



Office of Purchasing
10910 Clarksville Pike, Ellicott City, Maryland 21042
(410) 313-6644, fax (410) 313-6789

January 22, 2019

To All Interested Professional Services Contractors:

The Howard County Public School System (HCPSS) invites your submittals to provide an instructional writing program for students in kindergarten through fifth grade as specified in the attached Request for Proposals (RFP) No. 047.19.B1. Submittals shall be accepted at the Howard County Department of Education, Purchasing Office, 10910 Clarksville Pike, Ellicott City, Maryland 21042, until **2:00 p.m. February 8, 2019**.

Late submittals will not be considered. It is the responsibility of each Offeror to ensure that its submittal is delivered to the proper place prior to the scheduled closing date and time.

Copies of the Request for Proposal may be obtained by visiting the HCPSS website at <http://www.hcpss.org/about-us/purchasing/> or by contacting the Purchasing Office at the address above or by calling (410) 313-6722. Firms are encouraged to visit the website frequently to learn of any changes or updates that may be made in the RFP.

The Howard County Public School System reserves the right to reject in whole or in part any or all submittals.

Sincerely,

A handwritten signature in black ink that reads "D Pindell".

Douglas Pindell
Director of Purchasing

REQUEST FOR PROPOSALS
FOR
Phonics Program for Students in Elementary Grades
RFP No. 047.19.B1

Howard County Public School System
10910 Clarksville Pike (MD Route 108)
Ellicott City, Maryland 21042

January 22, 2019

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**PART I
GENERAL INFORMATION**

1.1 Purpose

The Howard County Public School System (HCPSS) issued this Request for Proposals (RFP) to solicit submittals from qualified, professional independent contractors to provide an explicit systematic and cumulative phonics program including diagnostic and multi-sensory components for students in grades K-3 that addresses a wide range of components as outlined in this solicitation.

1.2 Background

The school system operates 77 schools with additional office locations in a suburban area. Enrollment is approximately 52,000 students. For more information on the Howard County Public School System, please visit <http://www.hcpss.org/aboutus/>.

1.3 Obligations of HCPSS

The school system shall pay no costs or other amounts incurred by any entity in responding to this RFP or prior to the effective date of the contract entered into for the services provided. The school system reserves the right to reject any or all submitted responses. All submittals will become a part of the school system official procurement files, and will be available for public inspection as allowed by law.

1.4 Respondent Obligations

Qualified Offerors are invited to submit responses in accordance with this RFP. Submittals must address all specifications. The Offeror will be liable, both individually and severally, for the performance of all obligations under the contract, and will not be relieved of non-performance of any subcontractor.

Although not detailed in this document, HCPSS reserve the right to negotiate a contract amendment with the Contractor for additional services that may be required.

1.5 Schedule of Events

HCPSS currently anticipate that the selection of a Contractor and execution of the Contract will proceed according to the following schedule:

January 2019	Issuance of RFP
February 2019	Deadline for Submission of responses (2:00 p.m. local time) – see Invitation letter for specific dates. Late submittals will not be considered.

The above dates are subject to change.

1.6 Contact

Questions concerning this RFP must be in writing and addressed to Douglas Pindell, Director of Purchasing at dpindell@hcpss.org. Upon issuance of this RFP, other employees and representatives of HCPSS will not answer questions or otherwise discuss the contents of this RFP with any potential respondents or their representatives. Failure to observe this restriction may result in disqualification of any subsequent submittal. This restriction does not preclude discussions unrelated to this RFP.

1.7 Respondent Understanding of RFP

By submitting a signed submittal, a respondent represents that it fully understands this RFP and will abide by its terms and conditions, including those appearing as Appendix A and E to this RFP and the HCPSS Standard Contract that appears as Appendix B to this RFP. No exceptions, amendments, or deviations from this RFP will be allowed in any submittals unless agreed to in writing and raised by the Contractor prior to or during the pre-submittal conference, if held. Unauthorized exceptions, amendments, or deviations in the response may result in disqualification of the submittal.

1.8 Deadline for Submission of Responses

To be considered, submittals must be received in the issuing office the date and time specified.

1.9 Right to Amend, Modify or Withdraw RFP

HCPSS reserves the right, in their sole discretion, to amend, or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to the award of a Contract, if it is in the best interest of HCPSS to do so. The decision of HCPSS shall be administratively final in this regard.

1.10 Issuing Office

HCPSS is the Issuing Office and the sole point of contact for the RFP. HCPSS is the only office authorized to clarify, modify, amend, alter, or withdraw the specifications, terms, and conditions of this RFP and any contract awarded as a result of this RFP. **All communications concerning this procurement must be in writing and addressed to:**

Douglas Pindell, Director of Purchasing
Howard County Public School System
10910 Clarksville Pike, Ellicott City, Maryland 21042
Phone: 410 313-6722 Fax: 410 313-6789 Email: dpindell@hcpss.org

Written questions must be received as promptly as possible. HCPSS will make every effort to provide a timely, written response to questions.

1.11 Open Records

Following the award and execution of the contract, responses to this RFP are subject to release as public information unless HCPSS has determined that parts of the submittal are confidential. It is recommended that respondents consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information.

In the event HCPSS receives a public information request for records related to this RFP, the school system may contact respondents if it believes a portion of this submittal could be considered confidential under the Maryland Public Information Act or other applicable state and federal law. Once contacted, respondents will be asked to submit in writing specific detailed reasons, including any relevant legal authority, stating why it believes the material to be confidential. Vague and general claims as to confidentiality will not be accepted. Final decisions for releasing information are the responsibility of HCPSS based on available information at the time of receipt of the public information request.

Copyrighted submittals are unacceptable and will be disqualified as non-responsive. All submittals become the property of HCPSS.

1.12 Written Questions and Official Responses

If an Offeror discovers any ambiguities, conflicts, discrepancies, exclusionary specifications, omissions, or other errors in this RFP, Offeror must immediately notify the Issuing Office. If an Offeror fails to so notify the Issuing Office, such Offeror submits a response at its own risk and under such conditions. If such Offeror is awarded a contract, then it is not entitled to additional compensation, relief, or time by reason of the error or its later correction.

1.13 Time

The times stated in this document refer to the Eastern Time Zone. Unless otherwise stated in this document, the applicable time deadline will be 3:00 p.m. on the date specified. HCPSS' regular office hours are 8:30 a.m. to 4:30 p.m., Monday through Friday, except for holidays.

1.14 Copies

Offerors must submit one (1) signed original and two (2) copies. Offerors must include copies of respondents' cost proposals in their submittal.

PART II

SUBMITTAL FORMAT

2.1 Introduction

Submittals must be organized as described in Section 2.2 below. Submittals not organized in this manner are subject to disqualification. Conciseness and clarity of content are emphasized and encouraged. Vague and general submittals will be considered non-responsive and disqualified. Submittals must be complete; failure to include all required information may result in disqualification. Submittal pages must be numbered and contain an organized, paginated table of contents corresponding to the sections and pages of the submittal.

2.2 General Organization of Submittal Contents

Submittals must be organized as follows:

- a. Transmittal Letter
- b. Executive Summary
- c. Table of Contents
- d. Submittal Information
- e. Cost Proposal (See Appendix C)
- f. Affirmative Action Certification – minority participation, if any
- g. Certification that the firm is not debarred or listed on the federal government's excluded parties list.
- h. Acceptance of the school system's privacy agreement.

2.3 Transmittal Letter

Offerors must submit with their response a transmittal letter that identifies the entity submitting the offer, all principals, and includes a commitment by that entity to provide the services required by HCPSS. The transmittal letter must state that the submittal is valid for **120 days from the deadline for delivery of submittals. Any submittal containing a term of less than 120 days for acceptance from this deadline will be rejected as non-responsive.**

The transmittal letter must be signed by a person legally authorized to bind the Offeror to the representations in the response. In the case of a joint submittal, each party must sign the transmittal letter. The Offeror also must indicate, in its transmittal letter, why it believes it is the most qualified respondent to provide the requisite services.

The transmittal letter must include a statement of acceptance of the terms and conditions as specified in Appendix A of this RFP and of the contract resulting from this RFP (a copy of the HCPSS Standard Contract appears as Appendix B. If an Offeror takes exception to any of the proposed terms and conditions stated in Appendix A or the Standard Contract that appears as Appendix B of this RFP; those exceptions must be noted in the transmittal letter; however, failure to accept those terms and conditions may result in disqualification of the submittal. Offerors are encouraged to submit any questions with regard to terms and conditions and the Standard Contract prior to the deadline of this RFP for the submission of questions.

2.4 Executive Summary

Offerors must provide an executive summary of their submittals and represent that Offerors' submittals address all of the requirements of this RFP. The executive summary must not exceed three pages, and must represent a full and concise summary of the contents of the submittal. The executive summary must not include any information concerning the cost of the submittal. Offerors must identify any services that are provided beyond those specifically requested. If Offeror is providing services that do not meet the specific requirements of this RFP, but in the opinion of respondent are equivalent or superior to those specifically requested, any such differences must be noted in the executive summary. However, failure to provide the services specifically required may result in disqualification of the submittal.

2.5 Table of Contents

Each submittal must be submitted with a table of contents that clearly identifies and denotes the location of each title and subtitle of the submittal. The table of contents must also clearly identify and denote the location of all enclosures of the submittal. The table of contents must follow the RFP's structure as much as is practical.

2.6 Respondent Identifying Information

Each Offeror must provide the following identifying information:

- a. name and address of business entity submitting the submittal;
- b. all principals;
- c. type of business entity (i.e., corporation, partnership);
- d. state of incorporation or organization and principal place of business;
- e. name and location of major offices or other facilities that relate to Offeror's performance under this RFP;
- f. name, address, business and home telephone number, and fax number of Offeror's principal contact person regarding the Contract;
- g. Offeror's Federal Employer Identification Number; and
- h. statement regarding the Agency's ability to comply with the requirements outlined in the Appendices and other requirements listed in this RFP.

2.6.1 Subcontracting Information (Affirmative Action)

This section refers to the opportunities of the Offeror to utilize other firms to provide non-direct services such as uniform rental, supplies or other outsourced services. Offeror should include a plan of how such subcontracted services will be utilized.

2.6.2 Equal Employment Opportunity Practices

HCPSS is committed to assisting firms that are majority owned by minorities and women. Offerors must state in its submittal whether it is majority owned by minorities and/or women. Offerors are expected to make every effort to meet or exceed the goal of 25 percent participation by organizations majority owned by Native American/Alaskans, Asian/Pacific Islanders, Blacks, Hispanics, local firms, persons with disabilities, and/or women as certified by the Maryland Department of Transportation, the certifying agency in Maryland.

2.6.3 Conflict of Interest

Each Offeror must disclose any existing or potential conflict of interest relative to the performance under the Contract. Examples of potential conflicts may include an existing business or personal relationship between Offeror, its principal, or any affiliate or subcontractor, with HCPSS or any other entity or person involved in any way in the Contract. By submitting a proposal, the Offeror agrees that, if selected, it will be independent and not be unduly influenced by any group or individuals, public or private, to include the HCPSS, Maryland State Department of Education, Maryland State Government, or any of its respective employees, members, or representatives.

2.7 Submittal Requirements

Please refer to Part III, below.

2.8 Cost Proposal

Please refer to Section 4.2 and Appendix C, below.

**PART III
SUBMITTAL AND CONTRACT REQUIREMENTS**

3.1 Technical Response

The Offeror should prepare their response to the Request for Proposal as described below. For rating purposes the submittal will be evaluated for the following distinct parts.

A. Offeror Qualifications

1. Established firm for past three years.
2. Demonstrated ability to provide the services described herein.
3. Clearly defined means and methods of providing the described services.
4. Proposed costs to provide services

B. Submittals

Company profile, to include:

- (a) How long in business under current name.
- (b) Business contact information.
- (c) Statement as to business and/or principals' involvement in any legal action pending or resolved regarding failure to perform in the state of Maryland during the previous three years, furnish details and outcome. This includes a declaration that the Offeror is not listed on the Excluded Parties List as maintained by the Federal Government.

C. Interpretation

A narrative expansion of the understanding of the desired services as defined in these bid documents by the Offeror.

D. Content and Material Compliance

1. The Offeror shall briefly explain how their proposed solution complies with the intent of this solicitation.

E. Cost/Fee Structure

Contractors shall submit a fee structure utilizing the Proposal Total Sheet – **Appendix C**.

F. Statutory Affidavit and Non-Collusion Certification (Appendix D).

3.2. Computer Capabilities

Describe the computer applications and other technology, if planned or needed to be used in delivering the services under solicitation.

3.3 Financial Information

Every Offeror may be required to submit a financial statement upon request, and other financial data requested or required, at the same time the competitive response is submitted, in a separate sealed envelope labeled "Financial Statement and Data."

3.4 Scope of Work to be Performed

- A. The Howard County Public School System (HCPSS) seeks an instructional phonics program for its students in elementary Kindergarten through third grade. The program must have the following components:
 - a. Correlates to Maryland College and Career state standards
 - b. Systematic and cumulative phonics instruction
 - c. Grade by grade with a sequential set of phonics elements

- d. Explicit instruction: phonology and phonological awareness, sound-symbol association, syllable instruction, semantics, syntax and morphology
 - e. Direct application within text (shared, interactive and guided reading)
 - f. Teacher instructional guide with scripted lesson plans and differentiated strategies
 - g. Interaction with phonemic awareness and phonics elements over multiple days
 - h. Opportunity for students to practice daily
 - i. Support for hands-on, multi-sensory activities
 - j. Diagnostic and Formative assessments- Progress monitoring tools
 - k. Digital Resources that will interface with Clever or Canvas
 - l. Offers a range of professional development experiences
 - m. Meets the expectation of ESSA to include evidenced-based instructional practices
- B. The program must be able to show evidence of effectiveness:
- a. In students of multiple races/ethnicities
 - b. With significant positive effects on:
 - i. Improved academic performance
 - ii. Ensuring the successful transfer of foundational skills from guided practice to independent application in reading and writing.
- C. The program will adhere to HCPSS data privacy and security requirements, Attachment E.

3.5 Howard County Public School System Client Data

Please see Appendix E for the school system's standard language for protecting data.

3.6 Contract Completion and Renewal

This contract shall begin on upon award by the Board of Education, anticipated to be February 2019 for one year. The contract may be extended for an additional four (4) one-year periods subject to satisfactory performance and adequate funding.

3.7 Insurance

3.7.1. The Service Provider shall not commence services until the Service Provider has obtained at the Service Provider's own expense all of the insurance as required hereunder and such insurance has been approved by the Board. Approval of insurance required of the Service Provider will be granted only after submission to the Board of original certificates of insurance signed by authorized representatives of the insurers or, at the Board's request, certified copies of the required insurance policies.

- A. Insurance as required hereunder shall be in force throughout the term of the Contract and for two years after final payment by Board for services rendered under this Contract in accordance with the insurance requirements below. Original certificates signed by authorized representatives of the insurers or, at the Board's request, certified copies of insurance policies, evidencing that the required insurance is in effect, shall be maintained with the Board throughout the term of the Contract and for two years after final payment by Board for services rendered under this Contract.
- B. The Service Provider shall require all Subcontractors to maintain during the term of the Contract all insurance or its equivalent to the same extent required of the Service Provider herein unless any such requirement is expressly waived or amended by the Board in writing. The Service Provider shall not allow any Subcontractor to commence services on any subcontract until all insurance required of the Subcontractor has been so obtained and approved by the Service Provider. The Service Provider shall furnish Subcontractors' certificates of insurance to the Board immediately upon request.
- C. All insurance policies required hereunder shall be endorsed to provide that the policy is not

subject to cancellation, non-renewal or material reduction in coverage until sixty (60) days prior written notice has been given to the Board.

- D. Therefore, the phrases "endeavor to" and "... but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" are to be eliminated from the cancellation provision of standard ACORD certificates of insurance.
- E. No acceptance and/or approval of any insurance by the Board shall be construed as relieving or excusing the Service Provider from any liability or obligation imposed upon the Service Provider by the provisions of this Contract.
- F. If the Service Provider does not meet the insurance requirements of this Contract, the Service Provider shall forward a written request to the Board for a waiver in writing of the insurance requirement(s) not met or approval in writing of alternate insurance coverage, self-insurance, or group self-insurance arrangements. If the Board denies the request, the Service Provider must comply with the insurance requirements as specified in this Contract.
- G. All required insurance coverages must be underwritten by insurers allowed to do business in the State of Maryland and acceptable to the Board. The insurers must also have a policyholders' rating of "A-" or better, and a financial size of "Class VII" or better in the latest evaluation by A. M. Best Company, unless Board grants specific approval for an exception. The Board hereby grants specific approval for the acquisition of workers compensation and employers liability insurance from the Injured Workers Insurance Fund of Maryland.
- H. Any deductibles or retentions in excess of \$10,000 shall be disclosed by the Service Provider, and are subject to Board's written approval. Any deductible or retention amounts elected by the Service Provider or imposed by the Service Provider's insurer(s) shall be the sole responsibility of the Service Provider.
- I. Any and all return premiums and/or dividends for insurance or coverage directly charged to the Board by the Service Provider in connection with this Contract shall belong to and be payable to the Board.
- J. If the Board is damaged by the failure or neglect of the Service Provider to purchase and maintain insurance as described and required herein, without so notifying the Board, then the Service Provider shall bear all reasonable costs properly attributable thereto.

3.7.2. Service Provider's Liability Insurance

The Service Provider shall purchase and maintain the following insurance coverages which shall be written for not less than the limits specified below or required by law, whichever is greater.

A. Commercial general liability insurance or its equivalent for bodily injury, personal injury and property damage including loss of use, with minimum limits of:

- \$ 1,000,000 each occurrence;
- \$ 1,000,000 personal and advertising injury;
- \$ 2,000,000 general aggregate; and
- \$ 1,000,000 products/completed operations aggregate.

This insurance shall include coverage for all of the following:

- i. Liability arising from premises and operations;

- ii. Liability arising from the actions of independent contractors;
- iii. Liability arising from products and completed operations;
- iv. Contractual liability including protection for the Service Provider from bodily injury and property damage claims arising out of liability assumed under this Contract; and
- v. Liability arising from injury to patients when caused by other than medical malpractice.

B. Business auto liability insurance or its equivalent with a minimum limit of \$1,000,000 per accident and including coverage for all of the following:

- i. Liability arising out of the ownership, maintenance or use of any auto (if no owned autos, hired and non-owned autos only); and
- ii. Automobile contractual liability.

C. Workers compensation insurance or its equivalent with statutory benefits as required by any state or Federal law, including standard "other states" coverage; employers liability insurance or its equivalent with minimum limits of:

- \$ 100,000 each accident for bodily injury by accident;
- \$ 100,000 each employee for bodily injury by disease; and
- \$ 500,000 policy limit for bodily injury by disease.

If the Service Provider is an individual or sole proprietor operating without workers compensation coverage, personal health insurance or its equivalent.

D. Service Provider's medical professional liability (or errors or omissions liability) insurance or its equivalent with limits totaling at a minimum:

- \$ 3,000,000 each person or claim; and
- \$ 3,000,000 annual aggregate.

E. Individual medical professional liability insurance or its equivalent for the individual professionals arranged by the Service Provider to provide medical services under this Contract with minimum limits of:

- \$ 1,000,000 each person or claim; and
- \$ 3,000,000 annual aggregate.

F. Umbrella excess liability or excess liability insurance or its equivalent with minimum limits of:

- (\$ 2,000,000)per occurrence;
- (\$ 2,000,000)aggregate for other than products/completed operations and auto liability; and
- (\$ 2,000,000)products/completed operations aggregate

and including all of the following coverages on the applicable schedule of underlying insurance:

- i. Commercial general liability;
- ii. Business auto liability; and
- iii. Employer's liability.

3.7.3. The Board of Education of Howard County and the Board's elected and appointed officials, officers, consultants, agents and employees shall be named as additional insured on the Service Provider's commercial general liability insurance and the umbrella excess liability or

excess liability policies, if required herein, with respect to liability arising out of the services provided under this Contract by Service Provider.

Special Note: ISO forms CG 2009 and CG 2054 entitled “Additional Insured - Owners, Lessees or Contractors – Scheduled Person or Organization” (previously Forms A and B respectively) are ***NOT ACCEPTABLE***. ISO form CG 2026 entitled “Additional Insured - Designated Person or Organization” ***or*** a manuscript endorsement with the above wording is required.

- A. Insurance or self-insurance provided to the Board and Board's elected and appointed officials, officers, consultants, agents and employees under any Service Provider's liability insurance or self-insurance required herein, including, but not limited to, umbrella and excess liability or excess liability policies, shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of insurance or self-insurance. (Any cross suits or cross liability exclusion shall be deleted from Service Provider's liability insurance policies required herein.)
- B. Insurance or self-insurance provided to the Board and Board's elected and appointed officials, officers, consultants, agents and employees as specified herein shall be primary, and any other insurance, self-insurance, coverage or indemnity available to the Board and Board's elected and appointed officials, officers, consultants, agents and employees shall be excess of and non-contributory with insurance or self-insurance provided to the Board and Board's elected and appointed officials, officers, consultants, agents and employees as specified herein.
- C. If any liability insurance purchased by the Service Provider has been issued on a "claims made" basis, the Service Provider must agree to comply with the following additional conditions:
 - i. The Service Provider shall maintain each such “claims made” coverage and shall provide certificate(s) of insurance evidencing each such “claims made” coverage for a period of two years after final payment for services rendered under the Contract. Such certificate(s) shall evidence a retroactive date no later than the beginning of the services provided under this Contract; ***or***
 - ii. The Service Provider shall purchase an extended (minimum two years) reporting period endorsement for each such "claims made" policy in force as of the date of final acceptance and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself. Such certificate or copy of the endorsement shall evidence a retroactive date no later than the beginning of the services provided under this Contract.

3.7.4. Indemnification

To the fullest extent permitted by law, Service Provider agrees to defend, indemnify, pay on behalf of, and save harmless the Board of Education of Howard County, its elected and appointed officials, agents, employees, and authorized volunteers against any and all claims, liability, demands, suits or loss, including attorneys’ fees and all other costs connected therewith, arising out of or connected to the services provided by Service Provider under this Contract.

3.7.5. Waiver of Subrogation

To the fullest extent permitted by law, the Service Provider and its invitees, employees, officials, volunteers, agents and representatives waive any right of recovery against the Board of Education of Howard County for any and all claims, liability, loss, damage, costs or expense (including

attorneys' fees) arising out of the services provided by Service Provider under this Contract. Service Provider specifically waives any right of recovery against the Board and its elected and appointed officials, officers, volunteers, agents and employees for personal injury (and any resulting loss of income) suffered while working on behalf of the Board as an independent contractor. Such waiver shall apply regardless of the cause of origin of the injury, loss or damage, including the negligence of the Board and its elected and appointed officials, officers, volunteers, agents and employees. The Service Provider shall advise its insurers of the foregoing.

3.7.6 Acknowledgment of Service Provider's Independent Contractor Status and No Coverage for Service Provider under Board's Workers Compensation Coverage

Service Provider hereby acknowledges its status as an independent contractor while performing services on behalf on the Board and that the Board's workers compensation coverage or self-insurance is not intended to and will not respond to cover any medical or indemnity loss arising out of injury to the Service Provider or its employees during the Service Provider's performance of services for the Board. To the fullest extent permitted by law, the Service Provider specifically waives any right of recovery against the board and its elected and appointed officials, officers, volunteers, agents and employees for personal injury (and any resulting loss of income) suffered during the performance of services as an independent contractor for the Board. Such waiver shall apply regardless of the cause of origin of the injury, loss or damage, including the negligence of the Board and its elected and appointed officials, officers, volunteers, agents and employees. The Service Provider shall advise its insurers of the foregoing.

3.7.7. Damage to Property of the Service Provider and its Invitees

To the fullest extent permitted by law, the Service Provider shall be solely responsible for any loss or damage to property of the Service Provider or its invitees, employees, officials, volunteers, agents and representatives while such property is on, at or adjacent to the premises of the Board.

3.8 Americans with Disabilities Act Requirements:

1. The Howard County Public School 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. HCPSS 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.
2. Your acceptance of this contract acknowledges your commitment and compliance with ADA.

3.9 Optional Use of Contract

1. The Mid-Atlantic Purchasing Team (MAPT) is the title of the agreement between the Metropolitan Washington Council of Governments and the Baltimore Metropolitan Council to aggregate the purchasing volumes in the Maryland, Virginia and Washington D.C. regions. A lead agency format is used to accomplish this work, and neither the lead agency nor MWCOG or BMC are compensated through the contract.
2. Participating entities, through their participation, agree to the terms and conditions of the resulting contract to the extent that they can be reasonably applied to the participating entity. Participating entities may also negotiate additional terms and conditions specific to their local requirements upon mutual agreement between the parties.
3. The supplier agrees 1) this contract shall be governed by and construed in accordance with the laws of the State in which the participating entity officially resides; 2) the regional coordinators of cooperative purchasing in MWCOG and BMC shall be provided reasonable contract usage reporting on demand and without further approval of contract participants; 3) contract obligations

rest solely with the participating entities only; and 4) significant changes in total contract value may result in further negotiations of contract pricing for the participating entities.

4. Consider the broad reach of MAPT with public and non-profit entities in this super region.

PART IV

SUBMITTAL EVALUATION AND SELECTION PROCESS

4.1 Introduction

This Part details the submittal evaluation and selection process and the mandatory format for submission of the cost portion of submittals (“cost proposals”).

4.2 Cost Proposal

The respondent must utilize the format provided in Appendix C in submitting a cost proposal in response to this RFP. The cost proposal must be included in each copy of the submittal. Additional sheets may be attached to expand on the proposed pricing model.

4.3 Submittal Evaluation and Selection

HCPSS will evaluate submittals on the basis set forth in this section. A contract may be awarded the Contractor whose submittal best meets HCPSS requirements and needs at the time of the award. Cost will have 40% weight with 25% weight for the qualifications of the Offeror and the remaining weight given to the Offeror’s response to the RFP, compliance with materials offered. The Board reserves the right to request Best and Final Offers as a result of the need for clarifications to the solicitation requirements.

**PART V
PAYMENTS**

5.1 Payments

HCPSS will make every effort to pay the Contractor within thirty (30) days of acceptance of an approved invoice.

APPENDIX A

GENERAL PROVISIONS

I. CONTRACT AWARD

Any award to furnish services to The Howard County Public School System (referred to as "HCPSS") shall include, in whole or in part, either attached or incorporated by reference, binding in all respects, these provisions.

II. ORDER OF PRECEDENCE

In the event of an inconsistency among provisions of this Request for Proposal, the inconsistency shall be resolved by the following order of precedence:

- Terms and Conditions
- General Provisions for Professional Services
- Request for Proposal and Appendices

III. WAIVER OF RIGHT TO BID ON OTHER CONTRACTS

The Contractor agrees that it and its parent, its affiliates and subsidiaries, if any, waive the right to bid on any procurement contracts, of any tier, resulting from the services to be provided under this agreement.

IV. PUBLIC INFORMATION ACT NOTICE

Offerors should give specific attention to the identification of those portions of their submittals that they deem to be confidential, proprietary information or trade secrets and provide any justification of why such materials, upon request, should not be disclosed by HCPSS. Blanket requests for the entire submittal to be held confidential will not be accepted.

HCPSS shall determine, in their sole discretion, which (if any) portions of the Offeror's submittals shall be confidential.

V. INITIATION OF WORK

The Contractor shall not commence performance of the services until it receives a formal written notice of award from HCPSS.

VI. RESPONSIBILITY FOR CLAIMS AND LIABILITY

The Contractor shall be responsible for any personnel injury, loss of life, and damage to or loss of property arising from or related to Contractor's activities or those of its subcontractors, agents, or employees in connection with the services required under this agreement. The Contractor shall indemnify and save harmless HCPSS, its elected officials, officers, agents and employees from and against all claims, suits, demands, judgments, expenses, actions, damages and costs of every name and description, including but not limited to attorney's fees arising out of or resulting from its negligent or wrongful performance or failure of performance of the services of the Contractor under this agreement or the activities conducted or required to be conducted by the Contractor under this agreement, including its subcontractors, agents, or employees.

VII. CHANGES ALTERATIONS, OR MODIFICATIONS IN THE SERVICES

HCPSS shall have the right, at their discretion, to change, alter, or modify the services provided for in this agreement and such changes, alterations, or modifications may be made even though it will result in an increase or decrease in the services of the Contractor or in the contract cost thereof.

If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of any service under this contract, whether or not changed by an order, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim of the Contractor for adjustment under this clause must be asserted in writing with 30 days from the date of receipt by the Contractor of the notification of change unless the project manager or his duly authorized representative grants a further period of time before the date of final payment under the contract.

No services for which an additional cost or fee will be charged by the Contractor shall be furnished without prior written authorization of HCPSS.

VIII. REMEDIES AND TERMINATION

A. ***Termination for Default*** - If the Contractor fails to fulfill its obligations under this contract properly and on time, otherwise violates any provision of the contract, HCPSS may terminate the contract by written notice to the Contractor. The notice shall specify the acts of omissions relied on as cause for termination. All finished or unfinished supplies and services provided by the Contractor, shall at HCPSS's option, become HCPSS property. HCPSS shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach.

If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and HCPSS can affirmatively collect damages.

B. ***Termination for Convenience of HCPSS*** - HCPSS may terminate all or any part of the work required under this contract for the convenience of HCPSS. In the event of such termination, the contract manager shall determine the costs the Contractor has incurred to the date of termination and such reasonable costs associated with the termination. HCPSS shall pay such costs as determined by the contract manager to the Contractor together with reasonable profit reasonably earned by the Contractor to the time of termination but not to include any profit not earned as of the date of termination.

C. ***Termination for Breach*** – HCPSS may terminate all or any part of the work without cause or justification if the Contractor fails to provide the appropriate staff as required and without proper notification. In addition, offsetting payments may be withheld if HCPSS incurs additional costs over and above the Contractor's contract rates.

E. ***Obligations of Contractor upon Termination*** - Upon notice of termination as provided in Paragraphs C and D above, the Contractor shall:

1. Take immediate action to orderly discontinue its work and demobilize its work force to minimize the occurrence of costs.
2. Take such action as may be necessary to protect the property of HCPSS, place no further orders or subcontract, assign to HCPSS in the manner and to the extent directed by HCPSS all of the right, title and if ordered by HCPSS possession and interest of Contractor under the orders or subcontracts terminated.
3. Deliver to HCPSS all materials, equipment, data, drawings, specifications, reports, estimates, and such other information accumulated by the Contractor which has been or will be reimbursed under this agreement after taking into account any damages that may be payable to HCPSS. Title to such items shall be transferred to HCPSS.

- F. ***Remedies Not Exclusive*** - The rights and remedies contained in this general condition are in addition to any other right or remedy provided by law, and the exercise of any of them is not a waiver of any other right or remedy provided by law.

IX. RESPONSIBILITY OF CONTRACTOR

- A. Notwithstanding any review, approval, acceptance, or payment for the services by HCPSS, the Contractor shall be responsible for professional and technical accuracy of its work furnished by the Contractor under this agreement.
- B. HCPSS's review, approval, or acceptance of, nor payment for, any of the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Contractor shall be and remain liable to HCPSS in accordance with applicable law for all damages to HCPSS caused by the Contractor's negligent performance of any or the services furnished under this contract.
- C. The rights and remedies of HCPSS provided for under this contract are in addition to any rights and remedies provided by law.

X. DISPUTES; GOVERNING LAW

Except as otherwise provided in these contractual documents, any claim, dispute, or other matter in question concerning a question of fact shall initially be referred to the HCPSS contract manager. Any claim, dispute, or other matter in question concerning a question of fact referred to the contract manager that is not disposed of by agreement shall be referred to the purchasing officer, HCPSS, who shall reduce his decision to writing and mail or otherwise furnish a copy to the Contractor. The decision of HCPSS shall be final and conclusive.

The contract shall be governed by the law of the State of Maryland and nothing in this contract shall be interpreted to preclude the parties from seeking, after completion or termination of the agreement, any and all remedies provided by law.

XI. EXAMINATION OF RECORDS

The Contractor agrees that the auditor of HCPSS any of their duly authorized representatives shall, until expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

XII. DISSEMINATION OF INFORMATION

During the term of this agreement, the Contractor shall not release any information related to the services or performance of the services under this agreement nor publish any final reports or documents without the prior written approval of the HCPSS contract manager.

XIII. NON-HIRING OF EMPLOYEES

No employee of the Board of Education of Howard County or any department, commission, or agency or branch thereof, whose duties as such employee include matters relating to or affecting the subject matter of this contract, shall, while such employee, become or be an employee of the party or parties hereby contracting with said HCPSS, or any department, commission, agency or branch thereof.

XIV. CONTINGENT FEE PROHIBITION

- A. The Contractor warrants that they have not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the

Contractor, to solicit or secure this agreement, and that they have not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement.

- B. For breach or violation of this warranty, HCPSS shall have the right to terminate this agreement without liability, or, at its discretion, to deduct from the contract price or consideration, or percentage, brokerage fee, gift or contingent fee.

XV. COMPLIANCE WITH LAW

The Contractor hereby represents and warrants:

- A. That it is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified.
- B. That it is not in arrears with respect to the payment of any monies due and owing the county or state, of any department or agency thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this agreement.
- C. That it shall comply with all federal, state, and local law, ordinances and legally enforceable rules and regulations applicable to its activities and obligations under this agreement.
- D. That it shall procure, at its expense, all licenses, permits, insurance, and governmental approval, if any, necessary to the performance of its obligations under this agreement.
- E. That the facts and matters set forth hereafter in the "Contract Affidavit" which is attached to this agreement and made a part hereof are true and correct.

XVI. OWNERSHIP AND USE OF PROGRAM MATERIALS

All materials, including but not limited to training documents, program and software, diagnostic equipment and energy information systems furnished by Contractor to HCPSS in connection to this Program shall remain the property of the School System. No materials will be returned to the Contractor at the end of the contract period including any that are copyrighted. HCPSS shall have the right to continue using all and any control equipment and document materials for as long as the School System desires to do so.

XVII. ADHERENCE TO SCHOOL SYSTEM POLICIES

The Contractor understands that HCPSS shall not be required to act contrary to the School System policies or unreasonably interfere with the School System operations. The Contractor and any Sub-Contractor personnel assigned to this project must be cognizant of School System policies and operating procedures at all times. Health and safety policies and procedures will not be compromised. Proposed programs must not violate or conflict with the School System policies and procedures. Moreover, the Contractor shall be cognizant of federal and state regulations and policies and all proposals and subsequent work shall adhere to known regulations and policies

APPENDIX B

STANDARD CONTRACT - SAMPLE

AGREEMENT # _____

THIS AGREEMENT is entered into this _____ Date, effective as of this date, by and between the Board of Education of Howard County (hereinafter referred to as the "Board") and _____ Contractor, (hereinafter referred to as the "Contractor").

RECITALS

WHEREAS, the Contractor submitted a proposal to RFP # 047.19.B1 issued by the Board and has been selected to perform professional services in accordance with the terms and conditions expressed in the RFP;

WHEREAS, Board desires the Contractor to perform certain work and services, on the terms and conditions herein set forth and the Contractor is ready, willing, and able to perform such work and services; and

WHEREAS, this Agreement shall be administered by the Project Manager or such other persons designated by The Board of Education.

NOW, THEREFORE, in consideration of the promises contained herein and the promises each to the other made, the parties hereby agree as follows:

ARTICLE I - CATEGORY OF WORK AND SERVICES

- (1) The work and services to be performed by the Contractor shall be in accordance with the following documents:

Request for Proposal _____, RFP # 047.19.B1, dated _____, 2019; and _____ (contractor name) proposal dated _____, 2019.

ARTICLE II - TERMS AND CONDITIONS

Contractor agrees to perform the work and services required under this Agreement in accordance with RFP # 047.19.B1, whose provisions for services are incorporated herein by reference.

ARTICLE III - TERM OF AGREEMENT

The term of agreement shall begin upon award for a period of one year. Contract renewals may be made for up to four one-year renewals subject to satisfactory performance and funding.

ARTICLE IV - PAYMENTS AND SCHEDULE OF PAYMENTS

The Contractor shall receive compensation within 30 days of invoice date.

ARTICLE V - INSURANCE

The Contractor agrees to and has complied with the insurance requirements set forth in the RFP.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above-written.

BOARD OF EDUCATION OF HOWARD COUNTY

By: _____(SEAL)
Mavis Ellis, Chair
Board of Education of Howard County

By: _____(SEAL)
Dr. Michael J. Martirano, Superintendent
Howard County Public School System

By: _____
Signature

Typed Title

Company Name

Address

City, State Zip

Telephone Fax

APPENDIX C

A. GENERAL INFORMATION

1. Offeror's Name: _____

2. Person Responsible for completing this form:

Name: _____

Title: _____

Address: _____

Telephone: () _____ Fax: () _____

3. The information in this response is binding until _____
(Date)

4. Name and addresses of both service and fiscal representatives (Key Personnel) who would handle this account.

Service/Sales Representative: _____

FORM FOR COST PROPOSAL

Quantity Breaks*

Cost per Teacher
material: \$ _____ each

Cost per subscription
per student \$ _____ each
Program cost** \$ _____ each

Attach additional sheets if necessary. Please as descriptive as possible.

Note: * Please identify quantity breaks, if any, for quantities up to 500 units.
** This represents a program wide or enterprise distribution by school.

APPENDIX D

AFFIDAVIT

Special Instructions: An authorized representative of the Offeror needs to complete the following affidavit and insert an answer to paragraphs 1 and 3.

Statutory Affidavit and Non-Collusion Certification

I, _____, being duly sworn, depose and state:

1. I am the _____ (officer) and duly authorized representative of the firm (the "Firm") _____ whose address is _____ and that I possess the authority to make this affidavit and certification on behalf of myself and the firm for which I am acting.

2. Except as described in paragraph 3 below, neither I, nor to the best of my knowledge, the above Firm, nor any of its officers, directors, or partners, or any of its employees who are directly involved in obtaining or performing contracts with any public bodies has:

(a) been convicted of bribery, attempted bribery, or conspiracy to bribe, under the laws of any state or of the federal government;

(b) been convicted under the laws of the state, another state, or the United States of: a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;

(c) been convicted of a criminal violation of an antitrust statute of the State of Maryland, another state, or the United States;

(d) been convicted of a violation of the Racketeer Influenced and Corrupt Organization Act, or the Mail Fraud Act, for acts in connection with the submission of bids or proposals for a public or private contract;

(e) been convicted of any felony offenses connected with obtaining, holding, or maintaining a minority business enterprise certification, as prohibited by Section 14-308 of the State Finance ~ Procurement Article;

(f) been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction under any of the laws or statutes described in paragraph (a) through (e) above; or

(g) been found civilly liable under an antitrust statute of this State, another state, or the United States for acts or omissions in connection with the submission of bids or proposals for a public or private contract.

3. The only conviction, plea, or admission by any officer, director, partner, or employee of this Firm to involvement in any of the conduct described in paragraph 2 above is as follows:

If none, write "None" below. If involvement, list the date, count, or charge, official or administrative body, the individuals involved, their position with the firm, and the sentence or disposition of the charge.

(You may attach any explanation necessary.)

4. I affirm that this firm will not knowingly enter into a contract with a public body under which a person or business debarred or suspended under Maryland State Finance and Procurement Title 16, subtitle 3, Annotated Code of Maryland, as amended, will provide, directly or indirectly, supplies, services, architectural services, construction-related services, leases of real property, or construction.
5. I affirm that this proposal or bid to the Board of Education of Howard County is genuine and not collusive or a sham; that said Offeror has not colluded, conspired, connived and agreed, directly or indirectly, with any bidder or person to put in a sham bid or proposal or to refrain from bidding or making a proposal and is not in any manner, directly or indirectly, sought by agreement of collusion or communication or conference, with any person to fix the prices of the affidavit or any other person, or to fix any overhead, profit or cost element of said price, or that if any person, or to secure an advantage against the Board of Education of Howard County or any other person interested in the proposed contract; and that all statements in the proposal or bid are true. I acknowledge that, if the representations set forth in this affidavit are not true and correct, the Board of Education of Howard County may terminate any contract awarded and take any other appropriate action.
6. I affirm that this firm will not knowingly employ an individual to work at a school if the individual is a Registered Sexual Offender, pursuant to section 11-722 (C) of the Criminal Procedure Article of the Annotate Code of Maryland. A firm or person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.

The statements contained in this affidavit shall be incorporated into the awarded contract as material provisions and shall be effective throughout the life of the contract. The firm has a continuing obligation through the life of the contract to submit a revised affidavit should the firm discover information, or events occur, which render the contents of this affidavit erroneous or incomplete or which would result in the firm providing a different response. The firm's failure to submit a revised affidavit within three (3) working days of either its awareness of any error, change of circumstances, incompleteness, etc., or request by the owner shall constitute breach of contract. Upon submission of a revised affidavit, the owner has the right to take such actions as may be necessary, in the judgment of the owner, to maintain and enforce the provisions of the affidavit, including termination of the contract.

Continued next page

I DO SOLEMNLY DECLARE AND AFFIRM under the penalties of perjury that the contents of these affidavits (Statutory and Non-Collusion) are true and correct, that I am executing this Affidavit in compliance with Section 16-311 of the State Finance and Procurement Article, Annotated Code of Maryland, and the Non-Collusion Certification in compliance with requirements of the Howard County Board of Education, and that I am executing and submitting this Form of Proposal on behalf of and as authorized by the bidder named below.

(Legal Name of Company)

(Address)

(City)

(State)

(Zip)

(Telephone)

(Fax)

Contractor's No. _____

(Signature)

(Title)

(Date)

(Printed)

In the presence of _____

(Witness)

(Date)

We are/I am licensed to do business in the State of Maryland as a:

Corporation

Partnership

Individual

Other

APPENDIX E

HCPSS Data Sharing Agreement

HCPSS, as a Government entity, is required when entering into agreements with other parties to follow all applicable laws and regulations, including those related to data privacy and security; accessibility; and records retention. Accordingly, the ENTITY's Terms of Service (TOS) are hereby modified by this Amendment as they pertain to HCPSS's use of the ENTITY's Site and/or Services and the ENTITY's access to and use of HCPSS Client Data as defined herein.

- A. *Definition of "CLIENT Data"*:** CLIENT Data include all Personally Identifiable Information (PII) contained in a student's "education record" as defined by the Family Educational Rights and Privacy Act (FERPA) (34 CFR Part 99); and other non-public information that included, but is not limited to: personally identifiable personnel data, personally identifiable student data, personally identifiable metadata, and personally identifiable user content.
- B. *Data Collection and Use*:** ENTITY will collect and use CLIENT Data only for the purpose of fulfilling its duties and providing services under this Agreement, and for improving services under this Agreement.
- C. *Education Records*:** If ENTITY will have access to "education records" as defined under the Family Educational Rights and Privacy Act (FERPA) (34 CFR Part 99), the ENTITY acknowledges that for the purpose of this Agreement it will be designated as a "school official" with "legitimate educational interests" and will use the data only for the purpose of fulfilling its duties under this Agreement. ENTITY agrees to indemnify and hold harmless the Board of Education of Howard County for any damages or costs, including reasonable attorney's fees, which arise out of any negligence or misconduct by ENTITY, its agents and employees concerning its FERPA obligations under this section.
- D. *Obligation of Confidentiality*:** In performing services under this Agreement, ENTITY and CLIENT may be exposed to and will be required to use certain "Confidential Information", as defined below. ENTITY and CLIENT along with their employees, agents or representatives will not, use, directly or indirectly, such Confidential Information for purposes other than the purposes outlined in this Agreement.
- E. *Definition of Confidential Information*:** "Confidential Information" means information, not generally known, and proprietary to the ENTITY or CLIENT or to a third party for whom the ENTITY or CLIENT is performing work, including, without limitation, information concerning any patents or trade secrets, confidential or secret designs, processes, formulae, source codes, plans, devices or material, research and development, proprietary software, analysis, techniques, materials or designs (whether or not patented or patentable), directly or indirectly useful in any aspect of the business of the ENTITY or CLIENT. Confidential Information includes all information which ENTITY or CLIENT acquires or becomes acquainted with during the period of this Agreement, whether developed by ENTITY, CLIENT or others, which ENTITY or CLIENT has a reasonable basis to believe to be Confidential, such as data that is personally identifiable to an individual student and information within the definition of "Education Record." The parties agree that the following will be treated as "Confidential Information": (i) all database information ("Data") provided by or on behalf of CLIENT to ENTITY; (ii) all information provided by ENTITY to CLIENT pertaining to the Services; (iii) all information which is labeled as such in writing and prominently marked as "Confidential," "Proprietary" or words of similar meaning by either party; or (iv) business information of a party which a reasonable person would understand under the circumstances to be confidential.
- F. *Maintenance of Confidentiality*:** Any Confidential Information acquired or received by either party (the "Recipient") in the course of this Agreement will not be disclosed or transferred to any person or entity other than to employees of a party and, as to ENTITY, for the purpose of performing its obligations under this Agreement. Confidential Information received under this Agreement will be treated with the same degree of care and security as each party uses with respect to its own Confidential Information, but not less than a reasonable degree of care. The parties agree to use Confidential Information only for the purpose of performance of this Agreement and to make no copies except as necessary for performance of this Agreement. Any such confidential information and copies thereof made by a party, or any representative of a party, shall be completely and promptly destroyed at the conclusion of contract performance subject to paragraph F.1 below.

 - 1. Upon termination or completion of the Services hereunder, upon request of CLIENT, ENTITY will delete the CLIENT's Confidential Information as housed in the ENTITY production database(s),

provided that ENTITY may maintain archival copies for audit purposes and dispute resolution purposes and ENTITY may retain copies of Confidential Information on back-up media in which such Data is co-resident with other employment and income data. ENTITY shall remain under its contractual obligation of confidentiality and security to CLIENT and such obligations shall survive termination of the Agreement. This Section shall survive the termination of this Agreement.

- G. **Data De-Identification:** ENTITY may use de-identified Data for product development, research, or other internal purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Furthermore, ENTITY agrees not to attempt to re-identify de-identified Data.
- H. **Data Mining, Marketing and Advertising:** Except as indicated in Section G above, ENTITY is prohibited from mining CLIENT Data for any purposes other than those agreed to by the parties. **Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited. Any and all forms of advertisement, directed towards children, parents, guardians, or District Employees will be strictly prohibited unless allowed with express written consent of the District.**
- I. **Modification of Terms of Service:** ENTITY will not change how CLIENT Data are collected, used, or shared under the terms of this Agreement in any way without advance notice to the CLIENT. This Agreement is the entire agreement between the CLIENT (including all District end users) and the ENTITY. All other agreements or understandings, whether electronic, click-through, verbal or in writing, with District Employees or other End Users shall be null and void.
- J. **Data Sharing:** ENTITY will not share CLIENT data, with or disclose it to any third party, except to affiliated subcontractors, agents, or third-party service providers of the ENTITY, without prior specific and informed written consent of the CLIENT, except as required by law.
- K. **Data Storage:** CLIENT Data will not be stored outside of the United States without prior, specific and informed written consent from the CLIENT.
- L. **Terms, Data Transfer, Survival and Destruction:** The CLIENT may immediately terminate the Agreement if the CLIENT determines the ENTITY has breached this Agreement. The Agreement will automatically terminate at the expiration date. However, the ENTITY's obligations shall survive termination of this Agreement until ALL CLIENT Data has been returned and/or securely removed or destroyed. ENTITY will ensure that all Data in its possession and in the possession of any subcontractors, or agents to which the ENTITY may have transferred Data, are destroyed.
- M. **Rights and License in and to Data:** All goods, products, materials, documents, reports, writings, video images, photographs, papers and intellectual property of any nature including software or computer images prepared by the ENTITY (or subcontractors) for the CLIENT or from CLIENT-provided material will not be disclosed to any other person or entity and remains the property of the school system. All student-produced work remains the property of the school system or that eligible student. The ENTITY has a limited, nonexclusive license to the data described herein solely for the purpose of performing its obligations as outlined in the Agreement. This Agreement does not give ENTITY any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in the Agreement, including any right to sell or trade Data.
- N. **Access:** Except as otherwise expressly prohibited by law, the ENTITY will immediately notify the CLIENT of any subpoenas, warrants, or other legal orders, demands or requests, including Audits, and governmental requests and demands, received by the ENTITY seeking CLIENT Data. If the CLIENT receives a similar request, the ENTITY will promptly supply the CLIENT with copies of records or information required by the CLIENT to respond.
- O. **Security Controls and Risk Management:** ENTITY will store and process CLIENT Data in accordance with industry best practices. This includes appropriate administrative, physical, and technical safeguards to: 1) ensure the security and confidentiality of PII and Confidential Information; 2) protect against any anticipated threats or hazards to the security or integrity of Confidential Information; 3) protect against unauthorized access to or use of Confidential Information that could result in substantial harm or inconvenience to any customer or

to any client employee and/or student; and 4) dispose of PII and Confidential Information in a secure manner.

1. To comply with the safeguard obligations generally described above, ENTITY has (a) designated an employee to coordinate its information security program, (b) identified reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of CLIENT Information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, and assessed the sufficiency of any safeguards in place to control these risks, and (c) designed and implemented information safeguards to control the risks identified through the risk assessment, and regularly tests or otherwise monitors the effectiveness of safeguards' key controls, systems and procedures.
 2. ENTITY will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. ENTITY will also have a written incident response plan, to include prompt notification of HCPSS in the event of a security or privacy incident, as well as best practices for responding to a breach of PII.
- P. *Data Breaches:*** ENTITY shall notify CLIENT in writing as soon as commercially practicable, however no later than forty-eight (48) hours, after ENTITY has either actual or constructive knowledge of a breach which affects the confidentiality, integrity, and/or accessibility of CLIENT's Data (an "Incident") unless it is determined by law enforcement that such notification would impede or delay their investigation. ENTITY shall have actual or constructive knowledge of an Incident if ENTITY actually knows there has been an Incident or if ENTITY has reasonable basis in facts or circumstances, whether acts or omissions, for its belief that an Incident has occurred. The notification required by this section shall be made as soon as commercially practicable after the law enforcement agency determines that notification will not impede or compromise the investigation. ENTITY shall cooperate with law enforcement in accordance with applicable law provided however, that such cooperation shall not result in or cause an undue delay to remediation of the Incident. ENTITY shall promptly take appropriate action to mitigate such risk or potential problem at ENTITY's expense. In the event of an Incident, ENTITY shall, at its sole cost and expense, restore the Confidential Information, to as close its original state as practical, including, without limitation any and all Data, and institute appropriate measures to prevent any recurrence of the problem as soon as is commercially practicable.
- Q. *Employee and Subcontractor Qualifications:*** ENTITY shall ensure that its employees and all subcontractors who have potential access to CLIENT Data have undergone appropriate background screening and possess all needed qualifications to comply with the terms of this Agreement. Further, all employees and subcontractors are subject to the same FERPA compliance in relation to the 'school official' designation, and should receive training that the re-disclosure of PII and/or Confidential Information will violate federal and state laws and may result in criminal and/or civil penalties.
- R. *Governing Law:*** This agreement shall be governed by and construed in accordance with the laws of Maryland, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the appropriate Maryland Court. ENTITY will comply with Maryland Education Code ANN. § 4-131, "Operators of School Internet Web sites, Online Services, Online Applications, and Mobile Applications." ENTITY agrees to be bound as an "operator" under the law regardless of the ENTITY's exemptions that may exist in Maryland Education Code ANN. § 4-131(a)(3).
- S. *Compliance:*** In addition to complying with FERPA and the Maryland Education Code cited above, the ENTITY shall ensure that its products and services comply with the Federal Protection of Pupil Rights Act (34 CFR Part 98), the Federal Children's Internet Protection Act (47 CFR 54.520), and the Federal Children's Online Privacy and Protection Act (16 CFR Part 312).
- T. *Monitoring:*** The ENTITY agrees to allow the HCPSS the ability to audit the ENTITY's use of HCPSS data to ensure compliance with the terms of this agreement.
- U. *Indemnification:*** ENTITY agrees to indemnify and hold harmless HCPSS, and its members, trustees, employees, agents, officers, and officials, from and against any and all liabilities, taxes, tax penalties, interest, losses, penalties, damages, and expenses of any kind, nature, or character, including costs and attorney fees, arising out of or relating to any and all claims, liens, damages, obligations, actions, suits, judgments, settlements, or causes of action of every kind, nature, or character, in connection with or arising out of the acts

or omissions of either entity or its employees, subcontractors, or agents under this Agreement. This provision expressly applies to, but is not limited in application to, matters and circumstances involving or implicating the unauthorized use of any trade secrets, or United States patent or copyright infringement or any liability resulting from the unauthorized disclosure of PII or Confidential Information or a breach of the obligations contained in this Data Sharing Agreement, including those set forth in paragraph R above. The indemnities set forth herein will survive the expiration or termination of this Agreement.

HCPSS agrees to indemnify and hold harmless ENTITY, and its members, trustees, employees, agents, officers, and officials, from and against any and all liabilities, taxes, tax penalties, interest, losses, penalties, damages, and expenses of any kind, nature, or character, including costs and attorney fees, arising out of or relating to any and all claims, liens, damages, obligations, actions, suits, judgments, settlements, or causes of action of every kind, nature, or character, arising out of the intentional or malicious acts of HCPSS or its employees, subcontractors, or agents under this Agreement. This provision expressly applies to, but is not limited in application to, matters and circumstances involving or implicating the unauthorized use of any trade secrets, or United States patent or copyright infringement or any liability resulting from the unauthorized disclosure of PII or Confidential Information or a breach of the obligations contained in this Data Sharing Agreement. The indemnities set forth herein will survive the expiration or termination of this Agreement.

CLIENT:

By: _____
Signature

Printed Name Title

Date

Howard County Public School System
10910 Clarksville Pike
Ellicott City, MD 21042

VENDOR:

By: _____
Signature

Printed Name Title

Date

Vendor Name

Address

City, State Zip