

ATTACHMENT I
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.

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) 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-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, 4th 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