



Arlington Public Schools

PROCUREMENT OFFICE

2100 Washington Blvd., Arlington, VA 22204 • Phone: (703) 228-6123

Website: www.apsva.us

Subject: Contract 10FY21 Sheltered Instruction Professional Learning Services

Contract 10FY21, for the provision of Sheltered Instruction Professional Learning Services (“the Work”) is entered into as of the date the Procurement Agent signs this Agreement, this 30th day of June 2021; by and between Center for Applied Linguistics, located at 4646 40th Street NW, Washington, DC 20016-1859 hereinafter called “Contractor” and Arlington County School Board, operating as Arlington Public School hereinafter called “APS” or “Owner

1. Contract Term:

The initial term of this Contract shall commence on the date the Contract is fully executed by the Procurement Director/Procurement Agent and expiring on June 30, 2022 (‘Initial Contract Term’), unless otherwise stated as provided in the Contract Documents.

This Contract may be renewed for a term not to exceed one (1) year (‘Renewal Contract Term’) by written notice given by APS at any time prior to thirty (30) Days after expiration of the preceding Initial Contract Term or Renewal Contract Term. No representative of APS has any authority to order, direct, or request work after expiration of the Initial Contract Term or Renewal Contract Term and prior to a Renewal Contract Term in strict compliance with the renewal terms herein APS, at its sole discretion, has the right, but is under no obligation, to exercise this right to renewal not to exceed three (3) additional one-year periods at the same terms and conditions.

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.

2. Contract Price Adjustment:

The Contractor agrees that prices shall remain firm for the Initial Contract Term. If consideration is to be given to adjusting the price after the Initial Contract Term or a Renewal Contract Term, the price may be adjusted only upon approval of a written request to the Procurement Agent. Upon receipt of the Contractor’s request, APS shall make a determination to approve or adjust the requested price increase based upon its investigations and the information provided by the Contractor. Any price adjustment agreed to shall take place only in accordance with the schedule defined above.

The request for an adjustment in the price shall include as a minimum, (1) the cause for the adjustment; (2) proposed effective date; and, (3) the amount of the adjustment requested with documentation to support the requested adjustment (i.e., appropriate Bureau of Labor Statistics index, change in manufacturer’s price, etc.)

The request must be received at least thirty (30) days prior to the effective date of the expiration of the Initial Contract Term or Renewal Contract Term and shall become effective only upon approval by the Procurement Agent. The adjusted price shall not apply to orders received by the Contractor prior to the effective date of the approved increased

price. Orders placed via Purchase Order, shall be considered to have been received by the Contractor after the fifth (5th) calendar day following the date issuance. The Procurement Agent may cancel, without liability to either party, any portion of the Contract affected by the requested adjustment and any materials, supplies or Services undelivered at the time of such cancellation.

3. Scope of Work

The Contractor agrees to perform the services described in the Contract Documents (hereinafter the "Work"). The primary purpose of the Work is to obtain the services of a qualified Contractor to provide and implement the Work. The Work is more fully described in Attachment A. The Contract Documents set forth the minimum work estimated by APS and the Contractor to be necessary to complete the Work. It shall be the Contractor's responsibility, at the Contractor's sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of its Work. The Contractor shall be responsible for providing the Work.

4. Contract Amount

APS will pay the Contractor in accordance with the firm fixed price(s) shown in Attachment B – Fee Schedule. The firm fixed price shall include all of the Contractor's fees in performance of the Work under this Contract, including but not limited to, travel, overhead and profit. The firm fixed price(s) shall not be subject to change during the Contract Term.

5. Contract Documents

The Contract consists of the following documents: all of which are incorporated into and are part of the Contract, and which, in the event of a conflict, shall be given precedence in the order listed, with any Amendment or Modification having precedence over preceding provisions. In the event of a conflict within a Contract Document at the same level of precedence, that provision requiring the higher quality of performance or quantity shall prevail. In the event of a conflict which is not resolved by the foregoing, the Owner shall determine the provision having precedence.

- 1 Attachment G - Negotiated Items List
- 2 Agreement #10FY21 and all modifications properly incorporated into the Agreement
- 3 Attachment A - Scope of Work
- 4 Attachment B - Fee Schedule
- 5 Attachment C - Contractor Certification Regarding Criminal Convictions
- 6 Attachment D - Contract Terms & Conditions
- 7 Attachment E - Student Data Usage and Privacy Agreement
- 8 Attachment F - Certificate(s) of Insurance

The following are incorporated by reference:

- 9 The Request for Proposal (RFP) documents, and
- 10 The Proposal Response from the Contractor

Where the terms and provisions of the Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of the Agreement shall prevail over the other Contract Documents.

The Contract Documents set forth the entire Contract between APS and the Contractor. APS and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to this Contract which is not contained in the Contract Documents. The Contract Documents are referred to herein below as the "Contract."

6. 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.

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. 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.

9. Assignments

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. 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: Ms. Annie Duguay
 Director, Language and Literacy
 PreK-12 EL Professional Development
 Center for Applied Linguistics
 4646 40th Street NW
 Washington, DC 20016
 aduguay@cal.org

To APS: Mr. Sam Klein
 Director, Office of English Learners
 Arlington Public Schools
 2110 Washington Blvd.
 Arlington, Virginia 22204
 sam.klein@apsva.us

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

Note: Due to the COVID-19 pandemic, notices shall delivered by email and shall be considered received by a person(s) stated above when the email is in the receiver’s mailbox

11. 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.

The Work shall be performed in accordance with the above-referenced Contract Documents and is the complete agreement between APS and the Contractor and may not be altered except by written amendment signed by APS and the Contractor in compliance with the requirements of the Contact Documents.

The signatures of APS and the Contractor, or their authorized representatives, are set out below in acknowledgment and acceptance of this Contract.

IN WITNESS WHEREOF, APS and Contractor have executed this Agreement as of the date written above.

Acceptance:

Arlington Public Schools
Authorized Signature: *David J. Webb*
Printed Name: David J. Webb, C.P.M.
Title: Director/Procurement Agent
Date: June 30, 2021

Center for Applied Linguistics
Authorized Signature: *Joel Gomez*
Printed Name: Joel Gomez
Title: President
Date: June 28, 2021

Attachent A

Scope of Work

The Contractor(s) shall be responsible for providing the Work.

A. Category A - In-Person Sheltered Instruction Training:

Provide professional learning sessions for APS' secondary core content teachers of ELs on effective strategies for sheltering content for ELs and promoting their English language development in all four language domains. The four language domains as referenced herein refers to listening, speaking, reading, and writing. The professional learning will give teachers practical instructional strategies appropriate for planning, delivering, and adapting content for ELs within the context of standards-based lesson planning, instruction, and assessment and sufficient opportunities for modeling, practicing, and receiving feedback regarding such strategies. The professional learning should provide such teachers with the information they need to implement sheltered content instruction in their classes and for coaches, specialists, and administrators to provide support with implementation. Contractor should exhibit flexibility and should be willing to modify existing professional learning for the needs of APS. A specific facilitator may be required and should be provided for the requested assignment, if available. The preferred topics for in-person sheltered instruction professional learning sessions are listed below.

1. Identifying and writing clear content and language objectives
2. Planning and implementing sheltered lessons that integrate content and language
3. Culturally responsive teaching
4. Building and activating background knowledge
5. Selecting and teaching academic vocabulary
6. Making input comprehensible
7. Scaffolding instruction and using adapted and supplemental materials
8. Differentiating instruction for ELs at varying English proficiency levels
9. Promoting student interaction and academic discourse
10. Grouping students and using cooperative learning techniques
11. Applying metacognitive, cognitive, and language learning strategies
12. Teaching content to newcomers and/or Students with Limited Interrupted Formal Education (SLIFE) students
13. Teaching content to long-term ELs
14. Reading and writing for the secondary content areas
15. Assessing and providing feedback to ELs
16. Using EL-specific accommodations on assessments
17. Primary language support
18. Second language acquisition
19. Basic literacy to newcomers/SLIFE
20. Language difference versus learning disability/Response to Intervention (RTI)
21. Linguistics knowledge
22. Using ELs' assessment data to plan for instruction
 - a) In-Person Sheltered Instruction Series:
 - i) SIOP I or equivalent introductory level sheltered instruction training for up to 30 teachers (approximately 20 hours, in increments of 3.5 or 7 hours per day)
 - ii) SIOP II or similar intermediate level sheltered instruction training for up to 30 teachers (approximately 20 hours, in increments of 3.5 or 7 hours per day)
 - iii) School-based SIOP I or similar introductory sheltered instruction training for up to 80 teachers (approximately 20 hours, in increments of 2, 3.5, or 7 hours per day)

- iv) School-based SIOP II or similar intermediate level sheltered instruction training for up to 80 teachers (approximately 20 hours, in increments of 2, 3.5, or 7 hours per day)
- b) In-Person Sheltered Instruction Workshops: Professional learning about sheltered content instruction that focuses on one of the preferred topics and lasts between 1 and 3 hours per day.

B. Category B - Sheltered Instruction Online Training:

Provide online professional learning for APS' secondary core content teachers of ELs on effective strategies for sheltering content for ELs and promoting their English language development in all four language domains. The four language domains as referenced herein refers to listening, speaking, reading, and writing. The professional learning will give teachers practical instructional strategies appropriate for planning, delivering, and adapting content for ELs within the context of standards-based lesson planning, instruction, and assessment. The professional learning should provide sufficient opportunities for modeling, practicing, and receiving feedback on such strategies and should incorporate some facilitation and/or interactive components. These professional learning opportunities should provide APS teachers with the information they need to implement sheltered content instruction in their classes and for coaches, specialists, and administrators to provide support with implementation. Such opportunities must include a minimum of two (2) of the preferred topics for in-person sheltered instruction professional learning sessions listed above for Category A. A specific facilitator may be required and should be provided for the requested assignment, if available. For synchronous online training Contractor is required to provide the online training in either 3.5 or 7 hour sessions. For asynchronous online training Contractor may propose any length of time for the asynchronous online training. Contractor should exhibit flexibility and should be willing to modify existing training to accommodate the needs of APS.

C. Category C - School-Based Support and Coaching:

APS reserves the right to include Category C as a component in the award of the Contract. APS, at its sole discretion, shall decide within a period not to exceed twelve (12) months from the date any resulting Contract(s) is signed by the Procurement Agent, whether to exercise the option for a Contractor to deliver the Work for Category C at the prices agreed upon in the Contract Fee Schedule.

The Contractor shall provide personalized coaching for participating teachers at their schools focusing on the training described above. The focus should be on transforming instructional practice through a job embedded coaching model that is individualized to the specific learning needs of each teacher. A specific facilitator may be required and should be provided for the requested assignment, if available.

1. School-Based Support: Provide each teacher with at least two (2) hours during Y2 and Y3 (with the option of Y4 and Y5) of school-based support in applying the sheltered content instruction strategies they have previously learned. Options for the school-based support include:
 - a) Staff meetings,
 - b) Grade-level meetings,
 - c) Professional learning communities,
 - d) Department meetings, and
 - e) Lesson design focused on planning content lessons using sheltered strategies and analyzing lessons after delivery.
2. In-Classroom Coaching: Provide each teacher with at least three (3) hours during Y2 and Y3 (with the option of Y4 and Y5) of in-classroom coaching on applying sheltered instruction strategies. Some possibilities for the in-classroom coaching include:
 - a) An EL facilitator observing content teachers' application of what they have learned from recent sheltered instruction training, followed by feedback/debriefing
 - b) EL facilitator co-teaching/modeling best practices for sheltered instruction, followed by observing content teacher and providing feedback, and
 - c) Peer observations of exemplary sheltered instruction, including debriefing with an EL facilitator.

D. Negotiated Enhancements to Scope

1. At a minimum, Contractor shall create an **annotated outline for SIOP I and SIOP II** content and activities for discussion and approval with APS. APS' contribution in this capacity will be that of a reviewer/editor and not of a content creator/writer of the content and activities.
2. Contractor shall create a **needs assessment or survey** for participants to assist in the enrollment determinations (SIOP I vs. SIOP II).
3. Contactor shall provide course participants with **access** to the online training for **at least one (1) year** after the completion of the respective training
4. As part of **attendance tracking**, at a minimum CAL shall provide to APS the names of the participants, the date(s) and length of the training, and the title of the training in a Google Forms document.
 - For synchronous learning, the attendance record provided by CAL shall reflect participants that attended the entire session as well as information about participants who showed up late or left early.
 - For asynchronous training, the attendance record provided by CAL shall reflect whether the participants have completed all of the work required for the training and any work outstanding.
5. Although in-person training is not happening at this present time, it is the expectation that when local health officials in Arlington County and the Commonwealth of Virginia issue guidance permitting in-person training to occur safely, it is the expectation that CAL will work with APS to accommodate APS' desire for in-person training to be provided.

Attachment B

Fee Schedule

Category	PD Description	# of Participants	# of Facilitators	Unit hours	Hourly Rate per Facilitator[†]
Category A	In-person SIOP I & II PD Series*	30	1	3.5	\$467.86
	In-person SIOP I & II PD Series*	80 – 90	3	3.5	\$371.43
	In-person Individual workshop*	30	1	1, 2, 3	\$430.00
	In-person Individual workshop*	80 – 90	3	1, 2, 3	\$378.57
Category B	Virtual SIOP I & II PD	30-40	2	3.5	\$358.00
	Virtual SIOP I & II PD	80 – 90	3	3.5	\$327.43
	Virtual Individual workshop	30 – 40	2	1, 2, 3	\$378.57
	Virtual Individual workshop	80 – 90	3	1, 2, 3	\$358.00
Category C	School-based coaching based on menu*	Variety of groups and sessions within one day	1	7	\$311.14
	Classroom-based coaching*	Approximately 7 individual coaching sessions or 20 teachers in small groups within one day	1	7	\$280.14

[†] The cost of any required training materials shall be included in this unit pricing reflected herein. APS will not pay separately for training materials.

* Mode of transportation shall be the most economic available without upgrades in class or accommodation. Lodging, meals, and incidental entitlements shall not exceed the current GSA Per Diem Rates for the locality that serves as the destination. <https://www.gsa.gov/travel-resources>



Attachment C

Contractor Certification Regarding Criminal Convictions

The completed form from the Contractor is a condition precedent to the award of the Contract.

As the official authorized to enter into this Contract on behalf of my organization, I certify that the Contractor, its employees, its sub-contractor(s) and their employees, who will have direct contact with students either on or off school property either during regular school hours or during school-sponsored activities during the performance of this Contract, has not been convicted of:

1. A felony or of any offense involving the sexual molestation, physical or sexual abuse, or rape of a child;
2. A sexually violent offense as defined in Va. Code Ann. § 9.1-902;
3. Any of the offense listed below occurring on or after July 1, 2006 in which the offender was more than three years older than the victim, when the offense was done in the commission of, or as a part of the same course of conduct of, or as part of a common scheme or plan to commit, (i) abduction or kidnaping in violation of Va. Code Ann. § 18.2-47 or § 18.2-48, (ii) burglary in violation of Va. Code Ann. § 18.2-89, (iii) entering a dwelling house with intent to commit crimes in violation of Va. Code Ann. § 18.2-90 or Va. Code Ann. § 18.2-91, or (iv) aggravated malicious wounding in violation of Va. Code Ann. § 18.2-51.2., or (v) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof:
 - a. Rape of a child under 13 in violation of Va. Code Ann. § 18.2-61;
 - b. Forcible sodomy with a child under 13 in violation of Va. Code Ann. § 18.2-67.1; or
 - c. Object sexual penetration with a child under 13 in violation of Va. Code Ann. § 18.2-67.2;.or
4. A conviction for a crime of moral turpitude.

I understand that a materially false statement regarding this certification is a Class 1 misdemeanor and that conviction of such misdemeanor shall result in the revocation of this Contract and of any related license that I may hold. I declare under penalty of perjury that the foregoing statements are true and correct.

This form must be completed by an authorized official for any organization contracting to provide services under a contract with the Arlington Public Schools or any of its schools or departments, or any subcontractor under such contractor.

Center for Applied Linguistics
Name of Offeror

Joel Gómez
Signature

4646 40th Street, NW

Joel Gómez, President
Name and Title (please type or print)

Washington, DC 20016
Address of Offeror

202-362-0700
Telephone

10/27/20
Date

Attachment D

Contract Terms and Conditions

1. Standard of Care
In the performance or furnishing of services hereunder, the Contractor and all its agents, shall exercise the highest degree of skill and care normally accepted as practices and procedures by members of the same profession for provision of the Work.
2. Responsibility of the Contractor
The Contractor shall be responsible for the quality, technical accuracy, and the coordination of all deliverables and other services furnished by the Contractor under this Contract. The Contractor shall, without additional compensation, correct, or revise any errors or deficiencies that significantly affect the production environment, as determined by the Project Officer, which are discovered within a twelve-month period of final completion of Work.
3. Responsibility for Claims and Liabilities
APS' review, approval, or acceptance of, or payment for, any services or deliverables required under this Contract shall not be construed to operate as a waiver by APS of any rights or of any cause of action arising out of the Contract. The Contractor shall be and remains liable to APS for the accuracy and competency of deliverables, plans, specifications, or other documents.
4. Payment
Contractor will be paid upon acceptance of the submission of a complete invoice satisfactory to the Project Officer which meets the requirements of this section and other applicable provisions of the Contract. APS will pay the Contractor within thirty (30) calendar days after the date of receipt of a correct (as determined by the Project Officer) invoice approved by the APS Project Officer. The number of the issued APS Purchase Order shall appear on all invoices. 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
5. Project Officer
The performance of the Contractor is subject to the review and approval of the APS Project Officer ("Project Officer") who shall be appointed by the Director of the Arlington APS department requesting the Work under this Contract. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work under the Contract Documents.
6. Adjustments for Change in Scope
APS may order changes in the Work within the general scope of the Work consisting of additions, deletions or other revisions. No claim may be made by the Contractor that the scope of the Work or of the Contractor's services has been changed requiring adjustments to the amount of compensation due the Contractor unless such adjustments have been made by a written amendment to the Contract signed by APS and the Contractor. If the Contractor believes that any particular work is not within the scope of the Work or is a material change or otherwise will call for more compensation to the Contractor, the Contractor must immediately notify the Project Officer after the change or event occurs and within ten (10) calendar days thereafter must provide written notice to the Project Officer. The Contractor's notice must provide to the Project Officer the amount of additional compensation claimed, together with the basis therefore and supportive documentation for the amount. The Contractor will not be compensated for performing any work unless a Proposal complying with this subsection has been submitted in the time

specified above and a written amendment has been signed by APS and the Contractor and an APS Purchase Order is issued covering the cost of the services to be provided under the amendment.

7. Additional Services

The Contractor shall not be compensated for any goods or services provided except those included in the Contract Documents and included in the Contract Amount unless those goods or services are covered by a written amendment to this Contract signed by APS and the Contractor and an APS purchase order is issued covering the expected cost of such services.

APS may determine the need for additional work by the Contractor. Upon a request from APS, the Contractor shall prepare a cost Proposal for any such work. No Additional Services shall be performed unless a written amendment to this Contract has been executed by both parties.

8. Reimbursable Expenses

All expenses shall be included in the firm fixed price for provision of the Work for APS. APS shall not approve any request for reimbursement of travel-related expenses submitted by the Contractor.

9. Reimbursable Travel-Related Expenses

All travel-related expenses shall be included in the firm fixed price for provision of the Work for APS. APS shall not approve any request for reimbursement of travel-related expenses submitted by the Contractor.

Non-reimbursable Expenses: The following expenses are not allowable for reimbursement and should not be included in firm fixed price:

1. Alcoholic beverages
2. Personal phone calls
3. Self-entertainment activities (i.e. pay TV, movies, night clubs, health clubs, theaters, bowling)
4. Personal expenses (i.e. laundry, valet, haircuts)
5. Personal travel insurance (i.e. life, medical, or property insurance) for air fare or rental cars.
6. Auto repairs, maintenance and insurance costs for personal vehicles
7. Travel expenses incurred to obtain or maintain training and/or certificates that are not associated with an employee's job requirements.

10. Payment of Subcontractors*

The Contractor is obligated to take one of the two following actions within seven (7) calendar days after receipt of amounts paid to the Contractor by APS for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from APS attributable to the work performed by the subcontractor under this Contract; or
- b. Notify APS and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after seven (7) calendar days following receipt by the Contractor of payment from APS for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the above provisions may not be construed to be an obligation of APS. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

11. Non-Appropriation*

All funds for payments by APS under this Contract are subject to the availability of an annual appropriation for this purpose by Arlington County School Board (School Board). In the event of non-appropriation of funds by the School Board for the goods or services provided under this Contract, or substitutes for such goods or services which are as advanced or more advanced in their technology, 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. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor 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 Contract beyond the date of termination specified in APS's written notice.

12. APS Purchase Order Requirement*

APS purchases are authorized only if an APS Purchase Order is issued in advance of the transaction, indicating that the ordering school or department has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the order agency. APS will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by APS Procurement Agent. Contractors providing goods or services without a signed APS Purchase Order do so at their own risk and expense.

13. Replacement or Augmentation of Key Personnel and Subcontractors

The key personnel and subcontractors submitted by the Contractor in its Proposal and thereafter accepted by APS are considered essential to the Contractor's qualifications. The Contractor may not replace, substitute or augment any key personnel or subcontractor without prior written approval of APS. A request to replace or substitute any key personnel or subcontractor for any reason, shall be provided to the APS Project Officer at least fifteen (15) calendar days in advance of such proposed replacement or substitution and the request shall contain sufficient justification, including identification of the proposed replacement or substitute and their qualifications, in sufficient detail to permit evaluation by APS.

Additionally, the Contractor shall not remove or replace the approved Project Manager without written approval of APS. In cases of the approved Project Manager's prolonged illness or other extended leave of absence, Contractor shall provide an interim Project Manager whose continued work on the Work shall be subject to approval by APS.

In the event of the Project Manager's resignation or termination from the Contractor's employment, the Contractor shall replace the Project Manager with an individual with similar qualifications and experience and only with APS' prior written approval.

14. Project Staff

APS has the right of reasonable rejection and approval of staff or subcontractors assigned to the Work by the Contractor. If APS reasonably rejects staff or subcontractors, the Contractor must provide replacement staff or subcontractors satisfactory to APS in a timely manner and at no additional cost to APS. The day-to-day supervision and control of the Contractor's employees, and employees of any of its subcontractors, shall be the sole responsibility of the Contractor. APS reserves the right to reject a suggested facilitator who, in its sole discretion, is not adequately qualified to perform the work. APS may request a replacement facilitator when, in its sole discretion, the one currently in an assignment is not adequately qualified to perform the work.

15. Supervision by Contractor

The Contractor shall at all times enforce strict discipline and good order among the workers performing under this Contract, and shall only employ on the Work persons reasonably proficient in the work assigned.

16. Employment Discrimination by Contractor Prohibited*

During the performance of this Contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or 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 Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.
- C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- D. The Contractor will 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 Contractor will include the provisions of the foregoing subsections in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontract or vendor.

21. Employment of Unauthorized Aliens Prohibited*

In accordance with §2.2-4311.1 of the Virginia Code, the Contractor acknowledges that it does not, and shall not during the performance of this Contract for goods and/or services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

22. Drug-Free Workplace to be Maintained by Contractor*

During the performance of the Work pursuant to this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor by APS in accordance with the Procurement Resolution, the employees of which Contractor 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.

23. Termination for Cause, Including Breach and Default; Cure

The Contract shall remain in force for the Initial Contract Term or any Renewal Contract Term(s) and until APS determines that all of the following requirements and conditions have been satisfactorily met:

APS has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, APS shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by APS in its discretion.

If APS determines that the Contractor has failed to perform satisfactorily, then APS will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by APS prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to APS Project Officer within fifteen (15) calendar days after the expiration of the Cure Period. APS may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If APS terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from APS to the Contractor (unless APS in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor shall be liable to APS for all costs incurred by APS after the effective date of termination, including costs required to be expended by APS to complete the Work covered by the Contract, including costs of delay in completing the Work or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to APS upon demand by APS. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to APS, and APS shall be entitled to recover, all damages to which APS is entitled by this Contract or by law, including, and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by APS to the Contractor under the Contract and all attorney fees and costs incurred by APS to enforce any provision of this Contract.

Except as otherwise directed by APS in the notice, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

24. Termination for the Convenience of APS

The performance of work under this Contract may be terminated by the Procurement Agent in whole or in part whenever the Procurement Agent shall determine that such termination is in APS' best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) calendar days before the date of termination, specifying the extent to which performance of the Work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by APS prior to such termination and any other termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to APS; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

25. Indemnification* (Note: Virginia does not permit the indemnification of others; cross indemnity provisions are not acceptable). The Contractor covenants for itself, its employees, and subcontractor to save, defend, hold harmless, and indemnify APS, and all of their elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the "APS" for purposes of this section) from and against any and all claims made by third parties or by APS for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions or errors in performance or nonperformance of its work called for by the Contract Documents, whether such act or omission or error is attributable to Contractor, subcontractor, any material supplier, or anyone directly or indirectly employed by them, called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract.

If any action or proceeding relating to the indemnification required by this section is brought against APS, then upon written notice from APS to the Contractor, Contractor shall at Contractor's expense, resist or defend such action or proceeding by counsel approved by APS in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend same.

If, after Notice by APS, the Contractor fails or refuses to save, defend, hold harmless and/or indemnify APS, the Contractor shall be liable for and reimburse APS for any and all expenses, including but not limited to, reasonable attorney's fees incurred and settlements or payments made. The Contractor shall pay such expenses upon demand by APS and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to APS pursuant to this section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

26. Intellectual Property Indemnification*

The Contractor warrants and guarantees that no intellectual property rights (including, but not limited to, copyright, patent, mask rights and trademark) of third parties are infringed or in any manner involved in or related to the services provided hereunder.

The Contractor further covenants for itself, its employees, and subcontractors to save, defend, hold harmless, and indemnify APS, and all of its officers, officials, departments, agencies, agents, and employees 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, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by APS. If the Contractor, or any of its employees or subcontractors, uses any design, device, work, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Amount includes all royalties, licensing fees, and any other costs arising from the use of such design, device, work, or materials in any way involved with the Work. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after Notice by APS, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse APS for any and all expenses, including but not limited to, reasonable attorney's fees incurred and any settlements or payments made.

The Contractor shall pay such expenses upon demand by APS and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

27. Copyright

The Contractor hereby irrevocably transfers, assigns, sets over and conveys to APS all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor further agrees to execute such documents as APS may request to affect such transfer or assignment.

Further, the Contractor agrees that the rights granted to APS by this subsection are irrevocable. Notwithstanding anything else in this Contract, the Contractor's remedy in the event of termination of or dispute over the terms of this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this subsection. Similarly, no termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" subsection.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of this Contract is prohibited unless APS approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this subsection as part of any contract they enter into with the Contractor for work related to work pursuant to this Contract.

28. Ownership and Return of Records

This Contract confers no ownership rights to the Contractor nor any rights or interests to use or disclose APS' data or inputs.

The Contractor agrees that all drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of APS' request for services under this Contract, are the exclusive property of APS ("Record" or "Records"), and all such Records shall be provided to and/or returned to APS upon completion, termination, or cancellation of this Contract. The Contractor shall not use, willingly allow, or cause such materials to be used for any other purpose other than performance of all obligations under the Contract without the written consent of APS. Additionally, the Contractor agrees that the Records are confidential records and neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the Project Officer or his or her designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Officer or his or her designee for response. At APS' request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at APS's request, shall destroy all computer records created as a result of APS' request for services pursuant to this Contract.

The Contractor agrees to include the provisions of this section as part of any contract or agreement the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Contract. No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section of the Contract.

29. Confidential Information

The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all APS information obtained as a result of its Work under this Contract. 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's, 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 Contractor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

All student data is considered to be confidential under any resulting Contract as well as under the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. §1232g et seq., and any other federal or state statutes or regulations pertaining to student records, and will only be released in accordance with the applicable laws and regulations. Student data shall include all metadata, forms, logs, cookies, tracking pixels, user content, and 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. All student data received by the Contractor shall be maintained by the Contractor in a secure location, in accordance with the Student Data Usage and Privacy Agreement.

The Contactor also agrees that it will not directly or indirectly use or facilitate the use or dissemination of student data (whether intentionally or by inadvertence, negligence or omission verbally electronically, through paper transmission or otherwise), for any purpose other than that directly associated with its officially assigned duties pursuant to any resulting Contract. Contractor is aware that unauthorized use or disclosure of student data is prohibited and, in addition, may also constitute a violation of Virginia law (e. g. the Government Data Collection and Dissemination Practice Act, formerly called the Privacy Protection Act, VA Code §2.2-3800 et seq., and the Secrecy of Information Act, VA Code §58.1-3, which may be punishable by a jail sentence of up to six (6) months and/or a fine of up to \$1,000,000.).

30. HIPAA Compliance

The Contractor shall comply with all applicable legislative and regulatory requirements of the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”). Pursuant to 45 C. F. R. §164.502(e) and §164.504(e), the Contractor shall be designated a Business Associate pursuant and will be required to execute an APS Business Associate Agreement. If Contractor engages a subcontractor or subcontractors in the performance of the Scope of Work under any resulting Contract, the Contractor shall enter into an agreement with each of its subcontractors pursuant to 45 C. F. R. §164.3082(b) and the Health Information Technology for Economic and Clinic Health (HITECH) Act §13401 that is appropriate and sufficient to require each subcontractor to protect the Protected Health Information (PHI) to the same extent required of Contractor under APS’s Business Associate Agreement and in a form approved by APS. HITECH defines PHI as individually identifiable and maintained by a covered health care provider, health plan, or health care clearinghouse. See 45 C.F.R 160.103 and 164.501. The Contractor shall ensure that its subcontractors notify the Contractor, immediately, of any breaches in security regarding the PHI.

The Contractor takes full responsibility for any failure to execute the appropriate agreements with its subcontractors to comply with the existing and or future regulations of HIPAA and/or HITECH, and shall indemnify APS in accordance with the Indemnification clause in this section.

31. Data Security (Intentionally deleted)

32. Ethics in Public Contracting*

This Contract incorporates by reference Article 9 of the Procurement Resolution, as well as any state or federal law related to ethics, conflicts of interest, or bribery, including by way of illustration and not limitation, the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq., and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this purchase any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

33. APS Employees*

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

34. Force Majeure

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond control of the Contractor, and outside and beyond the scope of the Contractor's then current, by industry standards, disaster plan, that make performance impossible or illegal, unless otherwise specified in the Contract.

APS shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond control of APS that make performance impossible or illegal, unless otherwise specified in the Contract. The period hereinabove specified for the completion of his Work shall be extended by such time as shall be fixed by the Owner.

No such extension of time shall be deemed a waiver by the Owner of its right to terminate the Contract for abandonment or delay by the Contractor as herein provided or to relieve the Contractor from full responsibility for performance of his obligations hereunder.

35. Authority to Transact Business*

The Contractor shall pursuant to Code of Virginia §2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by a Contractor in violation of this requirement is voidable, without any cost or expense, at the sole option of APS.

36. Relation to APS*

The Contractor will be legally considered as an independent contractor and neither the Contractor nor its employees will, under any circumstances, be considered employees, servants or agents of APS. APS will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. APS will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Furthermore, APS will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by APS for its employees.

37. Antitrust

By entering into this Contract, the Contractor conveys, sells, assigns and transfers to APS all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods or services purchased or acquired by APS under this Contract.

38. Report Standards

Reports or written material prepared by the Contractor in response to the requirements of this Contract or request of the Project Officer shall, unless otherwise provided for in the Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Project Officer, and shall be submitted for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with these requirements shall be borne by the Contractor.

When submitting documents to APS, The Contractor shall comply with the following guidelines:

- All submittals and copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;
- All submittals must be in the required tabular format in a binder.

- Report covers / binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable);
- The use of plastic covers or dividers should be avoided; and
- Unnecessary attachments or documents not specifically asked for should not be submitted, and superfluous use of paper should be avoided.

39. Audit

The Contractor agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. APS or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the Initial Contract Term or any Renewal Contract Term. If the Contractor wishes to destroy or dispose of records (including confidential records to which APS does not have ready access) within five (5) years after final payment, the Contractor shall notify APS at least thirty (30) days prior to such disposal, and if APS objects, shall not dispose of the records.

40. Amendments

This Contract shall not be modified except by written amendment executed by persons duly authorized to bind the Contractor and APS

41. Arlington Public Schools Procurement Resolution and Policies*

Notwithstanding any provision to the contrary herein, no provision of the Procurement Resolution or any applicable APS policy is waived in whole or in part.

42. Dispute Resolution*

All disputes arising under this Contract, or its interpretation, whether involving law or fact, or extra work, or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer for decision at the time of the occurrence or beginning of the Work upon which the claim is based, whichever occurs first. Such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. Claims denied by the Project Officer may be submitted to APS Superintendent or designee in writing no later than sixty (60) days after final payment in accordance with the Procurement Resolution.

The time limit for final written decision by APS Superintendent or designee in the event of a contractual dispute, as that term is defined in the Procurement Resolution, is thirty (30) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Procurement Resolution, incorporated herein by reference. A copy of the Procurement Resolution is available upon request from the Office of the Procurement Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, APS Superintendent or designee, School Board, or a court of competent jurisdiction.

43. Applicable Law, Forum, Venue and Jurisdiction*

This Contract and the Work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia 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. In performing the Work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

44. Arbitration

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and any references to arbitration are expressly deleted from the Contract.

45. Nonexclusivity of Remedies

All remedies available to APS under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to APS at law or in equity.

46. No Waiver

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

47. Severability

The sections, subsections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph, subsection, or section of this Contract 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, subsections, and sections of this Contract.

48. No Waiver of Sovereign Immunity*

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by APS pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of APS. The parties intend for this provision to be read as broadly as possible.

49. Survival of Terms

In addition to any numbered section in this Contract which specifically state that the term, paragraph or subsection survives the expiration or termination of this Contract, the following sections if included in this Contract also survive: Indemnification; Relation to APS; Ownership and Return of Records; Audit; Copyright; Intellectual Property Indemnification; Confidential Information, and Data Security and Protection.

50. Headings

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this contract or a limitation on the scope of the particular section to which the heading refers.

51. Ambiguities

Each party and its counsel have participated fully in the review and revision of this Contract . Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Contract. The language in this Contract shall be interpreted as to its fair meaning and not strictly for or against any party.

52. Non-Discrimination Notice*

APS does not discriminate against faith-based organizations.

53. Insurance Requirements

The Contractor shall provide to the Procurement Agent a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any Work under this Contract and upon any contract extension. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, rating of "B" or better and a financial size of "Class VII" or better in the latest edition of A.M. Best Co., and acceptable to APS. The minimum insurance coverage shall be:

- a. Workers Compensation (if applicable)- Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of \$100,000/\$100,000/\$500,000.
- b. Commercial General Liability - \$500,000 combined single limit coverage with \$1,000,000 general aggregate covering all premises and operations and including Personal Injury and Independent Contractors. The general aggregate limit shall apply to this Contract. coverage
- c. Automobile Liability - \$100,000 per person / \$300,000 per accident.
- d. Product Liability - \$500,000 combined single limit coverage, \$1,000,000 general aggregate

- e. Cyber Liability Insurance – Intentionally deleted.
- f. Arlington Public Schools, its officers, elected and appointed officials, employees and agents, are to be named as additional insured under all coverages except Workers' Compensation and Automobile Liability, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this subsection shall be primary as respects APS, its officers, elected and appointed officials, agents and employees. The following definition of the term "APS" applies to all policies issued under the Contract: "Arlington County School Board and any affiliated or subsidiary Board, Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board, Authority, Committee, or Independent Agency is either a Body Politic created by the School Board of Arlington Public Schools, Virginia, or one in which controlling interest is vested in Arlington Public Schools".
- g. Cancellation - All insurance policies required by this Contract shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation or non-renewal until thirty (30) days prior written notice has been given to the Procurement Agent, Arlington Public Schools, Virginia." If there is a material change or reduction in coverage the Contractor shall notify the Procurement Agent immediately upon Contractor's notification from the insurer. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of this Contract, and APS notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- h. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.
- i. Contract Identification - The insurance certificate shall state this Contract's number and title.

The Contractor must disclose the amount of any deductible or self-insurance component applicable to the General Liability and Automobile Liability, or any other policies required herein, if any. APS reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, APS may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure protection for APS.

The Contractor shall require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Automobile Liability insurance, and Workers' Compensation insurance (if applicable) in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors' certificates of insurance to APS immediately upon request by APS.

No acceptance or approval of any insurance by APS shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

The Contractor shall be responsible for the Work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

The Contractor shall be as fully responsible to APS for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate financial capacity and the alternative coverage's are submitted to and acceptable to APS. The Contractor must also provide its most recent actuarial report and provide a copy of its self-insurance resolution to determine the adequacy of the insurance funding.

55. Accessibility of Web Site*

If any work performed under this Contract results in design, development, maintenance or responsibility for content and/or format of any APS websites, or APS' presence on other party websites, the Contractor shall perform such work in compliance with the requirements set forth in the U.S. Department of Justice document entitled "Accessibility of State and Local Government Websites to People with Disabilities." The document is located at: <http://www.ada.gov/websites2.htm>.

56. Arlington County Business License

The Contractor must comply with the provisions of Chapter 11 (Business Licenses) of the Arlington County Code. For further information on the provisions of this chapter and its applicability to this contract, contact the Arlington County Business License Division, Commissioner of the Revenue of Arlington, Virginia, Telephone Number (703) 228-3060.

57. Failure to Deliver

In case of failure to deliver goods or services in accordance with the contract terms and conditions, APS, after due oral or written notice, may procure the goods or services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which APS may have; provided that if public necessity requires the use of materials or supplies not conforming to the specifications, they may be accepted and payment therefore shall be made at a reduction in price to be determined solely by APS.

58. Subcontracts

The Contractor shall not enter into any subcontract with any subcontractor who has been suspended or debarred from doing federal, state or local government work for any reason.

The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the Work of subcontractors.

Nothing contained in this contract shall create any contractual relationship between any subcontractor and APS.

59. Non-Endorsement Clause for Contracts and Agreements

APS may be identified as a "Participant" in the Work with the following statement added: "This shall not constitute an endorsement of any products or services". For further information, please contact the APS Department of Schools and Community Relations.

60. Advertising and Use of Proprietary Marks or Logos

Contractor shall not use the name of APS or any authorized user or refer to APS or any authorized user, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of APS or such authorized user. In no event may Contractor use a proprietary mark of APS or an authorized user without receiving the prior written consent of APS or the authorized user.

61. Extension of Contract Term

The Procurement Office, at its sole and absolute discretion, may extend the Contract Term or final Renewal Contract Term of the resultant Contract for a period of not more than six (6) months, unless

specifically stated otherwise in the solicitation.

62. Student Data Usage and Privacy Agreement

During the term of the Contract Term, and any Renewal Contract Term(s), the Contractor will have access to student data. As a condition of awarding a Contract for the provision of the Work that requires the Contractor to have access to the student data the Contractor is required to sign the Student Data Usage and Privacy Agreement (See Attachment TBD).

63. Contractor Certification Regarding Criminal Convictions*

All Contracts with APS, where the Contractor or its employees, or its Subcontractors or their employees, will have direct contact with students on school property during regular school hours, or during school-sponsored activities, shall require the Contractor to certify that neither it nor any of its employees nor any of its Subcontractors' nor any of its Subcontractors' employees, who will have direct contact with students, have been:

- (1) convicted of a felony or of a sexually violent offense as defined in Va. Code Ann. § 9.1-902 as mandated by Va. Code Ann. § 18.2-370.5,
- (2) convicted of an offense occurring on or after July 1, 2006, where the offender was more than three years older than the victim involving:
 - (a) the rape of a child under age 13 pursuant to Va. Code Ann. § 18.2-61.A(iii),
 - (b) forcible sodomy of a child less than 13 years of age pursuant to Va. Code Ann. § 18.2-67.1.A.1,
 - (c) object sexual penetration of a child under 13 years of age pursuant to Va. Code Ann. § 18.2-67.2.A.1, or
 - (d) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof.

This requirement is applicable without exception for a person convicted of a felony or of a sexually violent offense as defined in Va. Code Ann. § 9.1-902, but for all other offenses set forth above this requirement does not apply unless the qualifying offense was done in the commission of, or as a part of the same course of conduct of, or as part of a common scheme or plan as a violation of:

- (a) abduction or kidnapping in violation of Va. Code Ann. § 18.2-47.A,
- (b) abduction with intent to extort money or for immoral purpose in violation of Va. Code Ann. § 18.2-48,
- (c) burglary in violation of Va. Code Ann. § 18.2-89,
- (d) entering a dwelling house with intent to commit murder, rape, robbery or arson in violation of Va. Code Ann. § 18.2-90,
- (e) aggravated malicious wounding in violation of Va. Code Ann. § 18.2-51.2, or
- (f) any similar offense under the laws of any foreign country or any political subdivision thereof, or the United States or any political subdivision thereof.

The Contractor certification covers its employees, its Subcontractors and the employees thereof.

The Contractor certification shall also cover its employees, its Subcontractors and employees thereof, assigned to the Work after Contract award. The Contractor, upon demand from APS, shall provide all

information which allowed for the Contractor's certification

64. Cooperative Contract for Use by Other Public Bodies

This Contract has been awarded by APS not only for its benefit but for the benefit of any other public body eligible to participate in use of the services herein solicited by means of cooperative procurement as provided by, and to the extent permitted by, §2.2-4304 of the Virginia Public Procurement Act.

65. Contractor Prohibited in Assisting Person for New Job if Engaged in Misconduct With Minor*

As a condition of awarding a Contract, or Contract Renewal, the Contractor 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 Contractor 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.

Attachment E

Student Data Usage and Privacy Agreement

This Student Data Usage and Privacy Agreement ("SDUPA") dated June 30, 2021 is between **Arlington County School Board**, operating as **Arlington Public Schools**, located at 2110 Washington Blvd., Arlington, VA 22204 ("APS" or "Customer") and **Center for Applied Linguistics** located at 4646 40th Street NW, Washington, DC 20016 ("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:

CENTER FOR APPLIED LINGUISTICS

By: Joel Gomez

Printed Name: Joel Gomez

Title: President

Date: June 28, 2021

ARLINGTON PUBLIC SCHOOLS

By: David J. Webb

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

Title: Procurement Director / Procurement Agent

Date: June 30, 2021

Attachment G

Negotiated Items List

Request for Proposal 10FY21 - Sheltered Instruction Professional Learning Services

-
- JG 1. At a minimum, CAL shall create an **annotated outline for SIOP I and SIOP II** content and activities for discussion and approval with APS. APS' contribution in this capacity will be that of a reviewer/editor and not of a content creator/writer of the content and activities.
-
- JG 2. CAL shall create a **needs assessment or survey** for participants to assist in the enrollment determinations (SIOP I vs. SIOP II).
-
- JG 3. CAL shall provide course participants with **access** to the online training for **at least one (1) year** after the completion of the respective training.
-
- JG 4. As part of **attendance tracking**, at a minimum CAL shall provide to APS the names of the participants, the date(s) and length of the training, and the title of the training in a Google Forms document.
- For synchronous learning, the attendance record provided by CAL shall reflect participants that attended the entire session as well as information about participants who showed up late or left early.
 - For asynchronous training, the attendance record provided by CAL shall reflect whether the participants have completed all of the work required for the training and any work outstanding.
-
- JG 5. Although in-person training is not happening at this present time, it is the expectation that when local health officials in Arlington County and the Commonwealth of Virginia issue guidance permitting in-person training to occur safely, it is the expectation that CAL will work with APS to accommodate APS' desire for in-person training to be provided.
-
- JG 6. As part of the Negotiations Stage, CAL proposes the following services and rates.

CAL Menu Pricing

Category	PD Description	# of Participants	# of Facilitators	Unit hours	Proposed Quantity of staff delivery hours	Hourly Rate per Facilitator	Total Price
Category A	In-person SIOP I & II PD Series	30	1	3.5	21	\$ 467.86	\$ 9,825.06
	In-person SIOP I & II PD Series	80 – 90	3	3.5	63	\$ 371.43	\$ 23,400.09
	In-person Individual workshop	30	1	1, 2, 3	1 -->3	\$ 430.00	TBD
	In-person Individual workshop	80 – 90	3	1, 2, 3	3-->9	\$ 378.57	TBD
Category B	Virtual SIOP I & II PD	30-40	2	3.5	42	\$ 358.00	\$ 15,036.00
	Virtual SIOP I & II PD	80 – 90	3	3.5	63	\$ 327.43	\$ 20,628.09
	Virtual Individual workshop	30 – 40	2	1,2,3	1 -->3	\$ 378.57	TBD
	Virtual Individual workshop	80 – 90	3	1,2,3	3-->9	\$ 358.00	TBD
Category C	School-based coaching based on menu	Variety of groups and sessions within one day	1	7	By Request	\$ 311.14	TBD
	Classroom-based coaching	Approximately 7 individual coaching sessions or 20 teachers in small groups within one day	1	7	By Request	\$ 280.14	TBD

JG 7. As part of the Negotiations Stage, CAL offers the following unit prices as its best pricing for the trainings identified in the tables shown below and on the following page.

Category A – In Person Sheltered Instruction Training			
Description	Hourly Rate	Estimated Number of Hours	Extended Fees
In-Person Sheltered Instruction Training [†]	\$ 614	210 service hours	\$ 128,940
Travel Fees Per Trip to APS*			
Travel fees for ½ Day training			\$
Travel fees for 1 Day training			\$
Travel fees for 2 consecutive Days training			\$
Travel fees for 2 non-consecutive Days training			\$
Category A Total			\$ 128,940
Category C – School-based Support and Coaching			
Description	Hourly Rate	Estimated Number of Hours	Extended Fees
School-based Support and Coaching	\$ 261	1260	\$ 328,860
Travel Fees Per Trip to APS*			
Travel fees for ½ Day coaching			\$
Travel fees for 1 Day coaching			\$
Travel fees for 2 consecutive Days coaching			\$
Travel fees for 2 non-consecutive Days coaching			\$
Category C Total			\$ 328,860

[†] The cost of any required training materials shall be included in this unit pricing reflected herein. APS will not pay separately for training materials.

* Mode of transportation shall be the most economic available without upgrades in class or accommodation. Lodging, meals, and incidental entitlements shall not exceed the current GSA Per Diem Rates for the locality that serves as the destination. <https://www.gsa.gov/travel-resources>

Please note that hours are calculated on service time and delivery and the CAL hourly rate also includes hours of preparation, management, and delivery for two CAL facilitators per PD session and project administrators.

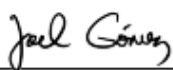
Category B – Sheltered Instruction Online Training			
Category B Description	Attendee Rate	Estimated Number of Attendees	Extended Fees
Sheltered Instruction Online Training †	\$ 184.20	700	\$ 128,940
Category B Total			\$ 128,940
Category C – School-based Support and Coaching			
Description	Hourly Rate	Estimated Number of Hours	Extended Fees
School-based Support and Coaching	\$ 261	1260	\$ 328,860
Travel Fees Per Trip to APS*			
Travel fees for ½ Day coaching			\$
Travel fees for 1 Day coaching			\$
Travel fees for 2 consecutive Days coaching			\$
Travel fees for 2 non-consecutive Days coaching			\$
Category C Total			\$ 328,860

† The cost of any required training materials shall be included in this unit pricing reflected herein. APS will not pay separately for training materials.

* Mode of transportation shall be the most economic available without upgrades in class or accommodation. Lodging, meals, and incidental entitlements shall not exceed the current GSA Per Diem Rates for the locality that serves as the destination. <https://www.gsa.gov/travel-resources>

Please note that hours are calculated on service time and delivery and the CAL hourly rate also includes hours of preparation, management, and delivery for two CAL facilitators per session and project administrators.

Acknowledgement and Agreement of:

Offeror: Center for Applied Linguistics Title: President
 Authorized Signature:  Date: 12/17/2020
 Printed Name: Joel Gómez