMS

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

The Provider may, by signing the attached Form of General Offer of Privacy Terms (General Offer attached hereto as Exhibit "E"), be bound by the terms of this DPA to any other Division who signs the acceptance in said Exhibit. The Form is limited by the terms and conditions described therein.

ARTICLE VII: MISCELLANEOUS

- A. **Term.** The Provider shall be bound by this DPA for so long as the Provider maintains or possesses any Division data.
- B. **Termination.** In the event that either party seeks to terminate this DPA, they may do so by mutual written consent and as long as any service agreement or terms of service, to the extent one exists, has lapsed or has been terminated. The Division may terminate the DPA and any service agreement or contract in the event of a material breach of the terms of this DPA.
- C. **Data Transfer Upon Termination or Expiration.** Provider will notify the Division of impending cessation of its business and any contingency plans. Provider shall implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal disruption to the Division. As mutually agreed upon and as applicable, Provider will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and effect on the Division, all such work to be coordinated and performed in advance of the formal, transition date.
- D. **Effect of Termination Survival.** If the DPA is terminated, the Provider shall destroy all of Division's data pursuant to Article V, section 5(b). The Provider's obligations under this agreement shall survive termination of this Agreement until all Division Data has been returned or Securely Destroyed.
- E. **Priority of Agreements.** This DPA supersedes all end user and "click-thru" agreements. In the event there is conflict between the terms of the DPA and any other writing, such as service agreement or with any other bid/RFP, terms of service, privacy policy, license agreement, or writing, the terms of this DPA shall apply and take precedence. Except as described in this paragraph herein, all other provisions of any other agreement shall remain in effect.
- F. **Amendments:** This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both parties
- G. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.
- H. **Governing Law: Venue and Jurisdiction.** This agreement will be governed by and

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construed in accordance with the laws of the state of Virginia, without regard to conflicts of law principles. Each party consents and submits to the sole and exclusive jurisdiction to the state and federal courts for the county of the initial subscribing division or the division specified in Exhibit "E" as applicable, for any dispute arising out of or relating to this agreement or the transactions contemplated hereby.

- I. **Authority.** Provider represents that it is authorized to bind to the terms of this Agreement, including confidentiality and destruction of Division Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Division Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Division Data and portion thereof stored, maintained or used in any way.
- J. **Waiver.** No delay or omission of the Division to exercise any right hereunder shall be construed as a waiver of any such right and the Division reserves the right to exercise any such right from time to time, as often as may be deemed expedient.
- K. **Successors Bound:** This DPA is and shall be binding upon the respective successors in interest to provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business.
- L. **Electronic Signature:** The parties understand and agree that they have the right to execute this Agreement through paper or through electronic signature technology, which is in compliance with Virginia and Federal law governing electronic signatures. The parties agree that to the extent they sign electronically, their electronic signature is the legally binding equivalent to their hand written signature. Whenever they execute an electronic signature, it has the same validity and meaning as their handwritten signature.
- M. **Notice.** All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, facsimile or e-mail transmission (if contact information is provided for the specific mode of delivery), or first class mail, postage prepaid, sent to the designated representatives before:

a. Designated Representatives

The designated representative for the Provider for this Agreement is:

Name: Jessica Little
Title: Client Services Manager
Address: 123 N. Wacker Drive, Suite 1150, Chicago, IL 60606
eMail: jessica.little@ssg-healthcare.com
Phone: 678-426-2571

The designated representative for the Division for this Agreement is:

Name: _____
Title: _____
Address: _____

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eMail: _____
Phone: _____

- b. Notification of Acceptance of General Offer of Terms.** Upon execution of Exhibit “E” General Offer of Terms, subscribing Division shall provide notice of such acceptance in writing and given by personal delivery or email transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, to the designated representative below the designated representative for the notice of acceptance of the general offer of privacy terms is named title contact information.

Name: John Gumpert
Title: RFP & Contracts Manager
Address: 123 N. Wacker Drive, Suite 1150, Chicago, IL 60606
eMail: k12ops.bids@ssg-healthcare.com
Phone: 610.517.0063

[Signature Page Follows]

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IN WITNESS WHEREOF, the parties have executed this Virginia Student Data Privacy Agreement as of the last day noted below.

Provider Signature John Gumpert
Date: 4/12/2023 Printed Name: John Gumpert Title: RFP & Contracts Manager

Division Signature Michelle Pratt
Date: 10/12/23 Printed Name: Michelle Pratt Title: Director

VIRGINIA SCHOOL DATA PRIVACY AGREEMENT

EXHIBIT "A"

DESCRIPTION OF SERVICES

[INSERT DETAILED DESCRIPTION OF PRODUCTS AND SERVICES HERE. IF MORE THAN ONE PRODUCT OR SERVICE IS INCLUDED, LIST EACH PRODUCT HERE]

The Stepping Stones Group will provide special education services and personnel to the students of Fairfax County Public Schools. All services will be provided within district school sites. Services to be provided include Speech Language Pathology, Speech Language Pathology Assistant and paraprofessional services.

Speech-Language Pathologist

- language
- articulation
- phonology
- voice
- fluency
- social communication
- pragmatic language

Language:

- Provide services for the five domains of language: (1) semantics (vocabulary), (2) syntax (sentence structure), (3) morphology (word forms and grammar), (4) phonology (sounds), and (5) pragmatics (social language)
- Collaborate with Special Education teachers to use curriculum extension activities to increase skills in the language areas of semantics (vocabulary) and syntax (sentence formulation)
- Co-teach lessons with Special Education and General Education teachers targeting pragmatic (social language) skill development for peer interactions

Literacy:

- Offer literacy intervention in oral comprehension for students with language/learning needs
- Lead whole class lessons in kindergarten and first grade on phonological awareness
- Co-teach activities with the kindergarten and first grade teams for story narratives and sequential markers for story organization

Articulation:

- Teach students placement of the articulators of the mouth for correct sound production
- Partner with teachers and families for carryover activities to practice speech sound production

Fluency/Stuttering:

- Teach students techniques to shape rhythm and smoothness of speech production

Voice:

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EXHIBIT "B"

SCHEDULE OF DATA

Category of Data	Elements	Check if used by your system	Conduct	Conduct or behavioral data		
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.		Demographics	Date of Birth	x	
	Other application technology meta data- Please specify:			Place of Birth		
		Gender		x		
		Ethnicity or race		X		
		Language information (native, preferred or primary language spoken by student)		x		
		Other demographic information- Please specify:				
Application Use Statistics	Meta data on user interaction with application			Enrollment	Student school enrollment	x
					Student grade level	X
					Homeroom	x
					Guidance counselor	X
			Specific curriculum programs		x	
			Year of graduation		X	
			Other enrollment information- Please specify:			
Assessment	Standardized test scores	x	Parent/Guardian Contact Information	Address	X	
	Observation data	X		Email	x	
	Other assessment data- Please specify:		Phone	x		
Attendance	Student school (daily) attendance data	x				
	Student class attendance data	x				
Communications	Online communications that are captured (emails, blog entries)					

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Parent/ Guardian ID	Parent ID number (created to link parents to students)	X
Parent/ Guardian Name	First and/or Last	X
Schedule	Student scheduled courses	X
	Teacher names	X
Special Indicator	English language learner information	X
	Low income status	
	Medical alerts /health data	X
	Student disability information	X
	Specialized education services (IEP or 504)	X
	Living situations (homeless/ foster care)	X
	Other indicator information- Please specify:	
Student Contact Information	Address	x
	Email	x
	Phone	x
Student Identifiers	Local (School district) ID	X

	number	
	State ID number	X
	Provider/App assigned student ID number	X
	Student app username	X
	Student app passwords	X
Student Name	First and/or Last	X
Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	X
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	
Student Survey Responses	Student responses to surveys or questionnaires	
Student work	Student generated content; writing, pictures etc.	X
	Other student	

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	work data - Please specify:	
Transcript	Student course grades	X
	Student course data	X
	Student course grades/performance scores	X
	Other transcript data -Please specify:	
Transportation	Student bus assignment	
	Student pick up and/or drop off location	
	Student bus card ID number	

	Other transportation data -Please specify:	
Other	Please list each additional data element used, stored or collected by your application	

No Student Data Collected at this time _____.
 *Provider shall immediately notify LEA if this designation is no longer applicable.

OTHER: Use this box, if more space needed.

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EXHIBIT “C” DEFINITIONS

Data Breach means an event in which Division Data is exposed to unauthorized disclosure, access, alteration or use.

Division Data includes all business, employment, operational and Personally Identifiable Information that Division provides to Provider and that is not intentionally made generally available by the Division on public websites or publications, including but not limited to business, administrative and financial data, intellectual property, and student, employees, and personnel data, user generated content and metadata but specifically excludes Provider Data (as defined in the Contract).

De-Identifiable Information (DII): De-Identification refers to the process by which the Provider removes or obscures any Personally Identifiable Information (“PII”) from student records in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them. Anonymization or de-identification should follow guidance equivalent to that provided by U.S Department of Education publication “Data De-identification: An Overview of Basic Terms” or NISTIR Special Publication (SP) 8053 De-Identification of Personally Identifiable Information. The Provider’s specific steps to de-identify the data will depend on the circumstances, but should be appropriate to protect students. Some potential disclosure limitation methods are blurring, masking, and perturbation. De-identification should ensure that any information when put together cannot indirectly identify the student, not only from the viewpoint of the public, but also from the vantage of those who are familiar with the individual. Information cannot be de-identified if there are fewer than twenty (20) students in the samples of a particular field or category, *i.e.*, twenty students in a particular grade or less than twenty students with a particular disability.

Indirect Identifiers: Any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty.

Personally Identifiable Information (PII): The terms “Personally Identifiable Information” or “PII” shall include, but are not limited to, student data, staff data, parent data, metadata, and user or pupil-generated content obtained by reason of the use of Provider’s software, website, service, or app, including mobile apps, whether gathered by Provider or provided by Division or its users, students, or students’ parents/guardians, including “directory information” as defined by §22.1-287.1 of the Code of Virginia“.

PII includes, without limitation, at least the following:

- Staff, Student or Parent First, Middle and Last Name
- Staff, Student or Parent Telephone Number(s)
- Discipline Records
- Special Education Data
- Grades
- Criminal Records

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- Health Records
- Biometric Information
- Socioeconomic Information
- Political Affiliations
- Text Messages
- Student Identifiers Photos
- Videos
- Grade
- Home Address Subject
- Email Address
- Test Results
- Juvenile Dependency Records Evaluations
- Medical Records
- Social Security Number
- Disabilities
- Food Purchases
- Religious Information Documents
- Search Activity
- Voice Recordings
- Date of Birth
- Classes
- Information in the Student's Educational Record
- Information in the Student's Email

Provider: For purposes of the DPA, the term "Provider" means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records.

Pupil Generated Content: The term "pupil-generated content" means materials or content created by a pupil during and for the purpose of education including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of pupil content.

Pupil Records: Means both of the following: (1) Any information that directly relates to a pupil that is maintained by Division and (2) any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other local educational Division employee.

Securely Destroy: Securely Destroy means taking actions that render data written on physical (e.g., hardcopy, microfiche, etc.) or electronic media unrecoverable by both ordinary and extraordinary means. These actions must meet or exceed those sections of the National Institute of Standards of Technology (NIST) SP 800-88 Appendix A guidelines relevant to sanitization of data categorized as high security. All attempts to overwrite magnetic data for this purpose must utilize DOD approved methodologies.

School Official: For the purposes of this Agreement and pursuant to 34 CFR 99.31 (B), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education

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records; and (3) Is subject to 34 CFR 99.33(a) governing the use and re-disclosure of personally identifiable information from student records.

Student Data: Student Data includes any data, whether gathered by Provider or provided by Division or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, home address, telephone number, email address, or other information allowing online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information text messages, documents, student identifies, search activity, photos, voice recordings or geolocation information.

Student Data shall constitute Pupil Records for the purposes of this Agreement, and for the purposes of Virginia and Federal laws and regulations. Student Data as specified in Exhibit B is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student's use of Provider's services. Anonymization or de-identification should guidance equivalent to that provided by U.S Department of Education publication "Data De-identification: An Overview of Basic Terms" or NISTIR Special Publication (SP) 8053 De-Identification of Personally Identifiable Information.

Student Generated Content: Alternatively known as user-created content (UCC), is any form of content, such as images, videos, text and audio, that have been created and posted by student users on online platforms.

Subscribing Division: A Division that was not party to the original Services Agreement and who accepts the Provider's General Offer of Privacy Terms.

Subprocessor: For the purposes of this Agreement, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than Division or Provider, who Provider uses for data collection, analytics, storage, or other service to operate and/or improve its software, and who has access to PII.

Third Party: The term "Third Party" means an entity that is not the Provider or Division.

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EXHIBIT "D"
DIRECTIVE FOR DISPOSITION OF DATA

[Name or Division or Division] directs The Stepping Stones Group to dispose of data obtained by Provider pursuant to the terms of the DPA between Division and Provider. The terms of the Disposition are set forth below:

1. Extent of Disposition

- Disposition is Complete. Disposition extends to all categories of data.
- Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:
[Insert categories of data]

2. Nature of Disposition

- Disposition shall be by destruction or secure deletion of data.
- Disposition shall be by a transfer of data. The data shall be transferred to the following site as follows:

[Insert or attach special instructions.]

3. Timing of Disposition

Data shall be disposed of by the following date: As soon as commercially practicable
By TBD

4. Signature of Authorized Representative of Division

BY: _____ Date: _____
Printed Name: _____ Title/Position: _____

5. Verification of Disposition of Data

BY: _____ Date: _____
Printed Name: _____ Title/Position: _____

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OPTIONAL: EXHIBIT "E" GENERAL OFFER OF PRIVACY TERMS

1. Offer of Terms

Provider offers the same privacy protections found in this DPA between it and the Division to any other school division ("Subscribing Division") who accepts this General Offer through its signature below. The Provider agrees that the information on the next page will be replaced throughout the Agreement with the information specific to the Subscribing Division filled on the next page for the Subscribing Division. This General Offer shall extend only to privacy protections and Provider's signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Provider and the Subscribing Division may also agree to change the data provided by Division to the Provider to suit the unique needs of the Subscribing Division. The Provider may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statutes; (2) a material change in the services and products subject listed in the Originating Service Agreement; or (3) after three years from the date of Provider's signature to this form. Provider shall notify the Division in the event of any withdrawal so that this information may be transmitted to the Subscribing Divisions.

BY: John Gumpert Date: 4/12/2023
Printed Name: John Gumpert Title/Position: RFP & Contract Manager

2. Subscribing Division

A Subscribing Division, by signing a separate Service Agreement with Provider, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing Division's individual information is contained on the next page. The Subscribing Division and the Provider shall therefore be bound by the same terms of this DPA.

BY: _____ Date: _____
Printed Name: _____ Title/Position: _____

TO ACCEPT THE GENERAL OFFER THE SUBSCRIBING DIVISION MUST DELIVER THIS SIGNED EXHIBIT TO THE PERSON AND EMAIL ADDRESS LISTED BELOW

BY: John Gumpert Date: 4/12/2023
Printed Name: John Gumpert Title/Position: RFP & Contract Manager
Email Address: john.gumpert@ssg-healthcare.com

**APPENDIX D
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement is entered into by and between **The Stepping Stones Group, LLC** ("Business Associate") and **Fairfax County Public Schools** (the "Covered Entity"), is effective as of July 1, 2023 or another date determined by Covered Entity (the "Agreement Effective Date") or other date reflected herein.

RECITALS

WHEREAS, the parties have previously entered into a services agreement (referred to herein as the "Services Agreement") and business associate agreement for Covered Entity and business associates to meet the requirements of current law concerning the handling and disclosure of individually identifiable health information;

WHEREAS, the parties wish to disclose certain information to each other pursuant to the terms of this Agreement and the Services Agreement, some of which may constitute Protected Health Information (defined below);

WHEREAS, Covered Entity and Business Associate intend to (i) protect the privacy and provide for the security of Protected Health Information disclosed pursuant to this Agreement and the Services Agreement and (ii) comply with applicable transaction and code requirements set forth in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as most recently amended by the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services ("HHS") (collectively "HIPAA") and other applicable federal and state laws; and

WHEREAS, the parties acknowledge that certain federal or state laws may take precedence over HIPAA and agree that this Agreement, the operational requirements hereunder, and the Services Agreement shall be interpreted to enable the parties to comply with HIPAA, the Privacy Rule (defined below) and other applicable federal or state law.

NOW, THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement and the Services Agreement, the parties agree as follows:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Disclosure, Health Care Operations, Minimum Necessary, Notice of Privacy Practices, Subcontractor and Use.

1. **Definitions**. In addition to the definitions located elsewhere in the Services Agreement, the following shall apply to this Agreement:
 - a. "**Breach**" shall have the same meaning as 45 CRF Section 164.402, which in part is the acquisition, access, use or disclosure of Protected Health Information in a manner not permitted under subpart E of 45 C.F.R. part 164 that compromises the security or privacy of the Protected Health Information.
 - b. "**Business Associate**" shall generally have the same meaning as the term "business associate" at 45 C.F.R. Section 160.103, and in reference to the party to this agreement, shall mean.

- c. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 C.F.R. Section 160.103, and in reference to the party to this agreement, shall mean Fairfax County Public Schools.
- d. "Designated Record Set" or "DRS" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- e. "Electronic Protected Health Information" or "EPHI" shall mean the information identified in subsections (i) and (ii) of the definition of "protected health information" contained in 45 C.F.R. Section 160.103 of the Privacy Rule.
- f. "HHS Transaction Standards Regulation" shall mean 45 C.F.R. Sections 160 and 162.
- g. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
- h. "Information" shall mean any "health information" as defined in 45 C.F.R. Section 160.103.
- i. "Individual" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. Section 164.502(g).
- j. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- k. "Protected Health Information" or "PHI" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 160.103, and is the information created or received by Business Associate from or on behalf of Covered Entity.
- l. "Required by Law" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.103.
- m. "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or designee.
- n. "Security Incident" shall mean, as provided in 45 C.F.R. Section 164.304, any attempted or successful unauthorized access, use, disclosure, modification, or destruction of Electronic Protected Health Information created, received, maintained or transmitted on behalf of the Covered Entity, or any successful interference with system operations in an information system related to such Electronic Protected Health Information.
- o. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160, 162 and 164.
- p. "Unsecured Protected Health Information" means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals as provided in 45 C.F.R. Section 164.402).

2. Permitted Uses and Disclosures of PHI. Except as otherwise limited in this Agreement or by law, Business Associate may: (i) use or disclose PHI only to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Services Agreement between the parties and in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by a Covered Entity; (ii) use or further disclose PHI to carry out the legal responsibilities of Business Associate; (iii) conduct any other use or disclosure permitted or required by HIPAA or applicable federal or state law; and (iv) use PHI for the proper management and administration of Business Associate, consistent with 45 C.F.R. Section 164.504(e).
3. Data Aggregation Services. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. Section 164.504(e)(2)(i)(B). In addition to other permissible purposes, the Business Associate is authorized to de-identify Protected Health Information in accordance with 45 CFR 164.514(a)-(c). Data aggregation means the combining of PHI created or received by the Business Associate on behalf of Covered Entity with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the Health Care Operations of Covered Entity.
4. Obligations and Activities of Business Associate.

Business Associate agrees not to use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.

- a. Appropriate Safeguards. Business Associate shall use reasonable and appropriate physical, technical, and administrative safeguards (i) to prevent use or disclosure of PHI other than as permitted under this Agreement or Required by Law and (ii) to reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that Business Associate creates, receives, maintains or transmits on behalf of the Covered Entity to comply with Subpart C of 45 C.F.R. Part 164.
- b. Reporting of Improper Use or Disclosure. Business Associate shall promptly report in writing to Covered Entity (i) any use or disclosure of PHI not provided for by this Agreement upon becoming aware of such use or disclosure and (ii) Security Incidents (as described in 45 C.F.R. § 164.314(a)(2)(i)(C)) that result in unauthorized access, use, disclosure, modification or destruction of EPHI or interference with system operations ("Successful Security Incidents"). Contractor will report to Covered Entity any Successful Security Incident of which it becomes aware of within ten (10) business days. At a minimum such report will contain the following information:
 - Date and time when the Security Incident occurred and/or was discovered;
 - Names of systems, programs, or networks affected by the Security Incident;
 - Preliminary impact analysis;
 - Description of and scope of EPHI used, disclosed, modified, or destroyed by the Security Incident; and
 - Description of any mitigation steps taken.

Business Associate will provide the report to the Compliance/Privacy Official at **8115 Gatehouse Road, Suite 2100, Falls Church, VA 22042** and to the individual specified under the Notice provision in the Service Agreement and will send such report by traceable carrier.

To avoid unnecessary burden on either party for Security Incidents that do not result in unauthorized access, use, disclosure, modification or destruction of EPHI or interference with system operations

("Unsuccessful Security Incidents"), Contractor will report to Covered Entity any Unsuccessful Security Incident of which it becomes aware of only upon request of the Covered Entity. The frequency, content and the format of the report of Unsuccessful Security Incidents will be mutually agreed upon by the parties.

Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of (i) any use or disclosure of PHI by Business Associate or its agents or subcontractors in violation of the requirements of HIPAA or this Agreement or (ii) any Security Incidents of Business Associate or its agents or subcontractors.

- c. Reporting of a Breach. Business Associate shall, in accordance with the requirements of 45 C.F.R. § 164.410, promptly notify Covered Entity in writing, but in no case later than ten (10) business days following discovery, of a Breach of Unsecured Protected Health Information. Business Associate also shall, without unreasonable delay, but in no event later than sixty (60) calendar days after the discovery of a Breach of Unsecured Protected Health Information, notify affected Individuals, the Secretary and media of such Breach to the extent required under, and in accordance with the requirements of, 45 C.F.R. Sections 164.400 et seq. (Subpart D). To the extent provided under 45 C.F.R. Section 164.404(a)(2), a Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, subcontractor, or agent of Business Associate. The development and issuance of any required notification to affected Individuals, the Secretary or the media shall be coordinated with, and subject to the prior approval of, Covered Entity, however, if the notification involves data relating to multiple employer groups the parties hereby recognize that Business Associate may proceed with the notification if awaiting final approval would result in a failure to meet the timing requirements of the applicable notification rule.
- d. Business Associate's Agents. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2) Business Associate shall ensure that any agent, including a subcontractor, that creates, receives, maintains, transmits or to whom it provides PHI and Electronic Protected Health Information agrees to the same restrictions and conditions and requirements that apply through this Agreement to Business Associate for such PHI.
- e. Access to PHI. Business Associate shall provide access to an Individual, at the request of the Individual or the Covered Entity, to PHI in a Designated Record Set maintained by, or in the possession of, Business Associate in the time and manner required of a Covered Entity under 45 C.F.R. Section 164.524 or as Required by Law. Any denial of access to such PHI determined by Business Associate shall be the sole responsibility of Business Associate, including, but not limited to, resolution or reporting of all appeals and/or complaints arising therefrom. Business Associate shall promptly report all such requests and their resolution to Covered Entity as mutually agreed by the Parties. Business Associate shall promptly notify the Covered Entity of any request made to the Business Associate that extends to other PHI.
- f. Amendment of PHI. Business Associate shall make a determination on any authorized request by an Individual for amendment(s) to PHI in a Designated Record Set maintained by, or in the possession of, Business Associate in the time and manner required of a Covered Entity under 45 C.F.R. Section 164.526 or as Required by Law. Any denial of such a request for amendment of PHI determined by Business Associate shall be the responsibility of Business Associate, including, but not limited to, resolution and/or reporting of all appeals and/or complaints arising

therefrom. Business Associate shall report all approved amendments or statements of disagreement/rebuttals in accordance with 45 C.F.R. Section 164.526. Business Associate shall also promptly report all such requests and their resolution to Covered Entity.

- g. Documentation of Disclosures. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. Section 164.528, as amended by HITECH. At a minimum, such documentation shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure. Business Associate shall retain such documentation for such period as is set forth in the Privacy Rule or other applicable laws.
- h. Accounting of Disclosures. Business Associate agrees to provide to an Individual or the Covered Entity, in the time and manner required of a Covered Entity, with information collected in accordance with Section 3(f) of this HIPAA Agreement, to respond to a request by an Individual for an accounting of disclosures of PHI (including, but not limited to, PHI contained within an "electronic health record" as defined in HITECH Section 13400(5)) in accordance with 45 C.F.R. Section 164.528 (as amended by HITECH). Business Associate shall promptly report all such requests by an Individual and their resolution to Covered Entity. Beginning on the date required under HITECH (or such later date as may be established in HHS regulations or other guidance), should an Individual make a request for an accounting of disclosures related to electronic health records (or Covered Entity requests that Business Associate respond to such a request), Business Associate shall comply with a request for an accounting of disclosures made for treatment, payment, or health care operations purposes in accordance with HITECH Section 13405(c) and any HHS regulations or other guidance thereunder.
- i. Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity, upon reasonable request by Covered Entity, or to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Rules.
- j. HHS Transaction Standards Regulation. If Business Associate conducts, in whole or part, standard transactions for or on behalf of Covered Entity, Business Associate will comply, and will require any subcontractor or agent involved with the conduct of such standard transactions to comply, with the HHS Standard Transaction Regulation.
- k. Compliance with Security Rules. Business Associate shall:
 - i. use appropriate physical, technical and administrative safeguards to reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity;

- ii. report to Covered Entity any Successful Security Incident of which Business Associate becomes aware, upon becoming aware of such Security Incident;
- iii. ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information received from, or created, maintained, transmitted or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply throughout this Agreement with respect to such information; and
- iv. mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Security Incident relating to Business Associate or any of its agents, including a subcontractor.

I. HITECH Compliance. Business Associate shall:

- i. not receive, directly or indirectly, any impermissible remuneration in exchange for PHI or Electronic Protected Health Information, except as permitted by 45 C.F.R. Sections 164.506(a) and 164.508(a)(4);
- ii. comply with the marketing and other restrictions applicable to business associates contained in 45 C.F.R. Sections 164.506(a) and 164.508(a)(3);
- iii. fully comply with the applicable requirements of 45 C.F.R. Section 164.502 for each use or disclosure of PHI;
- iv. fully comply with 45 C.F.R. Sections 164.306 (security standards), 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), and 164.316 (policies, procedures and documentation requirements); and
- v. to the extent required under HITECH Sections 13401 and 13404, comply with the additional privacy and security requirements enacted in HITECH that apply to covered entities in the same manner and to the same extent as Covered Entity is required to do so.

5. Obligations of Covered Entity

- a. Delegation to Business Associate. As set forth in Sections 3(d), 3(e) and 3(g) of this Agreement, Covered Entity hereby delegates to Business Associate the Covered Entity's responsibility to provide access, amendment, and accounting rights to Individuals with respect to PHI in any Designated Record Set maintained by, or in the possession of, Business Associate. It is understood that Business Associate will interact with the Individual directly, up to and including resolution of any appeals or reporting of complaints under HIPAA or applicable federal or state law. Further, Covered Entity hereby delegates to Business Associate the Covered Entity's obligations with respect to notice of Breaches of Unsecured Protected Health Information. In accordance with Section 3(c) of this Agreement, Business Associate shall notify affected Individuals, Covered Entity, the Secretary, and media (if Required by Law) of such Breach within

sixty (60) calendar days after discovery. Such notice shall comply with the notification requirements set forth in Subpart D of 45 C.F.R. Part 164 (45 C.F.R. Section 164.400 et seq.).

- b. Responsibility for Further Disclosures. Covered Entity shall be responsible for ensuring that any further disclosure by Covered Entity of PHI (including, but not limited to, disclosures to employers, agents, vendors, and group health plans) complies with the requirements of HIPAA and applicable federal and state law.
 - c. Applicable Law. HIPAA requires the Covered Entity and the Business Associate to comply with the Privacy Rule and applicable state privacy laws, based upon application of the preemption principles set forth in 45 C.F.R. Sections 160.201 et seq.
 - d. Notice of Privacy Practices. Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 C.F.R. Section 164.520, as well as any changes to such notice. Business Associate shall not distribute its own notice to Individuals. Business Associate shall not be responsible for the content of Covered Entity's notice of privacy practices nor any error or omission in such notice.
 - e. Changes in Permission by Individual. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
 - f. Restrictions on PHI. Covered Entity shall notify Business Associate of any restriction upon the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. Section 164.522 (as amended by HITECH), to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
 - g. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except for Business Associate's use of PHI for its proper management and administration or to carry out its legal responsibilities under Section 2 of this Agreement.
 - h. Disclosure to Third Parties. Covered Entity may request that Business Associate disclose PHI directly to another party. Covered Entity agrees that all such disclosures requested by Covered Entity shall be for purposes of Covered Entity's treatment, payment or health care operations or otherwise permitted or required under HIPAA or other applicable law.
 - i. Use of Limited Data Sets. The parties agree, for purposes of complying with 45 C.F.R. Section 164.502(b)(1), to limit, to the extent practicable, any use, disclosure and requests of PHI to a "limited data set" (as defined in 45 C.F.R. § 164.514(e)(2)) or, if needed by the Business Associate or Covered Entity, to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure or request. This Section will cease to apply on the effective date of regulations issued by the Secretary in accordance with HITECH Section 13405(b)(2)(C). The parties shall comply with any such regulations promulgated by the Secretary as of their effective date.
6. Compliance Audits. Covered Entity shall have the right to audit Business Associate's compliance with this Agreement. Upon request, Business Associate shall provide Covered Entity representatives reasonable access to Business Associate's relevant records and other

information during normal business hours at Business Associate's place of business. Any such audits shall be conducted in accordance with the terms and conditions (if any) for Covered Entity audits set forth in the Services Agreement.

7. Indemnification. Business Associate agrees to indemnify, defend and hold the Covered Entity harmless from any and all liability, damages, costs (including reasonable attorneys' fees and costs) and expenses imposed upon or asserted against the Covered Entity arising out of any claims, demands, awards, settlements or judgments relating to the use or disclosure of PHI contrary to the provisions of this Agreement or applicable law.
8. Term and Termination
 - a. Term. The term of this Agreement shall commence as of the Agreement Effective Date, and shall terminate when all of the PHI provided by either party to the other, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with Subsection c. of this Section.
 - b. Termination for Cause. If either party breaches a material term of this Agreement, the non-breaching party shall provide a written notice of the breach and a reasonable opportunity to the other party to cure the breach or end the violation within a reasonable period of time specified in the notice. If the breach cannot be cured or is not cured within a reasonable period, this Agreement may be terminated by the non-breaching party. If neither cure nor termination is feasible, the non-breaching party may report the problem to the Secretary.
 - c. Effect of Termination.
 - i. Except as provided in paragraph (ii) of this Section 7(c), upon termination of this Agreement and the Services Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - ii. The parties recognize that Business Associate and Business Associate's Subcontractors and agents may be required to retain PHI to fulfill certain contractual or regulatory requirements, making return or destruction infeasible. Business Associate shall extend the protections of this HIPAA Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate's Subcontractors and agents are likewise contracted to extend such protections to PHI in their possession.
 - iii. In no event shall this Section 7 affect any obligation of Business Associate to transfer Covered Entity information and data to any successor services provider retained by Covered Entity or its successor under the Services Agreement or otherwise.

9. References. A reference in this Agreement to HIPAA means the law or regulation as in effect on the Agreement Effective Date or as subsequently amended, and for which compliance is required on the date of determination.
10. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is required for Covered Entity to comply with the requirements of HIPAA. The parties agree to negotiate in good faith any modification to this Agreement that may be necessary or required to ensure consistency with amendments to and changes in applicable federal and state laws and regulations, including but not limited to, the Privacy Rules or the Security Rules or other regulations promulgated pursuant to HIPAA.
11. Waiver. No delay or omission by either party to exercise any right or remedy under this Agreement will be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.
12. Survival. The respective rights and obligations of Business Associate under Sections 7 and 8(c) of this Agreement shall survive the termination of this Agreement and the underlying Services Agreement.
13. Severability. In the event any part or parts of this Agreement are held to be unenforceable, the remainder of this Agreement will continue in effect, but shall terminate when Business Associate no longer holds any PHI.
14. No Third-Party Beneficiaries. Nothing expressed or implied in this is intended to confer, nor shall anything herein confer upon any person, other than Covered Entity, Business Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
15. Assignment. This Agreement is not assignable by either party without the other party's written consent.
16. Effect of Agreement. Except as specifically required to implement the purposes of this Agreement, or to the extent inconsistent with the Agreement, all other terms of the Services Agreement shall remain in force and effect. This Agreement shall supersede and replace all prior business associate agreements between the parties.
17. No Agency Relationship. For purposes of this Agreement, Business Associate is not the agent of the Covered Entity (as such term is defined under common law).
18. Interpretation. The provisions of this Agreement shall prevail over any provisions in the underlying Services Agreement or any operations activity under the Services Agreement, that conflict or is inconsistent with any provision in this Agreement. Any ambiguity in this Agreement, the Services Agreement or in operations shall be resolved in favor of a meaning that permits Covered Entity or Business Associate to comply with HIPAA or the applicable federal or state rule.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Agreement Effective Date.

Fairfax County Public Schools:

By: *Michelle Pratt*
Title: *Director*

The Stepping Stones Group, LLC:

By: *John Dempsey*

Title: RFP & Contracts Manager

**CONFIDENTIALITY PROVISIONS
EMPLOYEE RECORDS**

THIS ADDENDUM, executed and effective as of the 11th day of September , 2023 , by and between **THE STEPPING STONES GROUP, LLC**, a corporation organized and existing under the laws of the Commonwealth of Virginia (the “Company”), and the **FAIRFAX COUNTY SCHOOL BOARD**, a public body corporate and politic organized and existing under the laws of the Commonwealth of Virginia (the “School Board”), recites and provides as follows.

Recitals

The Company and the School Board are parties to a certain agreement entitled **Speech Therapy Intervention Services** of even date herewith (the “Agreement”). In connection with the execution and delivery of the Agreement, the parties wish to enter into this Addendum in order to clarify and make certain modifications to the terms and conditions set forth therein.

The Company and the School Board agree that the purpose of such terms and conditions is (i) the identification of Company as an entity acting for the School Board in its performance of functions that a School Board employee otherwise would perform; and (ii) the establishment of procedures for the protection of confidential employee records, including procedures regarding security and security breaches.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged hereby, the parties agree as follows.

Agreement

The Agreement is amended hereby as follows:

1. The following provisions shall be deemed to be included in the Agreement and, in the event of a conflict or ambiguity between the Agreement and this Addendum, the terms of this Addendum will in all events govern and control:

Confidentiality Obligations Applicable to Certain FCPS Records. The Company hereby covenants and agrees that it shall maintain, in strict confidence and trust, all FCPS employee records whether provided by or created for FCPS pursuant to this contract (collectively, “FCPS Confidential Records”).

The Company shall cause each officer, director, employee and other representative who shall have access to FCPS Confidential Records during the term of the Agreement (collectively, the “Authorized Representatives”) to maintain in strict confidence and trust all FCPS Confidential Records. The Company shall take all reasonable steps to insure that no FCPS Confidential Records are disclosed to any person or entity except those who (i) are Authorized Representatives of the Company performing functions for FCPS under the Agreement and have agreed to be bound by the terms of this Addendum; (ii) are authorized representatives of FCPS, or (iii) are entitled to access such FCPS Confidential Records from the Company pursuant to federal and/or Virginia law.

The Company shall use FCPS Confidential Records, and shall take all reasonable steps necessary to ensure that its Authorized Representatives shall use such records, solely for purposes related to and in fulfillment of the performance by the Company of its obligations pursuant to the Agreement.

Other Security Requirements. The Company shall maintain all technologies, policies, procedures and practices necessary to secure and protect the confidentiality and integrity of FCPS Confidential Records in the Company's possession, including procedures to (i) restrict access to such records in accordance with this Addendum; (ii) establish user IDs and passwords as necessary to protect such records; (iii) protect all such user passwords from detection and unauthorized use; (iv) prevent hostile or unauthorized intrusion that could compromise confidentiality, result in data corruption, or deny service; (v) prevent and detect computer viruses from spreading to disks, attachments to e-mail, downloaded files, and documents generated by word processing and spreadsheet programs; (vi) minimize system downtime; (vii) notify FCPS of planned system changes that may impact the security of FCPS Confidential Records; (viii) return or destroy FCPS Confidential Records that exceed specified retention schedules; (ix) permit periodic security audits by FCPS or designated third party using applicable regulations and industry best practice standards as benchmarks, and make commercially reasonable efforts to remediate the vulnerabilities discovered; and (x) in the event of system failure, enable immediate recovery of FCPS records to the previous business day.

In the event of a security breach, the Company shall (i) immediately take action to close the breach; (ii) notify FCPS within 2 business days after Company's first knowledge of the breach, the reasons for or cause of the breach, actions taken to close the breach, and identify the FCPS Confidential Records compromised by the breach; (iii) return compromised FCPS Confidential Records for review; (iv) provide communications on the breach to be shared with affected parties and cooperate with FCPS efforts to communicate to affected parties by providing FCPS with prior review of press releases and any communications to be sent to affected parties; (v) take all legally required, reasonable, and customary measures in working with FCPS to remediate the breach which may include toll free telephone support with informed customer services staff to address questions by affected parties and/or provide monitoring services if necessary given the nature and scope of the disclosure; (vi) cooperate with FCPS by providing information, records and witnesses needed to respond to any government investigation into the disclosure of such records or litigation concerning the breach; and (vii) provide FCPS with notice within 2 business days after notice or service on Company, whichever occurs first, of any lawsuits resulting from, or government investigations of, the Company's handling of FCPS records of any kind, failure to follow security requirements and/or failure to safeguard confidential information. The Company shall provide satisfactory documentation of its compliance with the security requirements of this provision prior to performing services under the Agreement. The Company's compliance with the requirements of this provision is subject to verification by FCPS personnel or its agent at any

time during the term of the Agreement.

Disposition of FCPS Confidential Records Upon Termination of Agreement

Upon expiration of the term of the Agreement, or upon the earlier termination of the Agreement for any reason, the Company covenants and agrees that it promptly shall deliver to the School Board, and shall take all reasonable steps necessary to cause each of its Authorized Representatives promptly to deliver to the School Board, all FCPS Confidential Records. The Company hereby acknowledges and agrees that, solely for purposes of receiving access to FCPS Confidential Records and of fulfilling its obligations pursuant to this provision and for no other purpose (including without limitation, entitlement to compensation and other employee benefits), the Company and its Authorized Representatives shall be deemed to be school officials of the School Board, and shall maintain FCPS Confidential Records in accordance with all federal state and local laws, rules and regulations regarding the confidentiality of such records. The non-disclosure obligations of the Company and its Authorized Representatives regarding the information contained in FCPS Confidential Records shall survive termination of the Agreement. The Company shall indemnify and hold harmless the School Board from and against any loss, claim, cost (including attorneys' fees) or damage of any nature arising from or in connection with the breach by the Company or any of its officers, directors, employees, agents or representatives (including the Authorized Representatives) of any provision of this Addendum.

Certain Representations and Warranties. The Company hereby represents and warrants as follows: (i) the Company has full power and authority to execute the Agreement and this Addendum and to perform its obligations hereunder and thereunder; (ii) the Agreement and this Addendum constitute the valid and binding obligations of the Company, enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy or similar laws affecting the rights of creditors and general principles of equity; and (iii) the Company's execution and delivery of the Agreement and this Addendum and compliance with their respective terms will not violate or constitute a default under, or require the consent of any third party to, any agreement or court order to which the Company is a party or by which it may be bound.


Governing Law; Venue. Notwithstanding any provision contained in the Agreement to the contrary, (i) the Agreement, as amended hereby, shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of laws principles; and (ii) any dispute arising under or in connection with the Agreement, as amended hereby, which is not otherwise resolved by the parties hereto shall be decided by a court of competent jurisdiction located in the Commonwealth of Virginia.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their duly authorized officers effective as of the date first written above.

The Stepping Stones Group, LLC

By:  09/11/2023
Jessica Little, M.Ed.
Client Services Director

FAIRFAX COUNTY SCHOOL BOARD

By: 
Michelle R. Pratt
Director, Office of Procurement Services