



**Arlington Public Schools**

Procurement Office

2110 Washington Blvd., Arlington, VA 22204 • Phone: (703) 228-6123 • Fax: (703) 841-0681

www.apsva.us

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**Agreement**

**Contract Title: COVID-19 Sentinel Surveillance Testing Services and Medical COVID-19 Testing Services**

This Contract 37FY21 is made and entered into this 2<sup>nd</sup> day of June, 2021, the date the Agreement is fully executed by the Procurement Director/Procurement Agent, by and between Arlington County School Board, operating as Arlington Public Schools (“APS” or “Owner”) and ResourcePath (“Contractor”), whose address is 45945 Trefoil Lane #175, Sterling, VA 20166.

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

**1. Scope of Work:**

The Scope of Work for this Contract is contained in the ResourcePath Proposal to provide COVID-19 Sentinel Surveillance Testing Services and to Provide ResourcePath Proposal for Medical COVID-19 Testing Services (“the Work”), as set forth in greater detail in Attachment A.

**2. Contract Price:**

2.1. The Contract Price shall be as set forth in Attachment A – the ResourcePath Proposal to provide COVID-19 Sentinel Surveillance Testing Services and the ResourcePath Proposal to provide Medical COVID-19 Testing Services.

2.2. APS will not compensate the Contractor for any Goods or Services beyond those included in Attachment A unless those additional Goods or Services are covered by a written Change Order amending this Contract.

2.3. The Contract Prices set forth in Attachment A include all costs, expenses, including reimbursable expenses, to provide the Goods or Services described in this Agreement.

**3. Contract Documents:**

3.1. The documents which form the entire Contract between APS and the Contractor (“Contract Documents”) are as defined in this Agreement and are as set forth below.

- 3.1.1. Agreement, and all modifications properly incorporated in the Agreement
- 3.1.2. Attachment A – ResourcePath Proposals
- 3.1.3. Attachment B – Business Associate Agreement
- 3.1.4. Attachment C – Student Data Usage and Privacy Agreement
- 3.1.5. Attachment D - Arlington Public Schools Purchase Order Terms and Conditions

3.2. In the case of a conflict, the order of precedence shall be as follows:

- 3.2.1. Agreement and all modifications properly incorporated in the Agreement

- 3.2.2 Attachment D - Arlington Public Schools Purchase Order Terms and Conditions
- 3.2.3. Attachment A – ResourcePath Proposals
- 3.2.4. Attachment B – Business Associate Agreement
- 3.2.5. Attachment C – Student Data Usage and Privacy Agreement

- 3.3. All provisions required by law to be included in this Contract or otherwise applicable to this Contract shall be deemed to be a part of this Contract, whether actually set forth herein or not.
- 3.4. The Contract Documents are complementary and what is called for by one is as binding as if called for by all. If the Contractor finds a conflict, error, ambiguity or discrepancy in the Contract Documents, it shall immediately, in writing call such conflict, error, ambiguity or discrepancy to the attention of the Owner before proceeding with the Work affected thereby. The Owner will promptly resolve the matter in writing. Work done by the Contractor after such conflicts, errors, ambiguities or discrepancies are discovered, or in the exercise of reasonable care reasonably should have been discovered, prior to written resolution thereof by the Owner shall be done at the Contractor’s expense and risk. Any Work that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.
- 3.5. The Contractor will be held to a standard of strict compliance with the requirements of the Contract Documents in the performance of the Work, for giving Notice of any type to the Owner, and for making any submittal required for any purpose. The Contractor acknowledges and agrees that all time requirements set forth in the Contract Documents for any purpose are of the essence.

**4. Definitions:**

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

**5. Contract Term:**

- 5.1. The term of this Contract shall commence on the date the Contract is fully executed by the Procurement Director/Procurement Agent and expiring on the date the Governor rescinds Amended Executive Order No. 51 – Declaration of a State of Emergency Due to Novel Coronavirus COVID-19 (‘Contract Term’), unless otherwise stated as provided in the Contract Documents.
- 5.2 Unless directed otherwise by APS, any Work in progress at the time of expiration of a Contract term may continue and be completed under the terms of the Contract in existence at the time the Purchase Order for the Work was issued but must be completed no later than six (6) months following expiration of the Contract term in which the Purchase Order was issued.

**6. Non-Appropriation:**

All funds for payments by APS under any Contract awarded are subject to the availability of an annual appropriation for this purpose by the APS. In the event of non-appropriation of funds by the APS for the Goods or Services provided under the Contract, APS will terminate the Contract, without termination charge or other liability to APS, on the last day of the then current fiscal year or when the appropriation made for the then current year for the Services covered by this Contract is spent, whichever event occurs first. APS will endeavor to provide reasonable Notice of such termination, but no formal notice of such termination is required of APS, and APS shall not order any Goods or Services to be provided after such termination date.

**7. Right to Terminate Contract:**

APS has the right to terminate this Contract for convenience at any time, or for default, all pursuant to the provisions of the Terms and Conditions.

**8. Direction to Proceed:**

- 8.1. For Work to be performed by Contractor under this Contract, the Director/Procurement Agent will issue a Purchase Order. The Purchase Order will define the location of the Work to be performed and will define or, where specific definition cannot be provided, will estimate, the scope of the Work to be performed, the dates within which that Work is to be performed, and the price for that Work (collectively "Purchase Order Work"). A sample Purchase Order form is attached as Attachment F. Contractor shall not commence any Work until a written Purchase Order has been issued by the Procurement Director/Procurement Agent, and if it does so APS will be under no obligation to make payment for any Work performed prior to the issuance of the required Purchase Order. No employee or agent of APS other than the Procurement Director/Procurement Agent or his properly authorized designee has authority to make any purchases or otherwise bind APS contractually. If a Purchase Order is issued by anyone other than the Procurement Director/Procurement Agent, it shall be the responsibility of the Contractor to confirm the authority of that person to bind APS. Provided, however, if the Contractor has received from the Procurement Director/Procurement Agent prior written confirmation of a person's authority to bind APS, the Contractor may rely upon all Purchase Orders issued by that person within the scope of the stated authority as authorized.
- 8.2. Notwithstanding the foregoing, if the circumstances are such that there is not sufficient time for issuance of a Purchase Order, APS through the Director/Procurement Agent or his authorized designee may direct the Contractor to proceed by less formal writing or electronic communication, to be replaced by a Purchase Order by 5:00 P.M. on the next regular APS working Day following issuance of such Owner directive. Further, if emergency conditions exist which necessitate that the Contractor act to avoid or mitigate damage to person or property, the Contractor shall proceed and give written Notice to APS of such emergency Work by 5:00 P.M. on the next regular APS Working Day following commencement of such emergency Work.

**9. Payment Procedures:**

Contractor shall submit invoices for its Work, and such invoices will be processed by APS, all in accordance with the provisions of the Terms and Conditions.

**10. Assignments:**

10.1. This Contract is not assignable by Contractor without the express written consent of APS, and APS shall be under no obligation to grant such consent. Sale, assignment or transfer of a controlling interest in the Contractor shall be deemed an assignment for purposes of this provision and shall be grounds for termination of this Contract if consent of APS is not obtained. It is understood by APS that Contractor may use Subcontractors for performance of parts of the Work. However, it is expected that Contractor will be performing the Work, and subcontracting of all or substantially all of the Work under any Purchase Order shall be deemed an assignment subject to the restrictions of this Section.

10.2. Contractor acknowledges that, if so stated in the Bid Documents, this Contract is subject to the joint procurement or cooperative procurement provisions of Va. Code Ann. § 2.2-4304.

**11. Notices:**

Unless otherwise provided herein, all notices and other communications hereunder shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

To the Contractor: ResourcePath  
Attn: Dr. Ashley Hill  
45945 Trefoil Lane, Suite 175  
Sterling, VA 20166  
hill@resourcepath.net

To APS: Mr. Zac Pope  
Director, Safety, Security, Risk and Emergency Management  
Arlington Public Schools  
2110 Washington Blvd.  
Arlington, Virginia 22204  
zachary.pope@apsva.us

And David J. Webb, C.P.M.  
Procurement Director / Procurement Agent  
Arlington Public Schools  
2110 Washington Blvd.  
Arlington, Virginia 22204  
davidwebb@apsva.us

**12. Governing Law:**

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without reference to conflict of laws principles. The exclusive jurisdiction, forum and venue for any litigation with respect to this Contract shall be in the state courts of Arlington County, Virginia.

**13. Arlington Public Schools Procurement Resolution and Policies:**

The Procurement Agent has no power to change or waive any provision or requirement of the Procurement Resolution, any policies or regulations of the Arlington County School Board, or any applicable provisions of Arlington County ordinances or regulations, all of which are incorporated herein.

**14. Binding Agreement:**

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

**Signatures Appears on Following Page**

**Arlington Public Schools**

Authorized  
Signature:

David J. Webb

Printed Name

David J. Webb, C.P.M.

Procurement Director /

Title:

Procurement Agent

Date:

JUNE 2, 2021

**ResourcePath LLC**

Authorized  
Signature:

D. Ashley Hill M.D.

Printed Name:

D. Ashley Hill, MD

Title:

Medical Director

Date:

May 25, 2021

**Attachments:**

Attachment A – ResourcePath Proposals

Attachment B – Business Associate Agreement

Attachment C – Student Data Usage and Privacy Agreement

Attachment D - Arlington Public Schools Purchase Order Terms and Conditions

**End of Agreement**

Attachment A  
ResourcePath Proposals



RESOURCEPATI-1

## **ResourcePath Proposal to Provide COVID-19 Sentinel Surveillance Testing Services to Arlington Public Schools**

### **1.Executive Summary**

Founded in 2013, ResourcePath is a CLIA-licensed and College of American Pathologists (CAP)-accredited high complexity laboratory specializing in pathologic consulting and molecular diagnostics. ResourcePath combines expertise in research and development to address important diagnostic needs in oncology and emerging infectious diseases.

As COVID19 became a pandemic, our laboratory team understood the urgent need for timely and accurate SARS-CoV testing, and the benefit of molecular laboratory experts in helping communities, facilities and organizations incorporate necessary laboratory testing into a comprehensive infection control plan. Our mission has been to serve the needs of such local communities, at-risk facilities and organizations to offer a customized and individualized approach for the delivery of such services.

ResourcePath possesses the professional and technical expertise, logistical capabilities, the flexibility and agility of a small, locally owned and managed laboratory to provide testing and consultation services to the Arlington Public School system to allow students and teachers return to in-class education in the safest manner possible.

### **1.1 Mission and Vision**

ResourcePath is dedicated to fostering and maintaining local partnerships and to offer our services to the communities in which we live and work. Our Mission has been to help expand access to reliable and timely testing during the current pandemic, especially for the most vulnerable populations.

### **1.2 Our Team**

Our Laboratory Team consists of experienced scientists, molecular technologists, data analysts and public health professionals and is led by D. Ashley Hill, M.D., an experienced molecular diagnostic pathologist and NIH-funded investigator.

### **1.3 Our Capabilities**

ResourcePath works with and supports Arlington County Public Health and Emergency Management, local businesses, and multiple long-term-care facilities throughout Virginia with testing programs designed to meet their specific infection control needs. Through our work with these different populations, ResourcePath has developed the following capabilities which could be leveraged to benefit Arlington Public Schools (APS).

## RESOURCEPATH CAPABILITIES

CAP and CLIA certified clinical laboratory with extensive experience in test development and quality  
Development and validation of a highly sensitive COVID19 RT-PCR test for saliva and mid-nasal swabs  
Experienced staff capable of training and educating patients on the self-collection of specimens  
Logistics for transporting collection kits to testing sites and collected samples back to the laboratory  
Online test ordering system with the ability to locally print sample tube labels and barcodes to ensure accurate sample identification throughout the collection and testing process.  
Reliable and timely turnaround of results in 2 days  
Experience with HIPAA secure data management and sharing  
Small, agile laboratory with the ability to quickly respond to and adapt to clients' needs  
Automated laboratory processes facilitating high capacity testing ~1000 tests per shift  
Experience working with Arlington County Emergency Management and Public Health

### 2.0 Statement of the Problem

The current and ongoing coronavirus pandemic poses serious challenges to the nation's educational system, with most public primary and secondary schools either remaining closed for in-person instruction or having a modified hybrid schedule. The current learning environment has been a significant challenge for everyone, but especially for younger children, children with special needs and for parents who must work outside of the home. We acknowledge and understand the ongoing pressures on school systems to return to in-class learning in the safest manner possible.

It is the goal of ResourcePath Team to collaborate with and support APS incorporation of RT-PCR Sentinel Surveillance testing in its Infection Control Plan facilitating a safe and durable return to full-time, in-class learning.

### 3.0 ResourcePath Testing Proposal for Testing randomly selected asymptomatic students, teachers, and staff, i.e. Sentinel Surveillance Testing

Sentinel Surveillance Testing is a method of infection control which identifies asymptomatic and pre-symptomatic individuals who are contagious, but are unaware of their infected status, and therefore do not quarantine. This is particularly important in the setting of significant community viral transmission, which is being experienced by Arlington County now, and is likely to continue into the first several months of 2021.

Sentinel Surveillance Positivity Rate is an important metric which reflects the risk of COVID transmission in the community. In addition, this positivity rate can be used to identify trends and highlight areas in which additional education or structural improvements are needed to decrease transmission and mitigate outbreaks of disease which may delay or discontinue in-class learning.

## 4.0 Proposed Phases of Implementation

### Phase I: Planning the Sentinel Surveillance Testing Program

#### Primary Activities in Phase I: Designing a plan for Sentinel Surveillance Testing

- Assist APS team to develop informed consent/assent process, potentially piggybacking on already existing back to school consent and/or medical consent process
- Train individuals who will be performing and/or observing testing (saliva or swab, tube labeling, packaging); operating under ResourcePath CLIA license
- Develop a protocol for secure sharing of list of pre-identified students/teachers/staff to be tested (population selection) between APS and ResourcePath
- Streamline data entry and reporting using existing tools
- Assist APS in determining an efficient algorithm for reporting test results; i.e. to whom will results be given and who will be contacting individuals/families

#### Proposed costs:

ResourcePath Coordinator 0.5 FTE for 4 weeks (80 hours x \$100), \$8,000 invoiced on a per-hour basis of hours used.

#### Timeline:

ResourcePath is flexible and can work within APS timeline to complete the primary activities needed.

#### Deliverables:

The role of the ResourcePath Coordinator will be to assist APS in planning for implementation of Sentinel Surveillance Testing. This will include but is not limited to participating in design of informed consent/assent documents for inclusion into back to school materials reviewed and completed by parents and students. The coordinator will provide training for contract staff (or other designees) for printing requisitions, labeling tubes and observing or performing nasal swab/saliva testing. The coordinator will work with APS data team on best methods for secure data sharing involved in ordering tests on selected students and returning results.

### Phase II: Implementation of Sentinel Surveillance Testing program

#### Performing Sentinel Surveillance Testing

- APS identification of randomized individuals excluding those with history of prior COVID-19 infection
- Considerations for increasing% of students tested in schools with high minority populations known to be at risk for COVID-19, with potential opportunities for Arlington County collaboration/funding
- ResourcePath will evaluate feasibility of pooled testing which could reduce costs per test but dependent on prevalence rate
- Positive individuals will receive full report and ResourcePath can notify;
- Negative individuals reported on spreadsheet; APS can notify

#### Proposed costs:

\$292,000 for 5000 tests



**Timeline for initiation:**

ResourcePath is flexible and can work within APS timeline to begin testing.

**Deliverables:**

Test kits and results for 5000 tests, i.e. 2% of population for 15 weeks



RESOUFZCEPATH

## **ResourcePath Proposal to Provide Medical COVID-19 Testing Services to Arlington Public Schools**

### **1.Executive Summary**

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ResourcePath possesses the professional and technical expertise, logistical capabilities, the flexibility and agility of a small, locally-owned and managed laboratory to provide testing and consultation services to the Arlington Public School system to allow students and teachers return to in-class education in the safest manner possible.

### **1.1 Mission and Vision**

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### Z0 Statement of the Problem

The current and ongoing coronavirus pandemic poses serious challenges to the nation's educational system, with most public primary and secondary schools either remaining closed for in-person instruction or having a modified hybrid schedule. The current learning environment has been a significant challenge for everyone, but especially for younger children, children with special needs and for parents who must work outside of the home. We acknowledge and understand the ongoing pressures on school systems to return to in-class learning in the safest manner possible.

It is the goal of ResourcePath Team to collaborate with and support APS incorporation of RT-PCR point prevalence testing in its Infection Control Plan facilitating a safe and durable return to full-time, in-class learning (see Serial Surveillance Proposal). ResourcePath is proposing no out of pocket cost, voluntary, easily accessible medical testing for students, parents, teachers and staff with symptoms concerning for COVID19, or exposures to infected individuals.

### 3.0 ResourcePath Proposal for Symptomatic/Exposed and Outbreak Testing

The COVID19 Medical Testing Plan proposed by ResourcePath includes two components:

#### **1) Testing of *symptomatic* students, teachers, administration and staff, and those exposed to such individuals**

While testing services in the community are available, there are still many barriers to access reliable and timely testing. Providing access to reliable SARS-CoV2 testing for active infection with rapid turnaround is an important mitigation strategy to limit in-school person-to-person transmission. Testing of those exposed to infected individuals (as determined by Contact Tracing and parental reporting) is another important aspect of disease control that will allow the return and continuation of in-class learning.

ResourcePath has developed an infrastructure for the testing individuals with exposure or symptoms which is currently in use by numerous long-term care facilities, private businesses, pharmacies and

Arlington County Emergency Management. The methods developed for such testing can be successfully utilized by APS in which tests can be ordered by parents, nurses or physicians via a web based online ordering system. Information related to demographics, symptoms, exposure, consent and third-party billing are already incorporated into the existing testing infrastructure. We believe offering this service to individuals already participating in school activities (sports teams, special education classes and staff) will alleviate some of the anxiety that coordination of testing on a one-by-one basis typically entails.

## **2) Active outbreak testing**

Access to testing which can be done in a spontaneous, routine and simplified manner is important in limiting the occurrence and extent of outbreaks. When infectious outbreaks are noted, the ResourcePath Laboratory Team will work expeditiously with the contact tracing team and exposed students/teachers/staff. Using the existing infrastructure at ResourcePath, testing can be ordered by school nursing staff/physician or a parent through the ResourcePath web-based online ordering system. The Consulting Team can be utilized to recommend next steps to mitigate the outbreaks. As noted above, the collection of information related to demographics, symptoms, exposure, consent and third-party billing are already incorporated into the existing testing infrastructure and can be immediately deployed.

## **4.0 Proposed Implementation**

### **Testing sites:**

1. ResourcePath is working with Arlington County Emergency Management (primary contact Matthew Boisen) to procure a site suitable for easy drive-through or walkup testing for symptomatic or exposed individuals in self-quarantine
2. Testing could be ordered and performed by contract staff nurses in isolation rooms with parental consent in instances when a student or staff becomes ill at school

### **Proposed costs:**

None, testing costs billed to third party payers, Medicaid and HRSA for uninsured

### **Deliverables:**

Easy access and local COVID19 RT-PCR tests with 2-day TAT, reported back to school and family with no out of pocket expenses for individuals

## Attachment B

### Business Associate Agreement

This Business Associate Agreement is hereby entered into between ResourcePath (hereafter referred to as "Business Associate") and Arlington Public Schools (hereafter referred to as "Covered Entity" or "APS") (collectively "the parties") and is hereby made a part of any Underlying Agreement for goods or services entered into between the parties.

#### Recitals

APS provides services to its residents and employees which may cause it or others under its direction or control to serve as covered entities for purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

APS, in its capacity as a covered entity, may provide Business Associate with certain information that may include Protected Health Information (PHI), so that Business Associate may perform its responsibilities pursuant to its Underlying Agreement(s) with and on behalf of APS.

Covered Entity and Business Associate intend to protect the privacy of PHI and provide for the security of any electronic PHI received by Business Associate from Covered Entity, or created or received by Business Associate on behalf of Covered Entity in compliance with HIPAA; in compliance with regulations promulgated pursuant to HIPAA, at 45 CFR Parts 160 and Part 164; and in compliance with applicable provisions of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act") and any applicable regulations and/or guidance issued by the U.S. Department of Health and Human Services ("DHHS") with respect to the HITECH Act (collectively "federal law").

WHEREAS, federal law and the specific regulations promulgated pursuant to HIPAA at 45 CFR § 164.314, 45 CFR § 164-502(e) and 45 CFR § 164.504(e) require a Covered Entity to enter into written agreements with all Business Associates (hereinafter "Business Associate Agreement");

WHEREAS, the parties desire to comply with HIPAA and desire to secure and protect such PHI from unauthorized disclosure;

THEREFORE, **Business Associate** and **Covered Entity**, intending to be legally bound, agree as follows. The obligations, responsibilities and definitions may be changed from time to time as determined by federal law and such changes are incorporated herein as if set forth in full text:

#### **1) Definitions**

The capitalized terms used in this Business Associate Agreement shall have the meaning set out below:

- a) **Accounting**. "Accounting" means a record of disclosures of protected health information made by the Business Associate.
- b) **Breach**. "Breach" means the acquisition, access, use, or disclosure of protected health information in a manner not permitted by this Business Associate Agreement and/or by HIPAA which compromises the security or privacy of the protected health information. For purposes of this Business Associate Agreement, any unauthorized acquisition, access, use, or disclosure of protected health information shall be presumed to be a breach.
- c) **Business Associate**. "Business Associate" means a person who creates, receives, maintains, or on behalf of a Covered Entity to accomplish a task regulated

by HIPAA and not as a member of the Covered Entity's workforce. A Business Associate shall include, but is not limited to, a non-workforce person/entity who performs data processing/analysis/transmission, billing, benefit management, quality assurance, legal, actuarial, accounting, administrative and/or financial services on behalf of the Covered Entity involving protected health information. A Business Associate also includes a subcontractor.

- d) **Covered Entity.** "Covered Entity" means a health plan, a health care clearinghouse, and/or a health care provider who transmits any health information in electronic form in connections with an activity regulated by HIPAA.
- e) **Data Aggregation.** "Data Aggregation" means, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- e) **Designated Record Set.** "Designated Record Set" means all records, including medical, enrollment, billing, payment, claims, and/or case management maintained by and/or for a Covered Entity.
- f) **Discovery.** "Discovery" shall mean the first day an unauthorized use or disclosure is known or reasonably should have been known by Business Associate, including when it is or should have been known by any person other than the person who engaged in the unauthorized use/disclosure who is an employee, officer, or agent of Business Associate.
- g) **Electronic Protected Health Information.** "Electronic Protected Health Information" means individually identifiable health information that is transmitted by or maintained in electronic media.
- h) **HIPAA.** "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 as in effect and/or as amended.
- i) **HITECH Act.** "HITECH Act" means the portions of the Health Information Technology for Economic and Clinical Health Act which serve as amendments to HIPAA. HITECH is included within the definition of HIPAA unless stated separately.
- j) **Individual.** "Individual" means the person who is the subject of protected health information and/or a person who would qualify as a personal representative of the person who is the subject of protected health information.
- k) **Protected Health Information.** "Protected Health Information" or "PHI" means individually identifiable health information transmitted and/or maintained in any form.
- l) **Remuneration.** "Remuneration" means direct or indirect payment from or on behalf of a third party.
- m) **Required By Law.** "Required By Law" means an activity which Business Associate is required to do or perform based on the provisions of state and/or federal law.
- n) **Secretary.** "Secretary" means the Secretary of the Department of Health and Human Services or the Secretary's designee.

- o) **Security Incident.** “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the system operations in an information system.
- p) **Underlying Agreement.** “Underlying Agreement” means APS contract for goods or services made through APS’s procurement office which the parties have entered into and which APS has determined requires the execution of this Business Associate Agreement.
- q) **Unsecured Protected Health Information.** “Unsecured Protected Health Information” means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology approved by the Secretary.

## 2) **Obligations and Activities of Business Associate**

- a) Business Associate acknowledges and agrees that it is obligated by law (or upon the effective date of any portion thereof shall be obligated) to meet the applicable provisions of HIPAA and such provisions are incorporated herein and made a part of this Business Associate Agreement. Covered Entity and Business Associate agree that any regulations and/or guidance issued by DHHS with respect to HIPAA that relate to the obligations of business associates shall be deemed incorporated into and made a part of this Business Associate Agreement.
- b) In accordance with 45 CFR §164.502(a)(3), Business Associate agrees not to use or disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law.
- c) Business Associate agrees to develop, implement, maintain and use appropriate administrative, technical, and physical safeguards that reasonably prevent the use or disclosure of PHI other than as provided for by this Business Associate Agreement, in accordance with 45 CFR §§164.306, 310 and 312. Business Associate agrees to develop, implement, maintain and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI, in accordance with 45 CFR §§164.306, 308, 310, and 312. In accordance with 45 CFR §164.316, Business Associate shall also develop and implement policies and procedures and meet the documentation requirements as and at such time as may be required by HIPAA.
- d) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate, of a use or disclosure of PHI by Business Associate in violation of the requirements of this Business Associate Agreement.
- e) In accordance with 45 CFR §§164.308, 314 and 502, Business Associate will ensure that any workforce member or agent, including a vendor or subcontractor, whom Business Associate engages to create, receive, maintain, or transmit PHI on Business Associates’ behalf agrees to the same restrictions and conditions that apply through this Business Associate Agreement to Business Associate with respect to such information, including minimum necessary limitations. Business Associate will ensure that any workforce member or agent, including a vendor or subcontractor, whom Business Associate engages to create, receive, maintain, or transmit PHI on Business Associates’ behalf, agrees to implement reasonable and appropriate safeguards to ensure the confidentiality, integrity, and availability of the PHI.
- f) At the request of Covered Entity, Business Associate will provide Covered Entity, or as directed by Covered Entity, an Individual, access to PHI maintained in a Designated Record Set in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.524, and, where required by

HIPAA, shall make such information available in an electronic format where directed by the Covered Entity.

- g) At the written request of Covered Entity, (or if so directed by Covered Entity, at the written request of an Individual), Business Associate agrees to make any amendment to PHI in a Designated Record Set, in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.526.
- h) In accordance with 45 CFR §164.504(e)(2), Business Associate agrees to make its internal practices, books, and records, including policies and procedures, and any PHI, relating to the use and disclosure of PHI, available to Covered Entity or to the Secretary for purposes of determining compliance with applicable law. To the extent permitted by law, said disclosures shall be held in strictest confidence by the Covered Entity. Business Associate will provide such access in a time and manner that is sufficient to meet any applicable requirements of applicable law.
- i) Business Associate agrees to document and maintain a record of disclosures of PHI and information related to such disclosures, including the date, recipient and purpose of such disclosures, in a manner that is sufficient for Covered Entity or Business Associate to respond to a request by Covered Entity or an Individual for an Accounting of disclosures of PHI and in accordance with 45 CFR § 164.528. Business Associate further shall provide any additional information where required by HIPAA and any implementing regulations. Unless otherwise provided under HIPAA, Business Associate will maintain the Accounting with respect to each disclosure for at least six years following the date of the disclosure.
- j) Business Associate agrees to provide to Covered Entity upon written request, or, as directed by Covered Entity, to an Individual, an Accounting of disclosures in a time and manner that is sufficient to meet the requirements of HIPAA, in accordance with 45 CFR §164.528. In addition, where Business Associate is contacted directly by an Individual based upon information provided to the Individual by Covered Entity and where so required by HIPAA and/or any implementing regulations, Business Associate shall make such Accounting available directly to the Individual.
- k) In accordance with 45 CFR §164.502(b), Business Associate agrees to make reasonable efforts to limit use, disclosure, and/or requests for PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. Where required by HIPAA, Business Associate shall determine (in its reasonable judgment) what constitutes the minimum necessary to accomplish the intended purpose of a disclosure.
- l) In accordance with 45 CFR §502(a)(5), Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual, except with the express written pre-approval of Covered Entity.
- m) To the extent Business Associate is to carry out one or more of the Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- n) In accordance with 45 CFR §164.314(a)(1)(i)(C), Business Associate agrees to promptly report to Covered Entity any Security Incident of which Business Associate becomes aware.
- o) In accordance with 45 CFR §164.410 and the provisions of this Business Associate Agreement, Business Associate will report to Covered Entity, following Discovery and without unreasonable delay, but in no event later than five business days following Discovery, any Breach of Unsecured Protected Health Information. Business Associate shall cooperate with Covered Entity in investigating the Breach



and in meeting Covered Entity's obligations under HIPAA and any other applicable security breach notification laws, including but not limited to providing Covered Entity with such information in addition to Business Associate's report as Covered Entity may reasonably request, e.g., for purposes of Covered Entity making an assessment as to whether/what Breach Notification is required.

Business Associate's report under this subsection shall, to the extent available at the time the initial report is required, or as promptly thereafter as such information becomes available but no later than 30 days from discovery, include:

1. The identification (if known) of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach;
  2. A description of the nature of the unauthorized acquisition, access, use, or disclosure, including the date of the Breach and the date of discovery of the Breach;
  3. A description of the type of Unsecured PHI acquired, accessed, used or disclosed in the Breach (e.g., full name, Social Security number, date of birth, etc.);
  4. The identity of the individual(s) who made and who received the unauthorized acquisition, access, use or disclosure;
  5. A description of what Business Associate is doing to investigate the Breach, to mitigate losses, and to protect against any further breaches; and
  6. Contact information for Business Associate's representatives knowledgeable about the Breach.
- p) Business Associate shall maintain for a period of six years all information required to be reported under paragraph "o". This records retention requirement does not in any manner change the obligation to timely disclose all required information relating to a non-permitted acquisition, access, use or disclosure of Protected Health Information to APS Privacy Officer and APS Project Officer or designee five business days following Discovery.

### **3) Permitted Uses and Disclosures by Business Associate**

Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose PHI, consistent with HIPAA, as follows:

- a) Business Associate may use or disclose PHI as necessary to perform functions, activities, or services to or on behalf of Covered Entity under any service agreement(s) with Covered Entity, including Data Aggregation services related to the health care operations of Covered Entity, if called for in the Underlying Agreement, if Business Associate's use or disclosure of PHI would not violate HIPAA if done by Covered Entity.
- b) Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- c) Business Associate may disclose PHI for the proper management and administration of Business Associate if:

1. Disclosure is Required By Law;
  2. Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will remain confidential, and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed, and the person agrees to promptly notify Business Associate of any known breaches of the PHI's confidentiality; or
  3. Disclosure is pursuant to an order of a Court or Agency having jurisdiction over said information.
- d) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

4) **Obligations of Covered Entity**

- a) Covered Entity will notify Business Associate of any limitations on uses or disclosures described in its notice of privacy practices (NOPP).
- b) Covered Entity will notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI.
- c) Covered Entity will notify Business Associate of any restriction of the use or disclosure of PHI, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d) Covered Entity will notify Business Associate of any alternative means or locations for receipt of communications by an Individual which must be accommodated or permitted by Covered Entity, to the extent that such alternative means or locations may affect Business Associate's use or disclosure of PHI.
- e) Except as otherwise provided in this Business Associate Agreement, Covered Entity will not ask Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if such use and/or disclosure was made by Covered Entity.

5) **Term, Termination and Breach**

- a) This Business Associate Agreement is effective when fully executed and will terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, including any material provided to subcontractors. If it is infeasible to return or destroy all PHI, protections are extended to such information, in accordance with the Section 5(d) and 5(e) below.
- b) Upon Covered Entity's determination that Business Associate has committed a violation or material breach of this Business Associate Agreement, and in Covered Entity's sole discretion, Covered Entity may take any one or more of the following steps:
  1. Provide an opportunity for Business Associate to cure the breach or end the violation, and if Business Associate does not cure the Breach or end the violation within a reasonable time specified by Covered Entity, terminate this Business Associate Agreement;

2. Immediately terminate this Business Associate Agreement if Business Associate has committed a material breach of this Business Associate Agreement and cure of the material breach is not feasible; or,
  3. If neither termination nor cure is feasible, elect to continue this Business Associate Agreement and report the violation or material breach to the Secretary.
- c) If Business Associate believes Covered Entity has failed to fulfill any of its duties under this Business Associate Agreement, Business Associate will promptly notify Covered Entity as to same and Covered Entity shall promptly address the matter with Business Associate.
  - d) Except as provided in Section 5(e) upon termination of this Business Associate Agreement for any reason, Business Associate will return or destroy, at the discretion of Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision will also apply to PHI that is in the possession of workforce members, subcontractors, or agents of Business Associate. Neither Business Associate, nor any workforce member, subcontractor, or agent of Business Associate, will retain copies of the PHI.
  - e) If Business Associate determines that returning or destroying all or part of the PHI received or created by and/or on behalf of Covered Entity is not feasible, Business Associate will notify Covered Entity of the circumstances making return or destruction infeasible. If Covered Entity agrees that return or destruction is infeasible, then Business Associate will extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to retain the minimum necessary PHI to accomplish those tasks/responsibilities which make return and/or destruction infeasible.

6) **Miscellaneous**

- a) Covered Entity and Business Associate agree to take any action necessary to amend this Business Associate Agreement from time to time as may be necessary for Covered Entity or Business Associate to comply with the requirements of HIPAA, and/or any other implementing regulations or guidance.
- b) Notwithstanding the expiration or termination of this Business Associate Agreement or any Underlying Agreement, it is acknowledged and agreed that those rights and obligations of Business Associate which by their nature are intended to survive such expiration or termination shall survive, including but not limited to Sections 5(d) and 5(e) herein.
- c) In the event the terms of this Business Associate Agreement conflict with the terms of any other agreement between Covered Entity and Business Associate or the Underlying Agreement, then the terms of this Business Associate Agreement shall control.
- d) Notices and requests provided for under this Business Associate Agreement will be made in writing to Covered Entity, delivered by hand-delivery, overnight mail or first-class mail, postage prepaid at:

(1) Mr. Dan Redding  
Assistant Superintendent, Human Resources  
Arlington Public Schools Privacy Officer  
2110 Washington Blvd.  
Arlington, Virginia 22204

(2) John Cafferky  
Partner, Blankenship & Keith  
4020 University Drive  
Suite 300  
Fairfax, VA 22030

(3) Zachary Pope  
Director, Safety, Security, Risk and  
Emergency Management  
2110 Washington Blvd.  
Arlington, Virginia 22204

Notice and requests provided for under this Business Associate Agreement will be made in writing in the manner described above to Business Associate at:

ResourcePath  
Attn: Dr. Ashley Hill  
45945 Trefoil Lane, Suite 175  
Sterling, VA 20166

- e) Covered Entity will have the right to inspect any records of Business Associate or to audit Business Associate to determine whether Business Associate is in compliance with the terms of this Business Associate Agreement. However, this provision does not create any obligation on the part of Covered Entity to conduct any inspection or audit.
- f) Nothing in this Business Associate Agreement shall be construed to create a partnership, joint venture, or other joint business relationship between the parties or any of their affiliates, or a relationship of employer and employee between the parties. Rather, it is the intention of the parties that Business Associate shall be an independent contractor.
- g) Nothing in this Business Associate Agreement provides or is intended to provide any benefit to any third party.
- h) The Business Associate will indemnify and hold harmless Arlington Public Schools, its elected officials, officers, directors, employees and/or agents from and against any employee, federal administrative action or third party claim or liability, including attorney's fees and costs, arising out of or in connection with the Business Associate's violation (or alleged violation) and/or any violation and/or alleged violation by Business Associate's workforce, agent/s, or subcontractor/s of the terms of this Business Associate Agreement, federal law, HIPAA, the HITECH Act, and/or other implementing regulations or guidance or any associated audit or investigation.

The obligation to provide indemnification under this Business Associate Agreement shall be contingent upon the party seeking indemnification providing the indemnifying party with written notice of any claim for which indemnification is sought. Any limitation of liability provisions contained in the Underlying Agreement do not supersede, pre-empt, or nullify this provision or the Business Associate Agreement generally.

This indemnification shall survive the expiration or termination of this Business Associate Agreement or the Underlying Agreement.

- i) Any ambiguity in this Business Associate Agreement shall be resolved to permit the parties to comply with HIPAA, its implementing regulations, and associated guidance. The sections, paragraphs, sentences, clauses and phrases of this Business Associate agreement are severable. If any phrase, clause, sentence, paragraph or section of this Business Associate Agreement is declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences and sections of this Business Associate Agreement.
- j) If any dispute or claim arises between the parties with respect to this Business Associate Agreement, the parties will make a good faith effort to resolve such matters informally, it being the intention of the parties to reasonably cooperate with each other in the performance of the obligations set forth in this Business Associate Agreement. The Dispute Resolution clause of the Underlying Agreement ultimately governs if good faith efforts are unsuccessful.
- k) A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy as to any subsequent events.
- l) Neither party may assign any of its rights or obligations under this Business Associate Agreement without the prior written consent of the other party.
- m) This Business Associate Agreement and the rights and obligations of the parties hereunder shall be construed, interpreted, and enforced with, and shall be governed by, the laws of the Commonwealth of Virginia and the United States of America.
- n) This Business Associate Agreement shall remain in effect for the duration of the Underlying Agreement between the parties, any renewals, extension or continuations thereof, and until such time as all PHI in the possession or control of the Business Associate has been returned to the Covered Entity and/or destroyed. If such return or destruction is not feasible, the Business Associate shall use such PHI only for such limited purposes that make such return or destruction not feasible and the provision of this Business Associate Agreement shall survive with respect to such PHI.
- o) The Business Associate shall be deemed to be in violation of this Business Associate Agreement if it knew of, or with the exercise of reasonable diligence or oversight should have known of, a pattern of activity or practice of any subcontractor, subsidiary, affiliate, agent or workforce member that constitutes a material violation of that entity's obligations in regard to PHI unless the Business Associate took prompt and reasonable steps to cure the breach or end the violation, as applicable, and if such steps were unsuccessful, terminated the contract or arrangement with such entity, if feasible.
- p) Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or any change in applicable federal law including revisions to HIPAA; upon publication of any decision of a court of the United States or of the Commonwealth of Virginia, relating to PHI or applicable federal law; upon the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of PHI disclosures or applicable federal law, APS reserves the right, upon written notice to the Business Associate, to amend this Business Associate Agreement as APS determines is necessary to comply with such change, law or regulation. If the Business Associate disagrees with any such amendment, it shall so notify APS in writing within thirty (30) days of APS's notice. In case of disagreement, the parties agree to negotiate in good faith the appropriate amendment(s) to give effect to such revised obligation. In APS's discretion, the failure to enter into an amendment shall be deemed to be a default and good cause for termination of the Underlying Agreement.
- q) APS makes no warranty or representation that compliance by the Business Associate with this Business Associate Agreement, HIPAA, the HITECH Act, federal law or the regulations promulgated thereunder will be adequate or satisfactory for the Business Associate's own purposes or to ensure its compliance with

the above. The Business Associate is solely responsible for all decisions made by it, its workforce members, agents, employees, subsidiaries and subcontractors regarding the safeguarding of PHI and compliance with federal law.


- r) The Business Associate agrees that its workforce members, agents, employees, subsidiaries and subcontractors shall be bound by the confidentiality requirements herein and the provisions of this Business Associate Agreement shall be incorporated into any training or contracts with the same.
- s) This Business Associate Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
- t) This Business Associate Agreement shall replace and supersede any prior Business Associate Agreement entered between the parties.

IN WITNESS WHEREOF, each party hereto has executed this Business Associate Agreement in duplicate on the date below written:

**ARLINGTON PUBLIC SCHOOLS**

Authorized Signature:   
Printed Name Dan Redding  
Assistant Superintendent  
Title: Human Resources  
Date: May 28, 2021

**RESOURCEPATH**

Authorized Signature:   
Printed Name: D. Ashley Hill, MD  
Title: Medical Director  
Date: May 25, 2021

Attachment C  
STUDENT DATA USAGE and PRIVACY AGREEMENT

This Student Data Usage and Privacy Agreement ("SDUPA") dated June 2, 2021 is between **Arlington County School Board**, operating as **Arlington Public Schools**, located at 2110 Washington Blvd., Arlington, VA 22204 ("APS" or "Customer") and **ResourcePath, LLC** located at 45945 Trefoil Ln, Unit 175, Sterling, VA 20166 ("Provider") hereinafter individually a "Party" and collectively "the Parties", APS and Provider mutually agree to the terms of this SDUPA whereby APS will provide the following Data to Provider for the Approved Purposes only.

The Parties hereby agree as follows:

**1.0 Definitions**

- 1.1. "Agreement" or "Agreements" shall mean any contract or contracts between APS and the Provider for the provision of any Authorized Services.
- 1.2 "Approved Purposes" shall mean the use of Data by the Provider for the purposes of providing services authorized by APS in Agreements entered into between APS and the Provider ("Authorized Services") during the term of the SDUPA., and for no other purpose.
- 1.3 "Data" shall include all Personally Identifiable Information (PII), Education Records as defined by the Family Educational Rights and Privacy Act ("FERPA"), and other non-public information relating directly to APS students. Data include, but are not limited to, student data, metadata (only if such metadata can directly or indirectly identify a student), forms (only if such forms can directly or indirectly identify a student), logs (only if such logs can directly or indirectly identify a student), cookies, tracking pixels, and user content.
- 1.4 "Subcontractors" shall include Provider subcontractors, subcontractors of Providers subcontractors, their subcontractors, and all successor entities.

**2 Security Controls**

- 2.1 Provider will store and process Data in accordance with commercially reasonable practices. This includes appropriate administrative, physical, and technical safeguards to secure Data from unauthorized access, disclosure, and use.
- 2.2 Provider will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.
- 2.3 Provider will also have a written incident response plan, to include notifying APS, immediately (within one (1) business day) of becoming aware of a security or privacy incident involving Data. Provider agrees to share its incident response plan upon request.

**3 Access and Control**

- 3.1 Any Data held by Provider will be made available to APS upon request by APS upon thirty (30) days written request.
- 3.2 All Data must remain under the direct control of APS to the extent required by FERPA. Where Data is in possession of Provider, APS may direct Provider to take certain actions with regards to the Data, in conformity with the SDUPA and applicable law.
- 3.3 Parents and eligible students must be able to access the Data upon request. This request shall occur through APS as a FOIA request to ensure only authorized individuals have access to the Data.
- 3.4 Provider shall use Data solely as necessary to perform Authorized Services. Provider may not access, collect, store, process, or use Data for any reason other than as necessary to provide the Authorized Services.

**4 Marketing and Advertising**

- 4.1 Provider may not use any Data to advertise or market to students or their parents.
- 4.2 Provider may not use Data to target individual students with directed advertisements and may never use Data to directly collect personal information from students.

**5 Collection and use of Data**

- 5.1 Solely for purposes of this SDUPA with respect to Data, Provider is deemed a 'School Official' within the meaning of that term as defined in 20 USC §1232g et seq., with a legitimate educational interest to the Data performing services and providing functions which would otherwise be performed by APS staff, for the sole purpose of providing Authorized Services.
  - 5.1.1 No relationship of employer and employee is created by this SDUPA or any Agreement. Provider its sub-contractors, and its employees shall not be employees of APS and shall not have any claim under this SDUPA or any Agreement or otherwise against APS for vacation pay, sick leave, retirement benefits, social security contribution, worker's compensation, disability or unemployment insurance benefits or any other employee benefit of any kind. Provider shall not be the agent of APS, nor shall Provider make any representation to the contrary to any third parties.
- 5.2 Provider may not sell Data or disclose Data to third parties except under provision 5.4.
- 5.3 Provider will collect and use Data only for the purpose of fulfilling its duties and providing Authorized Services under any Agreement and for improving Authorized Services under such Agreement.

5.4 APS understands that Provider may rely on one or more Subcontractors to perform Authorized Services under an Agreement. Provider shall share the names of these Subcontractors, including sub-subcontractors, with APS upon request. If Provider intends to provide any Data which was received from, or created for APS, to a Subcontractor, then Provider shall require such Subcontractor and sub-subcontractor to enter into an agreement with data privacy protection terms as restrictive as those contained in this SDUPA. APS reserves the right to reject any Subcontractor if, in its sole discretion, APS determines that such subcontractor or sub-subcontractor is unsuitable for performance of the SDUPA. Provider acknowledges and agrees that the Provider's obligations under this SDUPA shall not be assigned to any other person or entity without the prior written consent of APS, which APS shall be under no obligation to grant.

6 Data Transfer or Destruction

6.1 Provider will ensure that all Data in its possession and in the possession of any Subcontractors, or agents to which the Provider may have transferred Data, are destroyed or transferred to APS under the direction of APS when the Data are no longer needed to provide Authorized Services, at the request of APS within one (1) month, or as agreed upon between the Parties. Where there is a conflict between applicable law and this SDUPA, the applicable law will prevail.

7 Rights and License in and to use Data

7.1 Parties agree that all rights, including all intellectual property rights, shall remain the exclusive property of APS and Provider has a limited, nonexclusive license solely for the purpose of performing its obligations.  
7.2 This SDUPA shall not be construed to give the Provider any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in this SDUPA to provide Approves Services. This includes the right to sell or trade Data.

8 Data De-Identification

8.1 Provider may use de-identified Data and metadata for product development, research, or other purposes. De-identified Data and metadata will have all direct and indirect personal identifiers removed. This includes removal of, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID.  
8.2 Provider agrees not to attempt to re-identify de-identified Data and not to transfer de-identified Data to any third party unless that third party agrees not to attempt re-identification.  
8.3 De-identified data and metadata may be used to improve the Provider's products or services, but may not be provided to third parties or sold.

9 Data Mining

9.1 Provider is prohibited from mining Data for any purposes except as expressly authorized by APS in any Agreement or in this SDUPA. Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited.

10 Modification of Terms of Service

10.1 During the term of the SDUPA, Provider will not materially change its methods for the collection, use, and sharing of Data, including its storage and destruction protocols, without advance notice to and consent from APS. Notwithstanding the foregoing, advance notice and consent from APS shall not be required if such changes to methods for collection, use and sharing are required under law and such changes result in more protective methods for the collection, use, and sharing of Data.

11 Precedence Over Agreements

11.1 Unless this SDUPA is specifically amended, in the event of a discrepancy between this SDUPA language and the terms and conditions of any Agreements between APS and the Provider relating to Data, the SDUPA language shall take precedence.

**ACCEPTED AND AGREED:**

RESOURCEPATH, LLC

By: D. Ashley Hill M.D.

Printed Name: D. Ashley Hill, MD

Title: Medical Director

Date: May 25, 2021

ARLINGTON PUBLIC SCHOOLS

By: David Webb

Printed Name: David J. Webb, C.P.M.

Title: Procurement Director / Procurement Agent

Date: June 2, 2021



**PURCHASE ORDER  
TERMS AND CONDITIONS**

**1. PURCHASE ORDER**

This Purchase Order is a contractual agreement between Arlington County School Board, operating as Arlington Public Schools (“APS”) and the Vendor and is subject to these Purchase Order Terms and Conditions, the Arlington Public Schools Procurement Resolution (“Procurement Resolution”), and the Code of Virginia.

**2. DELIVERY**

Time is of the essence for any orders placed as a result of this Purchase Order. APS reserves the right to cancel such orders, or any part thereof, without obligation if delivery is not made at the time(s) specified in the Purchase Order. Delivery costs will be included in the price. All items shall be delivered F.O.B. destination and Vendor will pay transportation charges both ways on materials rejected for failure to meet specifications or for wrong or defective material. The Vendor assumes all liability and responsibility for the delivery of merchandise in good condition to the specified delivery location(s).

**3. FORCE MAJEURE**

Neither Party shall be held responsible for failure to perform the duties and responsibilities imposed upon it by this Purchase Order to the extent such failure is due to causes beyond the control of the Party, such as but not limited to fires, riots, rebellions, natural disasters, wars or an act of God, that makes performance impossible or illegal, unless otherwise specified in this Purchase Order.

**4. ACCEPTANCE OF MATERIAL**

Any goods delivered under this Purchase Order shall remain the property of the Vendor, who bears all risk of loss, until a physical inspection or actual usage of the goods is made and thereafter accepted to the satisfaction of APS. All goods, services, professional services, construction or insurance (collectively “Deliverables”) must comply with the specifications/scope of services and terms and conditions of the Purchase Order and be of the highest quality. In the event any Deliverables supplied to APS are found to be defective or not to conform to specifications, APS reserves the right to cancel the order upon written notice to the Vendor and return products to the Vendor at the Vendor's expense.

**5. OVER SHIPMENTS**

APS shall not be responsible for payment of over shipments even in the event of inadvertent use of over shipped goods. Quantities ordered must not be exceeded unless authority for deviations is specified in this Purchase Order or an appropriate change order is issued.

**6. PACKING LIST AND/OR DELIVERY TICKET**

A Packing List and/or Delivery Ticket must be furnished with each shipment indicating the Purchase Order number as well as the following information:

- a. Name of the Article and Stock Number (Vendor's)
- b. Quantity Ordered
- c. Quantity Shipped
- d. Quantity Back Ordered
- e. Name of Vendor

**7. DROP SHIPMENTS**

"Drop Shipments" of materials by Vendor from manufacturers will also be subject to the Packing List and/or Delivery Ticket information requirements as outlined in Paragraph 6 above. Vendor must ensure manufacturer compliance with these instructions.

**8. MARKINGS**

The Purchase Order number must appear on all cartons, boxes, packages, shipping cases, invoices, shipping documents and correspondence.

**9. PAYMENT TERMS**

Payments will be made within thirty (30) calendar days after receipt of an approved invoice by APS. Any prompt payment discounts offered will be taken if payment is made within the discount period offered. In connection with any discount offered for prompt payment, time shall be computed from the date the invoice is received. For the purpose of earning the discount, in those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made.

**10. PAYMENTS TO SUBCONTRACTORS**

The Vendor agrees to make payments to subcontractors in accordance with Virginia Code Section 2.2-4354.

**11. PRICES**

This order is accepted only at prices stated in the Purchase Order. No tax shall be included except as provided for in Paragraph 13, Taxes.

**12. INVOICES**

Invoices, unless otherwise specified in the Purchase Order, will not be submitted until after acceptance by APS of the performance being invoiced and no more often than every thirty (30) days and in compliance with the requirements of paragraph 25 below. If shipment is made by freight or express, the original Bill of Lading properly receipted, must be attached to the invoice. Each Purchase Order must be invoiced separately. Deliverables furnished on two (2) or more Purchase Orders must not be included on one (1) invoice, but more than one (1) invoice may be issued under a Purchase Order. All funds not paid by APS when due as provided in this Purchase Order shall bear interest at the rate of 0.5% per month. Submit invoices, as applicable, by:

- a) By U.S. Mail to:

Arlington Public Schools  
Finance Office

2110 Washington Blvd.  
Arlington, VA 22204

Or

b) By email to:

aps.payables@apsva.us

**13. TAXES**

APS is exempt from the payment of any federal excise or any Virginia Sales Tax. The price must be net, exclusive of taxes. However, when under established trade prices, any federal excise tax is included in the list price, the Vendor may quote the list price and show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by APS. The APS Federal Tax I.D. is 54 6001128. V e n d o r s located outside of the Commonwealth of Virginia are advised that when materials are picked up by APS employees at Vendor's place of business, Vendor may charge and collect its own local/state tax.

**14. PURCHASE ORDER REQUIREMENT**

A Vendor shall not commence work until an approved Purchase Order or Change Order has been issued by the Procurement Agent, except where permitted either by the Procurement Resolution or the underlying Public Contract to which the Purchase Order or Change Order is the approval to commence work or modify it. A Public Contract is not considered to be fully executed unless it has been signed by the APS Procurement Agent, or his designee, and the Vendor.

In situations where work has commenced prior to a Purchase Order or Change Order being approved, and it is determined the commencement of work without a Purchase Order or Change Order is not permitted by the Procurement Resolution or the underlying Public Contract, requests for payment received from the Vendor for work performed prior to the date of a Purchase Order or Change Order being approved, may be rejected by the Procurement Agent and considered an Unauthorized Purchase.

The Vendor's sole recourse shall be as provided by the underlying contract and the applicable provisions of the Virginia Public Procurement Act.

APS will not be liable for payment of any purchases made by its employees without appropriate procurement authorization issued by APS Procurement Agent.

**15. CHANGES TO PURCHASE ORDERS**

No change may be made to this Purchase Order without an APS change order to this Purchase Order issued in advance of the transaction by an authorized APS employee. APS has no payment obligation or responsibility for any changes made without issuance of a written change order.

**16. APPROPRIATION OF FUNDS**

All funds for payments by APS under this Purchase Order are subject to the availability of an annual appropriation for this purpose by the Arlington County School Board. In the event of non-appropriation of funds by the Arlington County School Board for the goods, services, professional services, construction or insurance provided under this Purchase Order or changes thereto this Purchase Order will terminate automatically without termination charge or other liability to APS, on the last day of the then current fiscal year or when the appropriation made for the then current year for the purchase covered by this Purchase Order is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Purchase Order, cancellation will be accepted by the Vendor on thirty (30) calendar days prior written notice, but failure to give such notice shall be of no effect and APS shall not be obligated under this Purchase Order beyond the date of termination other than to make payment for delivery or performance prior to notice of termination.

**17. GUARANTEES & WARRANTIES**

Vendor warrants to APS that all goods furnished under this Purchase Order will be new unless otherwise specified in writing by APS, and that all performance will be of first class quality, free from faults and defects. All Deliverables provided not conforming to these requirements shall be considered defective. All manufacturer warranties shall be assigned to APS. Nothing stated herein shall in any way limit any applicable implied warranties. The warranty shall be for a period of minimum of one-(1) year, from acceptance by APS of the goods furnished under this Purchase Order, or the manufacturer's standard warranty, whichever is longer. The warranty shall include all parts, labor, transportation, and any other costs (except general supply items) necessary to keep the product in good operating condition. The cost of this one (1)-year warranty shall be included in the price quoted.

**18. VENDOR RESPONSIBILITY FOR DAMAGE TO PROPERTY**

The Vendor shall be responsible for damages to property caused by performance under this Purchase Order. The Vendor shall repair to proper working order or replace, to the satisfaction of APS, any property damaged either directly or indirectly by Vendor's actions.

**19. TERMINATION FOR CONVENIENCE**

Unless otherwise stated, this Purchase Order may be terminated by APS, in whole or in part, whenever APS determines that such a termination is in its best interests. Any such termination shall become effective on the date stated in a written notice of termination mailed or delivered to the Vendor at least five (5) business days prior to the stated termination date. The notice of termination shall state the extent to which performance shall be terminated. The Vendor shall be paid for all accepted performance prior to the termination date. Purchase Order termination pursuant to this section shall not be considered a Purchase Order default, and APS shall not be liable for future payments, damages of any type, or for cancellation or termination charges.

**20. TERMINATION FOR CAUSE**

If, through any cause, the Vendor shall fail to fulfill in a timely and proper manner its obligations under this Purchase Order, or if the Vendor violates any of the covenants, agreements, or stipulations of this Purchase Order, APS thereupon has the right to declare the Vendor in default in whole or in part. In the event APS elects to declare the vendor in default, APS will give the Vendor written notice describing the nature of the default and providing the Vendor a right to cure such default within ten (10) business days after the date of the notice, or within such longer period as APS, in its sole and absolute discretion, may prescribe. In the event the default is not cured within the time period, APS has the right to take

necessary actions to correct or complete the work. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Vendor and all goods on site under the Purchase Order shall, at the option of APS, become the property of APS and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory performance through the date of termination. A termination for cause subsequently determined to have been without adequate justification shall be deemed to have been a termination for convenience.

Notwithstanding the above, the Vendor shall not be relieved of liability for damages sustained by APS by virtue of any breach of this Purchase Order by the Vendor until such time as the exact amount of damages due to APS from the Vendor can be determined.

**21. CONTRACTUAL DISPUTE**

Contractual disputes shall be handled in accordance with Article 7-107 of the Arlington Public Schools Procurement Resolution.

**22. ARBITRATION**

It is expressly agreed that nothing under this Purchase Order shall be subject to arbitration.

**23. SEVERABILITY**

The sections, paragraphs, sentences, clauses and phrases of this Purchase Order are severable, and if any phrase, clause, sentence, paragraph or section of this Purchase Order shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Purchase Order.

**24. VENDOR LICENSING/REGISTRATION/CERTIFICATION**

The Vendor certifies it has in effect all licenses, certifications and classification(s) required to perform the work included in this Purchase Order, in accordance with Title 54.1 of the Code of Virginia and in accordance with the laws, rules and regulations of the Commonwealth of Virginia, Department for Professional and Occupational Regulation, or such other regulatory authority as may be applicable. If this certification is not correct, this Purchase Order is invalid and APS shall be responsible for no payment regardless of degree of performance by Vendor.

**25. AUTHORITY TO TRANSACT BUSINESS**

The Vendor must be in compliance with all applicable Arlington County business license requirements. Any Vendor organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership must be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Virginia Code, or as otherwise required by law. The proper legal name of the firm or entity and the identification number issued to the Vendor by the State Corporation Commission must be included in all invoices. Any Vendor that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law, or not required to have an Arlington County business license, shall include in its first invoice a statement describing why the Vendor is not required to be so authorized and licensed. APS may require documentation which clearly supports any of the forgoing representations of the Vendor. Failure to provide such documentation within the time requested shall be grounds for cancellation of this Purchase Order with no responsibility of APS to make payment of any kind, regardless of performance provided. For further information refer to the Commonwealth of Virginia State Corporation Commission website at: [www.scc.virginia.gov](http://www.scc.virginia.gov).

**26. COMPLIANCE WITH ALL REQUIREMENTS**

The Vendor shall comply with all applicable Federal, State and Local laws, codes and regulations and shall give all notices and obtain all permits required thereby.

**27. INDEMNIFICATION**

The Vendor covenants to save, defend, hold harmless, and indemnify APS, Arlington County School Board, and all of its elected and appointed officials, officers, employees, agents, departments, agencies, boards, and commissions (collectively the "Indemnified Parties ") from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, resulting from, arising out of, or in any way connected with the Vendor's performance or nonperformance of the scope of this Purchase Order except for those caused by the negligence or willful misconduct of an Indemnified Party. This indemnification shall survive the completion of this Purchase Order.

**28. GOVERNING LAW**

This Purchase Order and performance hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of laws principles, and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court.

**29. ARLINGTON PUBLIC SCHOOLS EMPLOYEES**

No employee of APS shall be admitted to any share or part of this Purchase Order or to any benefit that may arise from this Purchase Order which is not available to the general public.

**30. ETHICS IN PUBLIC CONTRACTING**

The provisions contained in Article 9 of the Procurement Resolution apply to all APS Purchase Orders. The provisions of Article 9 supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (Title 2.2, Chapter 31 of the Virginia Code), the Virginia Governmental Frauds Act (Title 18.2, Chapter 12, Article 1.1 of the Virginia Code) and prohibitions against bribery and related offenses (Title 18.2, Chapter 10, Articles 2 and 3 of the Virginia Code). The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia Conflict of Interests Act.

**31. FAITH BASED ORGANIZATIONS**

APS does not discriminate against faith-based organizations.

**32. IMMIGRATION REFORM AND CONTROL ACT**

In accordance with § 2.2-4311.1 of the Code of Virginia, the Vendor certifies that it has not, and will not during the performance of this Purchase Order, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

**33. HIPAA COMPLIANCE**

The Vendor shall comply with all applicable legislative and regulatory requirements of privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

**34. VENDOR CERTIFICATION REGARDING CRIMINAL CONVICTIONS**

The Vendor agrees to comply with Virginia Code 22.1-296.1. The Vendor agrees to provide certification that neither the Vendor, its employees, its subcontractors and employees thereof, who will have direct contact with students on school property during regular school hours or during school-sponsored activities, have not been convicted of a felony or of any offense involving the sexual molestation or physical or sexual abuse or rape of a child. The Vendor certification shall also cover its employees, its subcontractors and employees thereof, assigned to the performance of this Purchase Order and the Purchase Order was approved. The Vendor, upon demand from APS, shall provide all information which allowed for the Vendor's certification.

**35. ASSIGNMENT**

The Vendor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of APS.

**36. GENERAL INSURANCE REQUIREMENTS**

If requested, the Vendor shall provide a Certificate of Insurance indicating that the Vendor has in force general commercial liability and comprehensive insurance coverage levels acceptable to APS, and workers' compensation insurance in compliance with Virginia law, prior to the start of any work under this Purchase Order and agrees to maintain such insurance until the completion of the work. All required insurance coverage must be acquired from insurers authorized to do business in the Commonwealth of Virginia and acceptable to APS. APS requires notification of cancellation of any of the aforementioned insurance policies sixty (60) days prior to the cancellation date.

**37. EMPLOYER DISCRIMINATION BY VENDOR PROHIBITED**

During the performance of this Purchase Order, the Vendor agrees as follows:

- A. The Vendor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, age, disability or any other basis prohibited by state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Vendor. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Vendor, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, will state that such Vendor is an Equal Opportunity Employer.
- C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- D. The Vendor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.
- E. The Vendor will include the provisions of the foregoing sections in every subcontract or Purchase Order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- F. In seeking subcontractors, suppliers and vendors necessary to perform work, the Vendor shall encourage the participation of small businesses, women-owned businesses, minority-owned businesses, service disabled veteran-owned businesses and employment services organizations. At a minimum, for any portion of the work the Vendor is not going to perform with its own forces, the Vendor shall contact the Commonwealth of Virginia Department of Minority Business Enterprise to obtain a list of certified businesses in these categories available to perform such work or provide such materials or equipment. The Vendor shall directly solicit bids from at least one certified business in each category to perform such work or provide such materials or equipment, but shall not be obligated to give any preference to any such business in the award of subcontracts or materials/equipment supply subcontracts. Identification and direct solicitation of other such businesses by other means is strongly encouraged

**38. DRUG-FREE WORKPLACE TO BE MAINTAINED BY VENDOR**

During the performance of this Purchase Order, the Vendor agrees to:

- A. Provide a drug-free workplace for the Vendor's employees;
- B. Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Vendor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- C. State in all solicitations or advertisements for employees placed by or on behalf of the Vendor that the Vendor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or Purchase Order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Vendor in accordance with this Procurement Resolution, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**39. SMOKING PROHIBITED**

Any building or open area owned by APS wherein or whereon a Vendor is performing a contract is either an educational facility or a public place as defined by Va. Code Ann. §15.2-2820. There shall be no smoking as defined by Va. Code Ann. §15.2-2820 and including e-cigarettes or similar apparatus at any time in any educational facility, building or open area owned by APS. It is the responsibility of the Vendor to enforce this prohibition.

**40. CONFIDENTIAL INFORMATION**

The Vendor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all APS information obtained as a result of its work under this Purchase Order. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, proprietary systems, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Vendor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

**41. VENDOR TERMS AND CONDITIONS**

Any Vendor terms and conditions included or referenced in any Vendor documentation or Vendor website, shall not be considered to be and will not be considered to be a part of this Purchase Order

**42. VENDOR PROHIBITED IN ASSISTING PERSON FOR NEW JOB IF ENGAGED IN MISCONDUCT WITH MINOR**

As a condition of being awarded a Contract, or Contract Renewal, the Vendor acknowledges it is prohibited from assisting the elected and appointed officials of APS, its officers, current and former employees, agents, departments, agencies, boards, and commissions employee, and contractors, including all levels of subcontractors, in obtaining a new job if the Vendor knows or has probable cause to believe that the elected and appointed officials of APS, its officers, current and former employees, agents, departments, agencies, boards, and commissions employee, and contractors, including all levels of subcontractors, engaged in sexual misconduct regarding a minor or student in violation of law.

**43. ORDER OF PRECEDENCE**

Should the terms and conditions of this Purchase Order conflict with the terms and conditions of a contract the Vendor has with APS under which this Purchase Order is issued, the terms and conditions of the pre-existing APS contract shall take precedence.

The following is included in Purchase Orders and Change Orders for the purchase of textbooks:

**44. PURCHASE OF TEXTBOOKS**

The publisher shall, for each textbook ordered, furnish an electronic file in the National Instructional Materials Accessibility Standards (NIMAS) format that will be deposited in the National Instructional Materials Access Center (NIMAC) from which accessible versions of the particular textbook may be produced for students with print disabilities. The publisher shall deliver the NIMAS file of the textbook on or before the date of delivery of the regular text version.

The publisher certifies that the textbook unit price appearing in the contract or Purchase Order is the lowest wholesale price at which the book or books are currently bid under contract anywhere in the United States or that the price to be charged has been reduced and is the same price as sold anywhere outside of Virginia. In the event the reduced price is permanent the publisher further agrees to notify the Virginia Department of Education to update its website with the new unit price.

The publisher shall, when applicable, offer the Arlington County School Board the option of using any special or other edition of a textbook named in the contract or Purchase Order and adapted for use in Virginia and available at a lower price as sold elsewhere in the United States.

The following is included in Purchase Orders and Change Orders where the Vendor will have access to student data:

**45. STUDENT DATA USAGE AND PRIVACY AGREEMENT**

The Vendor understands and agrees that where the provision of Work requires the Vendor to have access to student data the Student Data Usage and Privacy Agreement (SDUPA) is included in the Purchase Order and Change Order by reference. A link to the SDUPA is provided.

<https://www.apsva.us/wp-content/uploads/2018/08/STUDENT-DATA-USAGE-and-PRIVACY-AGREEMENT-Revised-August-2018.pdf>

The following is included in Purchase Orders and Change Orders for construction services where the total amount payable by APS to the Vendor is in excess of One Hundred Thousand Dollars (\$100,000.00) but in an amount not to exceed Two Hundred Thousand Dollars (\$200,000.00).

**46. PERFORMANCE AND LABOR AND MATERIAL PAYMENT BONDS**

- a. The Vendor shall execute and deliver to APS Performance and Labor and Material Payment Bonds on the forms attached to this Purchase Order, each in an amount equal to the Purchase Order Total. The Performance and Labor and Material Payment Bonds shall be executed by a solvent and responsible surety company licensed to conduct business in the Commonwealth of Virginia, named in the current United States Treasury Department's latest Circular 570 and acceptable to APS. These bonds shall be issued and countersigned by a local authorized representative of such surety company who maintains a resident place of business in the Commonwealth of Virginia, regularly commissioned and licensed in the Commonwealth and producing satisfactory evidence of the authority of the person or persons executing the bonds to execute them on behalf of the surety. The Performance and Labor and Material Payment Bonds shall serve as security for the faithful performance of this Purchase Order, and for the payment of all persons performing labor and furnishing materials and services in connection with this Purchase Order consistent with the requirements of the Virginia Public Procurement Act. The premiums on the Performance and Labor and Material Payment Bonds shall be paid by the Vendor and shall be included in the Purchase Order Total.
- b. If at any time APS shall become dissatisfied with any surety or sureties providing the Performance or Labor and Material Payment Bonds, or both, or if for any other reason such Bonds shall cease to be adequate security for the Vendor, the Vendor shall within ten (10) Days after notification of such fact, substitute acceptable Bonds in such form and sum and signed by such other sureties as may be satisfactory to APS. The premiums on such Bonds shall be paid by the Vendor at no additional charge to APS. No further partial payments shall be deemed due nor shall be made until the new Bonds are in effect and provided to and approved by APS.

- c. Alternative Forms of Security: Any Performance or Labor and Material Payment Bond required may be provided in the form of a certified check, cashier's check, or cash escrow in the face amount required for the Bond and conditioned as required for a surety bond. Any Performance Bond or Labor and Material Payment Bond required may be in the form of a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bond, but only if approved by the APS attorney. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the AP S equivalent to a corporate surety's bond.

Amended July 01, 2020