



Office of Purchasing
10910 Clarksville Pike, Ellicott City
Maryland 21042-6198
(410) 313-6722, fax (410) 313-6789

April 20, 2021

Invitation to All Interested Providers of Professional Hearing Examiner Services:

RFP documents may be obtained on Tuesday, **April 20, 2021** at the Howard County Department of Education, Purchasing Office website <https://purchasing.hcpss.org/business-opportunities>.

The Purchasing Office's contact for this project is Mr. Douglas Pindell, dpindell@hcpss.org. Offices are working remotely so please use the email for contacting staff.

Submittals shall be submitted electronically via email in their entirety (all pages) in PDF format no later than May 5, 2021 at 3:00 PM to BidsandProposals@hcpss.org. Bids that contain either more than one file, or files larger than 75MB, shall be inserted into an e-folder and compressed in a .zip file. To ensure delivery, if file size cumulatively exceed 75MB, it is recommended that bidders submit separate emails labeled No.1, No.2, etc.

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

It is the bidder's sole responsibility to regularly visit the HCPSS Purchasing web site listed above to download and acknowledge receipt of all Addenda. It is highly recommended that bidders ascertain if they have received all the addenda issued prior to submitting their proposal. Failure of any bidder to receive any such Addenda or interpretation may not relieve such bidder from obligation under his/her proposal as submitted.

All questions should be directed, in writing, no later than 12:00 P.M., Wednesday, April 28, 2021 to the contact above. The Howard County Public School System is under no obligation to respond to any questions that are received after the cutoff date and time. Only answers provided via addenda issued by the HCPSS will be binding. Under no circumstances are bidders, including third party vendors or their staff, to contact any other HCPSS staff, employees or any related constituency for purposes associated with this solicitation, including but not limited to, obtaining or providing information. **Bidders failing to comply with this requirement may be disqualified.**

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". The signature is written in a cursive, flowing style.

Douglas Pindell
Director of Purchasing



Office of Purchasing
10910 Clarksville Pike, Ellicott City, Maryland 21042-6198
(410) 313-6723, fax (410) 313-6789

THE HOWARD COUNTY PUBLIC SCHOOL SYSTEM
10910 Clarksville Pike
Ellicott City, Maryland 21042

NO BID REPLY FORM

Sealed Bid For: Professional Hearing Examiner Services

Bid Number: 037.21.B1

Bidder: _____

To assist us in obtaining good competition on our Request for Bids, we ask that each firm that has received an invitation, but does not wish to bid, state their reason(s) below. This information will not preclude receipt of future invitations unless you request removal from the Bidders' List by so indicating below. This form may be faxed to (410) 313-6789.

We must offer a "No Bid" at this time because:

- _____ 1. We do not wish to bid under the terms and conditions of the Bid document. Our objections are:

- _____ 2. We do not feel we can be competitive.
- _____ 3. We cannot submit a bid because of the marketing or franchising policies of the manufacturing company.
- _____ 4. We do not wish to sell to The Howard County Public School System. Our objections are:

- _____ 5. We do not sell the item(s)/service(s) requested in the specific specifications.
- _____ 6. Other: _____

REQUEST FOR PROPOSALS
FOR
PROFESSIONAL HEARING EXAMINER SERVICES

RFP No. 037.21.B1

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

April 20, 2021

PART I GENERAL INFORMATION

1.1 Purpose

The Howard County Public School System (HCPSS) issued this Request for Proposals (RFP) to solicit proposals from qualified firms to provide the services of hearing examiners for cases that are before the Board of Education as necessary.

1.2 Background

The Howard County Public School System (HCPSS) currently has 58,000 students in 77 schools and is located between the metropolitan areas of Baltimore, Maryland and Washington, DC. While it is a suburban system in many respects, parts of it are becoming more urbanized with an influx of students and families from the two major metropolitan areas, many of them coming because of the outstanding reputation of the school system.

Respondents to this solicitation are encouraged to review the data contained in HCPSS' website for a better understanding of HCPSS, its organization and management, and the services it provides. The website includes a summary of the approved Operating Budgets. This website may be accessed at <http://www.hcpss.org/>

1.3 Contact

Questions concerning this RFP must be in writing and addressed to Douglas Pindell, Director of Purchasing, HCPSS. 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.

1.4 Deadline for Submission of Responses

To be considered, submittals shall be submitted electronically via email in their entirety (all pages) in PDF format no later than the time and date specified in the Notice to Bidders to BidsandProposals@hcpss.org, in order to be considered for this project/service.

1.5 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.

1.6 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
dpindell@hcpss.org

Written questions must be received prior to the date indicated on the invitation. HCPSS will make every effort to provide a timely, written response to questions.

1.7 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 releasability are the responsibility of HCPSS based on available information at the time of receipt of the public information request.

Transparency in the use of public funding is fundamental to HCPSS operations. Prior to the award of bids and contracts, the Board of Education of Howard County reviews and approves cost to be incurred by the school system – therefore, respondents should be aware that submission to this RFP may subject your pricing offer to release in a public forum. Additionally, pricing and payments made by HCPSS under the resulting Contract may also become subject to release as public information. HCPSS may consider both the ability to obtain necessary pricing from future respondents as well as the potential to cause harm to the competitive position of respondents in determining release of pricing detail.

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

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.

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 A)

2.3 Transmittal Letter

Firms must submit with their submittals a transmittal letter that identifies the entity submitting the submittal, 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 **90 days from the deadline for delivery of submittals. Any submittal containing a term of less than 90 days for acceptance from this deadline will be rejected as non-responsive.**

2.4 Executive Summary

Firms must provide an executive summary of their proposal and represent that the proposal addresses all of the requirements of this RFP. The executive summary must not exceed three pages.

2.5 Firm Identifying Information

Each firm must provide the following identifying information:

- a. A written summary that fairly and briefly depicts its proficiency, experience and capability in providing hearing examiner services.
- b. A list by individual, of credentials of all principals and staff attorneys that would service the HCPSS account, showing formal education and certification in specific areas of law.
- c. A list of clients that is comparable to HCPSS in size and complexity, denoting whether they are in an active or inactive status.
- d. A brief biographical sketch for each hearing examiner that would be assigned to the HCPSS account.
- e. A list of five (5) references including information that could provide an accurate representation of the firm's performance history with that client.
- f. A sample letter of engagement.
- g. A list of all active professional memberships, by individual.
- h. A general statement of philosophy regarding the role of a hearing examiner in the setting of a Maryland public school district.
- i. A listing of the hearing examiner's most current professional continuing education activities conducted within the last twenty-four (24) months.
- j. Provide bond counsel experience.

2.6 Subcontractor Information

Firms must provide statements from each of its proposed subcontractors, signed by an individual authorized to legally obligate each subcontractor, attesting to the fact that it will provide the services as represented in the submittal.

2.7 Conflict of Interest

Each firm 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 the firm, its principal, or any affiliate or subcontractor, with HCPSS or any other entity or person involved in any way in the Contract. Similarly, any personal or business relationship between the firm, the principals, or any affiliate or subcontractor, with any employee of HCPSS or its suppliers must be disclosed. Any such relationship that might be perceived or represented as a conflict must be disclosed. Failure to disclose any such relationship or reveal personal relationships with HCPSS employees may be cause for contract termination. HCPSS reserves the right, in its sole discretion, to determine if an actual or perceived conflict should result in submittal disqualification.

Each firm must reveal any past or existing relationship between the firm, its principal, employees, or any affiliate or subcontractor, with any state agency, entity, state employee, or other person in any way involved in the state's procurement and/or contracting processes. HCPSS reserves the right, in its sole discretion, to determine if such relationship constitutes a conflict of interest.

In submitting a submittal, the firm affirms that it has not given, nor intends to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same, in connection with this procurement.

By submitting a submittal the firm agrees that, if selected, the Firm 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, Howard County Government or any of its respective employees, members, or representatives.

2.8 Submittal Requirements

Please refer to Part III, below.

2.9 Cost Proposal

Please refer to Section 4.2 and Appendix A, below.

PART III

SUBMITTAL AND CONTRACT REQUIREMENTS

3.1 Technical Issues

The firm 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. Minimum Qualifications

1. Credentialed in the appropriate professions to provide these services.
2. Proven record of success on behalf of school systems in Maryland in the areas identified in section 3.2.
3. Adequate staff to respond timely to the Board of Education's needs for services.

B. Submittals

1. A statement of the firm's understanding of the services required by the Request for Proposal and attached specifications. The firm must explain how it would provide these services to the Howard County's Board of Education to fulfill the qualifications.
2. The names of the persons who are authorized to provide representations on behalf of the firm (include their titles, addresses and telephone numbers).
3. Identification of the full-time and part-time staff who may be assigned direct work with the Board.
4. A description of any comparable services performed by the firm during the most recent five-year period similar in scope to the Howard County's Board of Education. In particular, the firm should highlight any experience with placements at a national educational or non-profit organization. If the firm has provided services comparable to those specified in this Request for Proposal, provide a minimum of five (5) references. Provide complete addresses and telephone numbers of each reference, as well as the name, title and the telephone number of a contact individual.
5. The firm is welcome to outline additional services or alternative approaches that they feel are in the Howard County's Board of Education best interest.
6. The firm should guarantee delivery of services in accordance with such delivery schedule as is provided in the specifications.
7. Firms must submit a firm billing proposal by employee, position and hourly rate. Submit any other charges or costs which will be billed to the Board of Education (e.g. fax transmissions, photocopying charges, telephone charges, travel, etc.) and the rate of the charge. The firm shall provide a price for all items in this RFP which will remain valid throughout the stipulated performance period or until delivery is completed, see Appendix A.
8. Fully completed Appendix B.

D. Cost/Fee Structure

Firms shall submit a fee structure utilizing the Proposal Total Sheet – **Appendix A**.

E. Statutory Affidavit and Non-Collusion Certification, Appendix B.

3.2 Statement of Work

Proposals are sought for the following areas of law.

- A. Job Description for Hearing Examiner
The prime purpose of the Hearing Examiner is to review the record of cases on appeal to the Board of Education of Howard County and prepare draft decisions for the Board's review. To conduct administrative hearings on issues arising under the Annotate Code of Maryland Section 6-202 Suspension or dismissal of teachers, principals, and other professional personnel and Section 7-305 Suspension and Expulsion. The Hearing Examiner is to assure due process and render prompt decisions under Maryland law and regulation.
- B. Qualifications
The Hearing Examiner shall be an attorney admitted to practice before the Court of Appeals of Maryland, a member of the Maryland Bar in good standing, a minimum of four years' experience with the Educational appeals process, and excellent communication (verbal and written) skills.
- C. Services
Services are to be provided as outlined in Attachment A: Rules and Procedures for Appeals and Hearings before the Board of Education of Howard County (see attached). The Board of Education Office will coordinate court reporter services and meeting space.
- D. Responsibilities
The Hearing Examiner will contact the perspective parties and finalize arrangements prior to the hearing and estimate the time needed. The Hearing Examiner has the flexibility to establish procedures in order to streamline processes and provide an efficient hearing. Especially if the Board's Rules and Procedures (Attachment A) do not specifically address those subjects, e.g., a pre-hearing conference.

3.3 Contract Period and Renewal

- A. This contract shall begin on upon award by the Board of Education, anticipated to be May/June 2021 and terminate one year from the date of award.
- B. Automatic contract renewals are prohibited. Contract renewals must be authorized by and coordinated through the Purchasing Office. The initial term of this contract is for approximately one (1) year period. The Board reserves the right to renew the contract for four (4) additional years, one (1) year at a time.
- C. Any contract awarded pursuant to this Request for Proposal shall be conditioned upon an annual appropriation made by the Board of Education of Howard County of funds, see Sample Standard Contract, attached.

3.4 – 3.6 Sections Deleted

3.7 Insurance

3.7.1 The Contractor shall purchase and maintain the following insurance coverages at not less than the limits specified below or required by law, whichever is greater:

- 1.1 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; and
- iii. Contractual liability including protection for the Contractor from bodily injury and property damage claims arising out of liability assumed under this Contract.

- 1.2 If the Contractor has any employees, 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.

- 1.3 If the Contractor is a sole proprietor or partnership operating without workers compensation coverage, personal health insurance or its equivalent is recommended.

- 1.4 Professional liability (or errors or omissions liability) insurance or its equivalent with minimum limits of:

- \$ 1,000,000 each claim or wrongful act; and
- \$ 1,000,000 annual aggregate.

- 3.7.2.1 The Board of Education of Howard County and its elected and appointed officials, officers, employees and authorized volunteers shall be named as additional insureds on the Contractor's commercial general liability insurance with respect to liability arising out of the services provided under this Contract by Contractor.

Special Note: ISO forms CG 2009 and CG 2010 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.

- 3.7.2.2 Insurance or self-insurance provided to the Board and its elected and appointed officials, officers, employees and authorized volunteers under any Contractor's liability insurance or self-insurance required herein 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 Contractor's liability insurance policies required herein.)

- 3.7.2.3 Insurance or self-insurance provided to the Board and its elected and appointed officials, officers, employees and authorized volunteers 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, employees and authorized volunteers shall be excess of and non-contributory with insurance or self-insurance provided to the Board and its elected and appointed officials, officers, employees and authorized volunteers as specified herein.

3.7.2.4 If any liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions:

2.4.1 The Contractor shall agree to provide certificates of insurance evidencing such claims made coverages for a period of one year after final payment by the Board for Contractor's services under this Contract. Such certificates shall evidence a retroactive date no later than the earlier of the date of this Contract or the commencement of Contractor's services under this Contract; or

2.4.2 The Contractor shall purchase an extended (minimum one year) reporting period endorsement for each such "claims made" policy in force as of the date of final payment by the Board for Contractor's services under this Contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself. Such certificate or copy of the endorsement shall evidence a retroactive date no later than the earlier of the date of this Contract or the commencement of Contractor's services under this Contract.

2.4.3 The Contractor may forward a written request to HCPSS for a waiver in writing of the insurance requirement(s) not met or for approval in writing of alternate insurance coverage, self-insurance, or group self-insurance arrangements.

3.7.3 Indemnification

To the fullest extent permitted by law, Contractor agrees to defend, indemnify, pay on behalf of, and save harmless the Board, 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 Contractor under this Contract.

3.7.4 Waiver of Subrogation

To the fullest extent permitted by law, the Contractor 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 Contractor under this Contract. Contractor specifically waives any right of recovery against the Board and its elected and appointed officials, officers, volunteers, Contractors, 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, Contractors, agents and employees. The Contractor shall advise its insurers of the foregoing.

3.7.5 Acknowledgment of Contractor's Independent Contractor Status and No Coverage for Contractor under Board's Workers Compensation Coverage

Contractor 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 Contractor or its employees during the Contractor's performance of services for the Board. To the fullest extent permitted by law, the Contractor specifically waives any right of recovery against the Board and its elected and appointed officials, officers, volunteers, Contractors, 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, Contractors, agents and employees. The Contractor shall advise its insurers of the foregoing.

3.7.6 Damage to Property of the Contractor and its Invitees

To the fullest extent permitted by law, the Contractor shall be solely responsible for any loss or damage to property of the Contractor 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 Confidential Information, Data Security and Sex Offender Information

3.8.1 See APPENDIX C – Data Sharing Agreement.

3.8.2 See APPENDIX D – Employee Data Sharing Agreement

3.8.3 See APPENDIX E - Sex Offender Requirement

PART III (cont.)

TERMS AND CONDITIONS

A. **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 terms and conditions.

B. **WAIVER OF RIGHT TO BID ON OTHER CONTRACTS**

The Consultant 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.

C. **INITIATION OF WORK**

The Consultant shall not commence performance of the services until it receives a formal written notice to proceed from HCPSS.

D. **RESPONSIBILITY FOR CLAIMS AND LIABILITY**

The Consultant shall be responsible for any personnel injury, loss of life, and damage to or loss of property arising from or related to consultant's activities or those of its subcontractors, agents, or employees in connection with the services required under this agreement. The Consultant 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 attorneys fees arising out of or resulting from its negligent or wrongful performance or failure of performance of the services of the Consultant under this agreement or the activities conducted or required to be conducted by the Consultant under this agreement, including its subcontractors, agents, or employees.

E. **BILLING AND PAYMENT**

The Contractor shall submit bi-weekly invoices based on specific per transaction " totals for services as well as other detailed line items as deemed necessary to the Howard County Department of Education, (Name of Department), 10910 Clarksville Pike, Ellicott City, MD 21042, Attn: (Name of Contact), at the completion of each job. Invoices must contain the following information:

- a) Purchase Order Number
- b) Description as described above
- c) Relevant dates
- d) Total due

F. **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 Consultant or in the contract cost thereof.

If such changes cause an increase or decrease in the Consultant'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 Consultant for adjustment under this clause must be asserted in writing with 30 days from the date of receipt by the Consultant 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 Consultant shall be furnished without prior written authorization of HCPSS.

G. DELAYS AND EXTENSIONS OF TIME

The Consultant shall prosecute the work continuously and diligently and no charges or claims for damages shall be made by the Consultant for any delays, acceleration or hindrance, from any cause whatsoever, during the progress of any portion of the services specified in this agreement. Such delays, acceleration or hindrances, if any, may be compensated for by an extension of time for such reasonable period as HCPSS may decide. Time extensions will be granted only for excusable delays such as delays beyond the control and without the fault or negligence of the Consultant.

H. REMEDIES AND TERMINATION

1. ***Correction of Errors, Defects, and Omissions*** - The Consultant agrees to perform work as may be necessary to correct errors, defects, and omissions in the services required under this agreement without undue delays and without cost to HCPSS. The acceptance of the work set forth herein by HCPSS shall not relieve the Consultant of the responsibility.
2. ***Set-Off*** - HCPSS may deduct from and set-off against any amounts due and payable to the Consultant any back-charges or damages sustained by HCPSS by virtue of any breach of this agreement by the Consultant to perform the services or any part of the services in a satisfactory manner. Nothing herein shall be construed to relieve the Consultant of liability for additional construction and design or other costs, expenses, and damages resulting from a failure to satisfactorily perform the services. Nothing herein shall limit the liability of the Consultant for damages and HCPSS may affirmatively collect damages from the Consultant.
3. ***Termination for Default*** - If the Consultant 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 Consultant. The notice shall specify the acts of omissions relied on as cause for termination. All finished or unfinished supplies and services provided by the Consultant, shall at HCPSS's option, become HCPSS property. HCPSS shall pay the Consultant fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Consultant's breach.

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

4. ***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 Consultant 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 Consultant together with reasonable profit reasonably earned by the Consultant to the time of termination but not to include any profit not earned as of the date of termination.
5. ***Obligations of Consultant upon Termination*** - Upon notice of termination as provided in Paragraphs C and D above, the consultant 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 Consultant 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 Consultant 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.

6. 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.

I. RESPONSIBILITY OF CONSULTANT

1. The Consultant shall perform the services with that standard of care, skill, and diligence normally provided by a consultant, architect, or engineer in the performance of services similar to the services hereunder.
2. Notwithstanding any review, approval, acceptance, or payment for the services by HCPSS, the Consultant shall be responsible for professional and technical accuracy of its work furnished by the Consultant under this agreement.
3. 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 Consultant shall be and remain liable to HCPSS in accordance with applicable law for all damages to HCPSS caused by the Consultant's negligent performance of any or the services furnished under this contract.
4. The rights and remedies of HCPSS provided for under this contract are in addition to any rights and remedies provided by law.

J. 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 Project Manager. Any claim, dispute, or other matter in question concerning a question of fact referred to the Project 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 Consultant. 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.

K. SUBCONTRACTING OR ASSIGNMENT

- L. The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and their respective successors and assigns, provided any such General Provisions for Professional Services successor to the consultant, whether such successor or assign be an individual, a partnership, or a corporation, is acceptable to HCPSS and neither this agreement or the services to be performed thereunder shall be subcontracted, or assigned, or otherwise disposed of, either in whole or in part, except with the prior written consent of HCPSS.

M. DISSEMINATION OF INFORMATION

During the term of this agreement, the Consultant 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.

N. CONTINGENT FEE PROHIBITION

The Consultant 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 consultant, 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.

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.

O. MULTI-YEAR CONTRACTS CONTINGENT UPON APPROPRIATIONS

Funds have been set-aside for the anticipated term of this contract. Should, for any reason, the Contractor's work extend beyond the current fiscal year, this contract will be subject to termination in accordance with the Termination for Convenience Section, if the Board of Education of Howard County fails to appropriate funds for any fiscal year for the future performance of the contract.

HCPSS, however, reserves the right to negotiate with the Consultant to perform additional tasks not specified in this RFP that may be required in order to assure that the Consultant's recommendations are implemented and are having the desired effects.

P. COMPLIANCE WITH LAW

The consultant hereby represents and warrants:

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.

Q. STAFF

The consultant shall utilize the personnel named and/or otherwise identified in its submittal to perform services required. In the event that any of the personnel named are unable to perform because of death, illness, resignation from the Consultant's employ, or similar reasons, the Consultant shall promptly submit to the Project Manager, in writing, the name and qualifications of the proposed replacement. No substitutions shall be made without the proper written approval of the contract manager.

R. 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.

S. ADHERENCE TO SCHOOL SYSTEM POLICIES AND STATE AND FEDERAL REGULATIONS

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 and abide by 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 and enforce all federal and state regulations and policies and all proposals and subsequent work shall adhere to known regulations and policies.

T. OPTIONAL USE OF CONTRACT

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.

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.

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.

U. ETHICS REGULATIONS

The Board of Education of Howard County has adopted an Ethics Regulation policy, Policy #2070. Required by the Annotated Code of Maryland, these Ethics Regulations and Policy cover members of the Board of Education, the Superintendent, and all employees; and it specifies limits of participation of these individuals with entities doing business with The Howard County Public School System. For a copy of the regulations, please visit the HCPSS website for more information.

V. DEBARMENT STATUS

By submitting their proposal, the bidder(s), certify that they are not currently debarred by the State of Maryland or another governmental entity from submitting bids or proposals on contracts for the type of products or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

W. ASSIGNMENTS

The Contractor may not assign or transfer this contract, any interest herein or any claim hereunder, except as expressly authorized in writing by the Howard County Public School System. Unless the performance is expressly waived in writing by the Howard County Public School System, an assignment does not release the Contractor from responsibility for performance of this contract. Assignment or subcontracting without the written approval of the Howard County Public School System will be cause for termination.

X. SUBCONTRACTORS

In the event that some or all of the professional services under this agreement are assigned to one or more subcontractors with the permission of the HCPSS, the contractor must advise the HCPSS Contract Administrator of the current names and addresses of all subcontractors and shall verify that all subcontractors adhere to all requirements and responsibilities under this contract including, but not limited to, professional licensure and insurance requirements. Contractors and its subcontractors shall remain jointly and severally liable to the Board for any breaches, act, or omissions committed by a subcontractor. Nothing contained in these contract documents shall create any contractual relation between any subcontractor and the Howard County Public School System.

Y. TOBACCO FREE AND ALCOHOL/DRUG FREE ENVIRONMENT

The Board of Education of Howard County maintains a tobacco, alcohol/drug free environment. The sale or use of tobacco, alcohol or drugs, in any form, or related product, is prohibited in school buildings and grounds at all times. Persons found violating this policy will be requested to remove the product and themselves from school premises. Repeated use or sale of tobacco on HCPSS property, or any use or sale of alcohol, misuse of other drugs, or any use of illegal drugs by a contract employee while servicing this contract or while on HCPSS property will result in a prohibition of that employee from servicing the HCPSS contract. Repeated instances of violations by contract employees may result in a default ruling and lead to contract termination.

Z. RIGHT TO ASSIGN WORK

The school system reserves the right to obtain separate contracts through its normal procurement process according to the best interests of the school system.

AA. INDEMNIFICATION

The Awarded Contractor shall be responsible for any loss, personal injury, expense, death and/or any other damage which may occur by reason of Contractors acts, negligence, willfulness or failure to perform any of its obligations under this agreement. Furthermore any acts on the part of any agent, director, partner, servant or employee of the Contractor are deemed to be the Contractors acts. Contractor agrees to indemnify and hold harmless the Howard County Public School System and its Board of Trustees, Employees, Agents and Students from any claim, damage, liability, expense, and/or loss, including defense costs and attorney fees, arising directly or indirectly out of the Contractor's performance under this agreement. The indemnification obligation of the successful Contractor shall include, but shall not be limited to injuries to individuals and property of individuals who are not parties to the contract. In addition, the indemnification obligation of the successful Contractor shall cover the acts or omissions of any subcontractors hired by the successful Contractor. Furthermore, the indemnification obligation of the successful Contractor shall survive termination of the contract for any reason.

BB. PERMITS, CODES AND LAWS

All work shall be in accordance with all State, County, Federal, and Governmental rules, regulations and laws. The contractor is responsible for assuring that all of their employee and services provided under the contract follow and comply with any such requirements pertaining and applicable to the service being provided under this contract. All costs to comply with these requirements shall be paid by the contractor and included in the contractors Bid price.

CC. RIGHT TO STOP WORK

If HCPSS determines, either directly or indirectly, that the Contractors performance is not within the specifications, terms or conditions of this bid and/or that the quality of the job is unacceptable, HCPSS has the right to stop work. The stoppage of work shall continue until the default has been corrected and/or corrective steps have been taken to the satisfaction of HCPSS. HCPSS also reserves the right to e-bid this contract if it is decided that performance is not within the specifications as set out.

DD. LICENSES AND QUALIFICATIONS

Bidders must be licensed to do business in the State of Maryland and shall submit proof upon request.

HCPSS reserves the right to require that the contractor demonstrate that it has the skills, equipment and Other resources to satisfactorily perform the nature and magnitude of work necessary to complete the project within the proposed contract schedule.

EE. NON-DISCRIMINATION IN EMPLOYMENT

The HCPSS does not discriminate based on race, color, creed, national origin, religion, physical or mental disability, age, gender, marital statu, or sexual orientation in matters affecting employment or in providing access to programs. For more information, contact the Equity Assurance Office of the Howard County Public School System at 10910 Route 108, Ellicott City, ND 21042 or call 410-313-6654.

FF. BINDING AGREEMENT

This agreement supersedes any and all understandings or agreements, either oral or written, between the Board and the contractor, and constitutes the entire binding agreement upon the parties and their respective successors.

GG. INDEPENDENT CONTRACTS

It is expressly understood and agreed that this Agreement is not intended and shall not be construed to create the relationship of agent, servant, employee, partner, joint venture, or association between the parties.

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 firm must utilize the format provided in Appendix A in submitting a cost proposal in response to this RFP. The cost proposal must be included in each copy of the submittal.

4.3 Submittal Evaluation and Selection

The HCPSS will evaluate submittals on the basis set forth in this section. A contract may be awarded the firm(s) whose submittal best meets HCPSS requirements and needs at the time of the award. The Board of Education reserves the right to make single or multiple awards in order to develop a short-list of qualified firms from which to select depending on the specific case(s) as needed.

Submittals shall comprehensively address all of the desired services outlined in the Request for Proposal and shall demonstrate the successful performance of similar contracts by the firm making the submittal, and shall offer the most cost effective submittal for the desired services.

The Committee will use the following criteria and weighing in preparing its technical evaluation of each qualifying submittal:

Qualifications of the Firm	15%
Fees	25%
Qualifications of the Individuals Proposed	60%

PART V
PAYMENTS

5.1 Payments

HCPSS will make every effort to pay the firm within thirty (30) days of acceptance of all deliverables associated with each invoice. Notwithstanding any other provision of this RFP, all invoices must be accompanied with documentation that details the number of hours expended, nature of work performed by firm's personnel and any other approved fees or charges.

APPENDIX A

FORM FOR COST PROPOSAL

Personnel (including Subcontractor/Contractor) Costs:

	Hourly Rate
Person A (Name and Qualifications)	_____
Person B (Name and Qualifications)	_____
...	
...	
...	
Person N (Name and Qualifications)	

Other Costs:

Please identify any other costs which will be assessed (e.g. fax transmittals, telephone charges, photocopying charges, travel, etc.) and their rate of charge.

APPENDIX B

**Statutory Affidavit and Non-Collusion Certification
BID #037.21.B1**

Date: _____

Bidder: _____

ADDENDA

Receipt of the following Addenda is acknowledged:

Addendum No. _____ Dated _____ Addendum No. _____ Dated _____

Addendum No. _____ Dated _____ Addendum No. _____ Dated _____

AFFIDAVIT

Special Instructions: An authorized representative of the bidder shall complete the following affidavit in accordance with these bid documents 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 organization named _____ 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 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 and 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, their position with the firm, and the sentence or disposition of the charge.

(you may attach an explanation as 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 Maryland is genuine and not collusive or a sham; that said bidder has not colluded, conspired, connived and agreed, directly or indirectly, with any bidder or person to put in a sham bid or to refrain from bidding and is not in any manner, directly or indirectly, sought by agreement of collusion or communication or conference, with any person to fix the bid prices of the affidavit or any other bidder, or to fix any overhead, profit or cost element of said bid price, or that if any bidder, or to secure an advantage against the Board of Education of Howard County Maryland 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 Maryland 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.

CONFLICT OF INTEREST – FINANCIAL DISCLOSURE STATEMENT

As used below, the following terms have the meaning indicated:

- A. "Financial interest" means: (1) Ownership of any interest as the result of which the owner has received, within the past three years, or is presently receiving, or in the future is entitled to receive, more than \$1000 per year; or
(2) Ownership of more than three percent of a business entity, by a Board member or school system employee.
- B. "Qualified Relative" means a spouse, domestic partner, parent, child, and sibling.

Except as disclosed below, the bidder has examined its business records and states that to the best of its knowledge:

1. No Board of Education member or school system employee, or their Qualified Relative, has a Financial Interest in the company or its holding company or a subsidiary;
2. No Board of Education member or school system employee, or their Qualified Relative, is an officer, director, trustee, partner, or employee of the company or its holding company or a subsidiary; and
3. No Board of Education member or school system employee, or their Qualified Relative, is negotiating or has any arrangement concerning prospective employment with the company or its holding company or a subsidiary.

DISCLOSURES:

Attach as necessary.

NOTICE

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 judgement of the owner, to maintain and enforce the provisions of the affidavit, including termination of the contract.

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 Board of Education of Howard County Maryland, and that I am executing and submitting this bid/proposal on behalf of and as authorized by the bidder named below.

This bid/proposal must be signed by a bidder authorized to make a binding commitment for the firm submitting the bid/proposal. By submitting a bid/proposal in response to this solicitation, the bidder selected for award agrees that it shall comply with all federal, State, and local laws, and the Board of Education of Howard County Maryland policies and regulations applicable to its activities under the resulting contract. Any bidder selected for award, including businesses outside of the State, must comply with registration/verification requirements of the Maryland Department of Assessments and Taxation. **www.dat.maryland.gov as directed by the Purchasing Office.**

Your signature on this page provides and the Board of Education of Howard County Maryland your acknowledgment and acceptance of the terms and conditions contained in the solicitation. When this page is executed by an authorized officer of the Howard County Public School System, these specifications, terms and general conditions, and price(s) bid shall become a legally binding contract between the successful bidder and the Howard County Public School System.

(Signature of Bidder)

(Date)

Printed)

(Title of Bidder)

(Bidder Name

SUBSCRIBED AND SWORN to before me on this _____ day of _____, 2021.

NOTARY PUBLIC

Name _____

Seal:

My Commission Expires _____

(Legal Name of Company)

(Web Address/URL)

(Address)

(City)

(State)

(Zip)

(Telephone)

(Fax)

(E-mail address)

Contractor's License Number # _____

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

() Corporation

() Partnership

() Individual

() Other

**STUDENT DATA SHARING AGREEMENT:
APPLICABLE TO HOWARD COUNTY PUBLIC SCHOOL SYSTEM USERS/MEMBERS**

This is an agreement between [REDACTED] ("VENDOR", or "Company") and the Howard County Public School System ("HCPSS," "System," or "CLIENT") for the term beginning on the effective date of the contract services and ending on contract termination.

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 VENDOR's Terms of Service (TOS) are hereby modified by this Amendment as they pertain to HCPSS's use of the Company's Site and/or Services.

- A. Purpose of the Agreement:** Under this agreement, the VENDOR will be providing the following services through its digital platform: all information and data provided during the course of providing services.
- B. Definition of "CLIENT DATA":** Under this agreement, CLIENT DATA is defined as: (1) 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 (2) other non-public information that include, but are not limited to: personally identifiable personnel data, personally identifiable student data, personally identifiable metadata, and personally identifiable user content.
- C. Data Collection and Use:** VENDOR will collect and use CLIENT DATA only for the purpose of fulfilling its duties and providing services under this Agreement as defined in Section A, and for improving services under this Agreement.
- 1. Specific CLIENT DATA Shared Under this Agreement**
- i. Information associated with maintaining authentication between VENDOR and CLIENT, e.g. public/private keys, LTI secret, OATH keys.
 - ii. Information associated with maintaining a user's profile, e.g. username, email address, first name, last name, source IP address, or cookies.
 - iii. A user's status within the service, e.g. number of questions answered, time elapsed in lesson, student's score.
- D. Education Records:** If VENDOR will have access to "education records" as defined under the Family Educational Rights and Privacy Act (FERPA) (34 CFR Part 99), the VENDOR 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.
- E. Data De-Identification:** VENDOR 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, VENDOR agrees not to attempt to re-identify de-identified Data.

- F. **Data Mining, Marketing and Advertising:** Except as indicated in Section E above, VENDOR 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.**
- G. **Modification of Terms of Service:** VENDOR 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 VENDOR. 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.
- H. **Data Sharing:** VENDOR 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 VENDOR, without prior specific and informed written consent of the CLIENT, except as required by law.
- I. **Data Storage:** CLIENT DATA will not be stored outside of the United States without prior, specific and informed written consent from the CLIENT.
- J. **Data Deletion:** Upon termination or completion of the Services hereunder and request of the CLIENT, VENDOR will delete the CLIENT DATA, provided that VENDOR may maintain archival copies for audit purposes and dispute resolution purposes. If VENDOR maintains archival copies of CLIENT DATA, VENDOR shall remain under the contractual obligations of this agreement regarding the maintenance and use of CLIENT DATA. This Section shall survive the termination of this Agreement.
- K. **Terms, Data Transfer, Survival and Destruction:** The CLIENT may immediately terminate the Agreement if the CLIENT determines the VENDOR has breached this Agreement. The Agreement will automatically terminate at the expiration date. However, the VENDOR's obligations shall survive termination of this Agreement until ALL CLIENT Data has been returned and/or securely removed or destroyed. VENDOR will ensure that all Data in its possession and in the possession of any subcontractors, or agents to which the VENDOR may have transferred Data, are destroyed.
- L. **Rights and License:** 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 VENDOR (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 VENDOR 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 VENDOR any rights, implied or otherwise, to CLIENT Data, content, or intellectual property, except as expressly stated in the Agreement, including any right to sell or trade CLIENT Data. VENDOR will not use CLIENT's NAME or CLIENT DATA in any publications, without prior and specific writing authorization from the CLIENT. No part of this clause will prevent the VENDOR from sharing its open educational resources developed for public distribution on its platform.
- M. **Access:** Except as otherwise expressly prohibited by law, the VENDOR 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 VENDOR seeking CLIENT Data. If the CLIENT receives a similar request, the VENDOR will promptly supply the CLIENT with copies of records or information required by the CLIENT to respond.

- N. **Security Controls and Risk Management:** VENDOR 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 CLIENT DATA; 2) protect against any anticipated threats or hazards to the security or integrity of CLIENT DATA; 3) protect against unauthorized access to or use of CLIENT DATA that could result in substantial harm or inconvenience to any customer or to any client employee and/or student; and 4) dispose of CLIENT DATA Information in a secure manner.
1. To comply with the safeguard obligations generally described above, VENDOR 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 DATA that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such data, 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. VENDOR will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. VENDOR 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.
- O. **Data Breaches:** VENDOR shall notify CLIENT in writing as soon as commercially practicable, however no later than forty-eight (48) hours, after VENDOR has either actual or constructive knowledge of a breach which affects the confidentiality, integrity, and/or availability of CLIENT's DATA (an "Incident") unless it is determined by law enforcement that such notification would impede or delay their investigation. VENDOR shall have actual or constructive knowledge of an Incident if VENDOR actually knows there has been an Incident or if VENDOR 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. VENDOR 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. VENDOR shall promptly take appropriate action to mitigate such risk or potential problem at VENDOR's expense. In the event of an Incident, VENDOR 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.
- P. **Employee and Subcontractor Qualifications:** VENDOR 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.

- Q. **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. VENDOR will comply with Maryland Education Code ANN. § 4-131, "Operators of School Internet Web sites, Online Services, Online Applications, and Mobile Applications." VENDOR agrees to be bound as an "operator" under the law regardless of the VENDOR's exemptions that may exist in Maryland Education Code ANN. § 4-131(a)(3).
- R. **Compliance:** In addition to complying with FERPA and the Maryland Education Code cited above, the VENDOR 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).
- S. **Indemnification:** VENDOR 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 VENDOR, its agents and employees concerning its FERPA obligations under this section.
- T. **Limitation of Liability:** VENDOR shall be liable for any and all damages, costs and attorneys' fees which CLIENT may incur as a result of any claims, suits and judgments against CLIENT which arise out of any negligence or misconduct of the VENDOR, its employees, servants, representatives or agents under the term of this Agreement.
- U. **Monitoring:** VENDOR agrees to allow CLIENT the ability to audit VENDOR's use of CLIENT DATA to ensure compliance with the terms of the Agreements.

Signatures are on the next page.

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 Code

**EMPLOYEE DATA SHARING AGREEMENT:
APPLICABLE TO HOWARD COUNTY PUBLIC SCHOOL SYSTEM USERS AND VENDORS**

This Amendment is an agreement between [Name of Company] ("____," "VENDOR", or "Company") and the Howard County Public School System ("HCPSS," "System," or "CLIENT") for term beginning on _____ and ending on _____.

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 Terms of Service (TOS) of all agreements between the parties ("Current Contracts") are hereby modified by this Amendment as they pertain to HCPSS's use of the Company's Site and/or Services.

- A. **Definition of "Data":** Non-public information, including all Personally Identifiable Information (PII), and information related to students, employees, metadata, and user content.
- B. **Definition of "Personally Identifiable Information" (PII):** Information that reasonably could lead to identification of an individual either directly or in conjunction with other available information, including, but is not limited to, a person's name and/or identification number, date of birth, race/ethnic or other demographic information, personal address, and identification of school or other work location.
- C. **Definition of Employee Data:** Information pertaining to an individual employee's, agent's, contractor's, or subcontractor's personal information, financial information, social security number, health insurance, work performance, demographic data, evaluations, family data, education, training, professional licenses and all other similar information of a confidential nature prohibited from public disclosure, unless otherwise available under applicable state and federal laws and regulations.
- D. **Definition of Confidential Information:** Information, not generally known, and proprietary to VENDOR or CLIENT or to a third party for whom VENDOR 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 VENDOR or CLIENT. Confidential Information includes all information which VENDOR or CLIENT acquires or becomes acquainted with during the period of the Agreements, whether developed by VENDOR, CLIENT or others, which VENDOR or CLIENT has a reasonable basis to believe to be Confidential, such as data that is personally identifiable to an individual employee, agent or contractor and information within the definition of "Employee Data." 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 VENDOR; (ii) all information provided by VENDOR 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.

- E. **Data Collection and Use:** VENDOR will only collect and use CLIENT Data for the purpose of fulfilling its duties and providing services under the Current Contracts and this Agreement (hereinafter collectively referred to as “the Agreements”), and for improving services under the Agreements.

1. Specific Data Shared Under this Agreement

- i. Xxx
- ii. Yyy
- iii. Zzz

- F. **Use of Confidential Information:** In performing services under the Agreements, VENDOR and CLIENT may be exposed to and will be required to use certain “Confidential Information”, as defined below. VENDOR 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 the Agreements.

- G. **Maintenance of Confidentiality:** Any Confidential Information acquired or received by either party (the “Recipient”) in the course of the Agreements will not be disclosed or transferred to any person or entity other than to employees of a party and, as to VENDOR, for the purpose of performing its obligations under the Agreements. Confidential Information received under the Agreements 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 the Agreements and to make no copies except as necessary for performance of the Agreements. Any 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 except as set forth in paragraph G.2 below.

1. Each party acknowledges that unauthorized disclosure or use of the Confidential Information by a party may irreparably damage the other party in such a way that adequate and/or complete compensation could not be obtained from damages in an action at law alone. Accordingly, the actual or threatened unauthorized disclosure or use of any Confidential Information by the Recipient shall give the other party the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys’ fees). Each party hereby waives the posting of a bond with respect to any action for injunctive relief.
2. Upon termination or completion of the Services hereunder, upon request of CLIENT, VENDOR will deliver to CLIENT (in a VENDOR format) CLIENT’s Confidential Information as housed in VENDOR production database(s), provided that VENDOR may maintain archival copies for audit purposes and dispute resolution purposes and VENDOR may retain copies of Confidential Information on back-up media in which such Data is co-resident

with other employment and income data. VENDOR 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 each of the Current Agreements and this Agreement.

- H. **Data De-Identification:** VENDOR may only use de-identified CLIENT Data for product development, research, or other internal purposes. De-identified Data will have all PII removed. Furthermore, VENDOR agrees not to attempt to re-identify de-identified Data.
- I. **Data Mining, Marketing and Advertising:** VENDOR is prohibited from mining PII 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 HCPSS employees, agents, and contractors or their families is prohibited. Any and all forms of advertisement, directed towards HCPSS students, parents, guardians, HCPSS employees, agents, and contractors is strictly prohibited unless allowed with express written consent of HCPSS.**
- J. **Modification of Terms of Service:** VENDOR will not change in any way how Data are collected, used, or shared under the terms of the Agreements without advance notice to and written consent from CLIENT. The Agreements are the entire agreements between CLIENT (including all CLIENT end users) and the VENDOR. All other agreements or understandings, whether electronic, click-through, verbal or in writing, with HCPSS employees or other end users are superseded by this Employee Data Sharing Agreement.
- G. **Data Sharing:** VENDOR 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 VENDOR, 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 CLIENT.
- L. **Terms, Data Transfer, Survival and Destruction:** CLIENT may immediately terminate this Data Sharing Agreement if CLIENT determines VENDOR has breached the Agreements. Each of the Agreements will automatically terminate at their expiration date, except for VENDOR's continuing obligations set for in G.2 above.
- 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 VENDOR (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. VENDOR has a limited, nonexclusive license to CLIENT Data solely for the purpose of performing its obligations as contained in the Agreements. The Agreements do not give VENDOR any rights, implied or otherwise, to CLIENT Data, content, or intellectual property, except as expressly stated in the Agreements, including any right to sell or trade such Data.
- N. **Access:** Unless expressly prohibited by law, VENDOR will notify CLIENT as soon as possible,

but in no event later than 10 calendar days of receipt by VENDOR, of any subpoenas, warrants, or other legal orders, demands or requests, including audits, and governmental requests and demands, received by VENDOR seeking CLIENT Data. If CLIENT receives a similar request, VENDOR will promptly supply CLIENT with copies of records or information if required by CLIENT to respond.

- O. ***Security Controls and Risk Management:*** VENDOR 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; and 4) dispose of PII and Confidential Information in a secure manner.
1. To comply with VENDOR security control and confidentiality obligations, VENDOR 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 security controls, systems and procedures.
 2. VENDOR will remediate any identified security vulnerabilities in a timely manner. VENDOR also will have a written incident response plan, to include prompt notification of HCPSS in the event of a breach of security, as well as best practices for responding to a breach of PII and/or Confidential Data. The VENDOR agrees to share its incident response plan upon request.
- P. ***Data Breaches:*** When VENDOR has actual or constructive knowledge of a breach which affects CLIENT's Data (an "Incident") VENDOR shall notify CLIENT in writing, as soon as commercially practicable, but not later than forty-eight (48) hours after the Incident, unless it is determined by law enforcement that such notification would impede or delay their investigation. If such a determination is made by Law enforcement, then 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. VENDOR shall have actual or constructive knowledge of an Incident if VENDOR, through an employee or agent, has actual knowledge that there has been an Incident or if VENDOR, through an employee or agent, has reason to believe that an Incident has occurred, based on facts or circumstances, including unexpected or unexplained acts or omissions. The VENDOR shall promptly take appropriate action, at VENDOR's expense, to remediate the Incident and mitigate future risk of a future Incident. In the event an Incident damages or causes loss of CLIENT Data, VENDOR shall, at its sole cost and expense, fully repair or restore the CLIENT Data, including, without limitation any and all Confidential Information, and institute appropriate measures to prevent any recurrence of the problem as soon as is commercially practicable.
- Q. ***Employee and Subcontractor Qualifications:*** VENDOR 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 the Agreements. Further, all employees and subcontractors as agents of VENDOR are subject to the same compliance with federal and state employment laws as VENDOR and should receive appropriate training, including confidentiality requirements contained in the Agreements and in federal and state laws.

- R. **Sex Offender Requirement:** Maryland law requires certain sex offenders to register with the local law enforcement agency. See Maryland Annotated Code, Criminal Procedure Article, §11-704. One of the purposes of this law, is to inform school systems when a Registered Sex Offender is residing or working in the area. When the sex offender registers, the local police are required to notify the Superintendent of Schools, and the Superintendent, in turn, is required to send a notice to school principals.

Maryland Law requires that any person who enters a contract with a county board of education or a non-public school "may not knowingly employ an individual to work at a school" if the individual is a registered sex offender. See §11-722 Criminal Procedure Article. An employer who violates this requirement is guilty of a misdemeanor and if convicted may be subject to up to five years imprisonment and/or a \$5,000 fine. As a contractor working for HCPSS, you are prohibited from employing Registered Sex Offenders to work on projects for the school system if they are required or permitted to perform delivery, installation, repair, construction, or any other kind of services **on HCPSS property**.

VENDOR shall screen its work-forces to ensure that a Registered Sex Offender does not perform work at a county public school and also ensure that a subcontractor and independent contractor conducts screening of its any personnel whose work may involve entering school property. The term "work force" is refers to all of the VENDOR's employees and to subcontractors and/or independent contractors VENDOR engages to perform work required by the Agreements. This is a material provision of the Agreements with VENDOR and violation of this provision may cause HCPSS to take action against VENDOR up to and including termination of the Agreements.

Effective July 1, 2015, amendments to § 6-113 of the Education Article of the Maryland Code further require that a contractor or subcontractor for a local school system may not knowingly assign an employee to work on school property with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of, or pled guilty or nolo contendere to, a crime involving a sexual offense, child sexual abuse and crimes of violence.

VENDOR shall submit to HCPSS a listing of any employees assigned to perform work under the Agreements and shall certify that the necessary criminal history records checks have been conducted and that each employee complies with the requirements.

- S. **Governing Law:** The Agreements 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 the Agreements shall be brought solely in the appropriate Maryland Court.

- T. **Compliance:** In addition to complying with the confidentiality requirements herein and the Maryland Code sections cited above, VENDOR shall ensure that it complies with federal and state laws protecting the privacy of employee personnel records, including an employee's personal information included in the definition of "personal information" in the General Provision Article, Section 4-101.
- U. **Monitoring:** VENDOR agrees to allow CLIENT the ability to audit VENDOR's use of CLIENT data to ensure compliance with the terms of the Agreements.
- V. **Indemnification:** VENDOR agrees to indemnify and hold harmless CLIENT, 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 in connection with or arising out of the acts or omissions of either Party or its employees, subcontractors, or agents under the Agreements. 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 obligations set forth in paragraph S above. The indemnities set forth herein will survive the expiration or termination of the Agreements.

CLIENT agrees to indemnify and hold harmless VENDOR, 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 arising out of the intentional or malicious acts of CLIENT or its employees, subcontractors, or agents under the Agreements. 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. Nothing herein shall be construed to abrogate, impair or waive any defense, liability or damages limitation, or governmental immunity of the Howard County Public School System, the Board of Education of Howard County, or their officers and employees pursuant to Maryland law or otherwise. The indemnities set forth herein will survive the expiration or termination of the Agreements.



EDUCATION ARTICLE 6-113.2 AFFIDAVIT

A. AUTHORITY

I HEREBY AFFIRM THAT:

I, (print name) _____ possess the legal authority to make this Affidavit on behalf of _____

_____. (Name of company).

B. SCREENING APPLICANTS FOR EMPLOYMENT UNDER A HOWARD COUNTY PUBLIC SCHOOL SYSTEM (HCPSS) CONTRACT

Effective July 1, 2019, Maryland Law requires contractors to screen all applicants for a position involving direct contact with minors as defined in Section 6-113.2 of the Education Article, Maryland Annotated Code ("statute").

Screening requires the applicant to submit to the contractor the following:

1. Contact information of:
 - The current employer
 - All former school employers; and
 - All former employers of the applicant in which the applicant was employed in a position involving direct contact with minors.
2. Written consent form signed by applicant to release all records relating to child sexual abuse or sexual misconduct.
3. A written statement of whether the applicant:
 - Has been the subject of a child sexual abuse or sexual misconduct investigation by any employer, arbitrator, county board, state licensing agency, law enforcement agency, or child protective services agency, unless the investigation resulted in any of the findings listed in Section 6-113.2(B)(3)(i)(1-5), of the statute.
 - Has ever been disciplined, discharged, non-renewed, or asked to resign from employment, or has ever resigned from, or otherwise separated from, any employment while allegations of child sexual abuse or sexual misconduct were pending or were under investigation, or due to an adjudication or findings of child sexual abuse or sexual misconduct; or
 - Has ever had a license, professional license, or certificate suspended, surrendered, or revoked while allegations of child sexual abuse or sexual misconduct were pending or under investigation, or due to an adjudication or findings of child sexual abuse or sexual misconduct.

Before hiring an applicant for a position involving direct contact with minors, the Contractor shall:

1. Review an applicant's employment history by contacting employers listed by the applicant and requesting dates of employment and answers to questions regarding child sexual abuse or

- sexual misconduct required by the statute; and
2. Request a report from the Maryland State Department of Education regarding the applicant's eligibility for employment or certification status to determine whether the applicant a) holds a valid and active certification appropriate for the position and is otherwise eligible for employment; and b) has been the subject of professional discipline related to child sexual abuse or sexual misconduct.

If the information from an applicant's employer includes an affirmative response to the child sexual abuse or sexual misconduct questions, and the Contractor wants to further consider the applicant for employment, the Contractor shall request additional information from the employer including records related to the child sexual abuse or sexual misconduct.

Contractor shall conduct the employment history review of the applicant: 1) at the time of initial hiring of the employee; or 2) before the employee is assigned to work for a school entity in a position involving direct contact with minors.

Contractor shall maintain a record of each employee's employment history review required by the statute; and provide to HCPSS access to the employee's records upon request.

Before assigning an employee to perform work for HCPSS in a position involving direct contact with minors, Contractor shall provide notice to HCPSS of any affirmative responses to the child sexual abuse or sexual misconduct questions required by the statute.

Contractor may not assign an employee to perform work for HCPSS in a position involving direct contact with minors if HCPSS objects to the assignment after receiving notice required by the statute.

Notwithstanding any other remedies available under the Contract, Contractor may be subject to disciplinary action by the Maryland State Department of Education for willful violations of the statute.

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the requirements of Section 6-113.2 of the Education Article, Annotated Code of Maryland.

Violations of any of these provisions may result in immediate termination for cause.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (printed name of Authorized Representative and affiant)

_____ (signature of Authorized Representative and affiant)

STANDARD CONTRACT
AGREEMENT FOR PROFESSIONAL SERVICES

AGREEMENT # 037.21.B1

THIS AGREEMENT is entered into this ____ Day of _____ 2021, 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 #037.21.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, the 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 as needed and assigned; and

WHEREAS, this Agreement shall be administered by the Contract 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 No. 037.21.B1, and _____ (contractor name)
proposal dated _____ date.

ARTICLE II - TERMS AND CONDITIONS

Contractor agrees to perform the work and services required under this Agreement in accordance with RFP #037.21.B1, whose provisions for professional services are incorporated herein by reference.

ARTICLE III - TERM OF AGREEMENT

The term of agreement shall begin upon award for a period of ONE (1) year. The contract will have the ability to renew for four (4) years, one (1) year at a time. Funding after the first fiscal year will be subject to budget authority and appropriation.

ARTICLE IV - PAYMENTS AND SCHEDULE OF PAYMENTS

- (1) The Contractor shall receive compensation within 30 days of invoice date.
- (2) Payment shall be made in accordance with the provisions set forth in section 5.1.

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

Signature: _____
Chao Wu, Ph.D., Chair
Board of Education of Howard County
Date

Signature: _____
Michael Martirano, Ed. D.,
Superintendent of Schools
Date

Firms Signature: _____
Authorized Person at Firm
Date

Print Name

Typed Title

Company Name

Address

City, State Zip

Telephone Fax

WITNESS: By: _____
Signature Date

Print Name

**RULES OF PROCEDURE FOR APPEALS AND HEARINGS
BEFORE THE BOARD OF EDUCATION OF HOWARD COUNTY**

I. Purpose

These rules of procedure are adopted pursuant to the authority of the Education Article, Annotated Code of Maryland, Section 4-107(4)¹. They govern formal hearings before the Board of Education of Howard County in matters arising under Sections 6-202 and 7-304 and appeals to the Board of Education by persons who are directly and adversely affected by decisions made pursuant to Section 4-205(c). These rules shall not apply to: (1) conferences or other informal investigations or proceedings at or upon which no formal ruling or decision is made; (2) hearings governed by other procedures specifically required by State or Federal law, the Bylaws of the State Board of Education, or policies of the Howard County Board; or (3) proceedings governed solely by provisions of the negotiated agreements between the Board and its employee organizations.

II. Applicability

(a) These rules govern appeals and hearings within the quasi-judicial responsibility of the Board of Education. They do not apply to proceedings involving the Board's exercise of its legislative or executive functions.

(b) Proceedings covered by these rules of procedure arise under the Education Article, Sections 6-202 (suspensions and dismissals of professional personnel), 7-305 (suspension and expulsion of students), and 4-205(c) (appeals from decisions of the superintendent on controversies and disputes involving the rules and regulations of the Board or the proper administration of the county public school system).

III. Definitions

A. "Board" means the Board of Education of Howard County.

B. "Filed" or "filing" as used in these rules means received by the Board of Education.

C. "Party" includes any person or agency named or admitted as a party. Any person or agency may be admitted as a party for limited purposes upon the satisfactory demonstration of the nature and extent of its interest to the Board of Education.

D. "Written notice" under these rules shall be complete upon actual delivery by 4:30 p.m. or upon deposit of said notice in the United States Mail, stamped and

¹ All statutory references are to the Education Article unless otherwise indicated.

addressed to the addressee at the mailing address provided to or appearing on the records of the Howard County Public Schools.

E. "Hearing" means an evidentiary hearing before the Board, a committee of the Board, or the Board's Hearing Examiner.

F. "Counsel" means an attorney who is admitted to practice before the Court of Appeals of Maryland.

G. "Presiding officer" means the chairman of the Board, the vice-chairman or other designated Board member who may preside in the absence of the chairman, or a hearing examiner, appointed by the Board, pursuant to Section 6-203.

H. "Majority of the Board" means the number needed to adopt a motion or resolution as defined by the Maryland State Board of Education: three members when the board consists of five, four members when the board consists of six or seven, and five members when the board consists of eight or nine.

I. "Day" means a calendar day.

IV. Use of Hearing Examiners

A. In those instances in which the Board determines or the law requires that an evidentiary hearing is to be held, the Board shall conduct such hearing, unless it determines in its sole discretion to refer the matter to a Hearing Examiner selected by the Board. Among the factors which the Board may consider in determining whether to refer such a matter to a Hearing Examiner in the first instance are:

1. Whether it appears that there are facts in dispute which are likely to require a lengthy evidentiary hearing; and/or
2. Whether it appears there is an extensive record, substantial documentation, or additional information which the Board feels should be evaluated by a Hearing Examiner before the matter is submitted to the Board for its decision.

B. The Hearing Examiner shall be an attorney admitted to practice before the Court of Appeals of Maryland.

C. In all matters heard initially by a Hearing Examiner, the Hearing Examiner shall make findings of fact, conclusions of law, and recommendations. The Hearing Examiner shall submit a transcript of the proceeding, exhibits, findings of fact and conclusions of law, and recommendations to the Board which may be affirmed, denied, or modified by the Board. The Hearing Examiner shall distribute or mail to all parties and the Board the findings of fact, conclusions of law, and recommendations not more than thirty (30) days after completion of the hearing and receipt of the transcript. If the Hearing Examiner has provided for

oral argument or for the submission of written memoranda after a hearing, the 30 day period shall not commence until after such oral argument or submission of written memoranda, whichever is later.

V. Conduct of Evidentiary Hearings

A. Duties and Authority of Presiding Officer

The presiding officer shall have charge of the hearing, with authority to permit or limit the examination of witnesses, rule on the admissibility of evidence, and adjourn or recess the hearing from time-to-time. The presiding officer shall cause an oath to be administered to all witnesses testifying in the proceedings. Upon good cause shown and after consultation with other board members, the presiding officer may reschedule, postpone or continue a hearing beyond the scheduled date.

B. Quorum

Each hearing before the Board shall be held before not less than a quorum of the Board.

C. Order of Procedure

In a hearing on a recommendation for dismissal or suspension of professional staff (under Section 6-202), or in an appeal of a student suspension or expulsion (under Section 7-305), the Superintendent shall proceed first. In an administrative appeal under Section 4-205(c), the Appellant shall proceed first, except that the Board or its hearing officer may vary the order of the presentation at the request of a party or on its own initiative.

D. Examination of Witnesses and Introduction of Evidence

1. The strict judicial rules of evidence are not applicable to evidentiary hearings conducted by the Board or its hearing officer. In each case, the test of admissibility shall be whether the evidence is reasonably relevant to a material issue and whether it has substantial probative value with respect to a material issue. The presiding officer may limit or decline to admit cumulative or repetitive evidence, and may restrict redundant or duplicative questioning. The presiding officer may encourage, but shall in no event coerce, the parties where possible to make stipulations as to matters not reasonably in dispute and to make proffers in place of cumulative evidence. All testimony shall be given under oath.

2. A party or the party's counsel may submit evidence, examine and cross-examine witnesses who testify, and make objections and motions.

3. The superintendent may appear in person or through counsel or a designated representative, and shall be accorded the same rights as a party to submit evidence, examine and cross-examine witnesses, and make objections and motions.

4. The presiding officer and Board member in a hearing conducted by the Board may examine all witnesses called by a party. Ordinarily, this examination will occur after direct and cross-examination, unless it is necessary to interrupt the witness to address an issue requiring immediate clarification. The presiding officer may call as a witness any person whose testimony may be relevant and material. Neither the Board nor its Hearing Examiner possess subpoena power to compel a person to appear and/or testify.

E. Argument

The Presiding Officer may permit the parties to make oral or written arguments at the conclusion of an evidentiary hearing.

F. Briefs

The presiding officer may request that the parties submit briefs of the issues of fact and law involved in the hearing.

G. Counsel for the Board

The Board attorney shall be present to participate in any hearing as counsel for the Board.

VI. Record of Proceedings

A. The Presiding Officer shall cause to be prepared an official record, which shall include all pleadings, testimony, exhibits, and other memoranda or material filed in the proceedings.

B. An accurate record of all hearings, disputes, or controversies shall be kept by the county superintendent in order that, if an appeal is taken, the record shall be submitted.

C. A stenographic record of that part of the proceedings which involves the presentation of testimony and evidence shall be made at the expense of the Board. The record need not be transcribed, however, unless requested by the Board or a party to the proceedings. Any typewritten transcript of any proceedings, or part of proceedings, shall be paid by the party requesting it and each party requesting a transcript is responsible for paying the cost.

VII. Oral Argument Before the Board

- A. If requested, parties to an evidentiary hearing before the Board or before a Hearing Examiner are permitted by the presiding officer to make oral arguments before the Board.
- B. Parties to proceedings before a Hearing Examiner are permitted to make oral arguments before the Board on the report or recommendations of the Hearing Examiner. Additional evidence shall not be introduced before the Board unless the Board in its sole discretion agrees to hear additional evidence for good cause shown.
- C. If no evidentiary hearing has been conducted, the parties to an appeal may be permitted, at the sole discretion of the Board, to present oral or written arguments to the Board.
- D. The presiding officer may limit the time allowed for oral argument by each party. Oral argument by each party before the Board shall not exceed thirty (30) minutes, unless the presiding officer shall allow additional time for good cause shown.
- E. The Board's attorney shall be notified and requested to be present when oral arguments are heard by the Board.

VIII. Decision and Order

- A. The Board may adopt, reject or modify the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Examiner or make its own findings of fact, conclusions, and decision.
- B. The Decision shall be based as follows:
 - 1. In a hearing on a recommended dismissal or suspension of a certificated professional under Section 6-202, the Superintendent's case shall be proven by a preponderance of the evidence. Unless a majority of the Board members vote to uphold the Superintendent, the Appellant shall prevail.
 - 2. In a hearing on an appeal of a student suspension or expulsion under Section 7-305, the Appellant's case shall be proven by a preponderance of the evidence. Unless a majority of the Board members votes to overturn the suspension or expulsion, the Superintendent's decision shall prevail.
 - 3. In an administrative appeal under Section 4-205(c), the Appellant's case shall be proven by a preponderance of the evidence. Unless a majority of the Board votes to overturn the Superintendent's action, the

Superintendent's decision shall prevail.

C. The decision and order of the Board shall be issued in written form, unless the decision is announced orally after the hearing. In such an instance, the decision and order shall be issued thereafter in writing, with copies provided to all parties.

D. The decision and order, or a cover letter accompanying the decision and order, shall inform the parties of any right they may have to appeal the decision to the Maryland State Board of Education.

IX. Administrative Appeals Under § 4-205(c)

A. Initiation of Appeal

1. All appeals to the Board under Section 4-205(c) shall be from a final action or decision of the superintendent or the superintendent's designated representative or designee, which directly and adversely affects the person or persons who are appealing. References in these rules to decisions of the Superintendent are also intended to include the decisions of the Superintendent's designee.

2. An appeal to the Board under Section 4-205(c) shall be initiated by filing a written notice of appeal with the Board within 30 days after the date of the superintendent's final action or decision. The written notice of appeal shall also contain a statement of the issue or issues to be decided by the Board, and whether the party agrees or disagrees, in whole or in part, with any findings of fact or legal conclusions contained in the decision of the Superintendent. A copy of the appeal shall be sent to the Superintendent on the same date the appeal is filed with the Board. The party filing the appeal shall also file with the Board copies of all relevant documents upon which the party relies and a statement of the relief requested.

3. Upon receipt of the notice of appeal and the appeal information form, the Board, or its designee, will notify the party filing the appeal whether or not the Board will accept the appeal, and, if the appeal is to be considered, the procedures to be followed by the parties. Appeals may be dismissed, for example, if they are not timely filed, not within the jurisdiction of the Board or otherwise not properly before the Board.

4. Within 15 days after the Appellant's submission to the Board of the information and documentation required by subsection (2), the Superintendent may submit additional information or documentation in support of the decision which is the subject of the appeal, and shall provide a copy to the appealing party. If either party believes that oral

argument or an evidentiary hearing, or both, is necessary to a decision of the appeal, the party shall include a concise statement of the reasons therefore.

5. If an appeal is not filed within the period set forth in subparagraph 2, the Board may dismiss the appeal or request for a hearing.

6. (a) Appeals will be considered by the Board based on documents and arguments submitted in writing by the parties. At the request of a party or on its own initiative, the Board may direct: (1) that oral argument on the issues be presented, or (2) that a hearing be conducted. In determining whether to grant a request for oral argument or formal hearing, the Board may consider:

- (1) Whether the issues involved are of constitutional or significant public importance;
- (2) Whether resolution of the issues raised is likely to have significant value as precedent in the administration of the school system;
- (3) Whether the issue or issues raised require determination of some substantial employee right which cannot be satisfactorily adjudicated otherwise within existing appeal procedures; and
- (4) Other appropriate factors as determined by the Board.

(b) In addition, the Board may request that either party submit additional information or documentation on an issue in the appeal.

B. Notice of Hearing or Argument

Written notice of the date, time and place of the hearing or oral argument shall be provided to the parties.

X. Student Suspension and Expulsion Appeals

A. Initiation of Request for a Hearing

1. Requests for an appeal hearing under Section 7-305 shall be in writing addressed to the chairman of the Board and shall be submitted within 10 days of the suspension or expulsion decision.
2. The request for an appeal hearing shall contain the following: (a) a concise statement of the issues presented by the appeal; (b) a concise statement of the facts supporting the appeal; (c) a copy of all relevant

documents relied upon by the person appealing.

B. Notice of Hearing

Written notice of the date, time, and place of the hearing shall be provided to the parties.

C. Effect of Appeal

1. An Appeal to the Board does not stay the suspension or expulsion decision.
2. The decision of the County Board is final.

XI. Teacher Suspension And Dismissal Proceedings

A. Initiation of Request for a Hearing

A hearing must be requested within 10 days of the notice sent by the board to the individual advising him/her of the charges brought under Section 6-202 of the Education Article or the Board will act on the Superintendent's recommendation without a hearing.

B. Notice of Hearing

Written notice of date, time and place of the hearing shall be sent by the chairman of the Board of Education, or his designee not less than ten (10) days prior to the scheduled hearing.

XII. Miscellaneous

A. A party filing an appeal or requesting a hearing shall be sent a written notice that acknowledges receipt of the appeal/hearing request. If a hearing is scheduled, the parties shall be notified in writing of the date, time and place of the hearing. A copy of these Rules of Procedure shall be provided to a party filing an appeal or hearing request.

B. Parties are strongly encouraged to enter into stipulations of facts and matters that are not in dispute. The Presiding Officer may direct the parties to exchange written documents in advance of the hearing if they have not already done so.

C. Hearings ordinarily will be limited to no more than two hours, and each of the parties will be allotted up to one hour to present that party's side of the case. The Presiding Officer may extend the time for the hearing, upon request of a party, if the interests of fairness and justice so require.

D. All parties appearing at formal hearings shall have the right to appear in proper person or with counsel. In a student suspension or expulsion hearing, the student may be represented by the student's parent or legal guardian.

E. Hearings, arguments and other proceedings before the Board or its Hearing Examiner shall be held in closed session except as provided by law or otherwise approved by the Board. Confidentiality of the subject matter may be deemed waived if information becomes public as a result of the actions or statements of the employee, student, or Appellant, or an agent or representative of any of them. In such an event, the Board may make a public statement concerning the appeal.

F. While a matter is under consideration by a Hearing Examiner or by the Board, neither the Hearing Examiner nor any Board member may discuss the merits of the matter with any outside party, or consider communications in writing without supplying copies to all other parties and providing an opportunity for a response. Confidential information concerning appeals may not be released publicly by the Board, a Board member, a Hearing Examiner, or a staff member unless (1) it is a matter of public record; (2) a public statement is issued in accordance with paragraph E of this section; or (3) the appellant and Board mutually agree to release of information.

Approved: February 10, 2005

