

ADDENDUM NO. 5

June 23, 2023

RE: **Bid #116.23.B6**, RFP – Cloud Based Adapted Reading Program

FROM: **Purchasing Office
Howard County Public Schools
10910 Clarksville Pike
Ellicott City, MD 21042
(410) 313-6723
(410) 313-6789 fax**

TO: APPROVED PROSPECTIVE BIDDERS

This addendum forms a part of the Contract Documents and modifies the Original Bidding Documents as noted below. Acknowledge receipt of this Addendum in the space provided on the Bid Price Sheet/Form of Proposal. Failure to do so may subject the Bidder to disqualification. This Addendum consists of three (3) pages.

- A. The above referenced solicitation is hereby amended as follows. Language being added is bolded with double underlines, like this: **bolded with double underlines**. Language being deleted has a double strikethrough like this: ~~double strikethrough~~.

1. Student Data Agreement

a. Section G – Modification of Terms of Service

The terms in the aforementioned section are modified to reflect the following: VENDOR will not **materially diminish the commitments by Provider to the protection and privacy of user personal data, or that would reduce the rights of the district or any data subject with respect to Provider's use and processing of user personal data from those in the current Privacy Policies. Further, Vendor will not alter** how CLIENT DATA are collected, used, or shared under the terms of this Agreement in any way without **written** notice to the CLIENT. This Agreement is the entire agreement between the CLIENT (including all District end users) and the VENDOR. **All terms that conflict with the terms in this Agreement in any** other agreements or understandings, whether electronic, click- through, verbal or in writing, with District Employees or other End Users shall be null and void.

b. Section O – Data Breaches

In the event of a BREACH **that is attributable to the VENDOR**, 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 CLIENT Data, and institute appropriate measures to prevent any recurrence of the problem as soon as is commercially practicable.

B. Questions and Answers.

1. Section 1.3. General, second sentence: Savvas acknowledges that its proposal is an offer to perform in accordance with the specifications, terms, general conditions and attachments of the RFP, subject to these clarifications and exceptions. any terms applicable to the offered products, and any variations described in its response.

Response: HCPSS does not accept this exception. Any changes to the specifications, terms, general conditions and attachments will be revised by HCPSS through an Addendum. Changes not included in an Addendum will not be accepted.

2. Section 1.13, Price Guarantee: Savvas can commit to firm pricing for the initial term; however, renewals and future pricing are subject to product availability and will require further discussion at the time of renewal.

Response: HCPSS does not except this change. Please refer to Section 2.10 regarding changes in rates. In addition, it is the sole discretion of HCPSS to renew a contract.

3. Section 1.15, Required Documents: With regard to the District's requirement for audited financial statements, Savvas is a responsible and financially sound leader in the U.S. K-12 education marketplace. Because Savvas is privately held, its financials are proprietary and highly confidential and not typically shared with third parties. Indeed, Savvas carefully controls dissemination of its financials even inside the company. If selected as a finalist, Savvas will provide financials to a District-designated individual to whom this confidential information can be provided under separate cover and subject to reasonable assurances of confidentiality. In no event will Savvas' financials be considered a part of its response nor subject to any open records laws

Response: Offeror's may submit a letter from their bank on the bank's official letter head that the Offeror has good financial standing.

4. Section 2.1, Contract Award: Savvas' response is subject to these clarifications and exceptions, any terms applicable to the offered product, and any variations from RFP specifications in its response.

Response: HCPSS accepts this change.

5. Section 2.2, Contract Documents: As a clarification, Savvas submits its bid with the understanding that its response, including these clarifications and exceptions, as well as any terms applicable to the offered product, will be incorporated into a resulting contract.

Response: HCPSS accepts this change.

6. Section 2.7, Subcontracting or Assignment: Savvas reserves the right to assign any resulting contract in connection with a merger, acquisition or sale of all or substantially all of Savvas' assets. As such transactions are inherently confidential, Savvas would be unable to notify the District in advance. Should such an event occur during the life of any resulting agreement, Savvas will notify the District as soon as reasonably practicable, and will ensure that the pricing, terms, and conditions of any agreement will be binding on any successor

Response: HCPSS accepts this exception.

7. Section 2.10 Price Adjustments: Savvas can commit to firm pricing for the initial term; however, renewals and future pricing are subject to product availability and will require further discussion at the time of renewal. Savvas Savvas Learning Company LLC Clarifications and Exceptions Page 2 of 3 Howard County Public School System (MD) RFP #116-23.B6 cannot commit to (1) limiting increases to CPI-W; (2) notifying the District of price increases 60 days in advance of renewal; nor (3) providing documentation justifying a price increase.

Response: HCPSS does not accept this exception.

8. Section 2.11, Remedies and Termination: Savvas will look to correct any defective or nonconforming work as quickly as practicable and requests a 30-day cure period. As part of final negotiations, Savvas and the District will negotiate mutually acceptable cure periods and recourse. Savvas requests that any damages be tied to specific key deliverables and the total liability limited so as not to exceed the District's actual and fully documented damages for the item for which Savvas is in default. Savvas does not agree to a right of set-off. For clarification, Savvas retains all intellectual property rights in its pre-existing products, services, and accompanying materials, including any enhancements, derivatives or customizations thereto, whether created for the District or otherwise

Response: HCPSS accepts this exception.

9. Section 2.18, Cooperative Purchasing Clause: Savvas welcomes the opportunity to offer other districts the option to purchase Savvas solutions in accordance with the RFP; however, Savvas would limit any offers to districts within the state of Maryland only. Savvas would not be able to notify the District of cooperative purchases

Response: HCPSS accepts this exception.

10. Section 2.22, Ownership and Use: Savvas is proposing pre-existing products and related materials in its response to the RFP. Savvas retains ownership of and all intellectual property rights in and to its digital software, documentation, training materials, and so forth. District will obtain a license to, but not ownership of, any of these materials supplied by Savvas. The District's right to use such products and materials will end when the product subscription ends.

Response: HCPSS accepts this exception.

11. Section 2.29, Indemnification: Savvas agrees with the indemnification obligations under this subsection, subject to being provided prompt, written notice of a claim and being afforded the opportunity to defend and settle any such claim at its own expense.

Response: HCPSS accepts this exception.

12. Section (5), Security Incident Response, subsection (A); also, Section (6), Data Breach Responsibilities, subsection (A)1: Savvas will notify the District of a confirmed data breach as soon as reasonably practicable or in accordance with relevant state law.

Response: HCPSS does not accept this exception.

13. Section (6), Data Breach Responsibilities, subsection (B)1: Savvas reserve the right to review any additional security requirements not included in the District's RFP before being subject to such requirements.

Response: HCPSS does not accept this exception.

14. Section (6), Data Breach Responsibilities, subsection (B)3, last sentence: In the event of award, Savvas will ensure that its subprocessors' processes and procedures are consistent with those required of Savvas under a resulting agreement

Response: HCPSS does not accept this exception.

15. Appendix C – Insurance Requirements Savvas maintains a comprehensive insurance program and can generally meet the listed requirements; however, there may be certain technical aspects of the insurance clause that would need to be negotiated as part of the final contract. For example, insurance policies only provide notice to the first named insured, Savvas, and only in the event of cancellation or non-renewal. Savvas will notify District as soon as reasonably practicable after it receives notice of any such cancellation or non-renewal. Additionally, Savvas will not provide copies of original policies of insurance due to their proprietary nature but will provide Certificates of Insurance evidencing coverage as requested by the District

Response: HCPSS does not accept this exception.

16. Appendix H – Insurance Requirements Savvas can generally meet the listed requirements; however, there may be certain technical aspects that would need to be negotiated in the event of an award to Savvas. For example, Savvas' insurance providers will provide only 30 days' notice of policy cancellations, and such notice will only be provided to Savvas; therefore, Savvas will notify the District as soon as reasonably practicable. Savvas cannot provide copies of insurance policies due to their proprietary nature but will provide certificates of insurance evidencing required coverage. For clarification, additional insured coverage and waiver of subrogation occur by operation of policy language, not separate endorsement. Additionally, Savvas will provide proof of required extended coverage at the time such extended coverage is purchased. Indemnification: Savvas agrees with the indemnification obligations under this subsection, subject to being provided prompt, written notice of a claim and being afforded the opportunity to defend and settle any such claim at its own expense. It is Savvas' position that the vendor's indemnification obligation should be limited to its proportional fault, i.e., contract language that requires full indemnification by Savvas and exculpates District for its proportional fault is not acceptable.

Response: HCPSS accepts a Certificate of Insurance with HCPSS as the certificate holder as evidence of insurance coverage. HCPSS does not accept negotiating aspects of the insurance requirements once an award is recommended.

17. Appendix B – Student Data Privacy Agreement Savvas is committed to protecting the privacy of students, teachers and customers through rigorous non-disclosure requirements. We are also bound by law and our contracts to protect student and/or teacher personally identifiable information. In the event

of an eventual award to Savvas, Savvas will work with the District to align any resulting data privacy documents with District needs and policies, relevant laws, and Savvas processes and policies.

Response: HCPSS will not negotiate any terms to any agreements once a recommendation for award is made.

18. The County acknowledges and agrees that the Services are existing, commercially available SaaS-based subscriptions, provisioned in a multi-tenant, shared database architecture, with ancillary training, texts and other materials, which Lexia offers and provisions to all of its educational customers under its standard limited license terms, and all ownership or other intellectual property rights of any kind in and to the Services and/or any associated materials developed, used or provided in the course of any services, or derivatives thereof, whether or not now or in the future acquired, filed, perfected, registered or recorded, are expressly reserved to and remain the property of Lexia and/or its licensors, as set forth in the license terms. All rights relating to the Services and/or materials not expressly granted by Lexia in the license terms for the Services are reserved. The parties acknowledge that elements of the Lexia Services constitute software and documentation and are provided as "Commercial Items" as defined at 48 C.F.R. 2.101, and are being licensed to government end users solely as commercial computer software subject to restricted rights described in 48 C.F.R. 2.101 and 12.212. The parties do not anticipate or intend the creation by Lexia of any newly created intellectual property or "Works Made for Hire" ("New Work Product Deliverable") to be owned exclusively by the customer under the Agreement, and nothing will be deemed a New Work Product Deliverable hereunder unless the development of such New Work Product Deliverable is expressly agreed and individually identified as a New Work Product Deliverable to be owned exclusively by the customer in a Lexia quote or a statement of work signed by a VP or above level representative of Lexia, on an individual case basis prior to creation.

Response: HCPSS accepts this exception.

19. For clarity, and notwithstanding anything to the contrary, the District and Lexia acknowledge and agree that the Services to be offered, provisioned and supported by Lexia to the District under the RFP Contract are or include existing, commercially available, off-the-shelf, SaaS-based and provider-hosted Lexia® educational subscriptions, with ancillary training, texts, materials, and/or other services, which are offered and provisioned by Lexia to all of its State, district and school educational customers nationwide under its standard limited license terms, (the License Terms), which are fully incorporated and made part of Lexia's Proposal by reference, with the Services provisioned in a multi-tenant, shared database architecture, where individualized customer-dedicated or customized infrastructure or processing is not part of the Services offering.

Response: HCPSS does not accept this exception.

For clarity, and notwithstanding anything to the contrary, the District or any District entity wishing to submit orders under this RFP Contract should contact the Lexia representative who will prepare a quote that will include the number and term of the product subscription licenses and/or any implementation or training services package as described and at the prices offered under Lexia's Proposal to this RFP, as well as the name and billing location of the District customer. The quote will also include a unique serial reference number for the order. Purchase Orders submitted in response to the quote should reference this RFP and include the correct serial number as provided on the applicable quote, and will be processed under the terms of this RFP, Lexia's Proposal and the quote only; any terms contained in any

individual Purchase Order that are in addition to or inconsistent with the terms of the definitive Agreement under this RFP, Lexia's Proposal and the quote shall be null and of no effect. All orders are subject to Lexia's review and acceptance. Unless otherwise provided in the applicable quote, upon acceptance of an order, Lexia will issue an invoice for the total price for product subscription licenses and/or services under the quote, payable net (30) days from invoice date, F.O.B. Point of Origin, and, unless otherwise expressly required under applicable law or in the event of an uncured material default by Lexia, invoiced fees are not subject to offset, credit or reimbursement for termination prior to the end of the then-current license subscription period. Payment will be accepted by check or electronic funds transfer only, provided however, that at the discretion of and upon prior written approval by Lexia, Customer-issued payment card/credit card transactions up to \$100,000 may be accepted, on an exception basis.

Response: HCPSS accepts this exception.

20. The County acknowledges and agrees that the Services are existing, commercially available SaaS-based subscriptions, provisioned in a multi-tenant, shared database architecture, with ancillary training, texts and other materials, which Lexia offers and provisions to all of its educational customers under its standard limited license terms, and all ownership or other intellectual property rights of any kind in and to the Services and/or any associated materials developed, used or provided in the course of any services, or derivatives thereof, whether or not now or in the future acquired, filed, perfected, registered or recorded, are expressly reserved to and remain the property of Lexia and/or its licensors, as set forth in the license terms. All rights relating to the Services and/or materials not expressly granted by Lexia in the license terms for the Services are reserved. The parties acknowledge that elements of the Lexia Services constitute software and documentation and are provided as "Commercial Items" as defined at 48 C.F.R. 2.101, and are being licensed to government end users solely as commercial computer software subject to restricted rights described in 48 C.F.R. 2.101 and 12.212. The parties do not anticipate or intend the creation by Lexia of any newly created intellectual property or "Works Made for Hire" ("New Work Product Deliverable") to be owned exclusively by the customer under the Agreement, and nothing will be deemed a New Work Product Deliverable hereunder unless the development of such New Work Product Deliverable is expressly agreed and individually identified as a New Work Product Deliverable to be owned exclusively by the customer in a Lexia quote or a statement of work signed by a VP or above level representative of Lexia, on an individual case basis prior to creation.

Response: HCPSS accepts this exception.

21. Criminal History Background Checks - The aforementioned section's requirement for criminal history background check by HCPSS shall be limited to students who have direct contact with students.

Response: All staff having contact with students must have criminal background checks.

22. Security Incident Response (D) The aforementioned section's requirement to indemnify and hold harmless shall be limited to the unauthorized release of HCPSS data or other event requiring notification that are attributable to Lexia.

Response: HCPSS accepts this exception.

23. The terms in the aforementioned section are modified to reflect the following: **VENDOR will not materially diminish the commitments by Provider to the protection and privacy of user personal data, or that would reduce the rights of the district or any data subject with respect to Provider's use and**

processing of user personal data from those in the current Privacy Policies. Further, Vendor will not alter how CLIENT DATA are collected, used, or shared under the terms of this Agreement in any way without written notice to the CLIENT. This Agreement is the entire agreement between the CLIENT (including all District end users) and the VENDOR. All terms that conflict with the terms in this Agreement in any other agreements or understandings, whether electronic, click-through, verbal or in writing, with District Employees or other End Users shall be null and void.

Response: See Section A above for RFP exception.

24. Rights and License - For the avoidance of doubt, the parties do not anticipate or intend the creation by Lexia of any newly created intellectual property or "Works Made for Hire" ("New Work Product Deliverable") to be owned exclusively by the customer under the Agreement, and nothing will be deemed a New Work Product Deliverable hereunder unless the development of such New Work Product Deliverable is expressly agreed and individually identified as a New Work Product Deliverable to be owned exclusively by the customer in a Lexia quote or a statement of work signed by a VP or above level representative of Lexia, on an individual case basis prior to creation.

Response: HCPSS accepts this exception.

25. Data Breaches - The last sentence of the aforementioned section is deleted and replaced with the following: In the event of a BREACH that is attributable to the VENDOR, 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 CLIENT Data, and institute appropriate measures to prevent any recurrence of the problem as soon as is commercially practicable.

Response: See Section A above for exception to RFP.