



Request for Proposal - Title Page One

Arlington Public Schools Procurement Office

Request for Proposal 41FY22

Request for Proposal Title:	Medicare Retiree Health Benefits
Request for Proposal Number:	41FY22
Request for Proposal Issue Date:	June 6, 2022
Pre-Proposal Conference:	June 15, 2022, (Refer to Request Title Page 2)
Proposal Due Date and Time:	June 28, 2022, No Later Than 11:59 P.M. (EST)
Procurement Office Representative:	Rebecca Hoffman, CPPB Procurement Analyst 571-317-5354, rebecca.hoffman2@apsva.us

This is Arlington County School Board, operating as Arlington Public Schools (“APS” or “Owner”) Request for Proposal (RFP) #41FY22 for the establishment of a Contract for Medicare Retiree Health Benefits (“the Work”). Sealed Proposal shall not be received in response to the RFP at the Syphax Education Center (“Syphax”) by mail, express mail, in person, or by courier, but will do so instead electronically through a secure cloud-based file sharing platform (“Platform”).

Firms wishing to submit a Proposal in response to the RFP (“Offerors”) are required to upload the information requested in Tabs 1 - 7 of Section III, Proposal Requirements into the Platform through the link found on the Current Solicitations webpage under the Procurement Office website. A link to the webpage is provided below. Found under the Due Date column for RFP 41FY22 of the Current Solicitations table is a link for Offerors to submit its Proposal. (“Link to submit Proposal – RFP 41FY22”). To assist Offerors with its Proposal submission, screenshots of the steps required to submit a Proposal are attached as Appendix I to this RFP.

For a Proposal to be considered for award of a Contract the Proposal must be received in the Platform by no later than 11:59 p.m. on Tuesday, June 28, 2022 (“Proposal Due Date”). Offerors are strongly encouraged to submit their Proposals in advance of Proposal Due Date to allow sufficient time for the Proposals to be uploaded into the Platform before the Proposal Due Date. The time a Proposal is received shall be determined by the time shown under the Activity in the Folder log (“the Log”). If the upload time shown in the Log is after Proposal Due Date the Proposal

Request for Proposal - Title Page Two

will be considered non-responsive and will not be considered for Contract award. **Proposals received after the Proposal Due Date shall not be considered.**

For further information please contact Rebecca Hoffman at rebecca.hoffman2@apsva.us or at 571-317-5354.

Link to the Current Solicitations webpage: [Link to Current Solicitations](#).

Pre-Proposal Conference:

A non-mandatory pre-Proposal conference (“Conference”) will be held for this RFP on **Wednesday, June 15, 2022, at 10:00 A.M. (EST)**. The Conference will take place virtually, to discuss the Work and answer general questions concerning the two RFPs. Attendance at the Conference is encouraged. Offerors seeking to attend the Conference can access the Conference via a link in the Current Solicitations table on the Procurement Office website. It is recommended Offerors have a copy of the RFP with them during the Conference.

Minutes of the Conference, including but not limited to questions and answers presented at the Conference, will be issued in writing by the Procurement Office as an Information Item and distributed in the same manner as an Addenda, as set forth below

Questions:

All questions regarding this RFP, other than those submitted at the Conference, must be submitted in writing via email addressed to: Rebecca Hoffman, Procurement Analyst, rebecca.hoffman2@apsva.us, Brianna Cobbins, APS Project Manager, brianna.cobbins@apsva.us, and Daniel Low, Consultant, dan.low@kornferry.com, via email and **must be received by 5:00 PM (EST) on June 17, 2022**. The Procurement Office will issue written responses to questions received as an Information Item, in the same manner as an Addenda, as set forth below.

Refer to Section II, Instructions to Offerors, for additional instructions and requirements.

Addenda:

Changes to this RFP will be made only by written Addenda issued by the Procurement Office and designated as “Addendum No. ____.” No other form of communication shall modify this RFP.

Addenda will be posted on Virginia’s online electronic procurement system (“eVA”), the **Procurement Office website**, and on a public bulletin board in Syphax.

Offerors shall ascertain prior to submitting a Proposal that all Addenda issued have been received and shall acknowledge receipt and inclusion of all Addenda by marking here, or by including a signed copy of all Addenda with the Proposal:

Addendum #. ____ Date: _____ Addendum #. ____ Date: _____
Addendum #. ____ Date: _____

Information Items:

Questions received timely in response to this RFP, including those at the Conference, will be answered by written Information Items issued by the Procurement Office. This RFP shall not be modified by an Information Item.

Information Items will only be posted in the same manner as an Addenda, as set forth above.

Request for Proposal Title Page Three

Trade Secrets or Proprietary Information:

Each Offeror shall confirm whether their Proposal contains any information the Offeror deems proprietary or a trade secret. Information considered to be proprietary or a Trade Secret is to be included in the Proposal response at Tab 5. See Section III. Proposal Requirements, D., Submission of Proprietary Information, for additional information.

Please mark one:

- () Yes, My Proposal contains information deemed to be proprietary or a trade secret. The information deemed to be proprietary or a trade secret can be located under Tab 5
- () No, My Proposal does not contain information deemed to be proprietary or a trade secret.

Acceptance of Work:

By submitting a Proposal, Offeror confirms that it can deliver all of the Work contained in the RFP.

State Corporation Commission (SCC) Identification Number: Mandatory Requirement:

Under subsection C.8. of Section II Instructions to Offerors, subsection 31 of Appendix G, Contract Terms and Conditions, and the Virginia Public Procurement Act (VPPA) § 2.2 4311.2, the Offeror shall be authorized to “transact business” in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise by law. The Offeror shall include in its Proposal the identification number issued to it by the State Corporation Commission (SCC). For more information on how the SCC can expedite a request for an identification number, please contact the SCC at (www.scc.virginia.gov) or the Clerk’s office at 1-804-371-9733.

Please complete the following by checking the appropriate line that applies and providing the requested information:

1. ___ Offeror is a Virginia business entity organized and authorized to transact business in Virginia by the SCC. The Offeror’s identification number issued by the SCC is _____. *(The SCC number is NOT your federal tax Identification number nor your eVA registration number).*
2. ___ Offeror is an out-of-state (foreign) business entity that is authorized to transact business in Virginia by the SCC and such Offeror’s identification number issued to it by the SCC is _____.
3. ___ Certain limited business activities, however, are specifically excluded from the definition of "transacting business" The Offeror does not have an identification issued to it by the SCC and such Offeror is not required to be authorized to “transact business” in Virginia by the SCC for the following exclusion(s). Exclusion(s) can be found at <https://www.scc.virginia.gov/clk/befaq/forinva.aspx#a2>. Please attach additional sheets to explain in further detail why such Offeror is not required to be authorized to transact business in Virginia. *Proposals that fail to submit supporting details regarding option 3 above may be considered non-responsive by APS.*

Debarment:

If you answer yes to any of the following, on a separate attachment, state the person or entity against whom the debarment was entered, give the location and date of the debarment, describe the project involved, and explain the circumstances relating to the debarment, including the names, addresses and phone numbers of persons who might be contacted for additional information

1. Is your organization or any officer, director, project manager, procurement manager, chief financial officer, partner or owner currently debarred from doing federal, state or local government work for any reason?
Yes ___ No ___

Request for Proposal - Title Page Four

2. Has your organization or any current officer, director, project manager, procurement manager, chief financial officer, partner or owner ever been debarred from doing federal, state or local government work for any reason?
Yes ___ No ___

Type of Business:

Please check the following information relevant to your firm:

Minority Owned Business:	Yes _____	No _____
Small Business:	Yes _____	No _____
Woman Owned Business:	Yes _____	No _____
Service Disabled Veteran Owned Business:	Yes _____	No _____
Employment Service Organization:	Yes _____	No _____
None of the Above:	Yes _____	

Ethics in Public Contracting/Certification of Non-Disclosure:

Any Contract awarded as a result of this RFP will incorporate by reference Article 9 of the APS Procurement Resolution (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 undersigned 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 person (as defined in Code of Virginia Section 59.1-68.6 et seq.) 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.

In compliance with this RFP and all the conditions imposed therein, the undersigned offers and agrees to furnish the Work in accordance with the attached Proposal or as mutually agreed upon by subsequent negotiations. By my signature below, I certify that I am authorized to bind the Offeror in any and all negotiations and/or contractual matters relating to this RFP. Sign in blue ink and type or print requested information.

My signature certifies that the Offeror has no business or personal relationships with any other companies or persons that could be considered as a conflict of interest or potential conflict of interest to APS, and that there are no principals, officers, agents, employees, or representatives of this firm that have any business or personal relationships with any other companies or person that could be considered as a conflict of interest or a potential conflict of interest to APS, pertaining to any and all Work to be performed as a result of this RFP and any resulting Contract with APS.

Request for Proposal - Title Page Five

This Proposal is Submitted By:

Full Legal Name of Offeror: (to be used for Award): _____

Mailing Address:

Remittance Address (If Different):

Phone: () _____

Fax: () _____

Email Address: _____

Contact Person: _____

Tax Identification (FIN/SSN#): _____

Title: _____

Typed/Printed Name: _____

Signature: _____

Date: _____

(Person signing must be authorized to bind the Offeror in contractual matters)

A W-9 Form should be attached showing correct Full Legal name for award of Contract.

Include Pages 1 - 5 of this RFP as the first 5 Pages of the Proposal Response Under Tab 1

Table of Contents

Request for Proposal Title Pages 1-5

Table of Contents 6

I. Special Provisions 8

 A. General Information 8

 B. Background..... 8

 C. Scope of Services..... 8

II. Instructions to Offerors 10

 A. Information Requests..... 10

 B. Tentative Schedule for RFP #41FY22 10

 C. Additional Information 10

III. Proposal Requirements..... 15

 A. General Requirements 15

 B. Unnecessarily Elaborate Responses 16

 C. Use of Information and Documents..... 16

 D. Submission of Trade Secrets or Proprietary Information 16

 E. Format and Content 16

IV. Proposal Evaluation Process, Method of Contract Award and Proposal Evaluation Criteria..... 19

 A. Proposal Evaluation Process and Method of Contract Award..... 19

 B. Proposal Evaluation Criteria..... 20

Appendix A. Contractor Certification Regarding Criminal Conviction..... 22

Appendix B. Conflict of Interest Statement.....	23
Appendix C. Non-Disclosure and Data Security Agreement	24
Appendix D. Insurance Checklist	26
Appendix E. Business Associate Agreement	28
Appendix F. Sample Form Agreement	39
Appendix G. Contract Terms and Conditions	43
Appendix H. Sample Purchase Order	62
Appendix I. Screenshots of Steps Required to Submit a Proposal	63
Appendix J. Medicare Retiree Health Questionnaire	69
Appendix K. Medicare Retiree Census	70
Appendix L. Medicare Retiree History.....	71
Appendix M. Disruption Report	72

I. Special Provisions

A. General Information:

- 1.1 The purpose of this Request for Proposal (RFP) is to solicit Proposals from qualified Offerors to provide services for Medicare Retirees Health Benefits for Arlington Public Schools (APS).
- 1.2 APS is soliciting Proposals from qualified Offerors to provide either a Group Medicare Advantage with Medicare Part D plan on a national PPO basis or a fully-insured standalone, Medicare Supplement plan (patterned after Plan N) with standalone customized group Medicare Part D coverage.

B. Background:

- 1.1 APS currently offers a fully insured Medicare Supplement plan (patterned after Plan N), and a standalone customized group Medicare Part D coverage through United Healthcare (UHC) as well as a fully insured Medicare Advantage plan with a Medicare Part D benefit through Kaiser Mid-Atlantic.
- 1.2 Medicare eligible retirees contribute to the cost of their medical and prescription drug coverage based on years of service, ranging from 22% to 90%. Dependents of Medicare eligible retirees also contribute to the cost of their medical and prescription drug coverage based on the retiree's years of service, ranging from 50% to 90%. APS has a \$1,200 per month subsidy cap, without regard to service at retirement and number of dependents coverage, as part of their communicated premium strategy for retirees. At this time, no retirees are subject to this cap.
- 1.3 The following items are included in this RFP in electronic format and should be used to prepare your Proposal response:
 - 1.3.1 The Excel file at Appendix K
 - 1.3.2 The Excel files at Appendix L

C. Scope of Services

The scope of Services consists of the following:

- 1.1 Provide group medical coverage through either a Group Medicare Advantage with Medicare Part D plan on a national PPO basis or a fully-insured standalone, Medicare Supplement plan (patterned after Plan N) with standalone customized group Medicare Part D coverage. Coverage should duplicate the current plans for over 65 Medicare eligible retirees and their Medicare eligible dependents as close as possible, subject to Guideline 1.3.3 below.
- 1.2 Provide full administration services for at least the plans mentioned in the Scope of Services to include but not be limited to:
 - 1.2.1 Billing (retiree direct bill, APS and from pension, as applicable)
 - 1.2.2 Enrollment (open season and ongoing) including onsite meetings with Medicare retiree groups
 - 1.2.3 Communications
 - 1.2.3.1 Develop and distribute member handbooks which contain evidence of coverage, enrollee's responsibilities and plan's responsibilities.
 - 1.2.3.2 Design, develop, produce and distribute educational, open enrollment and marketing materials.
 - 1.2.3.3 Administer and distribute all CMS required communications.
 - 1.2.4 Customer Service
 - 1.2.4.1 Provide a toll-free customer service number which shall provide general information on the plan, claims status, and counseling to members.

- 1.2.4.2 Respond correctly and timely to inquiries received by telephone, by mail or in person.
 - 1.2.5 Claim resolution
- 1.3 Guidelines
 - 1.3.1 Offeror must be able to provide a national PPO group Medicare Advantage with Medicare Part D plan or standalone, Medicare Supplement plan with standalone customized group Medicare Part D coverage
 - 1.3.2 Plans must be insurer-filed and have state and federal approval.
 - 1.3.3 If proposing a Medicare Supplement plan, Plan N should be used as a basis.
 - 1.3.4 The proposed plan(s) must provide benefits that are as good or better than current benefit levels.
 - 1.3.5 Coverage must be guaranteed issue and guaranteed renewable for each participant.
 - 1.3.6 The plan must allow for enrollments of pre-Medicare retirees upon attainment of age 65 during any given plan year.
- 1.4 Offerors are highly encouraged to include in their Proposal a description of any significant task not listed in the Scope of Services which they know to be necessary under the proposed Contract.

APS may add to the Scope of Services or make changes in the Scope of Services for services of a similar nature to those specified in the Scope of Services of this RFP as mutually agreed to at a price mutually agreed upon. The change must be approved by the Director/Purchasing Agent and a Contract Amendment and Purchase Change Order issued by the Procurement Office to change the Contract.

II. Instructions to Offerors

A. Information Requests

All questions relating to this RFP shall be submitted in writing to Rebecca Hoffman, Procurement Analyst at rebecca.hoffman2@apsva.us and Brianna Cobbins, APS Project Manager, at brianna.cobbins@apsva.us, and Daniel Low, Consultant, dan.low@kornferry.com. For a question to be considered, the subject line of the email must state the following: "RFP #41FY22 Questions". Questions should be succinct and must include the submitter's name, title, company name, company address, and telephone number. Prior to the award of a Contract resulting from this solicitation, Offerors and prospective Offerors are prohibited from contacting APS staff other than Rebecca Hoffman.

B. Tentative Schedule for RFP #41Y22

RFP Issuance	June 6, 2022
Pre-Proposal Conference	June 15, 2022
Question Deadline	June 17, 2022, by 5:00 PM, EST
Information Item/Addendum 1 Issuance	Week of June 20, 2022
Proposal Due Date	June 28, 2022, No Later Than 11:59 PM, EST
Shortlist Interviews	Week Commencing July 18, 2022
Negotiations Stage	Week Commencing July 25, 2022
Contract Award	Anticipated Award Date August 2022

Questions may not be considered if they are received after June 17, 2022, by 5:00 PM, EST. Any questions related to the answers provided in Addendum #1 may be addressed in an additional addendum.

If any questions or responses require revisions to this RFP as it was originally published, such revisions will be by formal amendment only. Offerors are cautioned that any written, electronic, or oral representations made by any APS representative or other person that appear to change materially any portion of the RFP shall not be relied upon unless subsequently ratified by a written amendment to this RFP issued by the Office of the Procurement Agent.

C. Additional Information

1. Debarment Status

The Offeror shall indicate, in the spaces provided on Request Pages 3 and 4, whether or not it, or any of its principals, is/are currently debarred from submitting bids or proposals to APS, or any other state or political subdivision, and whether or not it is an agent of any person or entity that is currently debarred from submitting proposals to APS, Virginia, or any other state or political subdivision. An affirmative response may be considered grounds for rejection of the proposal. This statement shall also apply to any subcontractor(s) the Offeror intends to use in the performance of a resulting contract.

2. Conflict of Interest Statement

The Offeror must provide a statement regarding potential conflict of interest. The certification shall be in the form provided in this solicitation, signed by an authorized agent and principal of the Offeror and notarized. The completed Conflict of Interest Statement (Appendix B) shall be provided in Tab #1 of the Proposal.

3. Expenses Incurred in Preparing Proposal

APS accepts no responsibility for any expense incurred by any Offeror in the preparation and presentation of a Proposal. All expenses related to an offer are the sole responsibility of the Offeror.

4. Incomplete Documents

Each Offeror is responsible for having determined the accuracy and/or completeness of the RFP upon which it relied in making its Proposal and has an affirmative obligation to notify the Procurement Agent immediately upon discovery of an apparent or suspected inaccuracy, error in, or omission of any pages, drawings, sections, or addenda whose omission from the documents was apparent from a reference or page numbering or other indication in the RFP.

If a potential Offeror downloaded an electronic version of the RFP, that potential Offeror is responsible for determining the accuracy and/or completeness of the electronic documents.

If the successful Offeror proceeds with any activity that may be affected by an inaccuracy, error in, or omission in the solicitation documents of which it is aware but has not notified the Procurement Agent, the Offeror hereby agrees to perform any work described in such missing or incomplete documents at the Offeror's sole expense and at no additional cost to APS.

Failure to acknowledge all Addenda issued during the solicitation process on the Request for Proposal Title Page 3, or by including a signed copy of all Addenda with the Proposal, is considered an incomplete Proposal document.

5. Offeror Investigations

Before submitting a Proposal, each Offeror shall make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract and to verify any representations made by APS that the Offeror will rely upon. No pleas of ignorance or mistake, inaccuracy, misrepresentation of such conditions and requirements resulting from failure to make such investigations and examinations will relieve the successful Offeror from its obligation to comply in every detail with all provisions and requirements of the contract documents, or will be accepted as a basis for any claim whatsoever for any monetary compensation on the part of the successful Offeror.

6. Competitive Negotiation for Non-Professional Services

This RFP is let under the procedure for "Competitive Negotiation for Goods and Services Other Than Professional Services" as defined in the Procurement Resolution. Under this procedure, the content of the Proposals, and the identity of the Offerors are not public record until an award determination has been made. Because of this restriction, the opening of Proposals is not public.

7. Arlington County Business Licenses

The successful Offeror must comply with the provisions of Chapter 11 ("Licenses") of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this solicitation, prospective offers should contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060.

8. Authority to Transact Business

Any Offeror organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law. The proper and full legal name of the firm or entity and the identification number issued to the Offeror by the Virginia State Corporation Commission must be written in the space provided on the Proposal Form. Any Offeror that is not required to be authorized to transact business in the Commonwealth shall include in its Proposal a statement describing why the Offeror is not required to be so authorized. APS may require a firm to provide documentation prior to award which: 1) clearly identifies the complete name and legal form of the firm or entity (i.e. corporation, limited partnership, etc.), and 2) establishes that the firm or entity is authorized by the State Corporation Commission to transact business in the Commonwealth of Virginia. Failure of a prospective and/or successful Offeror to provide such documentation shall be grounds for rejection of the Proposal or cancellation of the award. For further information prospective Offerors should refer to the Commonwealth of Virginia State Corporation Commission website at: www.scc.virginia.gov.

9. Insurance Requirements

Each Offeror must review the insurance requirements section carefully with its insurance agent or broker prior to submitting a Proposal to ensure they can provide the specific coverage requirements and limits applicable to this solicitation. If the Offeror is not able to meet the insurance requirements of the solicitation, alternate insurance coverage satisfactory to APS may be proposed by the Offeror and considered by the APS. Written requests for consideration of alternate coverage must be received by the Procurement Agent at least ten (10) calendar days prior to the date set for receipt of Proposals. If APS denies the request for alternate coverage, the coverage required by the Insurance Requirements or Checklist section must be provided. If APS permits alternate coverage, an amendment to the Insurance Checklist will be issued prior to the time and date set for receipt of Proposals. The Insurance Checklist can be found at Appendix D.

10. Interest in More Than One Proposal, and Collusion

If more than one Proposal is received in response to this RFP from an individual, firm, partnership, corporation, affiliate, or association under the same or different names, all Proposals will be rejected. Reasonable grounds for believing that an Offeror is interested in more than one (1) Proposal for a RFP both as an Offeror and as a subcontractor for another Offeror, will result in rejection of all Proposals in which the Offeror is interested. However, a firm acting only as a subcontractor may be included as a subcontractor for two (2) or more Offerors submitting a Proposal for the Work. Any or all Proposals may be rejected if reasonable grounds exist for believing that collusion exists among any Offerors. Offerors rejected under the above provisions shall be disqualified if they respond to a new RFP for the same work.

11. Proposal Withdrawal

No Proposal may be withdrawn after it is filed unless the Offeror makes a request in writing to the Procurement Agent prior to the time and date set for the receipt of Proposals or unless APS fails to award or issue a notice of intent to award a Contract within ninety (90) calendar days after the date and time set for receipt of Proposals with the successful Offeror.

12. Parking

Where parking is not provided at an APS location, the Contractor is responsible for the payment of any parking charges or fines resulting from parking at any worksite(s).

13. Contract Award is in the Best Interest

APS reserves the right to accept or reject Proposals, to cancel this solicitation, to waive any informalities or irregularities therein, (an informality is a minor defect or variation of a Bid or Proposal from the exact requirements of the ITB or RFP, which does not affect the prices, quantity or delivery schedule for the goods, services or construction being procured), and to contract as the best interests of APS may require in order to obtain the firms that best meet the needs of APS, as expressed in this RFP. Selection of a Proposal does not mean that all aspects of the Proposal are acceptable to APS. APS reserves the right to negotiate the modification of terms and conditions with the Offeror offering the best value to APS in conjunction with the evaluation criteria contained herein prior to the execution of a Contract, to ensure a satisfactory Contract.

14. Notice of Intent to Award

APS will post a written Notice of Intent to Award on a public bulletin board in Syphax, 2110 Washington Blvd., Arlington, Virginia, 22204, stating the date the award will be made, and identifying the name(s) of the awardee(s).

15. Replacement or Augmentation of Key Personnel and Subcontractors

The key personnel and sub-contractors submitted by the Offeror in its Proposal in order to qualify, are considered essential to the Offeror's qualifications and may not be replaced, substituted or augmented after qualification of the Offeror's Proposal without prior written approval of APS. A request to replace or substitute any key personnel or subcontractor must be submitted to and approved by APS prior to substitution or augmentation.

16. 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. (Submit completed Appendix A).

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

17. Cooperative Contract for Use by Other Public Bodies:

This procurement is being conducted 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.

18. 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.

19. Request for Comments:

Following the award of any Contract or Contracts, or the cancellation of this RFP, all Offerors or potential Offerors are invited to provide to APS written comments regarding the manner in which this RFP was conducted and any suggested modifications to that process which might make future RFPs by APS more efficient, more productive, and more attractive to potential Offerors.

20. Number of Contracts to be Awarded:

APS intends to award Contracts to a minimum of one (1) successful Offeror (Contractor) to perform the Work.

21. Vaccine Requirement

Due to the ongoing COVID-19 pandemic, APS has taken various steps to protect the welfare, health, safety and comfort of its employees and students. As part of these steps, APS has implemented various requirements with respect to health and safety including policies with respect to social distancing the use of face-coverings, and vaccine requirements. To protect APS' employees and students, all employees and subcontractors of the Contractor who are assigned to this Contract, must be fully vaccinated against COVID-19. Any Contractor employee or subcontractor who is not fully vaccinated, must follow a weekly testing protocol as established by the Contractor unless exempt pursuant to a valid reasonable accommodation under state or federal law. By submitting a Proposal, the Offeror certifies that it will comply with this provision and will ensure that its subcontractor, if any, do so as well.

III. Proposal Requirements

A. General Requirements

One (1) electronic copy of the Proposal with a completed Fee Schedule. The Offeror's Proposal shall address the below areas, not exceeding the stated page limitations. The Proposal shall be limited to a page size of 8 ½" x 11", single space and type size shall not be less than ten (10) point font for each response item. Note: for page-counting purposes, a page equals a one-sided sheet. If a page limit is not noted within the section below there is no page limit. In addition, a completed Excel version of the APS RFP 41FY22 Medicare Retiree Health Questionnaire.xlsx (Appendix J) should be included with the Proposal with the Offeror's name included as a suffix in the file name.

Offerors are responsible for having their Proposal received in the Platform prior to the Proposal Due Date. Failure to comply with this or other requirements of this RFP may be grounds for APS to reject such Proposals.

Proposals must be submitted electronically through the Platform. The Platform can be accessed through the link found on the Current Solicitations webpage under the Procurement Office website. Found under the Due Date column for RFP 41FY22 of the Current Solicitations table is a link for Offerors to submit its Proposal. ("Link to submit Proposal – RFP 41FY22"). Nothing herein is intended to exclude any responsible Offeror or in any way restrain or restrict competition. All responsible Offerors are encouraged to submit Proposals.

Proposals shall be submitted with the required information in the order listed below. Additional instructions are in the Instructions to Offerors (Section II) of this solicitation.

Modification of or additions to any portion or terms of the RFP by the Offeror may be cause for rejection of the Proposal; however, APS reserves the right to decide, on a case by case basis, in its sole discretion, whether or not to reject such a Proposal as nonresponsive.

Mandatory provisions of this RFP are indicated by the inclusion of the words "shall" or "must" to identify the Offeror's obligations. Failure to comply with these requirements or with any other requirements stated as mandatory either in this RFP or in the Instructions to Offerors shall result in rejection of the Offeror's Proposal as not responsive, except to the extent the failure or omission either is not a mandatory statutory requirement or does not affect price, quantity, quality or time.

APS proposed Contract Documents and this RFP contain terms and conditions APS favors and intends to use for the resultant Contract. If the Offeror wishes APS to consider any changes to these documents, such changes must be submitted in writing in the Proposal, and such exceptions shall be considered during negotiation. Any Offeror receiving a Contract award shall be required to execute a Contract in substantial compliance with APS standard Agreement and will be required to furnish all other required Contract Documents including tax identification or social security number within fifteen (15) days after receipt of notification that the Contract is ready for signature; otherwise, APS may award the Contract to another Offeror.

Proposals having any erasures or corrections must be initialed by the Offeror in blue ink.

An Offeror may request in writing to withdraw its Proposal at any time. In the event an Offeror discovers an error in their Proposal and desires to make a correction after the Proposal Due Date, the Offeror shall submit in writing the requested correction, along with a written explanation and justification for the change, no later than one (1) business day following the Proposal Due Date. If APS is satisfied that the identified error was the result of a clerical or mathematical error, APS may permit the correction. APS shall issue its written decision to the requesting Offeror within three (3) business days of receipt of the correction request. If the request is approved, the Proposal shall be deemed modified by incorporation of the correction requested. If the requested correction is denied, the Proposal shall be considered as originally submitted. APS may request additional information or clarifications from an Offeror at any time after the review process has begun.

B. Unnecessarily Elaborate Responses

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this RFP are not desired and may be construed as an indication of the Offeror's lack of cost consciousness. Elaborate or expensive artwork, paper, bindings, and visual and other presentations are neither necessary at this time nor desired by APS.

C. Use of Information and Documents

APS and its officials, employees and agents will copy and use the response of the Offeror and documents included with the response, for various purposes related to analysis, evaluation, and decision to award a contract. Proposals shall be the property of APS. Following award APS may be required to allow inspection and copying of documents and may also use the Offeror's documents in connection with any resulting contracts with that Offeror. The Offeror is responsible for obtaining any necessary authorizations for all such use of the documents and information, and for assuring that such copying and use is in conformance with laws related to trademarks and copyrights. Any documents or information for which the Offeror has not obtained such authorization, or for which such copying and use is not authorized, shall not be submitted. The undersigned Offeror agrees to indemnify, defend and hold APS, its officials, employees and agents harmless from any claims of any nature, including claims arising from trademark or copyright laws, related to use of information and documents submitted with the Offeror's response.

D. Submission of Trade Secrets or Proprietary Information

Trade secrets or proprietary information submitted by an Offeror in connection with this procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke these protections upon submission of the data or the materials, and must identify the data or other materials to be protected and state the reason why protection is necessary. [Virginia Code Section 2.2-4342(F)]. **Offerors shall submit, under Tab 16 of the Proposal, any data or materials it considers to be a trade secret or proprietary information, or falls within the exceptions to the VFOIA and shall state the reason why protection is necessary. Offerors may not declare the entire Proposal proprietary nor may they declare proposed pricing to be proprietary.** References may be made within the body of the Proposal to proprietary or trade secret information; however, all information contained within the body of the Proposal not in the separate section labeled proprietary shall be public information. It is the Offeror's sole responsibility to defend such exemptions if challenged in a court of competent jurisdiction.

E. Format and Content

The Proposal should address the items included in the Scope of Services and in the Criteria for Proposal Evaluation. Failure to do so will result in a lowered evaluation. Incomplete Proposals may be determined nonresponsive.

Offerors should organize their Proposals using the following tabular format:

Tab 1: Administrative

- A fully executed Request for Proposals Title Pages 1 - 5 of this RFP should be included as the first five pages of your Proposal. The name stated on the Request Sheet on, page 5, must be the full legal name of the Offeror and the address must be that of the office which will have the responsibility for the services provided. The following forms should be completed and also provided in this section:
- The Contactor Certification Regarding Criminal Convictions at Appendix A
- The Conflict of Interest Statement at Appendix B
- The Non-Disclosure and Security Agreement at Appendix C
- The Insurance Checklist at Appendix D
- Business Associate Agreement at Appendix E
- A completed W-9 Form showing correct full legal name for award of Contract

TAB 2: Executive Summary (pdf)

- Provide three (3) current references for provision of Medicare Retiree Health Benefits the Offeror has provided within five (5) years prior to the issue date of the RFP. The services must be of a similar size and nature to the Scope of Services in this solicitation. Indicate organization name, contact name,

telephone number and **e-mail address of each reference**. Please verify all information prior to submitting it.

- Address what factors differentiate the Offeror from other potential Offerors for this project?
- What is the Offeror's particular strength in the market place?
- Describe the Offeror's experience in providing similar services.
- How long has the Offeror been providing these specific services?
- Is the Offeror's business line solely providing Medicare benefits to retirees? If not, what other services does the Offeror provide and what percentage of the Offeror's business lines is providing Medicare benefits to employees?
- Describe the methodology of the Offeror in successfully providing Medicare benefits to retirees for public schools.

TAB 3: Technical Proposal (Excel)

The Offeror shall complete the following tabs included in the Excel file labeled APS RFP 41FY22 Medicare Retiree Health Questionnaire.xlsx (Appendix J)

- Minimum Requirements
- Organization Experience
- Reference Form
- Retiree Services Administration (Retiree Services and Plan Administration)
- AcctMgmt Report Implement (Account Management, Reporting, Implementation)
- Account Team Breakdown
- Prescription Drugs
- Plan Design Clinical Formulary (Plan Design, Clinical and Wellness, Provider Networks)
- Medical Design Deviations – APS
- Part D Design Deviations – APS
- Formulary Disruption – APS
- Access Standards – APS (Access Standards – Medical Providers – Medicare Advantage National Passive PPO)
- Provider Disruption – APS (top Facilities and Top other Providers....)
- Explanations (Extended Explanation Worksheet)
- Attachments C1-C15 (as noted throughout the Questionnaire)
- Please see the excel file titled APS RFP 41FY22 Disruption Report.xlsx for the providers currently utilized by APS's members and complete a network disruption analysis (Appendix M)

TAB 4: Cost Proposal (Excel)

Fee shall include all services required under the Scope of Services (Section II)

The Offeror shall complete the following tabs included in the Excel file labeled APS RFP 41FY22 Medicare Retiree Health Questionnaire.xlsx (Appendix J)

- Fully Insured Questionnaire (Financial Questionnaire)
- Proposed Rates (Fully Insured Rate Quote – group Medicare Advantage with Part D or group Medicare Supplement with Part D)
- Explanations (Extended Explanation Sheet)

Tab 5: Trade Secrets or Proprietary Information

- Offerors are to provide information on the data or other materials sought to be protected and state the reasons why protection is necessary or falls within the exceptions of the Virginia Freedom of Information Act. It is the Offeror's sole responsibility to defend such exemptions if challenged in a court of competent jurisdiction.
- The Offeror shall provide their most recently filed, signed tax return, and financial statements. This includes the opinion letter, management letter comments, income statement, balance sheet, and notes to the financial statements from the most recent reporting period. Additional financial details, to include balance sheets and cash flow statements are requested for the past three years. Note: APS will treat any financial information provided in the Proposal as proprietary and confidential, and it will not be subject

to public disclosure. Therefore, APS will not execute any Offeror-provided non-disclosure agreements related to such documents.

Tab 6: Exceptions Taken to Any Provision of the RFP

- Offerors are to provide any exceptions to any provision of the RFP in accordance with Section IV. A.

Tab 7: Industry Standard Documentation

- Offerors are to provide any industry standard documentation for consideration (e.g. HIPAA, Medicare Advantage with Medicare Part D Agreement) in Tab 7 of their Proposal.
- Along with the forms, please include the specific law or regulation that mandates the form.

IV. Proposal Evaluation Process, Method of Contract Award and Proposal Evaluation Criteria

A. Proposal Evaluation Process and Method of Contract Award

A Selection Advisory Committee (SAC) will review and evaluate all responsive Proposals received by the Procurement Office. The SAC will rely only on the information contained in the Proposals submitted in selecting Offerors deemed to be fully qualified and best suited among those submitting Proposals. Therefore, Offerors must emphasize specific information considered pertinent to the Work and submit all information requested. The SAC may seek clarification of any aspect of the Proposal from an Offeror during the Initial Evaluation Stage.

The Offeror shall state any exceptions to any provision of the Contract Documents in writing in its Proposal as a part of Tab 6, identifying with specificity the provision to which exception is taken, the exception, the rationale for the exception, and the proposed alternative provision. The SAC may, but is not required to, negotiate as it deems necessary any exceptions so submitted, but no negotiations shall occur prior to the Negotiations Stage as defined below. An Offeror shall be deemed to have waived all objections to, and accepted, all provisions of the Contract Documents to which no exception is included in its submitted Proposal and in such event no exceptions shall be considered during the Negotiation Phase. Provided, however, if APS makes a material change to the RFP after the Proposal Due Date which if it had been made prior to the Proposal Due Date would have resulted in the Offeror including an exception in its submitted Proposal, the Offeror may within five (5) days following issuance by APS of the material change submit in writing any exception to the material change. Any exception to the material change not submitted to APS in writing within such five (5) day period shall be deemed to have been waived and shall not be considered further during the Negotiation Stage or otherwise. Any industry standard documents the Offeror requests to have included in any resulting Contract shall be included in the Offeror's submitted Proposal. Any documents the Offeror asserts is an industry standard documents not provided by the Offeror in its submitted Proposal shall not be considered during the Negotiation Stage or otherwise and shall not be a part of any Contract awarded.

1. After the SAC has completed its Initial Evaluations of the responsive Proposals received by the Procurement Office, when applicable, it will select Offerors to participate in Shortlist Interviews to provide information that will clarify Offerors' Proposals.

2. Upon completion of the Shortlist Interviews, but before making any decisions regarding which Offerors to consider further, the SAC may seek from any Offeror which participated in the Shortlist Interviews clarification of any aspect of the Proposal or of issues which arose during the Shortlist Interview. Selection shall be made of two (2) or more Offerors deemed to be fully qualified and best suited among those submitting Proposals, on the basis of the evaluation criteria stated in the RFP.

3. Negotiations shall then be conducted with each of the Offerors so selected. Price shall be considered, but need not be the sole determining factor. During the Negotiation Stage, individual members of the SAC may engage in discussions with any Offeror to gather information to assist the SAC in making its final determination regarding award of the Contract. Such individual information and discussions shall be shared with the entirety of the SAC.

4. After negotiations have been conducted with each Offeror so selected, APS shall select the Offeror which, in its opinion, has made the best Proposal and provides the best value, based on the evaluation criteria advertised in the RFP, and shall award the Contract to that Offeror. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one Offeror. Should APS determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a Contract may be negotiated and awarded to that Offeror.

5. If at any time it is discovered that an Offeror's Proposal does not satisfy any mandatory requirement of this RFP or that the Offeror has misstated its minimum qualifications or experience, even if

the Proposal initially appeared to satisfy such mandatory requirement or requirements or qualifications or experience, the Proposal may be deemed to be nonresponsive and if deemed nonresponsive shall not be considered further.

B. Proposal Evaluation Criteria

The evaluation process involves three (3) stages. The first stage is the Initial Evaluation of all responsive Proposals submitted by responsible Offerors (“Initial Evaluation Stage”). The second stage is the evaluation of those Offerors selected for interviews (“Shortlist Interviews Stage”). The third stage is negotiations with those Offerors selected for negotiations (“Negotiations Stage”). The Evaluation Criteria set forth below will be used for purposes of scoring Proposals at each stage of the evaluation process. Scores from the Initial Evaluations will determine the Offerors to be selected for Shortlist Interviews, if Shortlist Interviews are conducted. When Shortlist Interviews are conducted, Offerors interviewed will be rescored based on the Shortlist Interviews Evaluation Criteria identified herein. Only scores resulting from the Shortlist Interviews Evaluation Criteria will determine the ranking of Proposals whereby APS will enter into negotiations as described in Section A above. Only scores resulting from the Negotiations Stage will determine the ranking of Offerors for purposes of Contract award. Although there may be overlap between the Initial Evaluation Criteria, the Shortlist Interview Evaluation Criteria, and the Negotiations Stage Evaluation Criteria, each stage of the evaluation process is intended to be a separate score and only that score will be used to determine the consequence of that evaluation stage. The Shortlist Interviews Evaluations and the Negotiations Stage Evaluations are, however, the result of cumulative impressions from all preceding stages.

Initial Evaluations Criteria:

	INITIAL EVALUATIONS CRITERIA	WEIGHT
1	Organization, Structure, Experience, Compliance, Contractual	10%
2	Retiree Services and Administration	20%
3	Account Management	15%
4	Prescription Drugs	5%
5	Plan Design, Clinical and Wellness, Provider Networks, Formulary Disruption (if applicable)	20%
6	Cost	30%
	TOTAL	100%

If Shortlist Interviews are conducted, Offerors selected will be asked to provide information that serves to clarify the Offeror’s Proposal. The Shortlist Interviews may include a presentation, a product/service demonstration, and a question-and-answer session. Offerors selected for Shortlist Interviews will be evaluated in accordance with the evaluation criteria listed below:

Shortlist Interviews Evaluation Criteria:

	SHORTLIST – INTERVIEW EVALUATION CRITERIA	WEIGHT
1	Qualifications and experience of Offeror’s staff/team proposed for the contract and content	10%

2	Thoroughness of presentation / demonstration in addressing the points of clarification identified by APS	35%
3	Overall preparedness of the Offeror and ability to effectively communicate the information to the audience and demonstrate the suitability of their proposed plan with APS' needs	35%
4	Cost	20%
	TOTAL	100%

References will only be checked for Offerors selected for Shortlist Interviews. Information supplied by references on capabilities and past performance of an Offeror will be used in the scoring the Shortlist Interviews Evaluation Criteria

Negotiations Stage Evaluation Criteria:

The Negotiations Stage is for the purpose of further clarification of the selected Offerors' understanding of the performance requirements, its intended approaches to performance, and related information, and for negotiating with each selected Offeror the terms of any Contract award. The following Negotiation Stage Evaluation Criteria will be used in reviewing and evaluating the Proposals and the results of the negotiations for ranking Offerors for purposes of Contract award. Only scores resulting from the Negotiation Stage Evaluation Criteria will determine the ranking of Proposals whereby APS will determine to which Offeror to award the Contract.

During the Negotiations Stage, an Offeror's flexibility and cooperativeness will be evaluated, and an Offeror's participation during this Stage will be assigned a value up to 20% of the total score that it can receive in this final Stage. Those Offerors who do not submit any exceptions to either the Contract requirements and/or its terms and conditions will inherently be assigned the maximum value of 20% for the Negotiations Evaluation Criteria of flexibility and cooperativeness.

	NEGOTIATIONS EVALUATION CRITERIA	WEIGHT
1	The Offeror's ability to meet or exceed APS' requirements. <ul style="list-style-type: none"> • Additional capabilities which enhance the overall functionality of plan • The Offeror's ability to deliver enhancements to plan implementation, where applicable 	60%
2	Flexibility and cooperation in negotiating contract requirements, terms, and conditions	20%
3	Cost	20%
	TOTAL	100%



A COMPLETED APPENDIX A IS TO BE INCLUDED IN TAB 1 OF PROPOSAL

Appendix A

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.

Name of Offeror

Signature

Name and Title (please type or print)

Address of Offeror

Telephone

Date

A COMPLETED APPENDIX B IS TO BE INCLUDED IN TAB 1 OF PROPOSAL

Appendix B

Conflict of Interest Statement

I, whose name is subscribed below, a duly authorized representative and agent of the entity submitting this Proposal to APS in response to its Request for Proposal #41FY22, and on behalf of the Offeror:

Certify that neither the Offeror nor any affiliated firm, parent corporation or subsidiary has, within the past five (5) years, been employed by or represented a deliverer of services, which services reasonably could be expected to be considered for purchase by the APS as a result of this solicitation.

Affirm that if the Offeror is awarded a contract under this solicitation, and during the term of that contract prepares an invitation to bid or request for proposal for or on behalf of the APS, the Offeror agrees that it shall not (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or Offeror information concerning the procurement which is not available to the public.

Affirm that the Offeror further agrees that it shall not solicit or accept any commissions or fees from vendors who ultimately furnish services to the APS as a result of services furnished by the Offeror under any contract award made as a result of this solicitation.

Offeror Name: _____

Signed By: _____ Date: _____

Name/Title: _____

Acknowledgment

Commonwealth of Virginia/State of (_____) City/County of
(_____) to wit:

personally appeared before me this _____ day of _____, 20____ the undersigned a Notary Public in and for the State and County of aforesaid, _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to within the instrument as an agent of the Offeror and acknowledged that he/she has executed the same for the purposes therein contained.

(Seal)

Notary registration number: _____
My commission expires: _____, 20____

A COMPLETED APPENDIX C IS TO BE INCLUDED IN TAB 1 OF PROPOSAL

Appendix C

Non-Disclosure and Data Security Agreement

The undersigned, an authorized agent of the Contractor and on behalf of _____ (Contractor) hereby agree that the Contractor will hold Arlington Public Schools (APS) provided information, documents, data, images, records and the like (hereafter “Information”) confidential and secure and to protect it against loss, misuse, alteration, destruction or disclosure. This includes but is not limited to the Information of the APS, its employees, contractors, residents, clients, patients, taxpayers and property as well as Information that the APS shares with Contractor for testing, support, conversion or other services provided under APS (the “Work” or “APS Contract” as applicable) or which may be accessed through other APS owned or controlled databases (all of the above collectively referred to herein as “Information” or “APS Information”).

In addition to the Data Security obligations set in the APS Contract, the Contractor agrees that it will maintain the privacy and security of the APS Information, control and limit internal access and authorization for access to such Information and not divulge or allow or facilitate access to APS Information for any purpose or by anyone unless expressly authorized. This includes but is not limited to Information that in any manner describes, locates or indexes anything about an individual including, but not limited to, his/her (hereinafter “his”) Personal Health Information, treatment, disability, services eligibility, services provided, investigations, real or personal property holdings, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, social security number, tax status or payments, date of birth, address, phone number or that affords a basis of inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, and the record of his presence, registration, or membership in an organization or activity, or admission to an institution (also collectively referred to herein as “Information” or “APS Information”).

Contractor also agree that it will not directly or indirectly use or facilitate the use or dissemination of Information (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 work under the Work. Contractor acknowledges that any unauthorized use, dissemination or disclosure of Information is prohibited and may also constitute a violation of Virginia or federal laws, subjecting it or its employees to civil and/or criminal penalties.

The Contractor agrees that it will not divulge or otherwise facilitate the disclosure, dissemination or access to or by any unauthorized person, for any purpose, of any Information obtained directly, or indirectly, as a result of its work on the Work. Contractor shall coordinate closely with the APS Project Officer to ensure that its authorization to its employees or approved subcontractors is appropriate, tightly controlled and that such person/s also maintain the security and privacy of Information and the integrity of APS networked resources.

Contractor agrees to take strict security measures to ensure that Information is kept secure, properly stored, that if stored that it is encrypted as appropriate, stored in accordance with industry best practices and otherwise protected from retrieval or access by unauthorized persons or unauthorized purpose. Any device or media on which Information is stored, even temporarily, will have strict security and access control. Any Information that is accessible will not leave the Contractor’s work site or the APS’ physical facility, if working onsite, without written authorization of the APS Project Officer. If remote access or other media storage is authorized, Contractor is responsible for the security of such storage device or paper files.

Contractor will ensure that any laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices, as approved by the APS, and connected to the APS network are secure and free of all computer viruses or running the latest version of an industry standard virus protection program. Contractor will ensure that all passwords used by its employees or subcontractors are robust, protected and not shared. No Information may be downloaded expect as agreed to by the parties and then only onto an APS approved device. Downloading onto a personally owned device

is prohibited. Contractor agrees that it will notify the APS Project Officer immediately upon discovery, becoming aware or suspicious of any unauthorized disclosure of Information, security breach, hacking or other breach of this Non-Disclosure and Data Security Agreement, the APS Contract, APS policy, Contractor's security policies, or any other breach of Work protocols. The Contractor will fully cooperate with the APS to regain possession of any Information and to prevent its further disclosure, use or dissemination. The Contractor also agrees, if requested, to promptly notify others of a suspected or actual breach.

Contractor agrees that all duties and obligations enumerated in this Non-Disclosure and Data Security Agreement also extend to its employees, agents or subcontractors who are given access to APS Information. Breach of any of the above conditions by Contractor's employees, agents or subcontractors shall be treated as a breach by Contractor. Contractor agrees that it shall take all reasonable measures to ensure its employees, agents and subcontractors are aware of and abide by the terms and conditions of this Non-Disclosure and Data Security Agreement and related data security provisions in the APS Contract.

It is the intent of this Non-Disclosure and Data Security Agreement to ensure that the Contractor has the highest level of administrative safeguards, disaster recovery and best practices are in place to ensure confidentiality, protection, privacy and security of APS Information and APS networked resources and to ensure compliance with all applicable local, state and federal law or regulatory requirements. Therefore, to the extent that this Non-Disclosure and Data Security Agreement conflicts with the APS Contract or with any applicable local, state, or federal law, regulation or provision, the more stringent APS Contract requirement, law, regulation or provision shall control.

At the conclusion of the Work, Contractor agrees to return all APS Information to the APS Project Officer. These obligations remain in full force and effect throughout the Work and shall survive any termination of the APS Contract.

Authorized Signature: _____

Printed Name and Title: _____

Date: _____

A COMPLETED APPENDIX D IS TO BE INCLUDED IN TAB 1 OF PROPOSAL

Appendix D

Insurance Checklist

Coverages Required			Limits (Figures Denote Minimums)		
Offeror Use	APS Use	Number	Coverage Type	Coverage Limit Per Occurrence	Coverage Aggregate Limit
Coverage Present (Place an X in the Box if coverage is present)	Confirmed Coverage Present (Place an X in the Box if coverage is present)				
Commercial General Liability					
		1	Premises / Operations	\$2,000,000	\$4,000,000
		2	Completed Products / Operations	\$2,000,000	\$4,000,000
Subcontractors Commercial General Liability Insurance					
		3	Subcontractors General Liability	\$2,000,000	\$4,000,000
Worker's Compensation & Employer's Liability Insurance					
		4	Worker's Compensation	Statutory Limit	Statutory Limit
		5	Employer's Liability	\$100,000	\$100,000
Commercial Automobile Liability Insurance					
		6	Owned	\$1,000,000	\$2,000,000
		7	Non-Owned / Hired		
Cyber Liability Insurance					
		8	Cyber Liability	\$10,000,000	\$12,000,000
Umbrella / Excess Insurance					
		9	Umbrella Liability	TBD	TBD
		10	Excess Liability	TBD	TBD
All other Risk Management Items of Note					
		11	All insurance carriers AM Best Ratings are an A- or better or its equivalent		
		12	All deductibles and or self-insurance component have been submitted to Arlington Public Schools for review.		
		13	Notice of Cancellation, nonrenewal or material change in coverage shall be provided to APS at least forty-five (45) days prior to action		
		14	APS has been added as an Additional Insured (via endorsement of the insurance policy) on all policies except Workers Compensation & Cyber Liability.		
		15	All of the Certificates of Insurance show the Contract Number and Title		
		16	If Claims Made Coverage is Approved, does it meet stipulations 1 or 2 stipulated in Section G of the Insurance Requirements, of the Contract Terms and Conditions		

		17	Indemnification (Refer to Section 21 of the Contract Terms and Conditions)
--	--	----	--

Insurance Agent's Statement:

I have reviewed the above requirements with the Offeror named below and have advised the Offeror of required coverages not provided through this agency.

Agency Name	
Auth. Signature	
Date	

Offeror's Statement:

If awarded the Contract, I will comply with Contract insurance requirements.

Offeror Name	
Auth. Signature	
Date	

A COMPLETED APPENDIX E IS TO BE INCLUDED IN TAB 1 OF PROPOSAL

Appendix E

Business Associate Agreement

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

Recitals

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

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

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

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

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

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

1) Definitions

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

- a) **Accounting**. "Accounting" means a record of disclosures of protected health information made by the Business Associate.

- b) **Breach.** “Breach” means the acquisition, access, use, or disclosure of protected health information in a manner not permitted by this Business Associate Agreement and/or by HIPAA which compromises the security or privacy of the protected health information. For purposes of this Business Associate Agreement, any unauthorized acquisition, access, use, or disclosure of protected health information shall be presumed to be a breach.
- c) **Business Associate.** “Business Associate” means a person who creates, receives, maintains, or on behalf of a Covered Entity to accomplish a task regulated by HIPAA and not as a member of the Covered Entity's workforce. A Business Associate shall include, but is not limited to, a non-workforce person/entity who performs data processing/analysis/transmission, billing, benefit management, quality assurance, legal, actuarial, accounting, administrative and/or financial services on behalf of the Covered Entity involving protected health information. A Business Associate also includes a subcontractor.
- d) **Covered Entity.** “Covered Entity” means a health plan, a health care clearinghouse, and/or a health care provider who transmits any health information in electronic form in connections with an activity regulated by HIPAA.
- e) **Data Aggregation.** "Data Aggregation" means, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- f) **Designated Record Set.** “Designated Record Set” means all records, including medical, enrollment, billing, payment, claims, and/or case management maintained by and/or for a Covered Entity.
- g) **Discovery.** "Discovery" shall mean the first day an unauthorized use or disclosure is known or reasonably should have been known by Business Associate, including when it is or should have been known by any person other than the person who engaged in the unauthorized use/disclosure who is an employee, officer, or agent of Business Associate.
- h) **Electronic Protected Health Information.** “Electronic Protected Health Information” means individually identifiable health information that is transmitted by or maintained in electronic media.
- i) **HIPAA.** “HIPAA” means the Health Insurance Portability and Accountability Act of 1996 as in effect and/or as amended.
- j) **HITECH Act.** “HITECH Act” means the portions of the Health Information Technology for Economic and Clinical Health Act which serve as amendments to HIPAA. HITECH is included within the definition of HIPAA unless stated separately.
- k) **Individual.** “Individual” means the person who is the subject of protected health information and/or a person who would qualify as a personal representative of the person who is the subject of protected health information.

- l) **Protected Health Information.** “Protected Health Information” or “PHI” means individually identifiable health information transmitted and/or maintained in any form.
- m) **Remuneration.** “Remuneration” means direct or indirect payment from or on behalf of a third party.
- n) **Required By Law.** “Required By Law” means an activity which Business Associate is required to do or perform based on the provisions of state and/or federal law.
- o) **Secretary.** “Secretary” means the Secretary of the Department of Health and Human Services or the Secretary’s designee.
- p) **Security Incident.** “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the system operations in an information system.
- q) **Underlying Agreement.** “Underlying Agreement” means APS contract for goods or services made through APS’s procurement office which the parties have entered into and which APS has determined requires the execution of this Business Associate Agreement.
- r) **Unsecured Protected Health Information.** “Unsecured Protected Health Information” means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology approved by the Secretary.

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

- a) Business Associate acknowledges and agrees that it is obligated by law (or upon the effective date of any portion thereof shall be obligated) to meet the applicable provisions of HIPAA and such provisions are incorporated herein and made a part of this Business Associate Agreement. Covered Entity and Business Associate agree that any regulations and/or guidance issued by DHHS with respect to HIPAA that relate to the obligations of business associates shall be deemed incorporated into and made a part of this Business Associate Agreement.
- b) In accordance with 45 CFR §164.502(a)(3), Business Associate agrees not to use or disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law.
- c) Business Associate agrees to develop, implement, maintain and use appropriate administrative, technical, and physical safeguards that reasonably prevent the use or disclosure of PHI other than as provided for by this Business Associate Agreement, in accordance with 45 CFR §§164.306, 310 and 312. Business Associate agrees to develop, implement, maintain and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI, in accordance with 45 CFR §§164.306, 308, 310, and 312. In accordance with 45 CFR §164.316, Business Associate shall also develop and implement policies and procedures and meet the documentation requirements as and at such time as may be required by HIPAA.

- d) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate, of a use or disclosure of PHI by Business Associate in violation of the requirements of this Business Associate Agreement.
- e) In accordance with 45 CFR §§164.308, 314 and 502, Business Associate will ensure that any workforce member or agent, including a vendor or subcontractor, whom Business Associate engages to create, receive, maintain, or transmit PHI on Business Associates' behalf agrees to the same restrictions and conditions that apply through this Business Associate Agreement to Business Associate with respect to such information, including minimum necessary limitations. Business Associate will ensure that any workforce member or agent, including a vendor or subcontractor, whom Business Associate engages to create, receive, maintain, or transmit PHI on Business Associates' behalf, agrees to implement reasonable and appropriate safeguards to ensure the confidentiality, integrity, and availability of the PHI.
- f) At the request of Covered Entity, Business Associate will provide Covered Entity, or as directed by Covered Entity, an Individual, access to PHI maintained in a Designated Record Set in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.524, and, where required by HIPAA, shall make such information available in an electronic format where directed by the Covered Entity.
- g) At the written request of Covered Entity, (or if so directed by Covered Entity, at the written request of an Individual), Business Associate agrees to make any amendment to PHI in a Designated Record Set, in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.526.
- h) In accordance with 45 CFR §164.504(e)(2), Business Associate agrees to make its internal practices, books, and records, including policies and procedures, and any PHI, relating to the use and disclosure of PHI, available to Covered Entity or to the Secretary for purposes of determining compliance with applicable law. To the extent permitted by law, said disclosures shall be held in strictest confidence by the Covered Entity. Business Associate will provide such access in a time and manner that is sufficient to meet any applicable requirements of applicable law.
- i) Business Associate agrees to document and maintain a record of disclosures of PHI and information related to such disclosures, including the date, recipient and purpose of such disclosures, in a manner that is sufficient for Covered Entity or Business Associate to respond to a request by Covered Entity or an Individual for an Accounting of disclosures of PHI and in accordance with 45 CFR § 164.528. Business Associate further shall provide any additional information where required by HIPAA and any implementing regulations. Unless otherwise provided under HIPAA, Business Associate will maintain the Accounting with respect to each disclosure for at least six years following the date of the disclosure.
- j) Business Associate agrees to provide to Covered Entity upon written request, or, as directed by Covered Entity, to an Individual, an Accounting of disclosures in a time and manner that is sufficient to meet the requirements of HIPAA, in accordance with 45 CFR §164.528. In addition, where Business Associate is contacted directly by an Individual based upon information provided to the Individual by Covered Entity and where so required by

HIPAA and/or any implementing regulations, Business Associate shall make such Accounting available directly to the Individual.

- k) In accordance with 45 CFR §164.502(b), Business Associate agrees to make reasonable efforts to limit use, disclosure, and/or requests for PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. Where required by HIPAA, Business Associate shall determine (in its reasonable judgment) what constitutes the minimum necessary to accomplish the intended purpose of a disclosure.
- l) In accordance with 45 CFR §502(a)(5), Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual, except with the express written pre-approval of Covered Entity.
- m) To the extent Business Associate is to carry out one or more of the Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- n) In accordance with 45 CFR §164.314(a)(1)(i)(C), Business Associate agrees to promptly report to Covered Entity any Security Incident of which Business Associate becomes aware.
- o) In accordance with 45 CFR §164.410 and the provisions of this Business Associate Agreement, Business Associate will report to Covered Entity, following Discovery and without unreasonable delay, but in no event later than five business days following Discovery, any Breach of Unsecured Protected Health Information. Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting Covered Entity's obligations under HIPAA and any other applicable security breach notification laws, including but not limited to providing Covered Entity with such information in addition to Business Associate's report as Covered Entity may reasonably request, e.g., for purposes of Covered Entity making an assessment as to whether/what Breach Notification is required.

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

1. The identification (if known) of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach;
2. A description of the nature of the unauthorized acquisition, access, use, or disclosure, including the date of the Breach and the date of discovery of the Breach;
3. A description of the type of Unsecured PHI acquired, accessed, used or disclosed in the Breach (e.g., full name, Social Security number, date of birth, etc.);

4. The identity of the individual(s) who made and who received the unauthorized acquisition, access, use or disclosure;
 5. A description of what Business Associate is doing to investigate the Breach, to mitigate losses, and to protect against any further breaches; and
 6. Contact information for Business Associate's representatives knowledgeable about the Breach.
- p) Business Associate shall maintain for a period of six years all information required to be reported under paragraph "o". This records retention requirement does not in any manner change the obligation to timely disclose all required information relating to a non-permitted acquisition, access, use or disclosure of Protected Health Information to APS Privacy Officer and APS Project Officer or designee five business days following Discovery.

3) Permitted Uses and Disclosures by Business Associate

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

- a) Business Associate may use or disclose PHI as necessary to perform functions, activities, or services to or on behalf of Covered Entity under any service agreement(s) with Covered Entity, including Data Aggregation services related to the health care operations of Covered Entity, if called for in the Underlying Agreement, if Business Associate's use or disclosure of PHI would not violate HIPAA if done by Covered Entity.
- b) Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- c) Business Associate may disclose PHI for the proper management and administration of Business Associate if:
 1. Disclosure is Required By Law;
 2. Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will remain confidential, and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed, and the person agrees to promptly notify Business Associate of any known breaches of the PHI's confidentiality; or
 3. Disclosure is pursuant to an order of a Court or Agency having jurisdiction over said information.
- d) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

4) **Obligations of Covered Entity**

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

5) **Term, Termination and Breach**

- a) This Business Associate Agreement is effective when fully executed and will terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, including any material provided to subcontractors. If it is infeasible to return or destroy all PHI, protections are extended to such information, in accordance with the Section 5(d) and 5(e) below.
- b) Upon Covered Entity's determination that Business Associate has committed a violation or material breach of this Business Associate Agreement, and in Covered Entity's sole discretion, Covered Entity may take any one or more of the following steps:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation, and if Business Associate does not cure the Breach or end the violation within a reasonable time specified by Covered Entity, terminate this Business Associate Agreement;
 - 2. Immediately terminate this Business Associate Agreement if Business Associate has committed a material breach of this Business Associate Agreement and cure of the material breach is not feasible; or,
 - 3. If neither termination nor cure is feasible, elect to continue this Business Associate Agreement and report the violation or material breach to the Secretary.

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

6) **Miscellaneous**

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

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

(2) Kenneth M. Goleski
Assistant Division Counsel
Arlington Public Schools
2110 Washington Blvd.
Arlington, Virginia 22204

(3) Brianna Cobbins
Director, Office of Personnel
Arlington Public Schools
2110 Washington Blvd.
Arlington, Virginia 22204

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

Contractor

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

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

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

- i) Any ambiguity in this Business Associate Agreement shall be resolved to permit the parties to comply with HIPAA, its implementing regulations, and associated guidance. The sections, paragraphs, sentences, clauses and phrases of this Business Associate agreement are severable. If any phrase, clause, sentence, paragraph or section of this Business Associate Agreement is declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences and sections of this Business Associate Agreement.
- j) If any dispute or claim arises between the parties with respect to this Business Associate Agreement, the parties will make a good faith effort to resolve such matters informally, it being the intention of the parties to reasonably cooperate with each other in the performance of the obligations set forth in this Business Associate Agreement. The Dispute Resolution clause of the Underlying Agreement ultimately governs if good faith efforts are unsuccessful.
- k) A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy as to any subsequent events.
- l) Neither party may assign any of its rights or obligations under this Business Associate Agreement without the prior written consent of the other party.
- m) This Business Associate Agreement and the rights and obligations of the parties hereunder shall be construed, interpreted, and enforced with, and shall be governed by, the laws of the Commonwealth of Virginia and the United States of America.
- n) This Business Associate Agreement shall remain in effect for the duration of the Underlying Agreement between the parties, any renewals, extension or continuations thereof, and until such time as all PHI in the possession or control of the Business Associate has been returned to the Covered Entity and/or destroyed. If such return or destruction is not feasible, the Business Associate shall use such PHI only for such limited purposes that make such return or destruction not feasible and the provision of this Business Associate Agreement shall survive with respect to such PHI.
- o) The Business Associate shall be deemed to be in violation of this Business Associate Agreement if it knew of, or with the exercise of reasonable diligence or oversight should have known of, a pattern of activity or practice of any subcontractor, subsidiary, affiliate, agent or workforce member that constitutes a material violation of that entity's obligations in regard to PHI unless the Business Associate took prompt and reasonable steps to cure the breach or end the violation, as applicable, and if such steps were unsuccessful, terminated the contract or arrangement with such entity, if feasible.
- p) Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or any change in applicable federal law including revisions to HIPAA; upon publication of any decision of a court of the United States or of the Commonwealth of Virginia, relating to PHI or applicable federal law; upon the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of PHI disclosures or applicable federal law, APS reserves the right, upon written notice to the Business Associate, to amend this Business Associate

Agreement as APS determines is necessary to comply with such change, law or regulation. If the Business Associate disagrees with any such amendment, it shall so notify APS in writing within thirty (30) days of APS's notice. In case of disagreement, the parties agree to negotiate in good faith the appropriate amendment(s) to give effect to such revised obligation. In APS's discretion, the failure to enter into an amendment shall be deemed to be a default and good cause for termination of the Underlying Agreement.

- q) APS makes no warranty or representation that compliance by the Business Associate with this Business Associate Agreement, HIPAA, the HITECH Act, federal law or the regulations promulgated thereunder will be adequate or satisfactory for the Business Associate's own purposes or to ensure its compliance with the above. The Business Associate is solely responsible for all decisions made by it, its workforce members, agents, employees, subsidiaries and subcontractors regarding the safeguarding of PHI and compliance with federal law.
- r) The Business Associate agrees that its workforce members, agents, employees, subsidiaries and subcontractors shall be bound by the confidentiality requirements herein and the provisions of this Business Associate Agreement shall be incorporated into any training or contracts with the same.
- s) This Business Associate Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
- t) This Business Associate Agreement shall replace and supersede any prior Business Associate Agreement entered between the parties.

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

ARLINGTON PUBLIC SCHOOLS			
Authorized Signature:	_____	Authorized Signature:	_____
Printed Name	<u>David J. Webb, C.P.M.</u>	Printed Name:	_____
Title:	<u>Director/Procurement Agent</u>	Title:	_____
Date:	_____	Date:	_____

FOR INFORMATION PURPOSES ONLY

Appendix F

Sample Form Agreement



Arlington Public Schools

PROCUREMENT OFFICE

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

Website: www.apsva.us

Subject: Contract 41FY22. Medicare Retiree Health Benefits

Contract 41FY22, for the provision of Medicare Retiree Health Benefits (“the Work”) is entered into as of the date the Procurement Agent signs this Agreement, this _____ day of _____, 2022; by and between _____, located at _____, hereinafter called “Contractor” and Arlington County School Board, operating as Arlington Public School hereinafter called “APS” or “Owner

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 the last day of the thirty-sixth (36) month following execution of the Contract by the Procurement Director/ Procurement Agent (‘Initial Contract Term’), unless otherwise stated as provided in the Contract Documents.

This Contract may be renewed for a term not to exceed twelve (12) months (‘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.

Contract Price

APS will pay the Contractor in accordance with the terms of the Payment section below and of Exhibit B for the Contractor's completion of the Work as required by the Contract Documents. The Contractor will complete the Work for the total amount specified in this section (“Contract Amount”).

Scope of Services

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.

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.

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 Agreement #41FY22 and all modifications properly incorporated into the Agreement
- 2 Attachment A – Scope of Services
- 3 Attachment B – Fee Schedule
- 4 Attachment C – Contractor Certification Regarding Criminal Convictions
- 5 Attachment D – Non-Disclosure and Data Security Agreements
- 6 Attachment E – Business Associate Agreement
- 7 Attachment F – Contract Terms and Conditions
- 8 Attachment G – 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.”

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.

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.

Payment Procedures:

Payment is on a deliverable basis. Contractor will be paid upon Acceptance of the applicable Deliverables upon its submission of a complete invoice satisfactory to the Project Officer that 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 Purchase Order shall appear on all invoices.

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.

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, or emailed addressed as follows:

To the Contractor:

To APS: Ms. Brianna Cobbins
 Director, Human Resources Operations
 Department of Human Resources
 Arlington Public Schools
 2110 Washington Blvd.
 Arlington, Virginia 22204
 brianna.cobbins@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

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 Contract 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		Name of Contractor	
Authorized Signature:	_____	Authorized Signature:	_____
Printed Name	<u>David J. Webb, C.P.M.</u>	Printed Name:	_____
Title:	<u>Director/Procurement Agent</u>	Title:	_____
Date:	_____	Date:	_____

FOR INFORMATION PURPOSES ONLY

Appendix G

Contract Terms and Conditions

The Contract with the successful Offeror (“Contractor”) will contain the following Contract terms and conditions, with incomplete information to be added based upon the final negotiations between APS and the successful Offeror. Offerors who propose to use additional or modified language must include such language with their Proposal. Arlington Public Schools is referred to herein as “APS”. Non-Negotiable, Mandatory Provisions Required by Virginia Law or the Procurement Resolution are Indicated by Aa Asterisk (“*”). The final agreement is subject to review by the APS Attorney prior to being submitted to the successful Offeror for signature.

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.

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.

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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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' 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.

25. Confidential Information

The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all APS information obtained as a results 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.).

26. 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 Services 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.

27. Data Security

The Contractor agrees that it shall hold all APS data obtained or accessed as a result of its work under this Contract confidential in accordance with the Nondisclosure and Data Security Agreement attached hereto. If

individual employees or subcontractors of the Contractor are performing work under this Contract on APS-owned property, then such individual employees or subcontractors shall be required to sign a separate Nondisclosure and Data Security Agreement, which shall be incorporated by reference into this Contract, prior to performing any work or being allowed access to APS data.

The Contractor shall hold APS Information in the strictest confidence and comply with all applicable APS security and network resources policies as well as all local, state and federal laws or regulatory requirements concerning data privacy and security. The Contractor shall develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted APS Information received from, created or maintained on behalf of APS and strictly control access to APS Information. For purposes of this provision, and as more fully described in this Contract and APS's Non-Disclosure and Data Security Agreement (NDA), "APS Information" (also referred to as "APS Data" or "data") includes, but is not limited to, electronic information, documents, data, images, and records including, but not limited to, financial records, personally identifiable information, Personal Health Information (PHI), personnel, educational, voting, registration, tax or assessment records, information related to public safety, APS networked resources, and APS databases, software and security measures which is created, maintained, transmitted or accessed to perform the Work under this Contract.

- (a) APS' Non-Disclosure and Data Security Agreement (NDA). The Contractor shall require that an authorized Contractor designee, and all key employees, agents or subcontractors working on-site at APS facilities or otherwise performing non-incident work under this Contract, sign the NDA (attached as an Attachment D) prior to performing any work or permitting access to APS networked resources, application systems or databases under this Contract. A copy of the signed NDAs shall be available to APS Project Officer upon request.
- (b) Use of Data. The Contractor shall ensure that the use, distribution, disclosure or access ("use") to APS Information and APS networked resources shall not occur in an unauthorized manner. Use of APS Information for other than as specifically outlined in this Contract is strictly prohibited, unless such other use is agreed to in writing by the parties. The Contractor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of APS Information and any non-compliance with this Data Security and Protection provision or any NDA.
- (c) Data Protection. The Contractor agrees that it will protect APS Information according to standards established by the National Institute of Standards and Technology, including 201 CMR 17.00, Standards for the Protection of Personal Information of Residents of the Commonwealth and the Payment Card Industry Data Security Standard (PCI DSS), as applicable, and no less rigorously than it protects its own data, proprietary and/or confidential information. The Contractor shall provide to APS a copy of its data security policy and procedures for securing APS Information and a copy of its disaster recovery plan/s. The Contractor shall provide, if requested by APS, on an annual basis, results of an internal Information Security Risk Assessment provided by an outside firm.
- (d) Data Sharing. Except as otherwise specifically provided for in this Contract, the Contractor agrees that it shall not share, disclose, sell or grant access to APS Information to any third party without the express written authorization of the APS Chief Information Security Officer or designee.
- (e) Security Requirements. The Contractor shall maintain the most up to date anti-virus, industry accepted firewalls and/or other protections on its systems and networking equipment. The Contractor certifies that all systems and networking equipment that support, interact or store APS Information meet the above standards and industry best practices for physical, network and system security

requirements. Printers, copiers or fax machines that store APS Data into hard drives must provide data at rest encryption. Significant deviation from these standards must be approved by the APS Chief Information Security Officer or designee, the downloading of APS information onto laptops or other portable storage medium is prohibited without the express written authorization of the APS Chief Information Security Officer or designee.

- (f) Data Protection Upon Conclusion of Contract. Upon termination, cancellation, expiration or other conclusion of this Contract, the Contractor shall return all APS Information to APS unless APS requests that such data be destroyed. This provision shall also apply to all APS Information that is in the possession of subcontractors or agents of the Contractor. The Contractor shall complete such return or destruction not less than thirty (30) calendar days after the conclusion of this Contract and shall certify completion of this task, in writing, to APS Project Officer.
- (g) Notification of Security Incidents. The Contractor agrees to notify the APS Chief Information Officer and APS Project Officer within twenty-four (24) hours of the discovery of any unintended access to, use or disclosure of APS Information.
- (h) Subcontractors. To the extent the use of subcontractors is permitted under this Contract, the requirements of this entire section shall be incorporated into any subcontractor agreement entered into by the Contractor and any data sharing shall be compliant with these security and protection requirements and the NDA. In the event of data sharing, subcontractors shall provide to the Contractor a copy of their data security policy and procedures for securing APS Information and a copy of their disaster recovery plan/s.

28. 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.

29. APS Employees*

No employee of APS Schools, Virginia, 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. Amendments

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

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. Survival of Terms

In addition to any numbered section in this Contract which specifically state that the term, paragraph or subsection survives the expiration of 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.

46. 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.

47. 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.

48. Non-Discrimination Notice*

APS does not discriminate against faith-based organizations.

49. Insurance Requirements

A. Overview

During the term of this Contract, the Contractor and all of their Subcontractors shall procure and maintain the **types of insurance that are referenced in section D below**. All insurance policies shall be with insurance companies that meet the following criteria:

1. Are authorized to do business under the laws of the Commonwealth of Virginia and acceptable to the APS, in its sole discretion.
2. Are rated with an AM Best rating of A- or better. APS reserves the right to require the Contractor and/or its Subcontractors to change their insurance to an insurance company that has the minimum required AM Best rating. This right can be exercised at any time the insurance requirements set forth in the Contract Documents remain applicable. If the AM Best rating of the insurance company changes to a rating under A- during the Contract Term, the Contractor and/or its Subcontractors will notify APS in writing immediately upon discovery and change the insurance immediately to an insurance company that meets or exceeds the AM Best rating of A-.
3. If APS suffers damages under the Contract and makes a claim on the named insurance company by APS, and the claim is not paid in full by the insurance company, Contractor acknowledges that it shall remain wholly liable for the full amount of the claim regardless of the solvency of the insurance company or the insurance company's willingness to pay the claim in full.
4. The Contractor and/or its Subcontractors must disclose in the Certificate of Insurance the amount of any deductible or self-insurance component applicable to all required insurance policies herein, if any. APS has the right to request additional information to determine if the Contractor and/or

its Subcontractors have the financial capacity to meet their obligations under a deductible or self – insurance program. If, in its discretion, APS is not satisfied as to the Contractor and/or its Subcontractors financial capacity to meet its obligations under a proposed deductible or self – insurance program, the Contractor and/or its Subcontractors shall re-submit revised acceptable insurance coverage at the sole discretion of APS and with no obligation to do so agree to alternative approaches proposed by the Contractor and/or its Subcontractors to ensure protection for APS.

B. Certificates of Insurance & Additional Insured Status:

1. Contractor

The Contractor is required to provide a Certificate of Insurance that names Arlington County School Board, including elected and appointed officials, agents, and employees as additional insureds by endorsement for all insurance policies except Workers Compensation, Professional Liability, and Cyber Liability coverage.

2. Subcontractors

- All Subcontractors will provide the Contractor with Certificates of Insurance for the policies that are required under this contract. All Certificates of Insurance should by endorsement name Arlington County School Board, including elected and appointed officials, agents, and employees as additional insureds for all contracts of insurance except Workers Compensation & Professional Liability.
- All Subcontractors shall provide the Contractor with a certificate of insurance that will serve as proof of insurance for their Cyber Liability coverage, but APS will not need to be added as an additional insured.
- The Contractor will maintain all certificates of insurance for their subcontractors.
- The Contractor will provide APS with its Subcontractors certificates of insurance at any time upon request.

C. Termination & Or Augmentation of Insurance Policies:

1. All required insurance policies must be endorsed through a Certificate of Insurance to provide that the insurance company shall give **forty-five (45) days written notice** to the Owner if the policies are to be terminated or if any changes are made during the life of the Contract which will affect in any way the insurance requirements set forth herein. Before commencing Work, the Contractor shall provide APS with a Certificate of Insurance referencing each policy which it and each of its Subcontractors shall carry in accordance herewith, together with receipted bills evidencing proof of premium payment. The Contractor and or their Subcontractors terminating or augmenting any insurance policy without giving APS forty-five (45) days' notice will be in direct violation of the terms and conditions of the Contract.
2. If insurance coverage is allowed to lapse and a loss occurs, the Contractors and or their Subcontractors will still be required to indemnify and hold APS harmless for all losses sustained. Regardless of whether insurance is present or not.

D. Insurance Required by The Contract:

Casualty Insurance:

1. Commercial General Liability occurrence-based insurance:

Commercial General Liability occurrence-based insurance shall be in place until APS confirms the Contract has expired. Such insurance shall cover claims for bodily injury, property damage and personal injury arising out of operations under the Contract, whether such actions are performed by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them. For work that specifically deals with purchase, construction and or maintenance of physical property the insurance coverage for contractors and subcontractors shall also include coverage for explosions, collapse, underground utilities and completed products and operations. Coverage afforded under this policy shall be primary to all other insurance with respect to Arlington County School Board including its elected and appointed officials, agents, and employees.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Commercial General Liability	\$2,000,000	\$4,000,000

2. Subcontractor's Commercial General Liability Insurance:

The Contractor shall require each of its Subcontractors to procure and maintain during the life of its subcontract, subcontractor's Commercial General Liability Insurance in amounts satisfactory to the contract.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Subcontractors Commercial General Liability	\$2,000,000	\$4,000,000

3. Worker's Compensation and Employer's Liability Insurance:

Worker's Compensation and Employer's Liability Insurance is mandatory for the Contractor's employees engaged in the Work under this Contract, in accordance with the laws of the Commonwealth of Virginia. The Contractor shall require each of its Subcontractors to provide Worker's Compensation and Employer's Liability Insurance for all the Subcontractor's employees engaged on such subcontracts. If any class of employees engaged in work under the Contract is not protected under the Worker's Compensation laws in Virginia, the Contractor shall provide similar protection for these employees in amounts not less than the legal requirements.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Worker's Compensation	Statutory Limit	Statutory Limit
Employer's Liability	\$100,000	\$100,000

4. Commercial Automobile Liability Insurance:

Commercial Automobile Liability insurance, including coverage for owned, non-owned and hired vehicles shall be in place for the Contractor and all of its Subcontractors.

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Commercial Automobile Liability	\$1,000,000	\$2,000,000

5. Cyber Liability Insurance:

A **standalone Cyber Liability** insurance shall be in place for Contractor and all of its subcontractors. Coverage to include: Economic Loss arising out of Contractor’s capacity for which it is being hired, and Coverage resulting from the ability of a third-party to gain access to APS’ computer system, Contractor’s failure to prevent unauthorized access (e.g., breach) to or use of an Contractor’s computer system, and unauthorized access (e.g., breach) or use of confidential information (e.g., Personally Identifiable Information (PII) and Protected Health Information (PHI)). Coverage shall include but not be limited to:

1. Data Breach & Incident Response
2. Network Security, Privacy and Data Breach Liability
3. Regulatory Liability
4. PCI Fines & Assessments
5. Data Restoration
6. Cyber Extortion Including Ransomware
7. Media Liability
8. Social Engineering & Fraud Event
9. Forensics

Type of Insurance	Limit Per Occurrence	Aggregate Limit
Cyber Liability	\$3,000,000	\$6,000,000

E. Receipt of Certificates of Insurance:

Proof of satisfaction, of insurance for each type of coverage listed herein shall be provided to APS **within ten (10) days** of the Contractor’s receipt of the Notice to Proceed and no work, shall proceed unless all such insurance is in effect. The Contractor shall not allow any Subcontractor to commence work on its subcontract until all insurance required of the Subcontractor has been obtained and approved by the Contractor and found to be in accordance with the requirements set forth herein.

F. Use of Excess / Umbrella Liability Insurance:

The use of Excess / Umbrella Liability insurance is permitted. If Excess / Umbrella insurance is used the policy must be endorsed to show that the lines that the policy is bolstering are covered under the policy. All Excess / Umbrella Liability insurance coverage is subject to review by APS’ Risk Manager and its use can be denied based on that review.

G. Consideration of Claims Made Insurance Coverage:

APS will consider claims made insurance coverage on a case-by-case basis **APS reserves the right to accept or deny the use of Claims Made Insurance coverage at any time.**

If the liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Consultant must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:

1. Agree to provide certificates of insurance evidencing the above coverages for a period of two (2) years after final payment for the Contract for General Liability policies five (5) years for Professional Liability & Cyber policies. This certificate shall evidence a "retroactive date" no later than the beginning of the Consultant's work under this Contract.

or

2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this Contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.

If claims made insurance is utilized by the Contractor and or their Subcontractors and a claim occurs that relates back to the vendor's services. The Contractor and or their Subcontractors will indemnify and hold APS harmless of all losses regardless of whether they have insurance coverage in place or not.

H. Contract Identification:

All certificates of insurance shall state the Contract number and title.

50. 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>.

51. 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.

52. 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.

53. 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.

54. 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.

55. 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.

56. 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.

57. Student Data Usage and Privacy Agreement

Intentionally deleted.

58. 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. (Submit completed Appendix A).

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

59. 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.

60. 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.

61. Vaccine Requirement

All employees and students, all employees and subcontractors of the Contractor who are assigned to this Contract, must be fully vaccinated against COVID-19. Any Contractor employee or subcontractor who is not fully vaccinated, must follow a weekly testing protocol as established by the Contractor unless exempt pursuant to a valid reasonable accommodation under state or federal law. During the Contract Term, the Contractor certifies that it will comply with this provision and will ensure that its subcontractors, if any, will as well.

FOR INFORMATION PURPOSES ONLY

Appendix H

Sample Purchase Order

Page: 1 of 1



**Standard Purchase Order
Arlington Public Schools**

PROCUREMENT OFFICE
2110 Washington Blvd
Arlington, Virginia 22204
Telephone: (703) 228-6123

ACCOUNTS PAYABLE
2110 Washington Blvd
Arlington, Virginia 22204
Telephone: (703) 228-6121
Email: aps.payables@apsva.us

**Please note that our billing
address has changed.**

**Unless otherwise
instructed, please send
invoices to the address
above, Attn: Accounts
Payable.**

Purchase Order	2100000
Purchase Order Date	08-JUL-2020
Change Order Number	0
Change Order Date	
Procurement Specialist/Phone	Thanh Thai 703-228-2411
Requisitioner/Ph#/Email	O'Grady, Matthew Liam 703-228-6012 matt.ogrady@apsva.us
FEIN	54-6001128
Website: https://www.apsva.us/procurement-office/	

SUPPLIER: SLATE ROCK & GRAVEL COMPANY
301 COBBLESTONE WAY
Bedrock AZ 86001

This PURCHASE ORDER NUMBER shown above must appear on all invoices, packing slips & related correspondence. For questions regarding the order, contact the REQUISITIONER shown above.

Ship To: Arlington Public Schools
Finance
2110 Washington Blvd
Arlington, VA 22204

Payment Terms	Freight Terms	FOB
NET 30	Prepaid	Destination

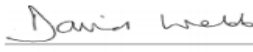
Line	Vendor Part	Item Description	Due Date	Quantity	UOM	Unit Price	Amount
1		Rocks	09-JUL-2020	100.00	Each	\$1.00	\$100.00

The Purchase Order Terms and Conditions found on the Arlington Public Schools Procurement Office Website, at the link provided below, are incorporated in, and become part of, this contract. It is the responsibility of the Vendor to carefully read and understand the Purchase Order Terms and Conditions.

The Purchase Order Terms and Conditions have been amended effective July 1, 2020.

<https://www.apsva.us/wp-content/uploads/2020/07/2020-07-01-Purchase-Order-TsCs.pdf>

IMPORTANT: There have been incidents of scammers pretending to be school representatives and ordering thousands of dollars of goods. **Purchases by APS are authorized only if an APS Purchase Order is issued in advance of the transaction**, indicating that the ordering agency has sufficient funds available to pay for the purchase. Vendors providing goods or services without a signed APS Purchase Order, do so at their own risk.

Authorized by: 
David J. Webb, C.P.M.
Director of Procurement

Purchase Order Total: \$100.00

FOR INFORMATION PURPOSES ONLY

Appendix I

Screenshots of the Steps Required to Submit a Proposal

Current Solicitations

Solicitation	Description	Due Date	Contact
ITB 125FY20 Addendum 1	Space Ranger Services	April 30, 2020 No later than 11:59 PM Link to Submit Bid - ITB 125FY20	Joshua Makely





Send files to Joshua

Joshua Makely has invited you to send files

Please provide Company Name as it appears on the Bid Form.

By continuing, I agree that I will not upload malware, unlawful materials or content that violates the intellectual property rights of others, and my failure to abide by this agreement shall subject me to all legally permissible remedies at Egnyte's disposal.

Continue



Send files to Joshua

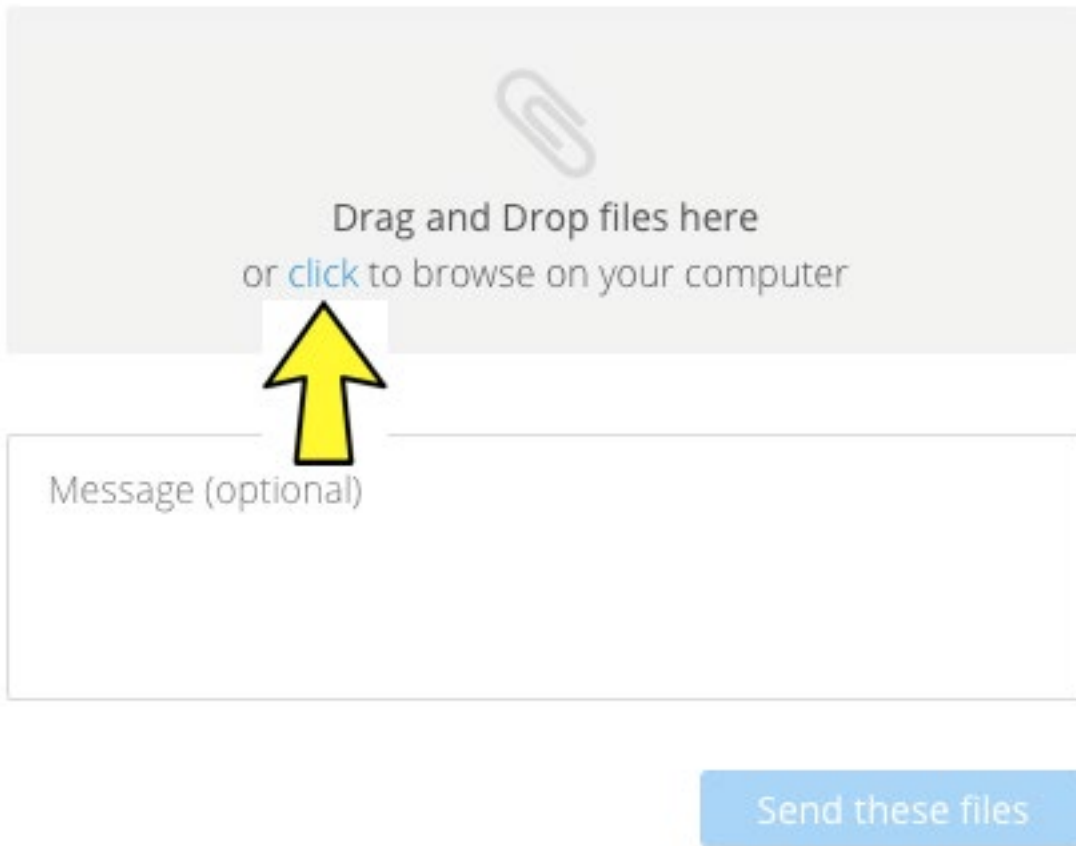
Joshua Makely has invited you to send files

Buzz Lightyear	 1
buzz@starcommand.org	 2
Star Command	 3

By continuing, I agree that I will not upload malware, unlawful materials or content that violates the intellectual property rights of others, and my failure to abide by this agreement shall subject me to all legally permissible remedies at Egnyte's disposal.



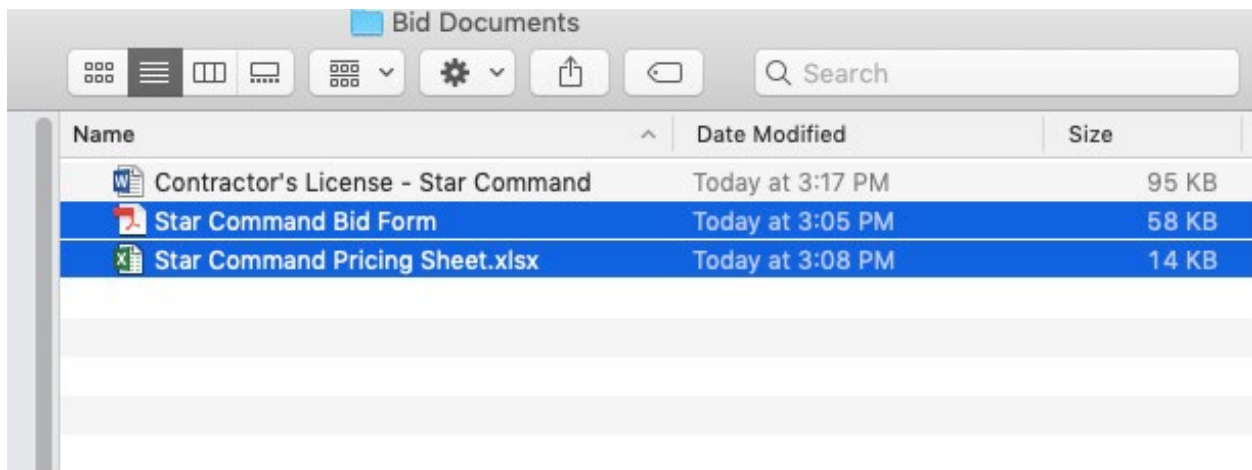
Attach the files you would like to send to Joshua Makely



Drag and Drop files here
or [click](#) to browse on your computer




Message (optional)

Send these files



Name	Date Modified	Size
Contractor's License - Star Command	Today at 3:17 PM	95 KB
Star Command Bid Form	Today at 3:05 PM	58 KB
Star Command Pricing Sheet.xlsx	Today at 3:08 PM	14 KB

Drag and drop or [click](#) to add more files







-  Star Command Bid Form.pdf | 
-  Star Command Pricing Sheet.xlsx | 14.1KB

If you need to
add more files
do so by
selecting the
option here.

Message (optional)

Send these files

Drag and drop or [click](#) to add more files

-  Star Command Bid Form.pdf | 56.6KB 
-  Star Command Pricing Sheet.xlsx | 14.1KB 
-  Contractor's License - Star Command.docx | 93KB 

Bid Form and Excel Pricing Page (if applicable) from Star Command.

Include as optional

Contractor's License also attached.

 Send these files



3 files sent to Joshua Makely

All files sent have been scanned for viruses - none were detected

You may now close this window

Appendix J

Medicare Retiree Health Questionnaire

APPENDIX J IS PROVIDED AS AN ATTACHMENT

Appendix K

Medicare Retiree Census

APPENDIX K IS PROVIDED AS AN ATTACHMENT

Appendix L

Medicare Retiree History

APPENDIX L IS PROVIDED AS AN ATTACHMENT

Appendix M

Disruption Report

APPENDIX M IS PROVIDED AS AN ATTACHMENT