

# BALTIMORE CITY PUBLIC SCHOOLS

200 EAST NORTH AVENUE  
BALTIMORE, MD 21202

## RFP-22110

### REQUEST FOR PROPOSALS FOR ADMINISTRATION OF FLEXIBLE SPENDING ACCOUNTS (FSA), COBRA AND OTHER ADDITIONAL SERVICES

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**ISSUED BY:** Procurement Office  
Baltimore City Public Schools  
200 East North Avenue, Room 401  
Baltimore, MD 21202  
Attention: Patricia Pickett

**RFP NUMBER:** RFP-22110

**PUBLIC POSTING DATE:** TUESDAY, JULY 19, 2022

**NDA SIGNATURE:** TUESDAY, JULY 26, 2022

**RFP PUBLISH DATE:** TUESDAY, AUGUST 2, 2022

**PRE-PROPOSAL MEETING:** TUESDAY, AUGUST 9, 2022 @ 1:30 p.m.

**QUESTIONS DUE:** WEDNESDAY, AUGUST 10, 2022 @ 4:00 p.m.

**PROPOSAL DUE DATE:** THURSDAY, AUGUST 25, 2022 @ 4:00 p.m.

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**Entities are cautioned not to make changes to any of the terms and conditions in this solicitation. Doing so may render an Entity's Proposal unacceptable and subject to rejection. Questions and inquiries may be addressed as outlined in Part II, Item 4 of this solicitation. Any exceptions to the Baltimore City Public Schools' ("City Schools") terms and conditions are not binding unless they are negotiated and affirmatively deemed mutually agreeable by the Entity and City Schools in an executed Contract. City Schools is not required to negotiate changes to its terms and conditions.**

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## **PART I: SCOPE OF WORK**

### **1.0 INTRODUCTION AND DEFINITIONS**

This Request for Proposals (“RFP” or “solicitation”) is soliciting Proposals from qualified Entities for the Baltimore Public Schools (City Schools) Human Capital Office which is responsible for administering the various benefits programs for City Schools’ employees and their dependents. The Materials Management Office is issuing this Request for Proposals (RFP) for a qualified Vendor to provide administration of City Schools’ Flexible Spending Account (FSA) Program and/or its Consolidated Omnibus Budget Reconciliation Act (COBRA) Program to include those services necessary to help the City Schools achieve its goals as outlined in this document. In order to achieve this goal, the selected Vendor will be required to provide services as outlined herein: City Schools reserves the right to select a single vendor to provide services for both the FSA Program and the COBRA Program, and that City Schools also reserves the right to select two Vendors – one vendor to provide Services for the FSA Program and one vendor to provide Services for the COBRA Program.

Offerors should understand that no documents or additional information other than what is requested in the RFP will be considered part of the offer unless specifically approved by the Plan.

Please note that Aon Consulting, as City Schools’ benefits consultant, is assisting City Schools in this procurement.

For the purposes of this RFP, the following definitions apply: “**City Schools**” refers to the Baltimore City Board of School Commissioners, which operates a system of public schools commonly known as the Baltimore City Public School System or Baltimore City Public Schools; “**Entity**” means any qualified, reliable, and interested broker, vendor, bidder, consultant, contractor, manufacturer, and/or other entity that responds to this RFP, as well as the entity awarded a Contract or otherwise duly authorized by City Schools to provide Services in accordance with applicable Laws; “**Contract**” or “**Agreement**” refers to the legally enforceable contract or agreement between City Schools and the Entity that is the successful respondent to this RFP; “**Services**” or “**Work**” refers to the work, deliverables, products, goods, materials, equipment, and/or services required to be provided or performed by the Entity under the terms of the Agreement; “**Law**” or “**Laws**” refers to any applicable federal, state, and local laws, regulations and rules, as well as Baltimore City Board of School Commissioners policies and administrative regulations, which are available at this link: [www.baltimorecityschools.org/board-policies](http://www.baltimorecityschools.org/board-policies); and “**Proposal**” means a bid or submission to City Schools in response to this RFP.

### **2.0 BACKGROUND**

City Schools serves the needs of public education in Baltimore City, covering approximately 77 square miles, with a residential population of more than 646,000. It is the fourth largest public school system in the State of Maryland. City Schools operates 156 facilities over a ten-mile radius, which includes Pre-k, elementary, middle, and high schools as well as special education centers and alternative schools. The Central administration headquarters is located at 200 East North Avenue, Baltimore, Maryland. City Schools is governed by the Baltimore City Board of School Commissioners (“Board”), which has 10 members (including a student member). The Board is appointed by the

Mayor of Baltimore. The Board sets and oversees policy and implementation of regulations for the school system and approves all major appointments. The City Schools Chief Executive Officer reports to the Board.

City Schools currently has approximately 79,000 students supported by approximately 10,000 employees and an annual operating budget of approximately \$1.3B.

City Schools offers an expansive range of employee benefit plans to approximately 10,500 employees and approximately 10,000 covered dependents. Benefit plans include health (including behavioral health), dental, Employee Assistance Program (EAP), group term life, accidental death and dismemberment, flexible spending accounts for day care and health care, prescription drugs, vision and voluntary long-term disability. These benefits are offered to a diverse, primarily union, workforce that includes teachers (BTU); paraprofessionals and school related personnel (PSRP); public school administrators (PSASA); clerical and administrative (CUB); school police officers (FOP); maintenance, food service, and transportation (Local 44); and professional/management employees (Unaffiliated). A detailed description of the current (proposed) plan designs may be found in City Schools will be selecting a vendor to administer Health Care, Dependent Care Flexible Spending Account and COBRA programs for those who to choose to enroll out of its 12,000 benefits eligible employees. Currently, the City Schools has a vendor that administers these programs; the Healthcare FSA option was added in 2013.

Currently all employees make their FSA elections on the City School's Oracle enrollment system, and that information is electronically transmitted to the carrier(s). The selected vendor must accept a bi-weekly or monthly change report via file transfer protocol (FTP) and update its enrollment records. FSA and COBRA contribution files must be accepted bi-weekly after each payroll is processed.

A detailed description of the Request for Proposal may be found in the Read Me First document as well as within the Reference Documents section of TBS.

### **3.0 PLAN DESCRIPTIONS**

City Schools currently has a Health and Dependent Care FSA and COBRA administration through P&A Group.

#### **FSA**

All active benefit eligible employees may set up a Medical FSA. An employee does not need to be a participant in one of the Baltimore City Public Schools medical, dental, or vision plans to participate.

The Medical FSA minimum annual contribution amount is \$120, and the maximum annual contribution amount is \$2,850. The Dependent Care FSA minimum annual contribution is \$120, and the maximum annual contribution amount is \$5,000 if married and filing jointly, and \$2,500 if married and filing separately.

When employees have eligible out-of-pocket expenses, they must submit receipts with a reimbursement form to P&A Group for reimbursement or use their P&A Benefits Mastercard at the time of service.

## **COBRA**

All City School employees covered by one of its health plans (including HMOs) and/or the dental plans have the right to choose continuation of coverage if the employee or one of their eligible dependents lose coverage as a result of a qualifying event.

### **4.0 MINIMUM QUALIFICATIONS**

City Schools minimum qualifications is delineated within TBS as a Microsoft Excel file labeled "Minimum Requirements" The minimum qualifications are:

1. Must have at least fifteen years' experience in providing the requested benefit plan services.
2. Must have at least 100,000 covered lives in the requested benefit plan services in your firm.
3. Must be SSAE 18 (Statements on Standards for Attestation Engagements) certified or provide proof of equivalent status.
4. Must be authorized to do business in the State of Maryland.
5. Must assign a designated Account Manager with public sector experience.

#### **Additional Requirement**

Prospective offerors are required to submit a **notarized original** of the "**Confidential Agreement for Census Release**" to retrieve TBS documents and data (see Appendix J).

### **5.0 SCOPE OF SERVICES**

Contractor will offer COBRA/FSA programs to approximately 8,700 BCPS active medical and COBRA employees. Health and Dependent Day Care FSA programs are to be provided under an administrative services arrangement and are currently offered as a benefit option. There are approximately 904 enrolled in the Health FSA and 181 enrolled in the Dependent Care FSA. The average monthly COBRA events are 93, and the monthly average new hire rate is 82. The Contractor is to bid on both FSA services and COBRA administration services combined.

BCPS currently outsources the benefits administration to a Benefits' Administrator. Contractor must agree to work with the Benefit Administrator to develop and test all required interfaces and communication lines before the effective date of January 1, 2023. Contractor will be required to work with the Benefit Administrator for all eligibility reconciliation projects, and other projects, as requested.

Contractors must demonstrate that they have the resources and capability to provide the materials and services. Contractors must meet the minimum qualifications outlined in the RFP questionnaire to be considered.

The full scope of services for this RFP is encompassed within the TBS platform as a Microsoft Excel file **labeled " Baltimore Public Schools RMF"**.

**THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY.**

## **PART II: GENERAL TERMS AND CONDITIONS**

### **1.0 STATEMENT OF CONFIDENTIALITY**

It is understood and agreed that all information pertinent to this solicitation may contain trade secrets, which are confidential and proprietary. The selected Entity agrees not to disclose or knowingly use any confidential or proprietary information of the Baltimore City Schools and/or third-party participant.

Prospective offerors are required to submit a **notarized original** of the “**Confidential Agreement for Census Release**” to retrieve TBS documents and data (see Appendix J).

Entities are notified that City Schools has unlimited data rights regarding Proposals submitted in response to this solicitation. “Unlimited data rights” means that City Schools has the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, or perform publicly and display publicly any information submitted by the Entity in response to this or any solicitation issued by City Schools. City Schools will exempt information that is confidential commercial or financial information of an Entity, as defined by the Maryland Public Information Act (“MPIA”), Title 4 of the General Provisions Article of the Maryland Annotated Code. It is the responsibility of the Entity to clearly identify each part of its Proposal that is confidential commercial or financial information by stamping the bottom right-hand corner of each pertinent page with one-inch, bold face letters stating the words “confidential” or “proprietary”. The Entity agrees that any portion of the Proposal that is not stamped as proprietary or confidential is not proprietary or confidential. As a condition for City Schools keeping the information confidential, the Entity must agree to defend and hold City Schools harmless if any information is inadvertently released. Each Entity must submit a proprietary and confidential redacted copy of its Proposal to be used in responding to MPIA requests. However, and in accordance with the MPIA, Entities are hereby notified that every portion of the Proposal may still be subject to disclosure under the MPIA.

### **2.0 TERM OF AGREEMENT**

The initial term of this contract shall be for a **period of five (5) years** beginning on **January 1, 2023**, with two (2), **2-year renewal options** (dates are tentative conditioned on the final agreement award by the Baltimore City Board of School Commissioners).

The Vendor shall keep their premium rates at or below those submitted on their Bid Proposal throughout **the initial term of the contract of five (5) year, and any renewal option years exercised**.

### **3.0 PRE-PROPOSAL MEETING**

The pre-proposal meeting is scheduled for **Tuesday, August 9, 2022 @ 1:30 p.m., EST** and will be conducted via Microsoft Office Teams. Call-in details are below:

**Join on your computer or mobile app at:**

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_ODJjZiY4N2UtMGY0Mi00ZDM3LWJmZTMtZjE2Mjk2Nzc1Njdm%40thread.v2/0?context=%7b%22id%22%3a%22065bb2f4-6fe3-414f-a910-](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODJjZiY4N2UtMGY0Mi00ZDM3LWJmZTMtZjE2Mjk2Nzc1Njdm%40thread.v2/0?context=%7b%22id%22%3a%22065bb2f4-6fe3-414f-a910-)

[f2886305c814%22%2c%22Oid%22%3a%22947b9efa-194c-48d4-afcd-43b8f836a70e%22%7d](https://emma.maryland.gov)

#### **Or join by entering a meeting ID**

Meeting ID: 281 650 216 997

Passcode: ycDLbK

While attendance at the pre-proposal meeting is not mandatory, the information presented is informative. All interested offerors are encouraged to attend in order to be better able to prepare an acceptable proposal.

#### **4.0 QUESTIONS AND INQUIRIES**

No interpretation of the meaning of the specifications or other documents will be made to any Entity orally. Questions shall be submitted in writing using the "Carrier Questions Template" that can be found on TBS. Alternatively, inquiries may be e-mailed to the Point of Contact. The subject field of the e-mail must include "INQUIRY" and the RFP name and number.

To be given consideration, the questions must be received **NOT LATER THAN Wednesday, August 10, 2022 at 4:00 p.m., EST**. Questions that are deemed to be substantive in nature will be answered only in writing, with both the question(s) and answer(s) posted on <https://emma.maryland.gov>. Unless expressly authorized by the Point of Contact, contact by Entities with any other City Schools employee regarding this solicitation until the Contract is awarded by the Board will be considered by City Schools as an attempt to obtain an unfair advantage and result in non-consideration of the Entity's Proposal.

#### **5.0 POINT OF CONTACT**

Patricia Pickett, Buyer  
Baltimore City Public Schools  
Office of Procurement  
200 E. North Avenue  
Baltimore, MD 21202  
E-mail: [PGPickett@bcps.k12.md.us](mailto:PGPickett@bcps.k12.md.us)

#### **6.0 CITY SCHOOLS PROJECT MONITOR/CITY SCHOOLS SUPERVISION**

For purposes of the Contract awarded pursuant to this RFP, the City Schools Project Monitor is Sarah Diehl.

The Entity's performance will be under the technical direction of the City Schools Project Monitor, who will be responsible for ensuring the Entity's compliance with the requirements of the Contract to include managing the daily activities of the Contract, providing technical guidance to the Entity, and overall project scheduling and coordination. The Entity shall be accountable to the City Schools Project Monitor on all matters relating to the scope of Work.

#### **7.0 CONTRACT TYPE**

The Contract resulting from this solicitation will be a **requirement contract**.

## 8.0 PAYMENT TERMS

The prices, rates, and other compensation for Services performed is as described in the Agreement. When transportation or freight charges are billed to City Schools, a paid freight bill must accompany the invoice. Invoices received unaccompanied by such evidence will be paid only upon acceptance by City Schools. Cartage, handling, packaging, or boxing charges will not be allowed unless specifically so stated in the purchase order.

The Parties acknowledge and agree that the Entity's invoices are to be submitted to City Schools in a timely manner, per the terms of a purchase order, after the Services have been provided to City Schools. If invoices are submitted more than one calendar year after the last date the Entity's Services have been rendered or the last date when Services were accepted by City Schools, then City Schools shall have no obligation to pay for the stale invoices. City Schools shall have no obligation to pay for Services performed before City Schools approves the Agreement or after it terminates, in excess of the monetary amount of the Agreement, or prior to the issuance of a purchase order. The Entity shall comply with additional City Schools guidance regarding invoices, proposals, and quotes, available on the City Schools website:

<https://www.baltimorecityschools.org/sites/default/files/inline-files/Quote-InvoiceGuidanceev10.6.20.pdf>.

The Entity's invoices shall be approved for payment by the City Schools Project Monitor only after the City Schools Project Monitor is satisfied that the Entity is performing the Services and has prepared the invoice as required by the Agreement. Prior to approving any Entity invoices for payment, City Schools, through any authorized representative, has the right at all reasonable times to inspect, or otherwise evaluate, the Services performed or being performed at the premises on which it is being performed. If any inspection or evaluation is made by City Schools on the premises of the Entity or any of its subcontractors, the Entity shall provide and shall require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of City Schools representatives in the performance of their duties. All inspections and evaluations shall be performed so that they will not unduly delay the Services.

Within thirty (30) days after receipt of each invoice and accepting the Services, City Schools shall, except as provided in the Agreement, pay for the Services performed when approved by the City Schools Project Monitor. A payment schedule will be jointly developed between City Schools and the Entity. City Schools reserves the right to submit payment using an electronic payment method, such as credit card, Single Use Account, or Automated Clearing House. The Entity shall not assess City Schools with any additional charge, fee, or price for the use of these electronic payment methods.

Regardless of any other provisions of the Agreement, failure of the Entity to submit required reports when due or failure to perform or deliver acceptable Services will result in City Schools withholding or limiting payments under the Agreement until such time as City Schools determines that the Entity has met the performance terms as established by this Agreement, unless such failure arises pursuant to Article 7 ("Force Majeure") of the City Schools General Articles and without the fault or negligence of the Entity. City Schools shall promptly notify the Entity of its intention to withhold or limit payment of any invoice submitted.

If at any time City Schools determines that a cost for which payment has been made is a



disallowed cost, such as overpayment, City Schools shall notify the Entity in writing of the disallowance or claim for unallowable costs. City Schools shall also state the means of correction, which may be, but shall not be limited to, adjustment of any future claim submitted by the Entity by the amount of the disallowance, or to require repayment of the disallowed amount by the Entity.

The Entity shall fully comply with any bid, payment, performance bond and/or other bonding or surety obligations as set forth in this RFP.

## **9.0 ELECTRONIC PAYMENT**

City Schools has the ability to process payments to contractors electronically using the CTX+ (“Corporate Trade Exchange”) payment format. The payment format will contain summarized information and will not provide details concerning each invoice amount included in the check total if the depositing bank does not accept CTX+ format. Entities must contact their bank in order to receive the CTX+ format and the depositing bank may charge a fee for this format. Entities need to discuss potential charges with their bank. Please complete and submit the Authorization for Entity Payment - ACH form. Forms can be obtained by visiting the City Schools procurement website at <https://www.baltimorecityschools.org/procurement>. City Schools will only process ACH forms for awarded Entities.

## **10.0 RFP REVISIONS**

Should it become necessary to revise any part of this RFP, addenda will be posted on <https://emma.maryland.gov>. All addenda, amendments or changes issued shall be deemed received by the Entity, provided they are posted to eMaryland Marketplace Advantage or the City Schools website. Failure of any Entity to receive or acknowledge receipt of such addenda or interpretation shall not relieve any Entity from any obligations under this RFP as amended by all addenda. All addenda so issued shall become part of the Contract award.

## **11.0 SUBMISSION DEADLINE**

Proposals in response to this solicitation are being accepted solely via TBS. **The proposal due date is Thursday, August 25, 2022 at 4:00 p.m., EST.** The date and time received via TBS shall be the official date and time of Proposal submission. **ANY PROPOSAL RECEIVED IN THE TBS PLATFORM AFTER THE SUBMISSION DEADLINE, NO MATTER WHAT THE REASON, WILL BE REJECTED AS UNTIMELY.**

**Hard copy submissions will not be accepted. All Proposals must be submitted electronically.**

## **12.0 PROPOSAL OPENING**

RFP Proposals are not opened publicly, but in the presence of at least two City Schools employees. Once the Proposals are opened, the Office of Procurement will prepare a document that summarizes the Proposals received. This document will be available for inspection after the Intent to Award letter is issued.

### **13.0 DURATION OF OFFER**

A Proposal submitted in response to this solicitation is binding upon the Entity and is considered irrevocable for a minimum of **180 days** following the closing date for receipt of initial Proposals or the closing date for receipt of a best and final offer, if applicable.

### **14.0 MINORITY & WOMEN BUSINESS ENTERPRISE PROGRAM**

During the MBE/WBE goal determination process, this solicitation was not assigned M/WBE goals pursuant to City Schools Administrative Regulation DJA-RA, *Procurement*, pertaining to Minority and Women's Business Enterprises (MBE/WBE Requirements).

### **15.0 E-MARYLAND MARKETPLACE ADVANTAGE**

eMaryland Marketplace Advantage (<https://emma.maryland.gov>) is the primary site for City Schools to transmit solicitations over \$50,000. This website also serves to publish any addenda, associated materials, Entity/offeror questions and City Schools' responses, and other solicitation related information.

Notices of solicitations are also posted on our website [www.baltimorecityschools.org](http://www.baltimorecityschools.org) in accordance with the Maryland Annotated Code, State Finance and Procurement Article § 13-103 Competitive Sealed Bids, Article § 13-104 Competitive Sealed Proposals, and Article § 13-107 Sole Source Procurements.

The eMaryland Marketplace Advantage law became effective on June 1, 2008 and requires units of State government, including those otherwise exempt from State procurement law, and all local government entities, to publish **notices** of procurement and procurement **awards** on the State's e-commerce website eMaryland Marketplace Advantage ("eMMA"). All Entities are required to register with eMaryland Marketplace Advantage, so that the award notice can be properly published.

### **16.0 INSURANCE**

Insurance requirements are set forth in Article 20 of the attached City Schools General Articles (Appendix B). The Entity shall submit with their Proposal a Certificate of Insurance that complies with § 19-116 of the Insurance Article, Maryland Annotated Code. The Baltimore City Board of School Commissioners should be named as Additional Insured on the Entity's insurance and named as Certificate Holder. The Entity's insurance shall be effective at time that the Entity submits its Proposal. If the Certificate of Insurance contains a minor irregularity, the Entity will be allowed five (5) business days to cure the minor irregularity or be determined non-responsive. The Insurance Certificate shall meet the insurance coverage required by Article 20 of the attached City Schools General Articles.

### **17.0 LIQUIDATED DAMAGES**

See the Questionnaires section of TBS for performance guarantees.

### **18.0 CRIMINAL BACKGROUND CHECK/FINGERPRINTING/PHOTO IDENTIFICATION BADGE**

Depending upon the type of services that the Entity performs and the Entity's access to students and/or student records, the Entity's (and its subcontractor's) employees may be

required to submit to a criminal background check and fingerprinting. Also, such employees may be required to obtain a photo identification badge. A full statement of these requirements is set forth in Article 18 (“Obligations Regarding Criminal Records of Individuals Assigned to Work in City Schools Facilities”) of the City Schools General Articles (Appendix B).

## **19.0 BONDING**

All Proposals shall be accompanied by a proposal bond in the amount of **\$5,000.00** in the form of a certified or cashier’s check, treasurer’s check, U.S. Postal Money Order, or an original proposal bond made payable to City Schools or the equivalent in cash, or otherwise supplied in a form satisfactory to the Chief Financial Officer (CFO).

Proposal bonds shall be submitted in Volume I - Technical Proposal Submission, electronically. Failure to submit the proposal bond, as required, will render the Proposal non-responsive, and, consequently, ineligible for a Contract award.

Proposal bonds will be returned to: (i) unsuccessful Entities upon the award of the solicitation; and (ii) successful Entities upon complete execution of the Contract(s) and the satisfaction of any additional bond requirements (i.e., performance and/or payment bonds), as applicable.

Non-performance by a successful Entity, or its failure to execute a Contract or meet requirements within thirty (30) business days after the Contract award, shall result in the proposal bond being forfeited to City Schools as liquidated damages.

## **20.0 TERMS AND CONDITIONS**

City Schools plans to enter into a contractual agreement with the Entity, subject to these RFP General Terms and Conditions and the Special Conditions for this RFP (Appendix A). The Contract between City Schools and the Entity shall include the City Schools General Articles (Appendix B), unless modified in writing by City Schools.

In the event of conflict between the City Schools General Articles (Appendix B) and these General Terms and Conditions or the Special Conditions (Appendix A), the City Schools General Articles shall take precedence.

In the event of a conflict between this RFP and any of the terms and conditions proposed by any Entity or incorporated in any acknowledgement of Contract awarded to the successful Entity, then, and in such event, the terms and conditions stated herein shall take precedence, unless modified in writing by the Director of Procurement.

Any exceptions to City Schools’ terms and conditions are not binding unless they are: (i) negotiated and deemed mutually agreeable by the successful Entity and City Schools; and (ii) memorialized in a binding agreement between the successful Entity and City Schools. Proposals must clearly identify any variances from, or exceptions or objections to: (i) the specifications in this RFP; (ii) each term and condition of the City Schools General Articles (Appendix B); (iii) these General Terms and Conditions; and (iv) the Special Terms and Conditions (Appendix A). In the absence of any response to the contrary, City Schools will conclude that the Entity agrees to and will hold the Entity strictly accountable to City Schools for: (i) the specifications in this RFP; (ii) each term and condition of the City Schools General Articles (Appendix B); (iii) these General Terms and

Conditions; and (iv) the Special Terms and Conditions (Appendix A). City Schools is not required to negotiate changes to its terms and conditions, and Entities should note that any variance from the aforementioned terms and conditions may provide the basis for City Schools to reject the Entity's Proposal. In particular, the following provisions are non-negotiable: (i) the Special Terms and Conditions (Appendix A); and (ii) the provisions set forth in the following Articles in the City Schools General Articles (Appendix B)—Articles 5 ("Entity's Responsibilities"), 6 ("Subcontractors"), 10 ("Termination"), 11 ("Non-Appropriation"), 12 ("Disputes"), 13 ("Integrity, Ethics, and Conflicts of Interest"), 14 ("Publication and Publicity"), 15 ("Data Collection and Confidential Information"), 16 ("Intellectual Property"), 18 ("Obligations Regarding Criminal Records of Individuals Assigned to Work in City Schools Facilities"), 19 ("Indemnification and Liability"), 20 ("Insurance"), 21 ("Order of Precedence"), 23 ("Governing Law and Jurisdiction"), 24 ("Entire Agreement"), 25 ("Successors and Assigns"), 26 ("Guarantee"), and 27 ("Notice"). In addition, any deviation by the awarded Entity, without prior documented approval, will be grounds for rejection of the Services or of any goods, and/or equipment when delivered.

## **21.0 STATE OF MARYLAND CERTIFICATE OF GOOD STANDING**

Entities shall submit a State of Maryland Certificate of Good Standing or other State of Maryland issued documentation verifying the Entity is in Good Standing with the Department of Assessments and Taxation of Maryland and/or registered to do business in the State of Maryland. The Maryland Certificate of Good Standing must be issued no later than sixty (60) days prior to the Proposal Due Date. If the Certificate of Good Standing contains a minor irregularity, the Entity will be allowed five (5) business days to cure the minor irregularity or be determined non-responsive. Certificates of Status may be obtained online by visiting the following website: <https://egov.maryland.gov/BusinessExpress/>

This requirement applies to both Domestic and Foreign (out of state) Entities. Foreign entities should contact the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, Maryland 21201 at 888-246-5941, to determine and apply for the appropriate documentation.

## **22.0 UNNECESSARILY ELABORATE BROCHURES**

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective Proposal are not desired and may be construed as an indication of the Entity's lack of cost consciousness. Elaborate artwork and expensive visual and other presentation aids are neither necessary nor wanted.

## PART III: PROPOSAL FORMAT

### 1.0 GENERAL FORMAT – TWO - PART SUBMISSION

#### Basic Response Requirements

Each Offeror must execute and submit complete and accurate responses to all of the forms, questions, and other requests for information found in the response package without exception. All Technical and Financial proposals must be presented exactly as described below.

Do not reference other source information as your response to a question. If you are unable to respond to a question in whole or in part, explain why. Also, if you are unwilling to disclose particular information that has been requested, explain why. Be advised, however, that failure to respond fully to any question may result in rejection of your proposal

The Vendor(s) must use the following files available in the TBS platform that are a part of the solicitation. The files are as follows:

<u>Contents</u>	<u>Location/File Name</u>
Flexible Spending Account and COBRA Services- Questionnaire Response Flexible Spending Account - Financial Comparison COBRA Services - Financial Comparison Flexible Spending Account - Performance Guarantees	Questionnaire Section of TBS
Read Me First Document Minimum Qualifications	Baltimore Public Schools RMF
Carrier Clarifying Questions Sheet	Carrier Questions Guide

- A. Offerors shall submit **in separate e-files** the following;
- Volume I - Technical Proposal
  - Volume II - Financial proposal

### 2.0 VOLUME I: TECHNICAL PROPOSAL FORMAT

Each Proposal must include a table of contents, and all pages in the Technical Proposal must be numbered consecutively from beginning to end and separated by tabs as described below:

#### TAB A. TRANSMITTAL LETTER

Technical Proposals are to be accompanied by a brief transmittal letter prepared on the Entity's letterhead and signed by an individual who is authorized to commit the Entity to the Services and requirements in the RFP and Proposal. This transmittal letter shall include:

1. The name, title, address, telephone number, and electronic mail address of the person authorized to bind the Entity to the Contract, and who will receive all official notices concerning this RFP.
2. The Entity's Federal Tax Identification Number or Social Security Number.

3. A brief statement of the Entity's understanding of the Work to be done, the commitment to perform the Work within the time period, and a statement of why the firm believes it is best qualified to perform the engagement.
4. A statement that the Proposal is a firm and irrevocable offer for a period of one-hundred eighty **(180) days**.
5. Acknowledgement of **all** Addenda to this RFP.

## **TAB B. TABLE OF CONTENTS**

## **TAB C. EXPERIENCE AND CAPABILITIES**

Entity shall provide information on past and current experience with rendering services similar in size and scope to those in this RFP. This description shall include:

1. Summary of the services offered, including: the number of years the Entity provided these services; the number of clients and geographic locations the Entity currently serves, etc. and has served; and, if a past customer, why the Entity is no longer providing services.
2. Organizational chart of the Entity showing: the major components of the unit(s) that will be performing the requirements of the Contract; where the management of the Contract will fall within the organization; and what resources will be available to support this Contract in primary, secondary, and back-up roles.
3. Name all key personnel who will perform Work under the Contract and include each individual's resume. Include work history, educational background and indicate the proposed role/function of each individual.

## **TAB D. FISCAL INTEGRITY/FINANCIAL STATEMENTS**

1. The Entity shall include in its Proposal completed audited financial statements including the auditor's notes, for its last two fiscal years. If the Entity has not had its financial statements audited by an independent accounting firm, the Entity must submit such un-audited financial statements as it has. Some acceptable methods include but are not limited to one or more of the following:
  - a. Recently audited (or best available) financial statements
  - b. Dunn and Bradstreet Report and Rating
  - c. Standard and Poor's Report and Rating
  - d. Lines of credit
  - e. Evidence of a successful financial track record
  - f. Evidence of adequate working capital
2. Entity shall identify any claims filed by or against the Entity during the past five (5) years. For each claim, please provide: case caption including case number, court in which the matter was filed, a summary of the allegations, and resolution, if applicable. The failure to provide accurate information may be determined to be a material breach of any future agreement or Contract with City Schools.

## **TAB E. TECHNICAL RESPONSE TO RFP SCOPE OF WORK**

The Offeror shall address each major requirement of Part I (Scope of Work) including the Minimum Requirements outline in the

## **TAB F. FORMS**

Entity shall provide and execute all of the following or their Proposal may be found non-responsive:

1. Certificate of Status (State of Maryland Certificate of Good Standing issued by the Department of Assessments and Taxation);
2. Completed W9 (a blank form is available at: <http://www.irs.gov/pub/irs-pdf/fw9.pdf>);
3. Certificate of Insurance that complies with §19-116 of the Insurance Article, Maryland Annotated Code;
4. Proposal Bond;
5. Completed Non-Collusion Certificate (Notarized) (Appendix D);
6. Completed Debarment Affidavit (Notarized) (Appendix E);
7. Completed Anti-Bribery Affidavit (Notarized) (Appendix F);
8. Completed Ethics Certification (Notarized) (Appendix G); and

### **3.0 VOLUME II: FINANCIAL PROPOSAL REQUIREMENTS**

Entities shall enter all price information. Financials are collected in two places within the TBS platform. Both are under the Prepare Bid Section. Financial file submissions are to be loaded separately from Technical files within the TBS.

**Failure to provide any of the requested information or documents in this solicitation may render the Proposal non-responsive.**

## **PART IV: EVALUATION AND SELECTION PROCEDURE**

### **1.0 EVALUATION COMMITTEE**

- A. Evaluation of the Proposals will be performed by a committee established for that purpose and will be based on the criteria set forth below. The Contract resulting from this RFP will be awarded to the Entity whose Proposals is the most advantageous to City Schools, considering price and technical factors set forth herein.
- B. The committee will make the final determination about acceptability of Proposals.

### **2.0 EVALUATION PROCESS**

- A. The committee will evaluate each Technical Proposal using the evaluation criteria set forth below. As part of this evaluation, the committee may hold discussions with all qualified Entities. Discussions may be conducted via teleconference or may take the form of questions to be answered by the Entities and conducted by mail, E-mail, or facsimile transmission at the discretion of City Schools. During the evaluation process, the committee may request technical assistance from any source.
- B. Following the completion of the technical evaluation of all Entities' Technical Proposals, including any discussions, the committee will rank each qualified Entity's Technical Proposal.
- C. The Financial Proposal for each qualified Proposal will be distributed to the committee following the completion of the technical evaluation. The Financial Proposal will not be distributed to the committee until the evaluation of the Technical Proposal is completed. The committee will determine total costs of the Proposals in order to establish a financial ranking of the Proposals from lowest to highest.
- D. The committee may reject in whole or in part any and all Proposals, waive minor irregularities, and conduct discussions with all responsible Entities in any manner deemed necessary to serve the best interests of City Schools.
- E. Entities may be asked to make an oral presentation to the committee. The purpose of the oral presentation is to provide an opportunity for the Entity to clarify its Proposal submission and substantiate Proposal representation. The oral presentation is a part of the technical evaluation. The committee may request an oral presentation in its discretion. No Entity is entitled to make an oral presentation.
- F. If it is determined to be in the best interest of City Schools, City Schools may invite Entities to make final revisions to their technical and/or financial proposals through submission of a Best and Final Offer.
- G. The committee will recommend the Entity whose overall Proposal provides the most advantageous offer to City Schools, considering both price and technical factors set forth in this RFP.
- H. City Schools reserves the right to negotiate price and Contract terms and conditions with the most qualified firm(s) to provide the requested service. If a mutually beneficial agreement with the highest ranked firm is not reached, City Schools reserves the right to enter into Contract negotiations with the next highest ranked Entity and continue this process until agreement is reached. Award shall be made to the most responsive



and responsible Entity whose Proposal is determined in writing to be the most advantageous, bringing “best value” to meet the criteria of City Schools. Following the selection and upon final negotiation of the Contract with the top-ranked Entity, recommendation(s) for Contract award, as required, shall be submitted to the City Schools CEO and recommended to the Baltimore City Board of School Commissioners for final approval.

### **3.0 EVALUATION CRITERIA**

The committee will evaluate the Technical Proposals based on its approach to satisfying the RFP requirements, experience and capabilities/references, and fiscal integrity/financial stability.

The committee shall determine which Proposals meet the basic requirements of the RFP and shall have the authority to determine whether any deviation from the requirements of the RFP is substantial in nature. The Evaluation Committee may reject in whole or in part any and all Proposals and waive minor irregularities.

#### **Technical Criteria**

The criteria to be applied to be applied to each technical proposal are as follows, listed in descending order of importance:

#### **Technical Evaluation Criteria (60% weighting)**

##### **Client Support (20%)**

- Superior account management
- Ability for BCPS to design and generate reports through the web or other electronic media for purposes of tracking utilization and providing comparative information
- A management information system which supports BCPS's needs for management reporting (e.g., utilization information regarding number of claims processed and money forfeited at year end)
- Program Implementation

##### **Administrative Services (20%)**

Centralized member service support via a toll-free telephone line

Member access to online tools to submit claims

Easy to understand claims substantiation process

Superior claims approval processing and turnaround

##### **Capability (15%)**

- Ability to meet all minimum qualifications
- Ability to provide BCPS's current plan design
- Satisfied COBRA/FSA clients of similar size to BCPS
- Size of Book of Business
- Interface with BCPS's Medical, Prescription Drug, Dental and Vision vendors
- Procedures in place for security and privacy
- Completeness and clarity of proposal

**Performance Guarantees (5%)**

- Fees at Risk - a willingness to accept risk through performance guarantees targeted to specified claim cost management, operational activities and customer service

Proposals will be evaluated for compliance with detailed specifications in the RFP. Consideration will be given to the quantities, time required for delivery, purpose of the goods/services, competency and responsibility of the Entity, and the ability of the Entity to perform satisfactorily. Evaluation may also be made for other factors, such as serviceability, functional suitability, workmanship, safety in use, and overall product quality, where acceptability may be determined on the basis of professional judgment and educational application. City Schools will consider the Entity's record and performance of any prior Contracts with City Schools, federal departments or agencies, or with other public bodies. City Schools expressly reserves the right to reject the Proposal of any Entity if the investigation discloses that the Entity, in the opinion of City Schools, has not properly performed such prior Contracts or has habitually and without just cause neglected the payment of bills or has otherwise disregarded its obligations to subcontractors or employees. City Schools may conduct any necessary investigation to determine the ability of the Entity to perform the Work, and the Entity shall furnish to City Schools all such information and data requested, such as information about its reputation, past performance, business and financial capability and other factors that demonstrate that the provider is capable of satisfying City Schools' needs and requirements for a specific Contract. City Schools reserves the right to reject any Proposal if the evidence submitted by the Entity or investigation of such Entity fails to satisfy City Schools that such Entity is properly qualified to carry out the obligations of the Contract and to complete all requirements contemplated therein. Consideration will be given to any previous performance with City Schools as to the quality and the acceptability of Entity's services.

## PART V: APPENDICES

**APPENDIX A - SPECIAL TERMS AND CONDITIONS FOR RFP'S**

These Special Terms and Conditions shall apply unless otherwise noted in General Terms and Conditions. It shall be the Entity's sole responsibility to ensure it is compliant with all applicable Laws that may impact any Contract awarded pursuant to this RFP. City Schools shall bear no responsibility for monitoring the Entity's compliance with Laws. If the Entity fails to maintain legal compliance, City Schools may find said Entity in default.

**1. GENERAL REQUIREMENTS**

- a. **AUTHORIZED DEALERS:** Only authorized dealers may submit a Proposal for requested equipment. At the discretion of City Schools, a certificate, executed by the manufacturer, may be requested stating that the Entity is an authorized agent of the manufacturer and is duly authorized to service and maintain the equipment.
- b. **INSPECTIONS:** City Schools reserves the right to have inspectors on the premises of the manufacturer during the process of manufacture of any products being furnished under this RFP for as long as may be considered necessary by City Schools. All expenses of the inspectors shall be borne by City Schools. The presence of the inspectors at the site of manufacture of the products shall not relieve the awarded Entity of responsibility for faulty workmanship of materials that may be discovered at any time after delivery and prior to final acceptance in accordance with the specifications. In case of factory inspection of items being manufactured for City Schools, every facility shall be afforded inspectors by the manufacturers for the pursuance of their work.
- c. **TYPES OF PURCHASES:** These specifications are intended to cover the various types of purchases of equipment, materials, supplies, or services as shown to any or to each of the various schools, offices, or to any designated warehouse or warehouses in Baltimore City, Maryland, whichever is specified, in quantities to be determined subsequent to the award. There are approximately 200 schools and offices in City Schools.
- d. **SINGLE PRICE:** Unless otherwise specified in the General Terms and Conditions attached to this RFP, the Entity will not be allowed to offer more than one price on each item, even though the Entity may feel that it has two or more types or styles that will meet specifications. The Entity must determine which to offer. If the Entity should submit more than one price on any item, all prices for that item will be rejected.
- e. **AGGREGATE BIDS:** Where provision is made on the proposal form for pricing items on an individual, group or aggregate basis, the award will be made on whichever basis is in the best interest of City Schools. When an aggregate price proposal is requested, the unit prices for each item shall be identified in the Proposal. The unit prices in an aggregate bid should be consistent with the total quoted price for an aggregate price proposal. No Proposal or a combination of items will be permitted except as noted in the General Terms and Conditions.
- f. **MINIMUM REQUIREMENTS:** Whenever mention is made of any article, material, or workmanship to be in accordance with Laws (including, but not limited to, building codes, underwriter's code, A.S.M.E. regulations, or similar expressions), the requirements of these Laws shall be construed as to the minimum requirements of these specifications. In case of any apparent conflict between the specifications and Laws, the awarded Entity

shall call said conflict to the attention of City Schools' Director of Procurement for a decision before proceeding with any Work.

- g. **USE OF BRAND NAMES:** Brand names and model numbers are offered as a reference for Entities as to the style, size, weight, and other characteristics of the item(s) in the specifications. The use of such brand names should not be interpreted to be the exclusive brand desired unless so stated. The determination of the acceptability and/or the criteria for acceptability of an alternate is solely the responsibility of City Schools.
- h. **PRODUCT OFFERED BY THE ENTITY:** The product offered by the Entity shall be new, not used, and the latest version of the product. Should a product be discontinued and/or upgraded during the course of the Contract, the Entity shall offer to City Schools a new alternate product that meets and/or exceeds the established specifications, under the same terms, conditions, and prices as the originally offered item.
- i. **COMPLIANCE WITH SPECIFICATIONS:** The Entity shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission in the RFP but shall fully complete every part as the true intent and meaning of the drawings and specifications, as decided by the Director of Procurement. Where the requirements of the specifications call for higher grade and are not in conflict with Law, the specifications shall govern. Where the requirements of Law are mandatory, they shall govern. The successful Entity, after award and before manufacture and/or shipment, may be required to submit working drawings or detailed descriptive data identified as acceptable to City Schools, which would provide sufficient data to enable City Schools to judge the Entity's compliance with the specifications.
- j. **SUBCONTRACTORS:** The awarded Entity's use of subcontractors shall be governed by Article 6 ("Subcontractors") of the City Schools General Articles (Appendix B). The awarded Entity shall provide the name of the subcontractor(s) it intends employing, the portion of the materials/labor to be furnished, their place of business, and such other information as requested by the specifications and/or the Director of Procurement or his or her designee. The information may be used in considering the potential performance capabilities of the subcontractor(s). The awarded Entity shall not, without prior written consent of City Schools, assign any of the monies payable under the Contract.
- k. **COOPERATIVE PURCHASING:** City Schools reserves the right to extend the terms and conditions of this solicitation to any and all other agencies within the state of Maryland as well as any other federal, state, municipal, county, or local governmental agency under the jurisdiction of the United States and its territories. This shall include but not be limited to private schools, parochial schools, non-public schools such as charter schools, special districts, intermediate units, non-profit agencies providing services on behalf of government, and/or state, community and/or private colleges/universities that require these goods, commodities and/or services. This is conditioned upon mutual agreement of all parties pursuant to special requirements, which may be appended thereto. The supplier/contractor agrees to notify the issuing body of those entities that wish to use any Contract resulting from the Proposal and will also provide usage information, which may be requested. A copy of the Contract pricing and the Proposal requirements incorporated in this RFP will be supplied to requesting agencies.

Each participating jurisdiction or agency shall enter into its own Contract with the awarded Entity(s) and the Contract shall be binding only upon the principals signing such an agreement. Invoices shall be submitted in duplicate "directly" to the ordering jurisdiction for each unit purchased. Disputes over the execution of any Contract shall be the

responsibility of the participating jurisdiction or agency that entered into that Contract. Disputes must be resolved solely between the participating agency and the awarded Entity. City Schools does not assume any responsibility other than to obtain pricing for the specifications provided.

## 2. PRICES

- a. **UNIT PRICES:** Unit Prices must be rounded off to no more than two (2) decimal places, unless so specified in the General Terms and Conditions included with the RFP. All unit prices on items shall be completed on the proposal sheet(s). A NO BID notation must be completed for each item not being priced. In case of error in extension of prices in the Proposal, the unit price shall govern.
- b. **UNITS OF MEASURE:** Wherever City Schools indicates the unit of measure required and the Entity's price is based on a different unit of measure, it shall be at the sole discretion of City Schools to determine whether the Entity's price will be recalculated. City Schools will not accept any Proposals with Entity escalator clauses, unbalanced figures, or irregular features.
- c. **DELIVERY CHARGES:** All prices shall include all delivery charges.
- d. **CASH DISCOUNTS:** Cash discounts will not be taken into consideration in determining a Contract award. All discounts, other than prompt payment, are to be included in the price Proposal.
- e. **PRICE REDUCTIONS:** City Schools reserves the right to accept price reductions from the awarded Entity during the term of this Contract to occur no less than thirty (30) days from the approval of the Contract.
- f. **TAXES:** City Schools is exempt from the payment of the Maryland Sales Tax (Tax Exempt Number 30002539) and Federal Excise Tax (Tax Identification Number 52-2064-235). Prices quoted shall not include State Sales and Use Tax or Federal Excise Tax. Exemption certificates will be furnished upon request.

## 3. ITEM DELIVERY

- a. **GENERAL DELIVERY REQUIREMENTS:** All materials, supplies, and equipment for City Schools shall be delivered F.O.B. Destination. All deliveries must be inside the building. Delivery hours shall be Monday through Friday with the exception of holidays, to offices - **between 8:30 a.m. and 3:30 p.m.; to schools – between 9:00 a.m. and 2:30 p.m.** The awarded Entity(s) shall be held responsible for clean-up and removal of all packing cartons, boxes, crates, packing materials, etc., from the premises after delivery and set up of any furniture and equipment. Drivers must be bonded, have a clean driving record and have the appropriate training to handle hazardous items. The Entity will have the ability (including all applicable permits and licenses) to handle all types of shipments ranging from letters to multi-carton shipments, including bulky and fragile items. Delivery must include a current MSDS for each hazardous chemical or chemical compound delivered or used by the Entity at a City Schools worksite. The awarded Entity shall be liable for the full replacement value of any delivery item lost or damaged.
- b. **SPECIAL DELIVERY INSTRUCTIONS:** Special Instructions for delivery dates, delivery of heavy equipment, materials or machinery requiring special handling, to schools/sites under construction and/or renovation or refrigerated goods will be defined in General

## Terms and Conditions.

- c. **PACKING:** All materials must be securely packed in accordance with accepted trade practices. The City Schools Purchase Order number must be plainly visible on the exterior of each container. A packing slip and/or delivery ticket shall be included in each shipment. This ticket shall contain the following information: Purchase Order Number, Entity Name, Name of the Article, Item Number, Quantity, and Delivery Location (Example: ABC Elementary School Library). Failure to comply with this condition may be considered sufficient reason to refuse to accept the goods.
- d. **SAFETY REQUIREMENTS:** The awarded Entity shall provide all equipment and machinery furnished and delivered to City Schools complying with the safety regulations as required by OSHA and the Maryland State Safety Health Act (known as MOSHA). The Entity shall sign the safety section, if attached in the Proposal, certifying that the regulations for the type of equipment furnished shall meet all regulations applying to this type equipment meeting the CFR-1910 MOSHA Standard. The Entity shall submit Material Safety Data Sheets (MSDS) for all items awarded to that Entity provided under the terms of this Proposal in accordance with OSHA Communication Standard 29 CFR 1910.101, 29 CFR 1910.1200 and 29 CFR 1926.58 or any other applicable state, federal, or local regulation. Prior to delivery of the items awarded, the Entity must submit MSDS sheets to: Baltimore City Public Schools, Director of Facilities, 200 E. North Avenue, Room 407, Baltimore, Maryland 21202.
- e. **FAILURE TO DELIVER DAMAGES:** In the event the awarded Entity fails to deliver the goods or services of the Contract in accordance with the specifications, City Schools reserves the right to purchase the goods/services on the open market in sufficient quantities to assure the continued operation of City Schools. All additional expenses incurred by City Schools as a result of such purchases will be deducted from the monies owed or monies that may become due the Entity.

## 4. GUARANTEE AND WARRANTIES

- a. **GENERAL REQUIREMENTS:** The Entity shall provide the guarantees set forth in Article 26 ("Guarantee") of the City Schools General Articles (Appendix B).
- b. **FURNITURE AND EQUIPMENT:** If, within the guaranteed period, any defects or signs of deterioration are noted with respect to furniture or equipment provided by the Entity, which in the opinion of City Schools are due to faulty design and installation, workmanship or materials, upon notification, the Entity, at its expense, shall repair or adjust the furniture, equipment, or parts to correct the condition, or it shall replace the part or entire unit to the complete satisfaction of City Schools. These repairs and/or replacements shall be made at such times as will be designated by City Schools to avoid any interruption to the instructional programs.
- c. **OFFICE EQUIPMENT:** Entity agrees to provide on-site service of equipment within eight (8) hours of notification by City Schools personnel. Loaner equipment shall be supplied; free of charge, during the warranty period if the office equipment cannot be repaired within three (3) working days.
- d. **OTHER EQUIPMENT:** Certain pieces of equipment, machinery, and refrigeration will require guarantees other than detailed above. Refer to General Terms and Conditions for requirements on specific equipment.

## 5. PROPOSAL SUBMISSION

- a. **KNOWLEDGE OF TERMS AND CONDITIONS:** Entities or their authorized representatives are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting a Proposal. Failure to do so will be at the Entity's own risk and Entity cannot secure relief on the plea of error. Neither Law nor regulations make allowance for errors of omission or commission on the part of Entities.
- b. **FORMAT:** Entities must submit Technical and Financial Proposals as specified in Part III: Proposal Format. Entities shall retain one (1) copy of the Proposal for their files. Proposals must be signed and submitted by an authorized representative of the Entity. Each Entity may attach a letter of explanation to the Proposal, if so desired (or required), to provide an explanation of any detail(s) in the Proposal. This letter may not be used to offer optional or alternative proposals or pricing. City Schools shall not accept any facsimile transmission to agents, representatives or employees as meeting the requirement of the proposal. A facsimile document shall not be considered a valid Proposal.
- c. **PARTNERSHIPS:** Proposals by partnerships must be signed with the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing, who shall also state the names of the individuals composing the partnership.
- d. **CORPORATIONS:** Proposals by corporations must be signed with the name of the corporation, followed by the signature and designation of the officer having authority to sign. When requested, satisfactory evidence of authority of the officer signing in behalf of the corporation shall be furnished. Anyone signing the proposal as agent shall file satisfactory evidence of authorization to do so.
- e. **CERTIFICATES AND AFFIDAVITS:** All Entities shall be required to complete the certificates and/or affidavits that are incorporated into the General Terms and Conditions of this RFP. Such documents are required by local, state, or federal funding agencies of City Schools as part of the bidding process. In addition to the certificates and affidavits specified above, the documents may include when applicable: Sales Tax Certification, Small Business Enterprise affidavit, and Asbestos Free Certification.
- f. **SAMPLES:** When indicated in the General Terms and Conditions, a properly tagged sample and descriptive data shall be submitted to the address specified no later than the date specified in the Schedule of Events included in the General Terms and Conditions. The tag on the sample shall indicate the item number, the name of the company submitting the sample, and the RFP number. City Schools will not be responsible for any samples not picked up within 30 days of the notification of Entities to do so. Samples may be retained by City Schools until Entities are notified to remove them. Entities agree that City Schools will incur no liability for samples that are damaged, destroyed, lost, or consumed in testing processes. Failure to submit the above information when requested is sufficient grounds for rejection of the proposal.
- g. **SPECIAL SAMPLES WITH CERTIFIED APPROVAL:** Some Entities shall be required to submit two (2) samples of each product awarded with an affidavit stating that the chemical composition of the sample submitted is identical with the composition tested prior to the proposal and all remain unchanged during the period of the Contract. This requirement shall be part of the specifications of the product or products requested. Failure to submit the above information when requested is sufficient grounds for rejection of the proposal.



- h. PROPOSAL PREPARATION FEES: City Schools will not be responsible for any costs incurred by an Entity in preparing and submitting a Proposal.
- i. RECOMMENDATION OF AWARD: Recommendation of an award of a Contract will be made to the Board in accordance with the General Terms and Conditions.
- j. RIGHT TO PROTEST: Any Entity who responds to a solicitation and is aggrieved in connection with the solicitation or notice of intent to award a Contract may protest to the Director of Procurement. The protest shall be submitted, in writing, to the Director within five (5) business days after the basis for protest is known or should have been known, whichever is earlier in accordance with the provisions of the City Schools Administrative Regulations visible on the City Schools web site [www.baltimorecityschools.org](http://www.baltimorecityschools.org).
- k. COMMENCEMENT OF SERVICES: City Schools shall have no obligation to pay for services performed before the Board approves the Contract or after it ends. City Schools shall have no obligation to pay for services in excess of the monetary amount of the award. City Schools shall have no obligation to pay for services before a purchase order is issued.

## 6. ANNULMENTS AND RESERVATIONS

- a. RIGHT TO REJECT: City Schools reserves the right to exercise its statutory option to reject any or all proposals and re-advertise for other proposals. City Schools reserves the right to order the said equipment, materials, supplies or services as described within the specifications, and the Board also reserves the right not to order any items(s) within the specification.
- b. WAIVER OF TECHNICAL DEFECTS: City Schools reserves the right to waive technical defects, if in its judgment the interest of City Schools shall so require.
- c. AUTHORITY TO DEBAR OR SUSPEND The Director of City Schools Procurement Department shall have the authority to debar a person or company for cause from consideration for award of Contracts in accordance with the provisions of the City Schools Procurement Policies and Procedures visible on the City Schools web site: <https://www.baltimorecityschools.org/>.

## **APPENDIX B - CITY SCHOOLS GENERAL ARTICLES**

### **BALTIMORE CITY PUBLIC SCHOOLS GENERAL ARTICLES**

#### **ARTICLE 1. DEFINITIONS**

For the purposes of these General Articles and any Agreement incorporating these General Articles, the following definitions apply: “City Schools” refers to the Baltimore City Board of School Commissioners, which operates a system of public schools commonly known as the Baltimore City Public School System or Baltimore City Public Schools; “Entity” refers to the entity awarded a Contract or otherwise duly authorized by City Schools to provide Services in accordance with applicable Laws; City Schools and the Entity are collectively referred to as the “Parties” and each individually as a “Party”; “Agreement” refers to the legally enforceable contract or agreement between the Parties, which incorporates these General Articles; “Services” or “Work” refers to the work, deliverables, products, goods, materials, equipment, and/or services required to be provided or performed by the Entity under the terms of this Agreement; and “Law” or “Laws” refers to any applicable federal, state, and local laws, regulations and rules, as well as Baltimore City Board of School Commissioners policies and administrative regulations, which are available at this link: [www.baltimorecityschools.org/board-policies](http://www.baltimorecityschools.org/board-policies).

#### **ARTICLE 2. CITY SCHOOLS PROJECT MONITOR**

The City Schools Project Monitor, who is identified in the Agreement, is responsible for the technical and programmatic aspects of the Agreement and is the technical and programmatic liaison with the Entity. The City Schools Project Monitor is responsible for the review and approval of any and all Services, and such other responsibilities as may be specified in the Agreement; provided, however, that if the Agreement involves any data-sharing, a point of contact in the Office of Achievement and Accountability and/or the Information Technology Department will be appointed to facilitate such activities. The City Schools Project Monitor is not authorized to make any commitments, otherwise obligate City Schools, or make any changes that affect the Agreement price, terms, or conditions. No changes that affect the Agreement price, terms, or conditions shall be made without the written authorization of the Director of Procurement (and, if applicable, the Chief Executive Officer of City Schools). The City Schools Project Monitor may be changed at any time, provided that notification of the change, including the name and address of the successor City Schools Project Monitor, is provided to the Entity in writing.

#### **ARTICLE 3. INDEPENDENT CONTRACTOR**

The Parties agree that the Entity is an independent contractor under the Agreement and will in no way be considered to be an agent or employee of, or joint venture with, City Schools. Neither the Entity nor its employees, agents, affiliates, or subcontractors will be entitled to any benefits, coverage, or other privileges made available to City Schools employees.

#### **ARTICLE 4. KEY PERSONNEL**

Any of the Entity’s key personnel, identified as such in the Agreement, are considered to be essential to the Services performed under the Agreement. Prior to diverting any key personnel to other programs, the Entity shall notify the City Schools Project Monitor reasonably well in advance and submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the Agreement. No diversion shall be made by the Entity without the written consent of the City Schools Project Monitor. Failure to obtain the approval of the City Schools Project Monitor as required or to propose replacement personnel acceptable to City Schools may constitute termination for cause pursuant to Article 10 (“Termination”). City Schools reserves the right to require that the Entity replace any key personnel or any other individual fulfilling the Entity’s obligations under the Agreement at any point if City Schools determines that this action is in its best interests.

## ARTICLE 5. ENTITY'S RESPONSIBILITIES

- A. The Entity shall furnish all personnel, materials, products, supplies, equipment, tools, services, and facilities necessary to provide the Services and perform the obligations set forth in the Agreement. All Services required by the Agreement shall be submitted to the City Schools Project Monitor according to the kinds and dates indicated in the Agreement. City Schools has relied upon the professional ability and training of the Entity as a material inducement to enter into the Agreement. The Entity hereby agrees that all of its Services shall be performed in a professional and workmanlike manner, through qualified and appropriately trained personnel, and consistent with the highest industry standards in compliance with Law—it being understood that acceptance of the Services by City Schools shall not operate as a waiver or release of the Entity's obligations.
- B. The Entity certifies that all information that the Entity has provided or will provide to City Schools is true and correct and can be relied upon by City Schools in awarding, modifying, making payments, or taking any other action with respect to the Agreement, including resolving disputes. Any false or misleading information is a ground for City Schools to terminate the Agreement for cause pursuant to Article 10 ("Termination") and/or pursue any other appropriate remedy. The Entity certifies that the Entity's accounting system conforms to generally accepted accounting principles, is sufficient to comply with the Agreement's obligations, and produces reliable financial information.
- C. The Entity acknowledges and agrees that time is of the essence with respect to its obligations under the Agreement, and that prompt and timely performance of all such obligations, including conformance with all timetables and other requirements of the Agreement, is strictly required.
- D. The Entity shall obtain all authorizations, licenses, and/or permits necessary for performance of the Services required under the Agreement. In the event the Services to be performed by the Entity must by Law be provided by individuals who are licensed and/or certified to provide certain Professional Services, the Entity shall only assign individuals to perform Services under the Agreement who are licensed and/or certified in accordance with applicable Law, and all such individuals shall maintain their license and/or certification in good standing (not under review or subject to suspension) during the entire term of the Agreement. "Professional Services" for the purpose of the Agreement shall mean any service provided by a licensed, certified, or otherwise documented professional. Upon request by City Schools, the Entity shall promptly submit documentation to the City Schools Project Monitor that the individuals assigned to provide Professional Services under the Agreement are properly licensed and/or certified.
- E. Whenever the Entity has knowledge of an actual or potential situation (including but not limited to labor disputes or a force majeure event or circumstance as described in Article 7 ("Force Majeure")) delaying or threatening to delay the timely performance of the Services under the Agreement, the Entity shall immediately give written notice, including all relevant information, to the City Schools Project Monitor.
- F. The Entity shall comply with all Laws, as well as all applicable City School safety requirements. This obligation includes, but is not limited to, Baltimore City Board of School Commissioners Policies JBA, *Nondiscrimination – Students*; JBB, *Sex-Based Discrimination – Students*; ACA, *Nondiscrimination – Employees*; ACB, *Sexual Harassment – Employees*; ACD, *ADA Reasonable Accommodations*; and ADA, *Equity*, and the accompanying administrative regulations, which prohibit discrimination because of race, ethnicity, color, ancestry, national origin, religion, sex, sexual orientation, gender, gender identity, gender expression, marital status, pregnancy / parenting status, disability, veteran status, genetic information, or age, as well as any other legally or constitutionally protected attributes or affiliations. Consistent with these Laws, the Entity will not discriminate against any of its employees or applicants for employment because of the actual or perceived personal characteristics listed above. The Entity will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to these actual or perceived personal characteristics. In addition, the Entity agrees to provide such accommodations as are required under Law, including but not limited to the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973.

- G. The Entity shall provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988 and its implementing regulations, and the Baltimore City Board of School Commissioners Policy ADC and Administrative Regulation ADC-RA, *Smoke and Vape-Free School Environment*.
- H. City Schools is tax exempt as a governmental entity. The Entity shall be responsible for all federal and/or state tax, and Social Security liability that may result from the performance of its Services. City Schools assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of the Entity, to its employees, agents, affiliates, or subcontractors by reason of the Agreement.

**ARTICLE 6. SUBCONTRACTORS**

Services performed under the Agreement shall not be subcontracted without advance written approval of the Director of Procurement; nor shall any substitution of subcontractors be made without such advanced approval in writing. Sub-processors and third-party vendors shall be considered subcontractors for the purposes of this Agreement. The Entity shall include provisions in its subcontracts requiring its subcontractors to comply with the Agreement, to indemnify, defend, and hold harmless City Schools, and to provide insurance coverage for the benefit of City Schools, in a manner consistent with the Agreement. The Entity also shall cause its employees, agents, affiliates, and subcontractors to comply with the Agreement and adopt such review, audit, and inspection procedures as are necessary to assure such compliance.

**ARTICLE 7. FORCE MAJEURE**

Neither Party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented or delayed from performing such obligations by any act or circumstance beyond the Party's control, including, but not limited to, war, hostile foreign action, nuclear explosion, fire, flooding, earthquake, hurricane, tornado, epidemic, pandemic, or other catastrophic event or circumstance. Should there be such an occurrence that impacts the ability of either Party to perform its responsibilities under the Agreement, the nonperforming Party shall give immediate written notice to the other Party to explain the cause and probable duration of any such nonperformance. If the Director of Procurement determines that a failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of City Schools to invoke Article 10 ("Termination"). Within seven (7) calendar days after the cessation of the force majeure event, the Party whose performance was delayed shall provide the other Party written notice of the time at which the force majeure event or circumstance ceased and a complete explanation of all pertinent information pertaining to the force majeure event or circumstance. Under no circumstances shall delays caused by a force majeure event extend beyond 120 days from the completion date of a task, unless by prior written notice of permission of the other Party.

**ARTICLE 8. CHANGES**

The Director of Procurement may, at any time, make non-material changes that are within the original general scope of the Agreement and the solicitation in any one or more of the following: (i) specifications or Scope of Services, and (ii) place of performance or delivery. If any such changes cause an increase or decrease in the cost of or the time required for the performance of the Agreement, whether changed or not changed by any such order, an equitable adjustment shall be made: (i) in the Agreement price or time of performance or both; and/or (ii) in such other provisions of the Agreement as may be so affected; and the Agreement shall be modified in writing accordingly. Any claim by the Entity for adjustment under this Article must be asserted within thirty (30) days from the date of receipt by the Entity of the notification of change; however, if the Director of Procurement decides that the facts justify such action, the Director of Procurement may receive and act upon any such claim asserted at any time prior to final payment under the Agreement. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of Article 12 ("Disputes").

**ARTICLE 9. AUDIT AND DOCUMENT RETENTION**

- A. During the term of the Agreement and for four (4) years thereafter or such longer period as required by Law, including but not limited to Baltimore City Board of School Commissioners Policy EHB, *Data/Records*

*Retention Program*, and the accompanying administrative regulations, the Entity shall: (i) maintain complete and accurate books, records, and accounts regarding its business operations relevant to the calculation of amounts payable under the Agreement, if applicable, and any other information relevant to the Entity's compliance with the terms and conditions of the Agreement; and (ii) upon City Schools' request, make such books, records, and accounts, as well as any of its employees, agents, affiliates, or subcontractors who might reasonably have information related to such records, available during normal business hours for inspection and audit by City Schools or its authorized representative, provided that City Schools shall: (a) provide the Entity with reasonable prior notice of any audit or inspection; (b) undertake such audit or inspection no more than once per calendar year, except for good cause shown; and (c) conduct or cause to be conducted such audit or inspection in a manner designed to minimize disruption of the Entity's normal business operations.

- B. When federal funds are used to pay the Entity, certain public and private nonprofit entities are required to comply with the requirements of 2 C.F.R. Part 200. A nonprofit Entity is responsible for having an audit performed in accordance with and when required by 2 C.F.R. Part 200 and for sending a copy of the report issued as a result of the audit to City Schools within thirty (30) days of the audit report's issuance. Furthermore, City Schools must approve any independent auditor engaged to assure that the auditor is qualified and meets Government Accounting Office standards as well as to evaluate the scope of the audit engagement to assure it complies with Office of Management and Budget requirements.

## **ARTICLE 10.       TERMINATION**

### **A. Termination for Convenience**

1. The Agreement may be terminated in whole or in part by City Schools whenever the Chief Executive Officer, or an authorized designee, determines that such termination is in City Schools' best interest. Any such termination shall be effected by delivery of a notice of termination to the Entity, at least ten (10) business days prior to the termination date. The notice of termination shall specify the extent to which performance shall be terminated and the date upon which such termination becomes effective.
2. The Entity shall be entitled to receive just and equitable compensation for any Work completed prior to termination, as determined by City Schools in good faith, but no amount shall be allowed for anticipated profit on unperformed Work. All finished and unfinished deliverables, documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Entity under the Agreement shall become the property of City Schools.

### **B. Termination for Cause by City Schools**

1. If, through any cause (other than as set forth in Article 7 ("Force Majeure")), the Entity fails to fulfill in a timely manner its obligations under the Agreement, or if the Entity violates any of the covenants, agreements, or stipulations of the Agreement (hereinafter a "Default"), City Schools shall have the right to terminate the Agreement, in addition to City Schools' remedies in the Agreement and all other rights available at law or in equity. Such termination shall be effected by City Schools delivering a written notice of termination to the Entity, which notice may, in the sole discretion of City Schools, provide for a period of up to thirty (30) days for the Entity to cure the Default. If City Schools provides for an opportunity to cure the Default and the Default is not remediated within the specified period, as determined by City Schools, City Schools shall issue a final notice of termination specifying the effective date of such termination. To the extent permitted under applicable Laws, a bankruptcy or bankruptcy event shall be deemed grounds for a termination for cause.
2. A termination for cause is a termination for convenience if the termination for cause is later found to be without justification.
3. The Entity shall be entitled to receive just and equitable compensation for any Work completed prior to termination, as determined by City Schools in good faith, but no amount shall be allowed for anticipated profit on unperformed Work. All finished and unfinished deliverables, documents, data, studies,

surveys, drawings, maps, models, and reports prepared by the Entity under the Agreement shall become the property of City Schools.

4. Notwithstanding the foregoing provisions, the Entity shall not be relieved of liability to City Schools for damages sustained by City Schools by virtue of any breach of Agreement by the Entity for the purposes of set off, until the exact amount of said damages is ascertained.

C. Termination for Cause by the Entity

1. If, through any cause (other than as set forth in Article 7 (“Force Majeure”)), City Schools is in breach of the Agreement and has not cured such breach within thirty (30) days of written notice from the Entity specifying the same, the Entity shall have the right to immediately terminate the Agreement. Such termination shall be effected by delivering a notice of termination to the Director of Procurement specifying the effective date of such termination.

**ARTICLE 11. NON-APPROPRIATION**

If the term of the Agreement, or any Agreement extension, extends beyond the end of the City Schools fiscal year (July 1 to June 30) in which the Agreement was awarded or extended, and the approved City Schools budget for the subsequent fiscal year does not appropriate sufficient funds that may be utilized for the Agreement, the Agreement shall no longer be in force and effect upon the expiration of the current fiscal year funding. In this event, upon expiration of the current fiscal year funding, City Schools shall have no liability to pay any funds whatsoever to the Entity or to furnish any other consideration under the Agreement, and the Entity shall not be obligated to perform any further Services under the Agreement. If the approved City Schools budget for the subsequent fiscal year reduces funding available for the Agreement, City Schools shall have the option, in its sole discretion, to cancel the Agreement with no liability occurring to City Schools, or offer an amendment to the Agreement to the Entity reflecting the reduced amount, which the Entity may accept in lieu of termination.

**ARTICLE 12. DISPUTES**

The Parties shall collaborate in good faith to resolve any disputes arising under the Agreement. In the event that the Parties are not able to resolve a dispute concerning a question of fact arising under the Agreement, the dispute shall be submitted in writing to the Director of Procurement for a determination. The Entity may appeal the decision of the Director of Procurement in writing to the Chief Executive Officer, whose decision shall be final. This Article does not preclude consideration of questions of Law arising under the Agreement, provided that nothing in the Agreement shall be construed as making final the decision of City Schools or any of its officials or representatives on a question of law. **UNLESS OTHERWISE MUTUALLY AGREED TO BY THE PARTIES, THE PARTIES SPECIFICALLY AGREE THAT NO DISPUTE OR CAUSE OF ACTION ARISING OUT OF THE AGREEMENT SHALL BE SUBMITTED TO ARBITRATION OR MEDIATION, AND THE PARTIES WAIVE ANY RIGHT TO A JURY TRIAL IN ANY COURT OF COMPETENT JURISDICTION OR ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ONE AGAINST THE OTHER WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE AGREEMENT, OR ANY RELATIONSHIP OF CITY SCHOOLS AND THE ENTITY HEREUNDER.**

**ARTICLE 13. INTEGRITY, ETHICS, AND CONFLICTS OF INTEREST**

- A. Except as authorized under Baltimore City Board of School Commissioners Policy BCA, *Code of Ethics* (“Board Policy BCA”), the Entity is prohibited from using the services of City Schools employees or officials (including members of the Baltimore City Board of School Commissioners) in performing the Agreement. Former employees or officials may be used, provided that a 12-month period has elapsed since their last employment at City Schools. A former City Schools employee or official, may not assist or represent the Entity for compensation in any case, controversy, dispute, contract, or other specific matter involving City Schools, if that case, controversy, dispute, contract, or other specific matter is one in which the former employee or official significantly participated as an employee or official.

- B. No official or employee of Maryland, Baltimore City, or City Schools shall benefit from or receive any money as a result of the Agreement.
- C. The Entity hereby declares and affirms that, to its best knowledge, none of its officers, directors, partners, employees, agents, affiliates, or subcontractors directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any Law.
- D. The Entity agrees to review and at all times abide by Board Policy BCA. In addition, the Entity shall have an affirmative obligation to disclose in writing to the Director of Procurement any actual or potential conflicts of interest as identified in Board Policy BCA, and neither the Entity nor any of its officers, directors, partners, employees, agents, affiliates, or subcontractors shall take any action that they know or should have reason to know would result in any City Schools official or employee violating Board Policy BCA.
- E. The Entity warrants that it has not employed or retained a third-party selling agency or any person, other than an employee of the Entity, to solicit or secure the Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

**ARTICLE 14. PUBLICATION AND PUBLICITY**

City Schools may, in its sole discretion, make the Agreement publicly available on the City Schools website or otherwise, subject to the redaction of confidential and proprietary information, as set forth in the Maryland Public Information Act, Md. Code Ann., General Provisions, Title 4. The Entity shall not, without consultation and consent by City Schools, (i) originate any report, annual report, publication, presentation, publicity, newsletter, news release, or other announcement or statement, written or oral, relating to the Agreement or any results achieved pursuant to the Agreement (hereinafter “Publication”), unless such Publication is required by applicable Law; or (ii) use any names, trademarks, or logos of City Schools, except as necessary to perform of its obligations under the Agreement. Acceptance of Services under this Agreement does not imply that the City Schools has either adopted or endorsed the Services. To the extent that City Schools agrees to any such Publication regarding the Agreement, the Entity shall abide by the following terms:

- A. The primary purpose shall be to disseminate information about the Services rather than to promote the Entity’s accomplishments or knowledge.
- B. Such Publication shall prominently display or acknowledge City Schools’ support and include the following disclaimers: (i) the contents of this publication do not necessarily reflect the views or policies of City Schools; and (ii) the mention of trade names, commercial products, or organizations does not imply endorsement by City Schools.
- C. The Entity shall abide by the provisions of Article 15 (“Data Collection and Confidential Information”) and any other data-sharing agreement between the Parties.

**ARTICLE 15. DATA COLLECTION AND CONFIDENTIAL INFORMATION**

- A. The Entity shall comply with all applicable Laws regarding data collection, privacy, and security, including but not limited to: the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and its implementing regulations (34 C.F.R. part 99); the Children’s Online Privacy Protection Act (COPPA), 15 U.S.C. §§ 6501-6505, and its implementing regulations (16 C.F.R. § 312, et seq.); the Protection of Pupil Rights Amendment, (PPRA), 20 U.S.C. § 1232(h), and its implementing regulations (34 C.F.R. § 98.1 et seq.); the Children’s Internet Protection Act (CIPA), 20 U.S.C. § 9134, and 47 U.S.C. § 254, and its implementing regulations; the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104-191, and its implementing regulations (45 CFR part 160 and 164); the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq., and its implementing regulations (34 C.F.R. §§ 300.610 - 300.626, 303.400 – 303.417); the Maryland Student Privacy Act of 2015, Md. Code Ann., Educ. § 4-131; Code of Maryland Regulations (COMAR) 13A.08; the Maryland Public Information Act, Md. Code Ann., General

Provisions, Title 4; and Payment Card Industry Data Security Standards (PCI-DSS); as well as applicable Baltimore City Board of School Commissioners policies and regulations, including but not limited to the Baltimore City Board of School Commissioners Policy JRA and Administrative Regulation JRA-RA, *Maintenance and Release of Student Records*, and Policy LCA, *Conducting Research and Surveys, and Data Sharing*, and Administrative Regulation LCA-RA, *Procedures for Conducting Research and Surveys in City Schools and Obtaining Data*.

B. Questionnaires, survey instruments, or any other form of data collection from City Schools students, staff, parents/guardians, or others pursuant to the Agreement or otherwise must be approved by the City Schools Project Monitor and the City Schools Office of Achievement and Accountability, 200 East North Avenue, Room 203, Baltimore, MD 21202 (telephone: 410-396-8962), pursuant to Administrative Regulation LCA-RA, *Procedures for Conducting Research and Surveys in City Schools and Obtaining Data*.

C. Access to Confidential Information

1. To assist the Entity in its Services under the Agreement, City Schools may disclose to the Entity, either in writing or orally, records or information that City Schools deems to be proprietary and/or confidential (hereinafter, “Confidential Information”). For purposes of the Agreement, Confidential Information is any information or data labeled or identified as confidential in the Agreement or at the time of disclosure, as well as any information that should be reasonably considered confidential by the Parties. This definition and the obligations of this Article shall not extend to any information that: (i) the Entity possesses prior to acquiring it from City Schools; (ii) becomes available to the public or trade through no violation by the Entity; or (iii) is developed by the Entity independently of and without reliance on confidential or proprietary information provided by City Schools.

2. Confidential Information also includes any and all “Personally Identifiable Information” regarding City Schools students, parents/guardians, employees, or others in any medium, including but not limited to any medical and psychological records, financial records including credit card information, and information that City Schools students, parents/guardians, employees, or others (“City Schools Users”) input to access or use the Entity’s Services (e.g., log-in information or responses to assessment questions), and “user-generated content” (e.g., materials or content created by a City Schools User in the Services including but not limited to essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information), as well as “Metadata.” Metadata includes but is not limited to: information about how long a City Schools User took to perform a task; information about how long a City Schools User’s mouse hovered over an item; keystroke data; location data; or other data about the City Schools User’s use of the Entity’s Services that has not been stripped of all direct and indirect identifiers. With respect to City Schools students, Personally Identifiable Information, as defined under applicable Law, includes:

- a. A student’s name;
- b. The name of the student’s parent/guardian or other family members;
- c. The address of the student or student’s family;
- d. A personal identifier, such as the student’s social security number, student number, or biometric record;
- e. Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;
- f. Other information (including but not limited to Metadata) that, alone or in combination, is linked or linkable to a specific student or family that would allow a reasonable person in the City Schools community, who does not have personal knowledge of the relevant circumstances, to identify the student or family with reasonable certainty; or



- g. Information requested by a person, who is not an authorized representative of the educational agency and who City Schools and/or the Entity reasonably believes knows the identity of the student to whom the education record relates.
3. Confidential Information shall be maintained in the strictest confidence during the term of the Agreement and thereafter, except to the extent that it is required to be either disclosed or protected from disclosure by Law or judicial or administrative process. The Entity shall use the Confidential Information solely for the purposes of the Agreement. The Entity shall protect the Confidential Information from any Data Security Breach (as defined in paragraph G, below), loss, theft, or disclosure as a fiduciary and using a commercially reasonable care commensurate with the sensitivity of the Confidential Information that in no circumstances is less than the degree of care that the Entity uses to protect its own confidential information. The Entity agrees to assist City Schools in maintaining the privacy of Confidential Information as may be required by all Laws applicable to the Agreement including but not limited to the legal requirements listed above.
4. The Entity shall not permit unauthorized access to the Confidential Information at any time or provide Confidential Information to any person, party, or organization ineligible or prohibited from receiving such information pursuant to any Law applicable to the Agreement.
5. In the event that the Entity is required by Law or judicial or administrative process to disclose any Confidential Information, the Entity will promptly notify City Schools in writing, if permitted by Law, prior to making any such disclosure in order to facilitate City Schools' seeking of a protective order or other appropriate remedy. Should the proprietary or confidential status of any such information be disputed, the Parties agree to work in good faith to reach a mutually satisfactory disposition.
6. To the extent that Confidential Information includes Personally Identifiable Information regarding City Schools Users, City Schools may require additional data sharing protocols, as agreed in writing by the Parties. The Entity also agrees to comply with the re-disclosure limitations set forth in Law, including in 34 C.F.R. § 99.33, and shall not authorize access to Confidential Information to any of its employees, agents, affiliates, or subcontractors, or to any auditor, unless such employee, agent, affiliate, subcontractor, or auditor: (i) requires such access in order to allow the Entity to provide the Services set forth in the Agreement or to fulfill the Entity's obligations under the Agreement; and (ii) has signed a non-disclosure agreement no less restrictive than the terms of the Agreement that will: (a) prohibit such individual or entity from using any Confidential Information for any purpose other than providing service to, or on behalf of the Entity; (b) prohibit the individual or entity from disclosing any Confidential Information provided by the Entity to third parties; (c) require the individual or entity to implement and maintain strict security procedures and practices that, at a minimum, comply with industry standards for data security; and (d) require the individual or entity to promptly notify the Entity if the individual or entity becomes aware of any Data Security Breach, loss, disclosure, or alteration of Confidential Information. Such non-disclosure agreements shall be made available for inspection, upon demand, to City Schools. The Entity agrees to remind (in writing) individuals or entities who cease working with the Entity of their non-disclosure obligations at the time of departure, and to terminate their network access.
7. Notwithstanding any other provision of the Agreement, City Schools and/or City Schools Users, as appropriate, retain all right, title, and interest in and to the Confidential Information provided by City Schools and/or City Schools Users. Neither the Entity, nor any successor or entity to which the Entity's assets are sold, acquires rights in the Confidential Information, other than the rights City Schools grants to the Entity to perform the Services contemplated in the Agreement. If the Entity becomes subject to dissolution or insolvency, City Schools' and City Schools Users' Confidential Information will not be considered an asset or property of the Entity. City Schools reserves the right to demand the prompt return of any Confidential Information at any time and for any reason whatsoever. The disclosure of Confidential Information to the Entity shall not be construed as a grant of any right or license with respect to the information other than for the purposes set forth in the Agreement.

#### D. Use of Confidential Information

1. The Entity shall collect, use, and store only such Confidential Information that is necessary in connection with the Entity's obligations under the Agreement.
2. The Entity may collect and use aggregated and/or de-identified data based on the Personally Identifiable Information or other Confidential Information to provide the Services set forth in the Agreement, for the Entity's lawful quality assurance, and for no other purpose; provided, however, that the Entity agrees that such aggregated and/or de-identified data remains Confidential Information. Data are considered to be de-identified when all direct and indirect personal identifiers have been permanently removed, and there is no reasonable basis to believe that the remaining information can be used to successfully link the de-identified information to an identifiable specific individual or to City Schools, and provided that City Schools has made a reasonable determination that a City Schools User's identity is not personally identifiable, taking into account reasonably available information. Furthermore, the Entity agrees not to: (i) attempt to re-identify de-identified Confidential Information; and/or (ii) transfer de-identified Confidential Information to any party unless that party agrees not to attempt to re-identify the de-identified Confidential Information and unless City Schools has provided written express consent of the transfer.
3. Neither the Entity nor any of its employees, agents, affiliates, or subcontractors shall: (i) engage in targeted advertising to City Schools Users; (ii) engage in targeted advertising when the targeting of the advertising is based on Confidential Information; (iii) use Confidential Information to amass a profile about a City Schools User, except in connection with the Entity's performance of its obligations under the Agreement; (iv) sell Confidential Information; or (v) share with any individual or entity outside City Schools, without prior review and approval from City Schools, any report, data, or research findings that are based on Confidential Information or the use by City Schools or City Schools Users of the Entity's Services and that could be linked to an identifiable City Schools User, stakeholder, school, or the district.
4. To the extent that the Agreement requires the Entity to provide online or mobile services or digital content to City Schools that involves the collection, maintaining, or use of Personally Identifiable Information regarding City Schools students, the Entity warrants that it has signed-on to the *K-12 School Service Provider Pledge to Safeguard Student Privacy* (the "Student Privacy Pledge," available at [www.studentprivacypledge.org](http://www.studentprivacypledge.org)) and agrees to manage such Confidential Information in a manner consistent with the Student Privacy Pledge; provided, however, that if any statement of the Student Privacy Pledge is inconsistent with the requirements set forth herein, these General Articles shall govern. To the extent that the Entity conducts business in states other than Maryland that by Law require further protection of student information beyond that described herein, or the Entity agrees to such further protection in an agreement with another K-12 education agency in the United States, the Entity agrees that City Schools will receive the benefit of such protections.
5. The Entity acknowledges that there are no user agreements (whether electronic, click-through, verbal or in writing) in existence or contemplated between the Entity and any City Schools Users in connection with their access and use of the Entity's Services, and this Agreement shall supersede any user agreements that may be adopted during the term of the Agreement.

#### E. Security of Confidential Information

1. The Entity shall implement and maintain a comprehensive data-security program in accordance with commercial best practices for the protection of Confidential Information, whether the Confidential Information is stored electronically and/or in hard copy. Such data-security program shall adhere to the cybersecurity principles set forth by the National Institute of Standards and Technology (NIST), as well as City Schools' Third-Party Vendor and Business Associate Security Guidelines, which is available on the City Schools website, at this link ([www.baltimorecityschools.org/sites/default/files/inline-files/vendor-](http://www.baltimorecityschools.org/sites/default/files/inline-files/vendor-)

security-guidelines.pdf), and shall include, but are not limited to, the following:

- a. Security policies for the Entity's employees, agents, affiliates, and subcontractors related to the storage, access, retention, transportation, and disposition of data containing Confidential Information;
  - b. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - c. Secure access controls to Confidential Information, including but not limited to passwords;
  - d. Procedures for data recovery, incident response and processes, and business continuity processes and procedures;
  - e. Protocols for regular backups that include retention of backup copies for such period of time as may be required by City Schools, or by Law;
  - f. Audit logs of its system on a secured server with restricted access to prevent tampering or altering of audit data; and
  - g. A process for reviewing policies, procedures, and security measures, as well as training on security policies for employees who have access to Confidential Information, at least annually.
2. The Entity certifies that it has implemented policies, procedures, and security measures to protect against reasonably foreseeable unauthorized access to, or disclosure of, Confidential Information, and to prevent other reasonably foreseeable events that may result in substantial harm to City Schools. In addition, the Entity shall not maintain or store Confidential Information outside of the United States. To the extent that the Entity uses cloud computing services, all Confidential Information provided by City Schools or City Schools Users shall be securely stored with a commercially reasonable third-party vendor using physical servers located solely within the United States and subject to network security measures consistent with industry standards. The Entity will confirm to City Schools that the third-party vendor agrees to the non-disclosure agreement terms described in this Article.
  3. Access to the Entity's server(s) hosting Confidential Information shall be limited to the Entity's operations employees, agents, affiliates, or subcontractors who: (i) have access to Entity's access keys and are specifically trained to manage and secure data; and/or (ii) are involved in providing the Entity's Services.
  4. Any computer, server, or database on which Confidential Information, or any analysis conducted pursuant to the Agreement, is maintained shall have anti-virus, configuration control, monitoring/alerting, automated backups, and regular vulnerability testing. Such computer, server, or databases shall be password protected and securely stored at all times with proper authentication and authorization procedures and with access limited to the Entity's operations personnel and personnel directly involved in implementing the Agreement. The Entity shall not permit Confidential Information to be maintained or stored on any mobile computing devices (e.g., laptops or tablets) or any portable memory device (e.g., thumb drives or portable hard drives), without the express prior written consent of City Schools, unless such device is being used in connection with the Entity's backup and recovery procedures. In the event that such devices are used in connection with the Entity's backup and recovery procedures or City Schools otherwise consents to their use, the Entity will ensure that they are encrypted and centrally managed with respect to configuration updates and anti-virus, password protected, and scanned at the termination of the Agreement to ensure that no Confidential information remains stored on such devices.
  5. The Entity will regularly backup or cause to be backed up all Confidential Information under its control and will securely store and retain backups for such period of time as may be required by Law or by City

Schools. The Entity will remove Confidential Information from backups in a manner consistent with technology best practices and industry standards for secure data disposal methods. If the Entity is required to restore any materials from its backups, it will purge all Confidential Information, including Personally Identifiable Information, not currently in use in the production systems from the restored backups.

6. The Entity assures City Schools that its Services are only accessible via “https,” and all Confidential Information is encrypted with industry standard encryption when it is stored or transmitted electronically. Encryption of data at rest will be implemented for all stored data.
  7. City Schools understands that City Schools Users are responsible for the integrity and security of usernames and passwords required to access the Entity’s Services.
- F. City Schools reserves the right in its sole discretion to perform audits of the Entity at its sole expense to ensure compliance with this Article. The Entity shall reasonably cooperate in the performance of such audits. The Entity also will conduct regular internal monitoring and vulnerability assessments of the computers, computing environment, servers, and physical data centers that the Entity uses to collect, process, maintain, or store City Schools’ Confidential Information that includes Personally Identifiable Information regarding City Schools Users, and to hire a third party to conduct no less than annual security audits, which include penetration testing. The Entity shall review audit findings and will implement recommended security program changes and enhancements, where practical and appropriate. The Entity will provide City Schools, upon request, summary data of the above audits, scans, and tests. The Entity will take reasonable measures, including maintaining audit trails, to protect Confidential Information against deterioration or degradation of data quality and authenticity.

G. Data Security Breach

1. A “Data Security Breach” is any instance of which the Entity has actual knowledge or a reasonable basis on which to suspect or conclude that there has been an unauthorized release or access of Confidential Information, regardless of whether the Entity stores and manages data directly or through a subcontractor such as a third-party cloud computing vendor. A Data Security Breach may take various forms, including but not limited to: hackers gaining access to data through a malicious attack; lost, stolen, or temporarily misplaced data or equipment (e.g., mobile computing devices or portable memory devices); employee negligence (e.g., leaving a password list in a publicly-accessible location, or technical staff misconfiguring a security service or device); or policy and/or system failure.
2. The Entity shall notify the City Schools Project Monitor immediately of any Data Security Breach or data loss, and inform City Schools (to the extent known) what data has been compromised, but in no event later than twenty-four (24) hours after the Entity learns of the Data Security Breach or data loss. If the Entity becomes aware of a Data Security Breach or data loss, it shall cooperate with City Schools regarding recovery, remediation, and the necessity to involve law enforcement, if any. The Entity shall be responsible for performing an analysis to determine the cause of the Data Security Breach or data loss, and for producing a remediation plan in consultation with City Schools. The Parties agree to work together to determine an appropriate plan to notify City Schools Users of the Entity’s Services regarding any such Data Security Breach or data loss. In addition, to the extent not prohibited, the Entity agrees to notify City Schools of Data Security Breaches or data losses that affect its customers generally.
3. In addition to any other remedies available to City Schools, at law or in equity, the Entity will reimburse City Schools in full for all costs incurred by City Schools in investigating and remediating any Data Security Breach or data loss caused in whole or in part by the Entity or its employees, agents, affiliates, or subcontractors. The Entity shall use commercially reasonable efforts to mitigate any negative consequences caused to City Schools, or to a City Schools User, as the result of a Data Security Breach or data loss and to promptly implement procedures to prevent the recurrence of a similar Data Security Breach or data loss.

4. The Entity shall provide notice to City Schools within twenty-four (24) hours of notice or service on the Entity, whichever occurs first, of any lawsuits resulting from, or government investigations of, the Entity's handling of Confidential Information, failure to follow security requirements, and/or failure to safeguard confidential information of any third party.
- H. Except as specifically set forth by City Schools in writing, or as required by Law, the Entity shall upon the termination of the Agreement, upon cessation or dissolution of the Entity's business operations, or upon request by City Schools:
1. Erase, destroy, permanently delete, and render unreadable all Confidential Information in its paper files, computers, computing environment, systems, equipment, servers, and physical data centers; and/or, upon City Schools' request to ensure the integrity of City Schools operations, transfer/migrate such Confidential Information to City Schools or its designated third party;
  2. Certify in writing that the actions set forth in this subsection have been completed on or before agreed-upon deadlines;
  3. Ensure that any transfer/migration uses facilities and methods that are compatible with the relevant systems of City Schools or its designated third party; and
  4. To the extent technologically possible, ensure that City Schools will have access to the Confidential Information during any transfer/migration.
- I. Nothing in this Article shall supersede in any manner the Entity's obligations or the obligations of its employees, agents, affiliates, or subcontractors pursuant to all Laws applicable to the Agreement. Notwithstanding anything in the Agreement to the contrary, the provisions of this Article shall survive the termination of the Agreement.

#### **ARTICLE 16. INTELLECTUAL PROPERTY**

- A. In furtherance of City Schools' public purpose, the Entity grants to City Schools a non-exclusive, royalty-free, non-transferable right and license, exercisable by and through its City Schools Users, to the Entity's Services as set forth in the Agreement. Any Entity requirements that use of its Services be for private, personal, and/or non-commercial purposes shall be of no force or effect. City Schools agrees that it will not use the Entity's Services in any manner that infringes the proprietary rights of the Entity. City Schools further agrees that it will not: (a) sell the Entity's Services or any part of them; (b) copy any part of the Entity's Services, except where specifically indicated otherwise or for back-up purposes; (c) reverse engineer, decompile, or disassemble the Entity's Services or convert them into any other format or medium; (d) use more copies of the Entity's Services or deploy them on more devices or at more sites than authorized by the Entity; or (e) sub-license the Entity's Services, except as permitted by the Entity.
- B. The Entity warrants that (i) with respect to all intellectual property provided under the Agreement, the Entity possesses all right, title, and interest therein necessary for the Entity to grant to City Schools the rights and licenses specified thereunder; and (ii) any Services provided by the Entity to City Schools through the Agreement, as delivered by the Entity for City Schools' normal use, will not infringe any valid patents, copyrights, or other third-party intellectual property rights, provided, however, that this warranty does not extend to any infringement arising out of the use of such Services in combination with other systems, equipment, or platforms not supplied by the Entity.
- C. Notwithstanding the foregoing, collected data, analyses, and any analytical processes, programs, files, reports, and other deliverables developed as a contractual requirement are the sole property of City Schools. City Schools may waive title to any portion or to all data and analyses, which waiver shall be in writing. City Schools has the sole right to copyright any Services developed for City Schools purposes under the Agreement, which Work shall be deemed work made for hire as defined under U.S. Copyright law and may license its use by others for a fee or without charge. City Schools understands and acknowledges that the

Entity retains all intellectual property rights to its existing off-the-shelf Services.

- D. The Entity agrees that it shall not assert any ownership rights, property rights, or copyright to City Schools student work product, as defined in Md. Code Ann., Educ. § 4-130.

**ARTICLE 17. CITY SCHOOLS PROPERTY**

The use of City Schools facilities, equipment, materials, technology, and other property (“City Schools Property”) must be approved in advance by the City Schools Project Monitor. If the City Schools Project Monitor has agreed to the Entity’s use of City Schools Property, the following provisions shall apply:

- A. The Entity will use reasonable care to avoid damaging City Schools Property. The Entity shall insure all City Schools Property in its possession or control. If the Entity’s use results in any damage or loss to City School Property, aside from that incurred by normal wear and tear, the Entity must replace or repair the City School Property at no expense to City Schools, as directed by the City Schools Project Monitor. If the Entity fails or refused to make such repair or replacement, the Entity shall be liable for the cost, which may be deducted from payments due to the Entity. The Entity shall maintain City Schools Property in operating condition, with the cost being chargeable to the Agreement.
- B. All City Schools Property shall be returned promptly upon completion of the Agreement or otherwise disposed of, as directed in writing by City Schools. All costs of shipment or disposal are at the Entity’s cost.
- C. Unless stated otherwise in writing, City Schools Property may be used only for the performance of the Agreement.
- D. Title to all City Schools Property shall remain in the hands of City Schools at all times. Title to property acquired by the Entity for use under the Agreement shall vest in City Schools upon delivery to the Entity. Title to property leased with a purchase option shall pass to City Schools even if the option date is later than the Agreement period. Any payments required to acquire title are at the Entity’s cost.

**ARTICLE 18. OBLIGATIONS REGARDING CRIMINAL RECORDS OF INDIVIDUALS ASSIGNED TO WORK IN CITY SCHOOLS FACILITIES**

**A. Prohibition against assigning registered sex offenders and individuals convicted of sexual offenses, child sexual abuse, and other crimes of violence to work in City Schools facilities**

- 1. Any entity that enters into an agreement with City Schools “may not knowingly employ an individual to work at a school” if the individual is a registered sex offender. Under § 11-722 of the Criminal Procedure Article of the Maryland Code, an entity that violates this requirement is guilty of a misdemeanor and, if convicted, may be subject to up to five (5) years imprisonment and/or a \$5,000 fine.
- 2. Maryland Law further requires that a City Schools contractor or subcontractor may not knowingly assign an employee to work on school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of, or pled guilty or nolo contendere to, a crime involving:
  - a. A sexual offense in the third or fourth degree under § 3-307 or § 3-308 of the Criminal Law Article of the Maryland Code or an offense under the laws of another state that would constitute an offense under § 3-307 or § 3-308 of the Criminal Law Article if committed in Maryland;
  - b. Child sexual abuse under § 3-602 of the Criminal Law Article, or an offense under the laws of another state that would constitute child sexual abuse under § 3-602 of the Criminal Law Article if committed in Maryland; or
  - c. A crime of violence as defined in § 14–101 of the Criminal Law Article, or an offense under the

laws of another state that would be a violation of § 14–101 of the Criminal Law Article if committed in Maryland, including: (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking; (11) armed carjacking; (12) sexual offense in the first degree; (13) sexual offense in the second degree; (14) use of a handgun in the commission of a felony or other crime of violence; (15) child abuse in the first degree; (16) sexual abuse of a minor; (17) an attempt to commit any of the crimes described in items (1) through (16) of this list; (18) continuing course of conduct with a child under § 3-315 of the Criminal Law Article; (19) assault in the first degree; (20) assault with intent to murder; (21) assault with intent to rape; (22) assault with intent to rob; (23) assault with intent to commit a sexual offense in the first degree; and (24) assault with intent to commit a sexual offense in the second degree.

3. Under § 6-113.2 of the Education Article of the Maryland Code, any entity that contracts with City Schools to provide services to a school or the students of a school must follow specified screening requirements for hiring employees who will have direct contact with minors, including obtaining documentation regarding whether the individual has ever been disciplined for child sexual abuse or sexual misconduct.
4. The Entity is required to submit documentation, as required by City Schools, confirming that its employees and those of any subcontractors meet the foregoing obligations, as set forth in this Article. In addition, the Entity must confirm that it continues to meet this obligation on an annual basis and/or when there are changes in its workforce that the Entity and/or its subcontractors use to perform the work required by the Agreement.

#### **B. Required criminal background check process for certain individuals in the Entity’s workforce**

1. Under § 5-551 of the Family Law Article of the Maryland Code, the Entity shall require that any individuals in its workforce must undergo a criminal background check, including fingerprinting, if the individuals will work in a City Schools facility in circumstances where they have direct, unsupervised, and uncontrolled access to children. In addition, City Schools requires a criminal background check, including fingerprinting, for any individuals in an Entity’s workforce who are provided access to City Schools’ student information systems or who, in fulfilling their obligations under the Agreement, have direct, unsupervised, and uncontrolled access to children either online or in other non-City Schools facilities. The term “workforce” in this and the preceding section refers to all of the Entity’s direct employees, subcontractors and their employees, and/or independent contractors and their employees that the Entity uses to perform Work required by the Agreement.
2. Fingerprinting for the criminal background check shall be performed by City Schools Office of Human Capital, 200 E. North Ave, Room 110, Baltimore, MD 21202 (Telephone Number: 410-396-8885). Individuals fingerprinted by City Schools will be required to provide written consent, and City Schools will maintain copies of all records for criminal background checks performed by City Schools. If the Entity proposes to use another service to perform the criminal background check, the Entity must obtain prior approval from the Office of Human Capital, and the results must be provided to City Schools for record keeping.
3. The Entity must take appropriate steps to promptly follow up on information identified in the criminal background check related to any sexual offenses, child sexual abuse offenses, and crimes of violence enumerated above, as well as any offenses involving distribution of illegal drugs or other controlled substances, or any other criminal information identified by City Schools as warranting further explanation insofar as it may significantly affect the safety and security of City Schools students. If, after following up, the Entity believes that the individual is qualified and should be assigned to provide Services under this Agreement, then the Entity will provide a written summary to City Schools justifying its recommendation. City Schools will rely on the Entity’s summary to determine whether to accept the Entity’s recommendation, and the Entity will be responsible for any consequences of a material misrepresentation in its written summary.

4. Once the Agreement is executed, the Entity is responsible for initiating the background check process. An individual in the Entity's workforce may not begin work in a City Schools facility on an assignment where the individual will have direct, unsupervised, and uncontrolled access to children, until: (i) the background check results for that individual have been received by City Schools; (ii) the Entity certifies in writing to City Schools that the individual has completed training regarding recognizing, reporting, and preventing child abuse and neglect; and (iv) the individual obtains a City Schools identification badge. The badge will be issued by the Office of Human Capital. Appointments are made by calling 410-396-8885. The Entity will be required to return all badges at the conclusion of the Agreement.
5. The criminal background check and badging process will be at the Entity's expense.

#### **ARTICLE 19. INDEMNIFICATION AND LIABILITY**

- A. The Entity is responsible for any loss, personal injury, death, cost, claim, damages (including but not limited to incidental and consequential damages), and other expenses (including attorney's fees and litigation expenses) that may be suffered or incurred by reason of, or occasioned wholly or in part by, the Entity's negligence, its performance or failure to perform any of its obligations under the Agreement, or its violation of any applicable Law. For purposes of this Article, the negligence of employees, agents, affiliates, or subcontractors of the Entity is deemed to be the negligence of the Entity. In addition, the Entity must defend, indemnify, and hold City Schools harmless from and against: (i) any claim (including but not limited to an enforcement action by any federal, state, or local agency) arising from or related to any loss, personal injury, death, cost, claim, damages (including but not limited to incidental and consequential damages), and other expenses (including but not limited to attorney's fees and litigation expenses) that may be suffered or incurred by reason of, or occasioned wholly or in part by, the Entity's negligence, its performance or failure to perform any of its obligations under the Agreement, or its violation of any applicable Law; (ii) any claims, costs, and/or losses whatsoever occurring or resulting from: (a) the Entity's failure to pay any compensation, wages, benefits, or taxes; (b) the supplying to the Entity of Services in connection with or in support of the performance of the Agreement; and (iii) any claim that the Services delivered or otherwise provided to City Schools under the Agreement infringe, violate, dilute, or misappropriate any patent, copyright, trademark, or other intellectual property right.
- B. In the event of any intellectual property infringement, violation, dilution, or misappropriation claim, or if the Entity becomes aware of the possibility of such a claim, the Entity shall, in its discretion, within sixty (60) days: (a) furnish City Schools with non-infringing replacement of its Services which are functionally equivalent in all material respects to City Schools' satisfaction; (b) modify the applicable Services so that they become non-infringing but functionally equivalent in all material respects to City Schools' satisfaction; (c) obtain for City Schools the right to use such Services upon commercially reasonable terms, subject to adjusted payment obligations on the part of City Schools if such terms differ from those set forth in the Agreement; or (d) if and only if (a) – (c) are commercially impracticable, terminate the Agreement in whole or in part and refund to City Schools the fees received for such Services that are the subject of such a claim.
- C. In any action or proceeding brought against City Schools by reason of this Article, the Entity must reimburse City Schools the cost of defending such action or proceedings, or upon City Schools' written demand and at the Entity's sole cost and expense, the Entity must defend such action and proceeding by counsel approved by City Schools.
- D. For the purposes of this Article, City Schools includes the Baltimore City Board of School Commissioners, and its officers, officials, agents, employees, and volunteers, as well as the City of Baltimore and any charter school operators, if applicable. Nothing herein or any other provision of the Agreement shall be construed to abrogate, impair, or waive any defense, liability or damages limitation, or governmental immunity of City Schools pursuant to Law, or otherwise. In addition, nothing herein or any other provision of the Agreement shall be construed to require City Schools to defend, hold harmless, indemnify, or pay any expenses (including but not limited to attorney's fees and litigation expenses) to the Entity. The Entity expressly understands and agrees that any performance bond or insurance protection required by the Agreement, or



otherwise provided by the Entity, shall in no way limit its responsibility under the Agreement to defend, indemnify, and hold harmless City Schools.

- E. NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, THE ENTITY'S SERVICES PROVIDED HEREUNDER; HOWEVER, THE FOREGOING EXCULPATION OF LIABILITY SHALL NOT APPLY TO THE INDEMNIFICATION PROVISIONS OF THIS ARTICLE. NO OTHER DISCLAIMER OR LIMITATION OF LIABILITY SHALL BE APPLICABLE TO SERVICES PROVIDED BY THE ENTITY UNDER THE AGREEMENT.
- F. Notwithstanding anything in the Agreement to the contrary, this Article shall survive the termination of the Agreement.

## **ARTICLE 20. INSURANCE**

- A. The Entity shall be solely responsible for any insurance, including but not limited to general comprehensive liability, worker's compensation, professional liability insurance, and business automobile insurance. The Entity agrees to provide City Schools with certificates of insurance verifying the following minimum coverage:
  - 1. Comprehensive General Liability Insurance: Liability limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for claims arising out of bodily injuries or death, and property damages, subject to a minimum limit of Three Million Dollars (\$3,000,000.00) aggregate. Such insurance shall include contractual liability insurance.
  - 2. Comprehensive Business Automobile Liability Insurance: Liability limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for all claims arising out of bodily injuries or death and property damages. The insurance shall apply to any owned, non-owned, leased, or hired automobiles used in the performance of the Agreement.
  - 3. Worker's Compensation Insurance: Statutory coverage as required by Law.
  - 4. Professional Liability, Errors, and Omissions Insurance: Liability limit of not less than One Million Dollars (\$1,000,000.00) in the event the Services delivered pursuant to the Agreement, either directly or indirectly, involve or require Professional Services.
- B. The minimum limits of coverage listed above shall not be construed as the maximum as required by the Agreement or as a limitation of any potential liability on the part of the Entity; nor shall failure by City Schools to request evidence of this insurance in any way be construed as a waiver of the Entity's obligation to provide the insurance coverage specified. The Entity must keep this insurance in full force and effect during the term of the Agreement, including all extensions. If coverage is written on a claims made basis, the policy shall be endorsed to provide at least a three-year extended claims reporting provision.
- C. Insurance is to be placed with insurers licensed/approved to do business in the State of Maryland with a Best's rating of no less than A:VII, or if not rated with Best's, with a minimum surplus the equivalent of Best's surplus size VII, unless otherwise approved by the Director of Procurement. The Entity's insurance coverage shall be primary. The Baltimore City Board of School Commissioners and its officers, officials, agents, employees, and volunteers shall be covered by endorsement, as additional insureds with respect to liability arising out of activities performed or to be performed by or on behalf of the Entity in connection with the Agreement. The Entity's insurance shall apply separately to each insured against whom a claim is made and/or a lawsuit brought. Any insurance and/or self-insured program maintained by the Baltimore City Board of School Commissioners or its officers, officials, agents, and employees shall not contribute to the Entity's insurance or benefit the Entity in any way.
- D. The Entity shall provide City Schools with certificates of insurance within ten (10) days of execution of the

Agreement (or any shorter period of time set forth in the solicitation) evidencing the coverage required above. The certificates shall confirm that the Baltimore City Board of School Commissioners and its officers, officials, agents, and employees have been made additional insureds under the respective insurance policies. The Entity must provide to City Schools at least thirty (30) days written notice of a cancellation of, or a material change to, an insurance policy. The Entity must provide the certificates of insurance before commencing the work covered by the Agreement.

**ARTICLE 21. ORDER OF PRECEDENCE**

Unless expressly agreed in writing by the Chief Executive Officer, these General Articles shall take precedence over, supersede, and void any other provision of the Agreement to the extent such other provision is contrary to or inconsistent with the General Articles. For avoidance of doubt, to the extent that any provision of the Agreement provides City Schools with additional or greater rights than those provided in the General Articles, or any other provision of the Agreement imposes requirements on the Entity in addition to those set out in the General Articles, such other provision shall be deemed to be supplemental to, and not contrary to or inconsistent with, the General Articles.

**ARTICLE 22. SEVERABILITY**

Should any portion of the Agreement be found illegal, the remainder shall remain in full force and effect and shall be binding on both Parties.

**ARTICLE 23. GOVERNING LAW AND JURISDICTION**

The Agreement shall be governed by and construed in accordance with the laws of Maryland, without regard to conflicts of law provisions. Sole and exclusive jurisdiction for any action or proceedings arising out of or related to the Agreement shall be in an appropriate state or federal court located in Baltimore City, Maryland.

**ARTICLE 24. ENTIRE AGREEMENT**

The Agreement is binding between the Parties and constitutes the entire understanding between the Parties regarding the subject matter of the Agreement and supersedes all prior or contemporaneous statements, understandings, and contracts, whether oral or written, between the Parties with respect to the subject matter of the Agreement. Any changes and additions hereto shall not become binding upon any Party unless they are incorporated into a written amendment signed by the Parties. No waiver by either Party of any failure to observe or perform any term or condition of the Agreement shall operate as a waiver of such term or condition or of any subsequent or other breaches of the same or any other provision of this Agreement, nor shall any action or non-action by either Party be construed as a waiver of any provisions of this Agreement or of any breach thereof unless the same has been expressly declared or recognized as a waiver by such Party in writing.

**ARTICLE 25. SUCCESSORS AND ASSIGNS**

The Agreement and all of its provisions shall apply to and bind the authorized successors and assigns of the Parties. No assignment or transfer of the Agreement or any part hereof, rights hereunder, or interest herein by the Entity shall be valid unless and until it is previously approved in writing by City Schools and made subject to such reasonable terms and conditions as City Schools may impose. Unless performance is expressly waived in writing by the Director of Procurement, an assignment does not release the Entity from responsibility for performance of the Agreement.

**ARTICLE 26. GUARANTEE**

A. The Entity expressly and unconditionally guarantees that the Services will be free from any and all defects in material and workmanship and will be in full conformity with the specifications, drawings, representation, or sample, and that this warrant shall survive acceptance and any payment. In addition, Services provided under the Agreement must be of first quality, latest model, and of current manufacture, and must not be of

such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or demonstrator models are unacceptable, unless specifically requested by City Schools. In addition, the Entity guarantees that the Services must have been produced in full compliance with applicable Law, including at least the minimum conditions required under the Fair Labor Standards Act of 1938, as amended, as well as U.S. Department of Transportation and Food and Drug Administration regulations, and Executive Order 11246, as amended. If applicable, the Entity must also be in full compliance with Workplace Hazardous Materials Information System (WHMIS) federal legislation and maintain a written Hazard Communication Plan.

- B. This guarantee shall extend and must be in effect for a minimum period of one year from the date of acceptance of the Services, or for such longer period stated in the solicitation (“Guarantee Period”). The Entity must correct any and all defects in material and/or workmanship that may appear during the Guarantee Period, or any defects that occur within the Guarantee Period, even if discovered after the Guarantee Period, by repairing (or replacing with new items or new materials, if necessary) any such defect at no cost to City Schools and to City Schools’ satisfaction.
- C. Should the Entity’s warranty or guarantee, or the warranty or guarantee of a manufacturer or service provider utilized by the Entity, exceed the requirements stated above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturer’s or service provider’s warranties must be provided upon request. The Entity shall act as the manufacturer’s or service provider’s agent for all warranty claims.

**ARTICLE 27. NOTICE**

Any notice by a Party under the Agreement shall be in writing and either personally delivered, sent via email, a nationally recognized overnight delivery service (e.g., Federal Express), first class postage prepaid mail, or by fax, addressed to the other Party at the address specified in the Agreement, or such other address of which either Party may from time to time notify the other. Notices shall be deemed given when received by the receiving Party. All notices to City Schools shall be sent to the City Schools Project Monitor, using contact information available on the City Schools website, with copy to: Director, Office of Procurement, 200 East North Avenue, 4<sup>th</sup> Floor, Baltimore, MD 21202 (telephone: 410-396-8757).

**ARTICLE 28. INTERPRETATION**

This Agreement shall not be construed or interpreted for or against any Party hereto because the Party drafted or caused that Party’s legal representative to draft any of its provisions.

*Revised October 2020*

**APPENDIX C - REFERENCES**

**RFP-22110  
ADMINISTRATION OF FLEXIBLE SPENDING ACCOUNTS (FSA),  
COBRA AND OTHER ADDITIONAL SERVICES**

**1.**

**Client Name:**

---

**Address:**

---

**Services Provided:**

---

**Date(s)of services:**

---

**Contact Name & Title:**

---

**Phone No:**

---

**Email Address:**

---

**2.**

**Client Name:**

---

**Address:**

---

**Services Provided:**

---

**Date(s)of services:**

---

**Contact Name & Title:**

---

**Phone No:**

---

**Email Address:**

---

3.

**Client Name:**

---

**Address:**

---

**Services Provided:**

---

**Date(s)of services:**

---

**Contact Name & Title:**

---

**Phone No:**

---

**Email Address:**

---

4.

**Client Name:**

---

**Address:**

---

**Services Provided:**

---

**Date(s)of services:**

---

**Contact Name & Title:**

---

**Phone No:**

---

**Email Address:**

---

5.

**Client Name:**

---

**Address:**

---

**Services Provided:**

---

**Date(s)of services:**

---

**Contact Name & Title:**

---

**Phone No:**

---

**Email Address:**

---

**APPENDIX D - NON-COLLUSION CERTIFICATE**  
(TO BE SUBMITTED WITH TECHNICAL PROPOSAL)

**RFP-22110**  
**ADMINISTRATION OF FLEXIBLE SPENDING ACCOUNTS (FSA),**  
**COBRA AND OTHER ADDITIONAL SERVICES**

I HEREBY CERTIFY that I am the \_\_\_\_\_ and the duly authorized representative of \_\_\_\_\_ whose address is \_\_\_\_\_ and

THAT NEITHER I nor, to the best of my knowledge, information, and belief, the above firm nor any of its other representatives I here represent:

- (a) Have agreed, conspired, connived or colluded to produce a deceptive show of competition in the compilation of the RFP Proposal being submitted herewith;
- (b) Have in any manner, directly or indirectly, entered into any agreement, participated in any collusion to fix the RFP price Financial Proposal of the Entity herein or any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the Contract for which the within RFP Proposal is submitted.

In making this affidavit, I represent that I have personal knowledge of the matters and facts herein stated.

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(PRINTED OR TYPED NAME)

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

x \_\_\_\_\_ Notary Public

My commission expires: \_\_\_\_\_

**APPENDIX E - DEBARMENT AFFIDAVIT**  
(TO BE SUBMITTED WITH TECHNICAL PROPOSAL)

**RFP-22110**  
**ADMINISTRATION OF FLEXIBLE SPENDING ACCOUNTS (FSA),**  
**COBRA AND OTHER ADDITIONAL SERVICES**

\_\_\_\_\_, being first duly sworn deposes and says:

I am an officer of the Entity known as \_\_\_\_\_  
and the party making a Proposal in response to the RFP dated,  
\_\_\_\_\_20\_\_\_\_, to the Baltimore City Board of School Commissioners for  
Baltimore City Public Schools.

I further affirm that: Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing Contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension):

\_\_\_\_\_  
\_\_\_\_\_

I further affirm that:

- (1) The business was not established, and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
- (2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

\_\_\_\_\_

Signature of:

x \_\_\_\_\_  
Entity, if the Entity is an individual

\_\_\_\_\_  
Officer, if the Entity is a corporation or  
other business organization other than  
a partnership

x \_\_\_\_\_  
Partner, if the Entity is a partnership

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

x \_\_\_\_\_ Notary Public

My commission expires: \_\_\_\_\_

**APPENDIX F - ANTI-BRIBERY AFFIDAVIT**  
(TO BE SUBMITTED WITH TECHNICAL PROPOSAL)

**RFP-22110**  
**ADMINISTRATION OF FLEXIBLE SPENDING ACCOUNTS (FSA),**  
**COBRA AND OTHER ADDITIONAL SERVICES**

\_\_\_\_\_, being first duly sworn deposes and says:

I am an officer of the Entity known as \_\_\_\_\_  
and the party making a Proposal in response to the RFP dated,  
\_\_\_\_\_20\_\_\_, to the Baltimore City Board of School Commissioners for  
Baltimore City Public Schools.

I further confirm that: Neither I, nor to the best of my knowledge, information, and belief, the above business (as in defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, or any of its employees directly involved in obtaining or performing Contracts with public bodies (as is defined in Section 16-101(f) of the State Finance and Procurement Article of the Annotated Code of Maryland), has been convicted of bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court or administrative body, sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of:

x \_\_\_\_\_  
Entity, if the Entity is an individual

x \_\_\_\_\_  
Officer, if the Entity is a corporation or  
other business organization other than  
a partnership

x \_\_\_\_\_  
Partner, if the Entity is a partnership

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.

x \_\_\_\_\_ Notary Public

My commission expires: \_\_\_\_\_



**APPENDIX G - ETHICS CERTIFICATION**  
(TO BE SUBMITTED WITH BID)

**RFP-22110**  
**ADMINISTRATION OF FLEXIBLE SPENDING ACCOUNTS (FSA),**  
**COBRA AND OTHER ADDITIONAL SERVICES**

**[Note: The Baltimore City Board of School Commissioner’s Policy BCA, Code of Ethics, is subject to certain limited exceptions. If the Entity identifies a potential conflict of interest, it is encouraged to review Policy BCA for guidance, which can be found on the Baltimore City Public Schools’ website at “Board Policies and Administrative Regulations” (www.baltimorecityschools.org/board-policies).]**

<b>Name of Entity</b>	
<b>Name of Business Owner</b>	
<b>Owner Address</b>	
<b>Owner Email Address</b>	
<b>Owner Phone Number</b>	

List Key Personnel Below:

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I am a(n) director, officer, or authorized agent of the Entity known as \_\_\_\_\_ and the party making a Proposal in response to the RFP referenced above, dated, \_\_\_\_\_20\_\_\_\_, to the Baltimore City Board of School Commissioners for Baltimore City Public Schools.

I hereby certify that: No individual with an “interest” in the Entity submitting a Proposal in response to the above-referenced RFP is also: a member of the Baltimore City Board of School Commissioners (“Board”); an officer or employee of the Board; or a “qualified relative” of any of the foregoing individuals. The preceding certification includes without limitation the Key Personnel listed above. In making this certification, I understand that the term “interest” is defined by Board Policy BCA as: “A legal or equitable economic interest, whether or not subject to an encumbrance or a condition, that is owned or held, in whole or in part, jointly or severally, directly or indirectly.” I understand that the term “interest” as used herein also refers to prospective employment. In addition, I understand that the term “qualified relative” means “spouse, parent, child, or sibling”.

Signature of:

x \_\_\_\_\_  
Entity, if the Entity is an individual

Partner, if the Entity is a partnership

x \_\_\_\_\_  
a partnership

x \_\_\_\_\_  
Officer, if the Entity is a corporation or other business organization other than

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

x \_\_\_\_\_ Notary Public

My commission expires: \_\_\_\_\_

## APPENDIX H - EDGAR

### EDUCATION DEPARTMENT GENERAL ADMINISTRATIVE REGULATIONS (“EDGAR”) CERTIFICATIONS:

#### CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS FUNDED BY FEDERAL AWARDS

**I. Requirements Pursuant to 2 C.F.R. Part 200, Appendix II; Education Department General Administrative Regulations (“EDGAR”)**

**Paragraph (A):**

The Agreement addresses remedies in the following Articles of the City Schools General Articles (Appendix B to the RFP; Attachment I to the Agreement): Article 10 (“Termination”); Article 12 (“Disputes”); Article 19 (“Indemnification and Liability”); and Article 20 (“Insurance”).

**Paragraph (B):**

The City Schools General Articles (Appendix B to the RFP; Attachment I to the Agreement) address termination for cause and convenience in Article 10 (“Termination”).

**Paragraph (C):**

In addition to the non-discrimination requirements set forth in Article 5.G of the City Schools General Articles (Appendix B to the RFP; Attachment I to the Agreement), the Entity agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Entity will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Entity agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The Entity will, in all solicitations or advertisements for employees placed by or on behalf of the Entity, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The Entity will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information or other employees or applicants as a part of such employee’s essential job functions discloses the compensation or such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a

formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Entity's legal duty to furnish information.

4. The Entity will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Entity's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Entity will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The Entity will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the Entity's non-compliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Entity may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The Entity will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or Entity. The Entity will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event the Entity becomes involved in, or is threatened with, litigation with a subcontractor or Entity as a result of such direction, the Entity may request the United States to enter into such litigation to protect the interests of the United States.

**Paragraph (D):**

1. When Federal funds are expended by City Schools for any construction contract in excess of \$2,000 from this procurement process, the Entity certifies that it will comply with Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and §§ 3146-3148, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5.
2. The Entity certifies that it shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor, and Entity also certifies that it shall pay wages not less than once a week. **A copy of the prevailing wage determination issued by the Department of Labor is attached hereto as Attachment 1 to Entity Certification.** Entity certifies that it accepts this prevailing wage determination.

3. The Entity also certifies that it will comply with the Copeland "Anti-Kickback" Act, 40 U.S.C. § 3145 and 29 C.F.R. Part 3. The Entity certifies that it shall not induce, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

**Paragraph (E):**

1. When Federal funds are expended by City Schools for any Contract from this procurement process, the Entity certifies that it will comply with 40 U.S.C. § 3702 and § 3704 and 29 C.F.R. Part 5. Specifically, the Entity certifies that it understands and will comply with the following:
  - a. No Entity or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.
  - b. In the event of any violation of paragraph "a", above, the Entity and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Entity and subcontractor may be liable to the United State for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph "a", above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in paragraph "a", above.
  - c. The Federal agency providing the funds to compensate the Entity under the Agreement shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Entity or subcontractor under any such Contract or any other Federal Contract with the same prime contractor, or any other federally-assisted Contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Entity or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph "b", above.
  - d. The Entity or subcontractor shall insert in any subcontract the clauses set forth in paragraphs 1.a. through 1.d. and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1.a. through 1.d. of this section.
2. The Entity certifies that, pursuant to 40 U.S.C. § 3704 (applicable to construction work), no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

3. City Schools and the Entity understand that these requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**Paragraph (F):**

1. If the Contract award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (“Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements”) and any implementing regulations promulgated by the awarding Federal agency.
2. The regulation at 37 C.F.R. §401.2(a) currently defines “funding agreement” as “any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.”
3. When Federal funds are expended by City Schools, the Entity hereby certifies that during the term of an award for all Agreements by City Schools resulting from this procurement process, the Entity agrees to comply with all applicable requirements of 37 C.F.R. Part 401.

**Paragraph (G):**

1. When Federal funds are expended by City Schools, the Entity certifies that during the term of the Contract awarded hereunder, the Entity shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 U.S.C. §§ 7401 – 7671q, and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 – 1387.
2. The Entity agrees to report each violation to City Schools and understands and agrees that City Schools will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office.
3. The Entity agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance.

**Paragraph (H):**

1. The Entity understands and agrees that it is subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension).
2. The Entity understands and agrees that these regulations restrict awards, subawards, and Contracts with certain parties that are debarred, suspended, or otherwise

excluded from or ineligible for participation in Federal assistance programs and activities. A Contract award must not be made to parties listed in the System for Award Management (“SAM”) Exclusions. SAM Exclusions can be accessed at [www.sam.gov](http://www.sam.gov).

3. The Contract awarded pursuant to this solicitation may be a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Entity is required to verify that neither the Entity nor its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
4. The Entity certifies that it will comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction into which it enters.
5. This certification is a material representation of fact relied upon by City Schools. If it is later determined that the Entity did not comply with 2 C.F.R. Part 180 and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City Schools, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
6. The Entity or offeror agrees to comply with the requirements of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The Entity or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**Paragraph (I):**

When Federal funds are expended by City Schools for the Contract awarded hereunder, the Entity certifies that it complies with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352). The Entity further certifies that:

1. No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal Contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal Contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the Entity shall complete and submit Stand Form LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.
3. The Entity shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Contracts under grants, loans, and cooperative agreements) and all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352

(as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

5. The Entity certifies the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Entity understands and agrees that the provisions of 31 U.S.C. §§ 3801 et seq. apply to this certification and disclosure, if any.

**Paragraph (J):**

1. The Entity certifies that it shall comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962).
2. In the performance of a Contract awarded pursuant to this solicitation, the Entity shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
  - a. Competitively within a timeframe providing for compliance with the Contract performance schedule;
  - b. Meeting Contract performance requirements; or
  - c. At a reasonable price.
3. Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site: <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at: <http://www.epa.gov/cpg/products.htm>.

**II. Record Retention Requirements for Contracts Paid with Federal Funds**

When Federal funds are expended by City Schools, the Entity certifies that it will comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Entity further certifies that Entity will retain all records as required by 2 C.F.R. § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

**III. Certification of Compliance with the Energy Policy and Conservation Act**

When Federal funds are expended by City Schools for any Contract resulting from this procurement process, the Entity certifies that it will comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321, *et seq.*, and 49 C.F.R. Part 18.

**IV. Certification of Compliance with Buy American Act Provisions**

The Entity certifies that it complies with all applicable provisions of the Buy American Act, 41 U.S.C. §§ 8301-8305. Purchases made in accordance with the Buy American Act must still follow the applicable procurement rules calling for free and open competition.

**V. Certification of Non-Collusion**

The Entity certifies under penalty of perjury that its Proposal is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation, or other business entity.

**VI. Federal Agency Seal, Logo, and Flags**

With regard to the Federal agency awarding the Federal funds associated with this solicitation, the Entity shall not use the seals, logos, crests, or reproductions of flags, or the likenesses of the Federal agency's officials without specific pre-approval from the Federal agency awarding the Federal funds.

**VII. Using Federal Funds to Fund the Contract**

The Entity acknowledges that the Federal agency's financial assistance will be used to fund the Contract (awarded hereunder) only. The Entity will comply with all applicable Federal law, regulations, executive orders, and agency policies, procedures, and directives.

**VIII. No Obligation by Federal Government**

The Federal Government is not a party to the Contract awarded hereunder and is not subject to any obligations or liabilities to the non-Federal entity, the Entity, or any other party pertaining to any matter resulting from the Contract awarded hereunder.

**IX. Program Fraud and False or Fraudulent Statements or Related Acts**

The Entity acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Entity's actions pertaining to the Contract awarded hereunder.

**The Entity certifies compliance with the above requirements.**

Entity Name: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**APPENDIX I - FINANCIAL PROPOSAL FORM**  
(TO BE SUBMITTED WITH FINANCIAL PROPOSAL)

**RFP-22110**  
**ADMINISTRATION OF FLEXIBLE SPENDING ACCOUNTS (FSA),**  
**COBRA AND OTHER ADDITIONAL SERVICES**

Company name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone number \_\_\_\_\_

TO: BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS

We propose to provide Administration of Flexible Spending Accounts and COBRA benefits to Baltimore City Public Schools in accordance with Special Terms and Conditions, General Terms and Conditions, Scope of Work, and other documents of this Request for Proposal. (Delineated costs are addressed in the Technical and Financial responses in TBS).

Entities shall enter all price information within the TBS platform. Financials are collected in two places within the TBS platform. Both are under the Prepare Bid Section. Financial file submissions are to be loaded separately from Technical files within the TBS.

**Name** \_\_\_\_\_

**Title** \_\_\_\_\_

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

## APPENDIX J - CONFIDENTIALITY AGREEMENT FOR CENSUS RELEASE

### Baltimore City Public Schools Solicitation No. RFP - 22110

#### ADMINISTRATION OF FLEXIBLE SPENDING ACCOUNTS (FSA), COBRA AND OTHER ADDITIONAL SERVICES

#### CONFIDENTIAL DATA RELEASE AND INDEMNIFICATION AGREEMENT

This Confidential Data Release and Indemnification Agreement ("Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the Baltimore City Board of School Commissioners ("the Board"), which operates a system of public schools commonly known as the Baltimore City Public School System or Baltimore City Public Schools ("City Schools"), and \_\_\_\_\_ (the "Vendor").

The parties acknowledge and agree as follows:

WHEREAS, the Board is requesting proposals from qualified Vendors to provide insurance and administrative services for Administration Of Flexible Spending Accounts (FSA), Cobra And Other Additional Services;

WHEREAS, the Board will provide Vendor with a database containing confidential employee and retiree ("Participant") information in connection with the request for proposal (**RFP-22110**);

WHEREAS, the Board is willing to release Participant information to Vendor on the condition that the confidential nature of the requested data is acknowledged and preserved by Vendor;

THEREFORE, in consideration of the mutual promises contained herein, and as a condition of Board's disclosure of information, the parties agree as follows:

1. In order to assist Vendor in preparing its proposal for Baltimore City Public Schools in response to the Board's Request for Proposals relating to the Board's **RFP-22110: Administration Of Flexible Spending Accounts (FSA), COBRA And Other Additional Services** (hereinafter, the "RFP"), the Board will reveal to Vendor certain confidential information (hereafter referred to as "Confidential Information"). The Confidential Information may include, but is not limited to, the following: full time / part time indicator, organization, pay class, zip code, date of birth, gender, hire date, union code, medical plan, medical plan coverage tier, prescription plan, prescription plan coverage tier. Nothing herein shall require the Board to disclose any Confidential Information.
2. As used in this Agreement, "Confidential Information" means all information of the Board and its Commissioners and of City Schools and its officers, administrators, teachers, staff, and retirees, in whatever form transmitted, that:
  - a. is not generally known to the public;

- b. is disclosed by the Board or City Schools to the Vendor or that is otherwise learned by the Vendor in the course of its discussions or business dealings with, or due to its physical or electronic access to the premises or property of, the Board or City Schools; and/or
  - c. has been identified as being proprietary and/or confidential, or that would reasonably be deemed to be proprietary and/or confidential based upon the nature of the circumstances surrounding its disclosure or receipt.
3. “Confidential Information” does not include information which:
- a. becomes generally available to the public other than as a result of a disclosure by the Vendor;
  - b. was available to the Vendor on a non-confidential basis prior to its receipt by the Vendor;
  - c. becomes available to the Vendor on a non-confidential basis from a source other than the Board or City Schools, its representatives, subcontractors, or its agents, provided that such source is not bound by a confidentiality agreement with the Board or City Schools, its representatives, its subcontractors, or its agents or otherwise is prohibited from transmitting the information to the Vendor by a contractual, legal or fiduciary obligation; or
  - d. was independently developed by the Vendor without access to or the benefit of the Confidential Information.
4. The Board and Vendor acknowledge that any Confidential Information accessed by Vendor is accessed by them as a qualified Vendor responding to the RFP.
5. Upon receipt of the Confidential Information, Vendor shall:
- a. Treat the Confidential Information as confidential and proprietary to the Board, hold the Confidential Information in confidence, and not use the Confidential Information other than for the purposes of its business with the Board;
  - b. Use the Confidential Information only for the purposes stated above and shall not combine the Confidential Information with data from other sources to create a new data base for purposes other than responding to the RFP, and not to disclose the Confidential Information to any other person, firm, institution, or third party (other than insurance carrier’s reinsurers);
  - c. Maintain the Confidential Information at a specific location under the control of Vendor and take all necessary steps to safeguard the Confidential Information and to prevent unauthorized disclosure of it to third parties, including to those employees of each Vendor who are not directly involved in the issuance of health and life proposals;
  - d. Restrict disclosure of the Confidential Information solely to those of Vendor’s employees who need to know the information in order to prepare a bid in response to the RFP and who agree to be bound by the terms of this Agreement;
  - e. Advise Vendor’s employees who receive the Confidential Information of the existence and terms of this Agreement and of the obligations of confidentiality herein;

- f. Use, and require their employees to use, at least the same degree of care to protect the Confidential Information as is used with Vendor's own proprietary and confidential information;
  - g. Ensure compliance with the confidentiality provisions of: the Family Educational Records Privacy Act (20 USC §1232g; 34 CFR §99); the Health Insurance Portability and Accountability Act of 1996 (HIPAA) 45 CFR [Part 160](#) and [Part 164](#), Subparts A and E; and the Code of Maryland Regulations §§13A.08.02.00 – 13A.08.02.31; and
  - h. Vendor agrees to Provide to the Board thirty (30) days' prior written notice and a reasonable opportunity to file an objection to the production of Confidential Information in the event Vendor is required by any law, regulation, or order of court to disclose Confidential Information.
6. Confidential Information furnished in writing, pictorial, magnetic and/or other tangible form shall not be duplicated by Vendor, except for purposes of this Agreement, and any such duplication shall be documented and provided to Board after the contract has been awarded by Board, or the Vendor has missed the deadline for bidding.
  7. Except for when the Vendor is awarded in part or in whole the contract on which it has bid, the Vendor agrees that after the contract has been awarded by Board, or after the Vendor has missed the deadline for bidding, the Vendor shall return to Board all Confidential Information furnished in writing, pictorial, magnetic and/or other tangible form, and further shall relinquish to Board any duplicate copies of the Confidential Information contained in writing, pictorial, magnetic and/or other tangible for, along with the Vendor's documentation of the making of such duplication as required in Section 4 above upon request. If any copies of the Confidential Information remain on the Vendor's information systems, including computer hard drives, servers, etc., then the Vendor shall purge and/or destroy such Confidential Information. Notwithstanding the foregoing, the Vendor may retain copies of Confidential Information as may be required by law and in accordance with its internal record retention requirements. Such copies shall be subject to the confidentiality provisions in Section 5 above.
  8. Nothing contained in this agreement shall be construed as granting to or conferring upon the Vendor any rights by license or otherwise in any information disclosed, except for the limited right to use the information to prepare a bid in response to the RFP.
  9. Vendors agree to defend, indemnify and hold harmless the Board and its employees from and against any and all claims, demands, suits and actions, including attorney's fees and court costs, connected therewith, brought against Baltimore City Public Schools, and its employees, subcontractors, agents, and volunteers directly or indirectly arising out of any breach by Vendors or their officers, subcontractors, agents, directors, employees or designees of any of the provisions of this Agreement or any act or failure to act by Vendors in connection with the transaction contemplated by this Agreement which constitutes negligence or willful misconduct.
  10. This Agreement shall be effective as of the date below, and shall remain in full force and effect until the contract for which the RFP is disseminated has been awarded, and the Vendor has either

been awarded the contract or has returned or destroyed the Confidential Information in accordance with Section 7 above.

11. All obligations undertaken herein to safeguard the confidentiality of the Confidential Information shall survive the expiration or termination of this Agreement.
12. The terms of this Agreement supersede any previous non-disclosure agreements or any other preliminary representations or understandings that have been entered into by the parties to this Agreement with regard to the subject Confidential Information: Census Data.
13. Recipient agrees that in the event of any breach or threatened breach by Vendor, the Board may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect the Board against any such breach or threatened breach. The Vendor understands and agrees that monetary damages will not be sufficient to avoid or compensate for the unauthorized use or disclosure of Confidential Information and that seeking injunctive relief would be appropriate to prevent any actual or threatened use or disclosure of such Confidential Information: Census Data.
14. This Agreement and the obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Maryland. Furthermore, the parties agree that any suits or actions brought by either party against the other in connection with this agreement shall be brought in a court of competent jurisdiction in Baltimore City.
15. Neither this Agreement nor Vendors' rights or obligations hereunder may be assigned by Vendor without the Board's prior written approval.
16. This Agreement constitutes the entire understanding between the parties. No amendment or modification of this Agreement or assignment of it shall be valid or binding unless made in writing and signed on behalf of the parties by their respective duly authorized representatives. This Agreement may be executed in counterparts.
17. This Confidentiality Agreement is hereby included into and made a part of the original solicitation document the same as if specifically written therein.
18. Contact information for access to retrieve confidential data documents associated to solicitation.

**First Name:** \_\_\_\_\_

**Last Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**E-mail address:** \_\_\_\_\_

IN WITNESS WHEREOF, the parties have signed and sealed this Agreement as of the day first written above.

ENTITY

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_, 2022.

APPROVAL OF CITY SCHOOLS  
DIRECTOR OF PROCUREMENT

\_\_\_\_\_  
Office of Legal Counsel

\_\_\_\_\_  
Christopher Doherty, Interim Director