

**City of Cambridge
File No. 11054**

Preschool Enrollment Application System for the City of Cambridge

Sealed proposals will be received at the Office of the Purchasing Agent, City Hall, 795 Massachusetts Avenue, Cambridge Massachusetts 02139 prior to **11:00 a.m. on Thursday, July 13, 2023** for providing the following services to the City of Cambridge:

The City of Cambridge is seeking a vendor to provide a **Preschool Enrollment Application System for the City of Cambridge**. The duration of the resulting contract shall be one (1) year with two one-year options to renew at the City's sole discretion.

This RFP may be downloaded from the City's website: www.cambridgema.gov, online services, Purchasing Bid List, Regular RFP, **File No. 11054**. The City reserves the right to reject, in part or in whole, any or all proposals, waive any minor informalities in the proposal process, and accept the proposal deemed to be in the best interest of the City.

There must be no mention of the applicant's fee in the technical, non-price proposal. Any mention of the fee in the technical, non-price proposal will subject the proposal to rejection.

Questions from proposers concerning the Request for Proposals must be submitted in writing by **11:00 a.m. on Thursday, July 6, 2023**, to Elizabeth Unger, by email at: Purchasing@cambridgema.gov. Answers to substantive questions posed by proposers will be posted in the form of addenda. Proposers are responsible for checking the City's website regularly for addenda. The City shall not notify proposers individually of addenda.

Proposers must be willing to sign the City's IT Articles of Agreement (contract) and Data Privacy Agreement (DPA) which is attached to this RFP. Do not submit a proposal if your firm is not willing to execute the City's Articles of Agreement (contract).

Two (2) separate sealed envelopes, one (1) sealed envelope containing an original copy of the non-price technical proposal marked "Request for Proposal – File No. 11054 Preschool Enrollment Application System for the City of Cambridge - Non-Price Proposal" and one **(1) sealed envelope containing the price proposal** marked "Price Proposal File No. 11054 - Preschool Enrollment Application System for the City of Cambridge" must be received by Elizabeth Unger, Purchasing Agent, City of Cambridge Purchasing Department, 795 Massachusetts Avenue, Cambridge, Massachusetts 02139 prior to **11:00 a.m. on Thursday, July 13, 2023**. Proposals being hand delivered or sent via courier (other than USPS) may be delivered in person to 5 Bigelow Street, Cambridge, MA during normal business hours. It is the responsibility of the Bidder to ensure delivery of bid submission prior to deadline to the Purchasing Department. Any proposals received after such time will not be accepted, unless the date and time has been changed by addendum. Delivery to any other office or department does not constitute compliance with this paragraph, unless the proposals are received by the Purchasing Agent by the established deadline.

Confidentiality and Public Records Law

All proposals or other materials submitted by the vendor in response to this Request for Proposal will be open for inspection by any person in accordance with the Massachusetts Public Records Law.

Elizabeth Unger
Purchasing Agent

This request for proposal process and the award of the contract are made in conformity with M.G.L. c. 30B, section 6, unless otherwise stated. See below for General Terms and Conditions that shall become part of any Contract awarded through this Request for Proposal.

Terms and Conditions

The terms and conditions of any contract awarded through this procurement are attached hereto and shall be affirmed by the City and selected proposer.

1. The proposer's bid will remain in effect for a period of 120 days from the deadline for submission of proposals or until it is formally withdrawn, a contract executed, or this RFP is canceled, whichever occurs first.
2. The Purchasing Agent shall cancel the contract if funds are not appropriated and available to support continuation of performance in any fiscal year.
3. A sample contract is attached hereto. The bidder **must** be willing to sign the City's contract. The City will not accept a bidder's terms & conditions. Do not submit a proposal unless willing to execute the attached contract.
4. Rule for Award: The City will award a contract to the proposer submitting the most advantageous proposal taking into consideration the proposal's Quality Requirements, Evaluation Criteria and composite ratings, references, and price.
5. Rates must remain firm or be reduced throughout the life of the contract. A Contract will be awarded within 120 days unless award date is extended by consent of all parties concerned.
6. The City of Cambridge Living Wage Ordinance is applicable. The current living wage rate is \$18.41 per hour (the ordinance is attached).
7. The contract period shall commence on the date of execution of the contract by the City of Cambridge or soon thereafter. The City reserves the right, in its discretion, to extend the life of the contract at any time.
8. Payment for services will be based on the following key projects milestones.
 - 1) 25% of implementation fees upon successful setup and demonstration of application process as determined by selected vendor and the City
 - 2) 25% of implementation fees upon successful setup and demonstration of matching process as determined by selected vendor and the City
 - 3) 100% of annual License & maintenance fee upon application process being available for public as determined by selected vendor and the City
 - 4) 50% of implementation fees upon successful run of matching process as determined by selected vendor and the City

TO: Elizabeth Unger, Purchasing Agent PH: (617)349-4310 FX: (617)349-4008
795 Massachusetts Avenue
Cambridge, MA 02139

The undersigned certifies that this proposal is made without collusion with any other person, firm or corporation making any other proposal or who otherwise would make a proposal. The undersigned agrees to furnish the commodity or services in strict accordance with the proposal documents, which consist of this Request for Proposal and all attachments hereto. **The submitted proposal must be without conditions, exceptions or modifications to the proposal document.**

The proposal and all documents submitted with it are public records. This request for proposal process and the award of the contract are made in conformity with M.G.L. c. 30B, unless otherwise stated. See other side of this form for General Terms and Conditions that shall become part of any Contract awarded through this Request for Proposal.

This bid includes addenda numbered: _____

SIGNATURE OF PROPOSER: _____

TITLE OF SIGNATORY: _____

ADDRESS OF PROPOSER: _____

TELEPHONE NUMBER: _____ **FAX NUMBER:** _____

EMAIL ADDRESS: _____

Please check one of the following and insert the requested information:

() Corporation, incorporated in the State of: _____

() Partnership. Names of partners: _____

() Individual: _____

LAWS:	GENERAL TERMS AND CONDITIONS All deliveries shall conform in every respect with all applicable laws of the Federal government, Commonwealth of Massachusetts and City of Cambridge.
EQUAL OPPORTUNITY:	The Vendor in the performance of the contract shall not discriminate on the grounds of race, color, religious creed, national origin or ancestry, age, disability, sexual orientation, marital status, family status, military status, source of income, or sex in employment practices or in the selection or retention of subcontractors, and in the procurement of materials or rental of equipment. The City may cancel, terminate or suspend the contract in whole or in part for any violation of this paragraph
TAXES:	Purchases made by the City are exempt from the payment of Federal excise tax and the payment of Commonwealth of Massachusetts sales tax (except for gasoline) and any such taxes must not be included in the bid prices.
QUANTITIES:	Unless otherwise stated, the quantities set forth herein are ESTIMATES ONLY. The City reserves the right to purchase the commodity(ies) specified in any amount less than the estimated amount.
BID PRICES:	Bid prices shall include transportation and delivery charges fully prepaid to the City of Cambridge destination. Where the unit price and the total price are at variance, the unit price will prevail.
PAYMENT SCHEDULE:	Payment shall be in accordance with milestones specified in the scope of work. The City shall not prepay for goods or services.
DELIVERY AND PACKAGING:	Deliveries must be made in such quantities as called for in the purchase order and in the manufacturer's original packages. All deliveries must be "inside" delivery with no assistance from City personnel. Tailgate deliveries will not be accepted. Rejected material will be returned to the vendor at the vendor's expense.
MODIFICATION OF BIDS:	Prior to bid opening, a bidder may correct, modify or withdraw its bid by making the request in writing prior to the time and date for the bid opening. All corrections and modifications must be delivered to the Purchasing Department in a sealed envelope indicating that it contains a modification or correction of the original bid submitted for the particular commodity and indicating the time and date of the bid opening.
REJECTION OF BIDS:	The City reserves the right to reject any and all bids if it is in best interest of the City to do so.
AWARD OF CONTRACT:	Contract(s) will be awarded within forty-five days of the bid opening unless award date is extended by consent of all parties concerned. The continuation of any contract into the next fiscal year shall be subject to the appropriation and availability of funds.
INDEMNITY:	Unless otherwise provided by law, the Vendor will indemnify and hold harmless the City against any and all liability, loss, damages, costs or expenses for personal injury or damage to real or tangible personal property which the City may sustain, incur or be required to pay, arising out of or in connection with the performance of the Contract by reason of any negligent action/inaction or willful misconduct by the Contractor, its agents, servants or employees
TERMINATION OF CONTRACT:	Except as otherwise provided in the Articles of Agreement, the City may terminate the contract upon seven days' notice.
ASSIGNABILITY:	The Vendor shall not assign, sell, subcontract or otherwise transfer any interest in this contract without the prior written consent of the City.
MATERIAL SAFETY DATA SHEETS:	Pursuant to M.G.L. c. 111F, ss. 8, 9, and 10, any vendor who receives a contract resulting from this invitation agrees to submit a Material Safety Data Sheet for each toxic or hazardous substance or mixture containing such substance when deliveries are made. The vendor agrees to comply with all requirements set forth in the pertinent laws above.

Contractor's Insurance Obligations

Contractor must provide the City of Cambridge with insurance policies as stated below at the expense of the Contractor. The Insurance Certificate must be written in the name of the City as an Additional Named Insured in order to protect the interest of the City from any liability which might be incurred against it as the result of any operation of the Contractor, its subcontractors or their employees.

The insurance required shall include all major divisions of coverage and shall be on a comprehensive general basis including Premises and Operations (including X-C-U), Owner's and Contractor's Protective, Products and Completed Operations, and Owned, Non-owned, and Hired Motor Vehicles. Such insurance shall be written for not less than any limits of liability required by law or the following limits, whichever are greater.

Certificates must be presented to the City at the time the contract is signed by the contractor. The Contractor and all subcontractors waive subrogation rights against the City of Cambridge for all losses.

EACH POLICY SHALL CONTAIN A 30-DAY NOTICE OF CANCELLATION, CHANGE OR NON-RENEWAL.

NOTICE OF OCCURRENCE is to be given to the City Manager, City of Cambridge, City Hall, 795 Mass. Ave., Cambridge, MA 02139. Carriers must have an A.M. Best rating of A X or better.

- A. Owner's Protective Liability:

Each Occurrence	\$1,000,000
Aggregate	\$1,000,000

- B. Commercial Liability:

General Aggregate	\$2,000,000
Products Completed Operations Aggregate	\$1,000,000
Personal Injury and Advertising Limit	\$1,000,000
Each Occurrence	\$1,000,000

- C. Automotive-For all owned, non-owned, hired and leased vehicles:

Each Occurrence Combined Single Limit of	\$1,000,000
Bodily injury - each person	\$1,000,000
- each accident	\$1,000,000
Property damage-each occurrence	\$1,000,000

- D. Umbrella:

Combined single limit	\$2,000,000
General aggregate	\$2,000,000

- E. WORKER'S COMPENSATION

Coverage A STATUTORY	
Coverage B Each Accident	\$1,000,000
Disease-Policy Limit	\$1,000,000
Disease-Each Employee	\$1,000,000

THE CONTRACTOR MAY PURCHASE AND MAINTAIN EXCESS LIABILITY INSURANCE IN THE UMBRELLA FORM IN ORDER TO SATISFY THE LIMITS OF LIABILITY REQUIRED FOR THE INSURANCE TO BE PURCHASED AND MAINTAINED IN ACCORDANCE WITH THE REQUIREMENTS SET FORTH ABOVE (IN ADDITION TO THE UMBRELLA LIMITS REQUIRED). EVIDENCE OF SUCH EXCESS LIABILITY SHALL BE DELIVERED TO OWNER IN THE FORM OF A CERTIFICATE INDICATING THE POLICY NUMBERS AND LIMITS OF LIABILITY OF ALL UNDERLYING INSURANCE.

THE CITY OF CAMBRIDGE MUST BE AN ADDITIONAL NAMED INSURED ON ANY SUCH UMBRELLA POLICY. THE CITY RESERVES THE RIGHT, AT ITS SOLE DISCRETION, TO AMEND THE INSURANCE REQUIREMENTS SET FORTH ABOVE.

INSTRUCTIONS TO PROPOSERS

1. **Two (2) separate sealed envelopes, one (1) sealed envelope containing an original copy of the non-price technical proposal marked “Request for Proposal – File No. 11054- Preschool Enrollment Application System for the City of Cambridge - Non-Price Proposal” and one (1) envelope containing the price proposal marked “Price Proposal File No. 11054-Preschool Enrollment Application System for the City of Cambridge”** must be received by the Purchasing Agent, City of Cambridge, City Hall prior to **11:00 a.m. on Thursday, July 13, 2023**. Chapter 30B requires that price proposals must be separate from technical proposals. Therefore, please make no reference to price in the non-price technical proposal. Failure to adhere to this requirement will result in disqualification. It is the sole responsibility of the proposer to ensure that the proposal arrives on time at the designated place. It is strongly recommended that proposals are mailed or dropped off to the locked drop box at the Rear Entrance of City Hall or directly to the Purchasing Department in advance of the due date and time. Late proposals will not be accepted. Bids being hand delivered or sent via courier (other than USPS) may be delivered in person to 5 Bigelow Street, Cambridge, MA during normal business hours. It is the responsibility of the Bidder to ensure delivery of bid submission prior to deadline to the Purchasing Department.

2. The signature of the authorized official(s) must be provided on all the proposal forms. All proposals should be double-sided in conformance with the City's recycling policy.

3. The proposal should be organized and presented as directed. Accuracy and completeness are essential. The successful proposal will be incorporated into a contract; therefore, proposers should not make claims that they are not prepared to commit themselves to contractually.

4. The Price Proposal Form must be completed as instructed. No substitute form will be accepted. Pricing must remain firm. The bid submitted must be without conditions or exceptions.

5. Failure to answer any questions, to complete any form or to provide the documentation required will be deemed non-responsive and result in automatic rejection of the proposal unless the City determines that such failure constitutes a minor informality, as defined in Chapter 30B.

6. All interpretations of the RFP and supplemental instructions will be in the form of written addenda to the RFP specifications. Requests for clarification or any questions about information contained in the RFP should be addressed in writing to:

**Elizabeth Unger, Purchasing Agent
795 Massachusetts Avenue
Cambridge, MA 02139**

or emailed to: Purchasing@cambridgema.gov. No requests or questions will be accepted after **11:00 a.m. on Thursday, July 6, 2023**. An addendum will be issued and posted to the Purchasing website notifying all bidders of the questions and answers.

7. Proposals must be unconditional. However, prior to the proposal opening proposers may correct, modify, or withdraw proposals by written request to Elizabeth Unger, Purchasing Agent, City of Cambridge, Room 303, City Hall, 795 Massachusetts Avenue, Cambridge, MA 02139. A letter will be sufficient for withdrawal of a proposal up the date of the proposal opening. Any correction or modification to a proposal must be submitted in writing and in a sealed envelope labeled **“File No. 11054 - Preschool Enrollment Application System for the City of Cambridge - Correction or Withdrawal”**

EVALUATIONS OF THE PROPOSALS

All non-price proposals will be reviewed by the Evaluation Committee in accordance with M.G.L. Chapter 30B. Final selection will be based on evaluation and analysis of the information and materials required under the RFP, including information obtained by direct contact with references. The Evaluation Committee will be composed of staff from the City.

The City reserves the right to use itself as a reference and contact references other than those submitted by the proposer.

Proposals that meet the Quality Requirements will be reviewed for responses to the Comparative Evaluation Criteria. Each member of the Selection Committee will assign a rating of Highly Advantageous, Advantageous, Not Advantageous to each comparative evaluation criterion. Based on these evaluation criteria ratings, a composite rating by the evaluation committee will be determined for each proposal.

After the evaluation of the non-price proposals is complete, the price proposals will be opened by the Purchasing Agent who shall determine the most advantageous proposal. The City will award the contract to only one responsive and responsible proposer submitting the most advantageous proposal taking into consideration the proposals' quality requirements, evaluation criteria and composite ratings, references and price. Before awarding the contract, the City may request additional information from the proposer. The City reserves the right to reject any and all proposals, in whole or in part, if it determines that rejection serves the best interest of the City.

PROPOSAL SPECIFICATION AND PREPARATION

All information in the proposal should be organized and presented as directed below. Accuracy and completeness are essential. The successful proposal will be incorporated into a contract. The proposal should provide a straightforward and concise description of the proposer's commitment and ability to perform the services described in this document. To expedite the evaluation of proposals, it is essential that the proposer strictly adhere to the instructions in this part. A proposal may be deemed to be non-responsive, at the Purchasing Agent's discretion, if the proposer fails to comply with the following instructions.

SUMMARY

The introductory portion of the proposal must include a letter of Transmittal signed by the individual authorized to bind the proposer contractually. The letter must include: the name of the individual(s) who is/are authorized to negotiate and sign a contract on the proposer's behalf; the name, title, address and telephone number of the individual(s) who can supply additional information and a brief description of the overall services proposed. The signature of the authorized official (s) must be provided on all the proposal forms. All proposals should be double sided in conformance with the City's recycling policy. Failure to answer any question, to complete any form, or to provide the documentation required will be deemed non-responsive and result in automatic rejection of the bid unless the City determines that such failure constitutes a minor informality, as defined in Chapter 30B.

QUALITY REQUIREMENTS

A “no” response, any change or alternation to, or a failure to respond to any of the quality requirements will result in a rejection of your bid. **Proposers must use the form provided in this document.**

RESPONSES TO COMPARATIVE EVALUATION CRITERIA

This portion of the proposal is intended to present a description of the proposer’s qualifications. The proposer should respond briefly to each item listed in the Comparative Evaluation Criteria and include all requested documentation. When preparing this portion of the proposal, the proposer should clearly identify and respond to each comparative evaluation criteria.

PRICE PROPOSAL FORM

The Price Proposal Form must be completed as instructed. No substitute form will be accepted. Pricing must remain firm throughout the contract. **The Price Proposal Forms must be submitted in a separate, sealed envelope to the Purchasing Department.** The proposer must make no reference to pricing in any other part of the proposal. Failure to adhere to this may result in disqualification of the proposal.

Anti-collision and Tax Compliance Certification

A signed copy of the form must be submitted with RFP

Cori Compliance Form

A signed copy of the form must be submitted with RFP

Wage Theft Form

A signed copy of the form must be submitted with RFP

Written Information Security Policy (Wisp) Affirmation

A signed copy of the form must be submitted with RFP

SCOPE OF SERVICES

Cambridge Preschool Program Application System (CPPAS)

Overview

The purpose of this document is to solicit proposals to provide a Cambridge Preschool Program Application System, that will accept applications from families for the Cambridge Preschool Program (CPP) and match all eligible children with an appropriate preschool provider based on a unique algorithm designed by the Cambridge Preschool Program.

Background

The City of Cambridge, in partnership with Cambridge Public Schools, will launch Cambridge Preschool (UPK) in the fall of 2024. Over the last year, members of our teams have been busy designing and developing the initiative, which will be known as the Cambridge Preschool Program (CPP). We want to take this opportunity to share some details of this work.

CPP is a publicly-funded program that will provide free preschool to the families of all 4-year-olds and some 3-year-olds across Cambridge who apply to school-day, school-year preschool placements (*there will be additional costs for children who enroll in programs with extended day and summer hours*).

The Cambridge Office of Early Childhood (OEC) will oversee CPP, which will replace CPS's current Junior Kindergarten/Kindergarten Lottery and the Department of Human Service Programs' Preschool Lottery, HeadStart with additional preschool seats in select private preschools throughout the City of Cambridge. CPP is a mixed delivery system (combination of public and private providers).

Key components of the system

1. White label system that can be branded as City of Cambridge/CPP
2. Family interface with the CPP Application is user friendly and intuitive.
3. Preschool Provider information is detailed and presented in a visually appealing format for parents; including photos and short video tours of preschool programs.
4. Prioritization and Matching Algorithm: Vendor must provide a custom algorithm to CPP specifications that runs in multiple tiers (priorities) and pauses after each tier, allowing for administrative adjustments before running the next tier.
5. The system is structured to minimize barriers to application by having, for example, easy to navigate family interface, high quality translations of the application and follow-up communications, mobile friendly interface with ability to take pictures of documents for upload, ability for staff to enter applications for parents from a paper form or alongside them, and ability to complete an application without key information that so a CPP staff can contact the parent.

Detailed components of the system

FAMILY INTERFACE

6. High quality, easy to navigate family interface.
7. Accessible via tablet, smart phone, computer; ie most electronic devices.
8. The Application and family communications (automated messages and follow-up communication templates) will be translated into a number of frequently spoken languages by human translators. The system will accommodate an unlimited number of human translations.
9. Preschool programs are
 - a. Presented in both map and list formats
 - b. Map and list formats are available **both** external and internal to the CPP application.
 - i. External tool for families to explore the available preschool options
 - ii. Internal tool provides equal information and functionality in case a family does not use the external search tool before beginning their application.
10. Presentation of preschool provider program is highly configurable and includes information important to parents such as, but not limited to:
 - a. Location, hours, school or year round care
 - b. School day or extended hours
 - c. 3 and/or 4 year old eligible
 - d. Any family/child qualifications such as low income or employment/university affiliation
 - e. visual content including photos and embedded video virtual tours that parents can click on within the application (as opposed to providing a link to external website)
11. List and map formats of can be filtered on, at least, the following criteria:
 - a. CPS or community programs
 - b. School day or extended day
 - c. School year or full year
 - d. Proximity to home, work or a sibling's daycare/school
12. Interface is user friendly and applicants can easily transition from exploring preschool options to completing the application.
13. Parent can sign the application by typing or drawing their signature

CPP APPLICATION

14. Forms can be completed on-line by parent/caregiver.

15. Application is per family and makes it easy to complete an application for multiple children without re-entering family level information (such as parent names, addresses, income, etc).
16. Application includes required information (parent address, contact info., child's data of birth, etc.) and optional information (demographics, income information) including branching questions as needed.
17. Upload required documents (birth certificate, proof of residency, immunization and health records, etc)
 - a. Mobile optimized allows parent to take a picture of documents for upload
18. While completing the application parents select from preschool programs that are presented in both map and list formats and can be filtered on, at least, the following criteria (also listed in #11):
 - a. CPS or community programs
 - b. School day or extended day
 - c. School year or full year
 - d. Proximity to home, work or a sibling's daycare/school
19. Parents can choose up to 6 preschool options but **do not** rank their choices. The system can not allow for ranking of choices or it can be turned off so that parents do not see that option.
20. Application window is a defined period of time, but remains open on a rolling basis. A child can be assigned to a specific provider directly without going through the matching process.

PRIORITIZATION AND MATCHING

21. Each Preschool program must be identified with numbers of available seats with characteristics such as:
 - CPS or community,
 - School day or extended day,
 - age (3, 4 or either)
 - income level (low, not low or either),
 - School year or full year, and/or
 - other
22. Matching program runs in 4 tiers in order by groups based on income and age of child:
 - Group 1 - low income 4 year olds;
 - Group 2 - not low income 4 year olds;
 - Group 3 - low income 3 year olds;
 - Group 4 - not low income 3 year olds
23. Able to make any number of trial runs of the matching process before a final execution.

24. The program will run the match for one tier/group and pause the matching program allowing the CPP Administration to look at results and make changes and adjustments to placements.
25. As children come up for matching check for key matching criteria
 - a. Current preschool program that child is enrolled in
 - b. School that sibling attends (preschool or CPS)
 - c. Preference for CPS or community programs
26. CPP staff must have the ability to make changes after matches are run/made before any placements are offered to families.

CPPAS ADMINISTRATION

27. CPP staff or appointed individuals can create an application for a family as a proxy for family (from paper form or in person with parent).
28. Ability to make changes to an application - especially to unselect a provider selection that the child might not be eligible for before the prioritization and matching process commences.
29. Ability to lock (and unlock) applications preventing changes after the end of the application window.
30. Dashboard with statistics and visualizations of key metrics (such as applications received, approved, matched with a preschool provider, etc.), standard reports (families served by demographic category, resident address, preschool provider matches accepted, etc) and customized reports are readily available or easily created.
31. Additional detailed reports can be created for a number of administrative needs.
32. Communication tools to communicate with parents
 - a. Automated messages when application is completed/submitted
 - b. reminders to parents to complete or provide documents
 - c. Alerts/notices that can go out to all or a selected group of parents
 - d. Individual messages to specific parents
33. Administration team members may have differing permissions based on role and duties. Provide specifics about the permission structure and flexibility in assigning permissions.
34. Reports:
 - a. Standard reports are set up by vendor
 - b. CPP team has ability to create their own reports
 - c. Select reports can be scheduled and sent automatically

35. The system flags applications for missing information and/or meet certain criteria (such as missing documents or child is low income or has an IEP) that can be sorted on to create lists and reports for CPP staff to follow-up with families.
36. CPP staff can make changes to an application when necessary; especially to decline a preschool provider selection if it is not valid for the child's/family's situation.
37. Able to add notes to an application that a) a parent can see or b) can be kept internal (no parent visibility).
38. CPP can build in Admin only steps in the application process that are not visible to families or users of the CPPAS.

ENROLLMENT

39. Families can complete the enrollment process with the preschool provider after they have accepted the offered seat. They can complete additional, provider-specific forms and communicate directly with the preschool provider.

PRESCHOOL PROVIDER INTERFACE

40. Some Providers are able to communicate with the parents of their enrolled students through the system and have parents fill out additional forms in the system, if given permission.
41. All Providers are able to securely access a list of enrolled students and all associated data and documents.
42. Providers can view and update select fields in their profile, if given permission.
43. Providers can upload virtual tour videos, if given permission.
44. Permissions and access can vary for different providers.

SYSTEM REQUIREMENTS

45. ADA Compliant is mandatory, specifically Web Content Accessibility Guidelines (WCAG) 2.1.
46. Mobile optimized parent facing Interfaces
47. Build system interfaces with key preschool providers to transfer all information about families and children that have accepted a seat in their programs.
 - a. Aspen - Cambridge Public Schools (CPS) Student Information System
 - b. Trax - Department of Human Services Program (DHSP) PreK enrollment system
 - c. System for HeadStart, if possible

48. Secure data transfer for each provider of accepted student information
49. Ability to access system 24/7 with 99.99% availability
50. cloud hosted
51. Ability to secure database, only allow administrative users with appropriate credentials to access given information
52. Log of all activity on the system for tracking of family, administrative and/or provider changes. All user activity must be logged and retained indefinitely.
53. All user interfaces, including notices and communications to families, are customizable with CPP branding, having a highly similar look and feel to the user.
54. High quality, responsive support.
 - A. Highly responsive implementation team
 - B. Highly responsive help desk
 - C. Training for CPP staff and preschool providers, as needed.
 - D. Rapid implementation to minimize effort of CPP staff and open the application window in a timely manner

INSTRUCTIONS FOR COMPLETION OF THE TECHNICAL (NON-PRICE) PROPOSAL

The City requires the following information in order to evaluate proposers' abilities to provide the CPPAS and perform all related services. To assist the City in gaining the most thorough understanding of this information, proposers should include flowcharts, sample of reports, screenshots of online displays, data tables and other graphics related to the item under discussion for as many items as possible. If information is responsive to more than one (1) of the items listed below, proposers should include the information in one (1) section and reference that information by location in other section(s).

The technical proposal must include the following:

- A. Response to the scope of services.
- B. List of three (3) full-service clients that are most comparable to Cambridge (as described below)
- C. Organizational plan and employee background information for all staff who will be contributing to the operation of the Proposer's system and will be providing related support services.
- D. System implementation plan

Vendors should avoid including generic marketing and promotional materials and focus their proposals on responding to the specific items listed in these instructions.

Detailed instructions for the completion of each of these sections follow:

A. Response to the scope of services

Proposers shall provide a comprehensive and clear written description of each system element, feature, service, etc. required by the scope of services that it proposes to provide to the City. These descriptions shall reference the section title and number of the RFP item being responded to. The written description shall include the scope and particular features and benefits of the proposer's provision of these elements, features, services, etc., and detailed descriptions of functionality as defined in the scope of services. These descriptions shall demonstrate the proposer's understanding of the CPP's requirements and the proposer's ability to provide and effectively operate the services and systems required by the City.

Also required is a description of the proposer's experience providing support for mixed delivery systems (combination of public and private providers) of early childhood care, including preschool, and at least one Universal Preschool Program with a mixed delivery system.

B. Information about the proposer's provision of CPPAS services to three (3) full-service clients that are most comparable to Cambridge.

List three (3) client systems that are most comparable to the systems requirements stated in the City's scope of services and most comparable in terms of family applications/interface, prioritization and matching of children to preschool providers, mixed preschool provider delivery system, and complexity of program administration. Proposers should include project(s) in Massachusetts, if possible. Provide a brief narrative that explains why the City should consider this reference a relevant experience and why it is comparable to City of Cambridge's CPP's requirements.

References will be asked about their experience with the vendor including in the following areas:

- Provision of what is comparable in size, complexity, and features to Cambridge

- Mixed preschool provider delivery system
- Responsiveness and tracking of customer service requests
- Quality of staff
- Knowledge and experience with Application and matching systems
- General assessment of quality and effectiveness of the vendor's services

If the information provided by references fails to adequately and substantively demonstrate the vendor's ability to provide the level of performance required by this RFP, this may be grounds for rejection of the vendor's proposal.

Also, provide the following information for each of these Three (3) clients:

- Client Organization Name and Address:
- Duration of Contract:
- Dates of Operation:
- Website:
- Contact Person Name, Title, Phone Number and Email Address:
- System services provided: Application, Lottery/Matching, Enrollment, other
- Size of population served

C. Organizational Plan and employee background information for all staff who will be contributing to the operation of the proposer's system and will be providing related support services.

For all employees who are proposed to support the CPPAS, please provide their names and titles, information about their roles and responsibilities and qualifications including work experience both with the proposer's company and other companies with similar systems and the location at which they work. The purpose of this information is to identify proposer employee backgrounds as they relate to CPPAS experience. Resumes of key personnel should be provided (and other if the proposer desires).

D. Implementation Plan.

A detailed timeline showing deliverables to meet the scope of services included the RFP. The implementation plan should align with the a "Go Live" date 90 days after contract execution by both parties. Please include all stages of development and implementation through full implementation and the first round of applications and matching process.

QUALITY REQUIREMENTS

In order for a proposal to receive further consideration, the proposer must unconditionally circle “Yes” to each of the Quality Requirements below. The City shall reject in its entirety the proposal of any proposer who fails to check “Yes” or who modifies, qualifies or limits its affirmative response in any way.

Vendor experience & Quality Requirements

- 1. The proposer has experience with supporting preschool program application, prioritization and matching of children to available seats in preschool providers.

Yes No

- 2. Proposer must be in business under current name for a minimum of three years; or if the business was acquired by another firm, was in business under the previous name for at least three years.

Yes No

- 3. Proposer has experience creating and executing a prioritization and matching algorithm (sometimes referred to as lottery).

Yes No

- 4. Proposer is able to begin set-up and implementation of the system upon successful contractual agreement and ensure sufficient resources are allocated to this project in order to support a “Go Live” date 90 days after contract execution by both parties.

Yes No

- 5. The proposer has and shall provide implementation and service support for, at least, the hours of 9:00 AM to 5:00 PM EST Monday through Friday, during normal City operating hours. .

Yes No

- 6. Executed or ability to execute a City/CPP Data Privacy Agreement. (see attached CPP-DPA file)

Yes No

This page must be submitted with the technical, non-price proposal.

REFERENCE SUBMISSION REQUIREMENTS

1. Proposer shall provide references from three clients for whom they have provided similar services within the past three (3) years. Proposer shall include entity name, contact name, address and telephone number of each reference. Failure of a reference to follow up with the City on any inquiry will result in the disqualification of that reference. The City reserves the right to use itself as a reference, to contact references other than those provided by the proposer and to otherwise perform its own due diligence in determining the responsibility of the proposer.

Reference: _____

Contact: _____

Address _____

Phone _____ EMAIL _____

Reference: _____

Contact: _____

Address _____

Phone _____ EMAIL _____

Reference: _____

Contact: _____

Address _____

Phone _____ EMAIL _____

This page must be submitted with the technical, non-price proposal.

COMPARATIVE EVALUATION CRITERIA

Only proposals determined by the Purchasing Agent to meet all quality requirements and to be legally responsive, shall be evaluated according to the comparative evaluation criteria set forth in this section. An Evaluation Committee designated by the Purchasing Agent shall prepare written evaluations for each proposal. The Evaluation Committee shall assign a rating of “Highly Advantageous,” “Advantageous,” or “Not Advantageous” to each criterion.

Vendor Presentation

Proposers meeting the Quality Requirements will be asked to participate in a one-hour presentation with the Evaluation Team. The City of Cambridge expects the vendor team that will be assigned to this specific contract to be present and participate in the presentation. This includes the project manager and all other relevant staff.

The presentation will demonstrate/confirm that the vendor can perform the required scope of work.

The presentation will take place via Zoom, and a Zoom link will be sent to proposers.

A. LENGTH OF EXPERIENCE MEETING SIMILAR TECHNICAL AND OPERATIONAL REQUIREMENTS

Highly Advantageous: The Proposer has a minimum of five (5) years direct experience, which must include the past three (3) years, in implementing a system for preschool programs with at least one mixed delivery system (combination of public and private providers).

Advantageous: The proposer has a minimum of three (3) to four (4) years direct experience, which must include the past two (2) years, in implementing a system for preschool programs with at least one mixed delivery system (combination of public and private providers).

Not Advantageous: The proposer has less than three (3) years but at least one (1) year direct experience in implementing a system for preschool programs with no mixed delivery systems (combination of public and private providers).

Unacceptable: The proposer has less than one (1) year direct experience, in implementing a system for preschool programs.

B. COMPLIANCE WITH SCOPE OF SERVICES

1. Ability to comply with RFP requirements, deliver services and operate systems

Highly Advantageous: The proposal indicates that the proposed system meets or exceeds all requirements specified in the Scope of Services without modification and the proposal is fully complete in complying with the format required by the RFP.

Advantageous: The proposal indicates that the proposed system meets most of the requirements specified in the Scope of Services, but proposes compensatory elements, and explains fully how these will result in an equivalent (or greater) level of functionality and the proposal is fully complete in complying with the format required by the RFP.

Not Advantageous: The proposal indicates that the proposed system does not meet all requirements specified in the Scope of Services but explains fully how these omissions will not result in any significant loss of functionality and the proposal is fully complete in complying with the format required by the RFP.

Unacceptable: The proposal indicates that the proposed system does not meet all requirements specified in the Scope of Services and does not explain fully how these omissions will not result in any significant loss of functionality and/or the proposal is not fully complete in complying with the format required by the RFP.

2. Project Timeline

Highly Advantageous: The proposal indicates that the Vendor will be able to meet proposed deadline and explains both baseline and additional all resources that will be available without cost if necessary for ensuring that project timeframe does not slip.

Advantageous: The proposal indicates that the Vendor will be able to meet the proposed timeframe but only provides a baseline level of services and some additional resources that will be available without cost to ensure that the timeframe does not slip.

Not Advantageous: The proposal indicates that the Vendor has committed to meeting timeframe, but does not have additional resources to ensure that project timeframe does not slip.

Unacceptable: The proposal indicates that the Vendor will not meet desired timeframe.

C. CREATIVITY, FLEXIBILITY AND ADAPTABILITY OF APPROACH AND SYSTEM DESIGN

Highly Advantageous: Proposal reflects new and innovative approaches to delivering CAAPS that the proposer has demonstrated to have implemented elsewhere and that are responsive to the CPP's needs.

Advantageous: Proposal reflects new and innovative approaches to delivering CPPAS services that are responsive to the CPP's needs but which the proposer has not demonstrated to have implemented elsewhere.

Not Advantageous: Proposal reflects new and innovative approaches to delivering CPPAS services but which are not responsive to the CPP's needs and which the proposer has not demonstrated to have implemented elsewhere.

Unacceptable: Proposal reflects limited new and innovative approaches to delivering CPPAS services.

D. PRESENTATION EVALUATION CRITERIA

Highly Advantageous: Presentation demonstrates/confirms that the vendor can meet or exceed all system requirements, has experience with mixed delivery preschool implementations and reflects highly flexible and innovative approaches to delivering a CPPAS.

Advantageous: Presentation demonstrates/confirms that the vendor can meet all system requirements, has experience with preschool implementation and reflects innovative approaches to delivering a CPPAS.

Not Advantageous: Presentation demonstrates/confirms that the vendor can meet all system requirements and reflects solid approaches to delivering a CPPAS but lacks experience with Preschool implementations.

Unacceptable: Presentation demonstrates/confirms that the vendor can meet all system requirements but reflects a lack of flexible approaches to delivering a CPPAS and lack experience with Preschool implementations.

PRICE PROPOSAL

In a separate sealed envelope clearly marked "Price Proposals," firms or individuals must provide cost breakdowns per the below worksheet for the contract duration, including any options to renew: the fee must include all costs associated with the delivery of the services contemplated in this RFP. Any contract resulting from this RFP shall be for an initial period of One Year and have Two (2) One-year options to renew at the sole discretion of the awarding authority and subject to the availability of funds. The rates must remain firm for the duration of the contract, including any options to renew or extend in the sole discretion of the City.

Payment for services will be based on the following key projects milestones:

- 1) 25% of implementation fees upon successful setup and demonstration of application process as determined by selected vendor and the City
- 2) 25% of implementation fees upon successful setup and demonstration of matching process as determined by selected vendor and the City.
- 3) 100% of annual License & maintenance fee 25% of implementation fees upon application process being opening available for public as determined by selected vendor and the City
- 4) 50% of implementation fees upon successful run of matching process as determined by selected vendor and the City

YEAR ONE PRICE PROPOSAL

A) One Time Implementation and training cost: \$ _____

B) Year 1 Licensing cost: \$ _____

C) Year 1 Maintenance & Support Costs: \$ _____

Total Cost (A + B + C): \$ _____

Total cost in words

Signature of Proposer

Name and Title (Printed)

In the event of a discrepancy in the price listed in dollar value and the total price written in words the written word shall prevail.

YEAR TWO PRICE PROPOSAL (Option year to renew)

A) Year 2 Licensing cost: \$ _____

B) Year 2 Maintenance & Support Costs: \$ _____

Total Cost (A + B): \$ _____

Total cost in words

YEAR THREE PRICE PROPOSAL (Option year to renew)

A) Year 3 Licensing cost: \$ _____

B) Year 3 Maintenance & Support Costs: \$ _____

Total Cost (A + B): \$ _____

Total cost in words

Signature of Proposer

Name and Title (Printed)

In the event of a discrepancy in the price listed in dollar value and the total price written in words the written word shall prevail.

CORI COMPLIANCE FORM

Persons and businesses supplying goods and/or services to the City of Cambridge (“Vendors”), who are required by law to perform CORI checks, are further required by Section 2.112.060 of the Cambridge Municipal Code to employ fair policies, practices and standards relating to the screening and identification of persons with criminal backgrounds through the CORI system. Such Vendors, when entering into contracts with the City of Cambridge, must affirm that their policies, practices and standards regarding CORI information are consistent with the policies, practices and standards employed by the City of Cambridge as set forth in the City of Cambridge CORI Policy (“CORI Policy”) attached hereto.

CERTIFICATION

The undersigned certifies under penalties of perjury that the Vendor employs CORI related policies, practices and standards that are consistent with the provisions of the attached CORI Policy. **All Vendors must check one of the three lines below.**

- 1. _____ CORI checks are not performed on any Applicants.
- 2. _____ CORI checks are performed on some or all Applicants. The Vendor, by affixing a signature below, affirms under penalties of perjury that its CORI policies, practices and standards are consistent with the policies, practices and standards set forth in the attached CORI Policy.
- 3. _____ CORI checks are performed on some or all Applicants. The Vendor’s CORI policies, practices and standards are not consistent with the attached CORI Policy. Please explain on a separate sheet of paper.

(Typed or printed name of person signing quotation, bid or Proposal)

Signature

(Name of Business)

NOTE:

The City Manager, in his sole discretion may grant a waiver to any Vendor on a contract by contract basis.

Instructions for Completing CORI Compliance Form:

A Vendor should not check Line 1 unless it performs NO CORI checks on ANY applicant. A Vendor who checks Line 2 certifies that the Vendor’s CORI policy conforms to the policies, practices and standards set forth in the City’s CORI Policy. A Vendor with a CORI policy that does NOT conform to the City’s CORI Policy must check Line 3 and explain the reasons for its nonconformance in writing. Vendors, who check Line 3, will not be permitted to enter into contracts with the City, absent a waiver by the City Manager.

Submit this form with your Proposal.

**Americans with Disabilities Act (42 U.S.C. 12131)
Section 504 of the Rehabilitation Act of 1973
Tax Compliance/Anti-Collusion Statement
Debarment Statement**

The Americans with Disabilities Act (the "Act") applies to all employers of fifteen or more employees. All vendors that are subject to the Act must comply with its provisions. In further compliance with the Act, all Contractors who enter into contracts with the City are prohibited from discrimination against the City's employees, regardless of the size of the Contractor.

The Act protects against discrimination on the basis of "disability", which is defined as a physical or mental impairment that substantially limits at least one "major life activity"; discrimination against a person having a history or record of such impairment; and discrimination against an individual regarded - even if inaccurately - as having such an impairment. The Act also expressly prohibits discrimination that is based on an individual's relationship or association with a disabled person.

The Contractor shall not discriminate against any qualified employee or job applicant with a disability and will make the activities, programs and services covered by any contract awarded through this procurement readily accessible to and usable by individuals with disabilities. To be qualified for a job, or to avail oneself of the Contractor's services, the individual with the disability must meet the essential eligibility requirements for receipt of the Contractor's services or participation in the Contractor's programs or activities with or without: 1) reasonable modifications to the Contractor's rules, policies and practices; 2) removal of architectural, communication, or transportation barriers; or, 3) provisions of auxiliary aids and services.

By submitting its contract, the Contractor certifies to the City of Cambridge that it understands and will comply with all applicable provisions of the Act, including compliance with applicable provisions of Section 504 of the Rehabilitation Act of 1973, if the Contractor is receiving federal funds.

The undersigned certifies under penalties of perjury that this contract has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals

As required by M.G.L. c. 62C, §49A, the undersigned certifies under the penalties of perjury that the Contractor has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

The undersigned certifies that it is not currently subject to any State or Federal debarment order.

Date: _____

(Print Name of person signing bid)

(Signature & Title)

Submit this form with your Proposal.

WAGE THEFT PREVENTION CERTIFICATION

In Executive Order 2016-1, the City of Cambridge established requirements for City contracts in an effort to prevent wage theft. Prospective vendors must provide the following certifications or disclosures with their bids/proposals. Failure to provide the following shall result in rejection of the bid/proposal.

Instructions for this form:

A prospective vendor must check box 1 or box 2, as applicable, as well as boxes 3-5, and must sign this Form, certifying compliance with the requirements set out in this Form. This Form must be included with the bid or proposal, and for multi-year contracts must be completed annually on the contract anniversary and filed with the Purchasing Agent.

The undersigned certifies under the pains and penalties of perjury that the vendor is in compliance with the provisions of Executive Order 2016-1 as currently in effect.

All vendors must certify that [check either box 1 or box 2, as applicable]:

1. Neither this firm nor any prospective subcontractor has been subject to a federal or state criminal or civil judgment, administrative citation, final administrative determination, order or debarment resulting from a violation of G.L. c. 149, G.L. c. 151, or 29 U.S.C. 201 *et seq.* within three (3) years prior to the date of this bid/proposal submission.

OR

2. This firm, or a prospective subcontractor of this firm, has been subject to a federal or state criminal or civil judgment, administrative citation, final administrative determination, order or debarment resulting from a violation of G.L. c. 149, G.L. c. 151, or 29 U.S.C. 201 *et seq.* within three (3) years prior to the date of this bid/proposal submission and such documentation is included in the bid/proposal submission.

In addition, all vendors must certify each of the following:

3. Any federal or state criminal or civil judgment, administrative citation, final administrative determination, order or debarment resulting from a violation of G.L. c. 149, G.L. c. 151, or 29 U.S.C. 201 *et seq.* imposed on this firm or on any prospective subcontractor while any bid/proposal to the City is pending and, if awarded a contract, during the term of the contract, will be reported to the Purchasing Agent or other City department within five (5) days of receiving notice.

4. Vendors awarded a contract that have disclosed a federal or state criminal or civil judgment, administrative citation, final administrative determination, or order resulting from a violation of G.L. c. 149, G.L. c. 151, or 29 U.S.C. 201 *et seq.* within three (3) years prior to the date of this bid/proposal, while the bid/proposal was pending, or during the term of the contract shall, upon request, furnish their monthly certified payrolls for their City contract to the Purchasing Agent for all employees working on such contract and are required to obtain a wage bond or other suitable insurance in an amount equal to the aggregate of one year's gross wages for all employees. Vendors subject to a state or federal debarment for violation of the above laws or prohibited from contracting with the Commonwealth are prohibited from contracting with the City, and upon a finding or order of debarment or prohibition, the City may terminate the contract.

5. Notice provided by the City, informing employees of the protections of Executive Order 2016-1 and applicable local, state, and federal law will be posted by this firm in conspicuous places.

Attested hereto under the pains and penalties of perjury:

(Typed or printed name of person signing
quotation, bid or proposal)

Signature

(Name of Business)

Pursuant to Executive Order 2016-1, vendors who have been awarded a contract with the City of Cambridge must post the Massachusetts Wage and Hour Laws notice informing employees of the protections of G.L. c. 149, G.L. c. 151, and 21 U.S.C. 201 *et seq.* in conspicuous places. This notice can be found at <http://www.mass.gov/ago/docs/workplace/wage/wagehourposter.pdf>

This form must be submitted with your Proposal

CITY OF CAMBRIDGE
WRITTEN INFORMATION SECURITY POLICY (WISP) AFFIRMATION

I, _____ the undersigned, hereby confirm and acknowledge to the City of Cambridge that I am aware of and understand the City of Cambridge's Written Information Security Policy (WISP) as outlined in the link below; and shall comply with the requirements of the City of Cambridge's WISP policy to the extent the policy applies to this contract.

<https://www.cambridgema.gov/-/media/Files/informationtechnologydepartment/WISP.pdf>

Date: _____

Signature of bidder/Contractor

Printed Name of bidder/Contractor

Title

This form must be submitted with your Proposal

City of Cambridge CORI Policy

1. Where Criminal Offender Record Information (CORI) checks are part of a general background check for employment or volunteer work, the following practices and procedures will generally be followed.
2. CORI checks will only be conducted as authorized by the Department of Criminal Justice Information Services (DCJIS) and MGL c. 6, §172, and only after a CORI Acknowledgement Form has been completed. All applicants will be notified that a CORI check will be conducted. If requested, the applicant will be provided with a copy of the CORI policy.
3. An informed review of a criminal record requires adequate training. Accordingly, all personnel authorized to review CORI in the decision-making process will be thoroughly familiar with the educational materials made available by the DCJIS.
4. Prior to initiating a CORI check, the City will review the qualifications of the applicant to determine if the applicant is otherwise qualified for the relevant position. The City will not conduct a CORI check on an applicant that is not otherwise qualified for the relevant position.
5. Unless otherwise provided by law, a criminal record will not automatically disqualify an applicant. Rather, determination of suitability based on CORI checks will be made consistent with this policy and any applicable law or regulations.
6. If a criminal record is received from DCJIS, the authorized individual will closely compare the record provided by DCJIS with the information on the CORI request form and any other identifying information provided by the applicant, to ensure the record relates to the applicant.
7. If, in receiving a CORI report, the City receives information it is not authorized to receive (e.g. cases with dispositions such as not guilty or dismissal, in circumstances where the City is only authorized to receive convictions or case-pending information), the City will inform the applicant and provide the applicant with a copy of the report and a copy of DCJIS' *Information Concerning the Process for Correcting a Criminal Record* so that the applicant may pursue correction with the DCJIS.
8. If the City of Cambridge is planning to make an adverse decision based on the results of the CORI check, the applicant will be notified immediately. The applicant shall be provided with a copy of the criminal record and the City's CORI policy, advised of the part(s) of the record that make the individual unsuitable for the position and given an opportunity to dispute the accuracy and relevance of the CORI record.
9. Applicants challenging the accuracy of the criminal record shall be provided a copy of DCJIS *Information Concerning the Process for Correcting a Criminal Record*. If the CORI record provided does not exactly match the identification information provided by the applicant, the City of Cambridge will make a determination based on a comparison of the CORI record and documents provided by the applicant. The City of Cambridge may contact DCJIS and request a detailed search consistent with DCJIS policy.
10. If the City of Cambridge reasonably believes the record belongs to the applicant and is accurate, then the determination of suitability for the position will be made. Unless otherwise provided by law, factors considered in determining suitability may include, but not be limited to the following:
 - (a) Relevance of the crime to the position sought;
 - (b) The nature of the work to be performed;
 - (c) Time since the conviction;
 - (d) Age of the candidate at the time of offense;
 - (e) Seriousness and specific circumstances of the offense;

- (f) The number of offenses;
- (g) Whether the applicant has pending charges;
- (h) Any relevant evidence of rehabilitation or lack thereof;
- (i) Any other relevant information, including information submitted by the candidate or requested by the City.

11. The Personnel Department will assist affected departments, in assessing the suitability of candidates in accordance with paragraph 10 a through i above, to ensure consistency, fairness, and protection of employment opportunities and the public interest.
12. The City of Cambridge will notify the applicant of the decision and the basis of the decision in a timely manner.
13. CORI information shall not be disseminated or shared with any unauthorized employees or other, but shall be maintained in confidence consistent with the obligations of law.

ORDINANCE NUMBER 1376

Final Publication Number 3390. First Publication in the Chronicle on November 5, 2015.

City of Cambridge

In the Year Two Thousand and Fifteen

AN ORDINANCE

In amendment to the Ordinance entitled "Municipal Code of the City of Cambridge"

Be it ordained by the City Council of the City of Cambridge that the Municipal Code of the City of Cambridge be amended as follows:

Chapter 2.121

LIVING WAGE ORDINANCE Sections:

- 2.121.010 Title and Purpose**
- 2.121.020 Definitions**
- 2.121.030 Living Wage**
- 2.121.040 Standard Compensation**
- 2.121.050 Waivers and Exceptions**
- 2.121.060 Notification Requirements**
- 2.121.070 Duties of covered Employers**
- 2.121.080 Community Advisory Board**
- 2.121.090 Enforcement**
- 2.121.100 Severability**
- 2.121.110 Effective Date**

2.121.010 Title and Purpose.

This Chapter shall be known as the "Cambridge Living Wage Ordinance". The purpose of this ordinance is to assure that employees of the City of Cambridge and employees of City contractors, subcontractors and beneficiaries of tax abatements, loans, grants, subsidies and other assistance provided by the City earn an hourly wage that is needed to support a family of four.

2.121.020 Definitions.

For the purposes of this ordinance, the term:

(a) "Applicable Department" means the Personnel Department for employees of the City of Cambridge, the Purchasing Department, with the advice and assistance of the appropriate department which receives the services, for Covered Employers who contract or subcontract with the City of Cambridge, the School Department for employees, contractors and subcontractors of the School Department, and the City Manager's Office for any other Person who is a Beneficiary of assistance other than a contract or subcontract.

(b) "Assistance" means:

- (1) any grant, loan, tax incentive, bond financing, subsidy, or other form of assistance valued at least \$10,000 that an employer receives by or through the authority or approval of the City of Cambridge, including, but not limited to, c. 121A tax abatements, industrial development bonds, Community Development Block Grant (CDBG) loans and grants, Enterprise Zone designations awarded after the effective date of this Chapter, and the lease of City owned land or buildings below market value; and
- (2) any service contract, as defined herein, of at least \$10,000 with the City of Cambridge that is made with an employer to provide services pursuant to G.L.C. 30B or other public procurement laws, awarded, renegotiated or renewed after the effective date of this Chapter.
- (3) any service subcontract, as defined herein, of at least \$10,000.

(c) "Beneficiary" means:

- (1) any person who is a recipient of Assistance;
- (2) any company or person that is a tenant or sub-tenant, leaseholder or sub-leaseholder of a recipient of Assistance, provided that said company or person employs at least 25 persons and occupies property or uses equipment or property that is improved or developed as a result of Assistance, after the effective date of this Chapter; and

(d) Covered Employer" means the City of Cambridge or a Beneficiary of Assistance, but does not include a Covered Building Services Employer.

(e) "Covered Employee" means:

- (1) a person employed by the City of Cambridge except for persons in those positions listed in Section 2.121.040(j) of this ordinance; and
- (2) a person, other than a Covered Building Service Employee, employed by a Covered Employer, or a person employed by an independent contractor doing business with a Covered Employer, who would directly expend any of his or her time on the activities funded by the contract or the activities for which the Beneficiary received the Assistance, except for persons in those positions listed in Section 2.121.040(j) of this ordinance.

(f) "Living Wage" has the meaning stated in Section 2.121.030.

(g) "Person" means one or more of the following or their agents, employees, servants, representatives, and legal representatives: individuals, corporations, partnerships, joint ventures, associations, labor organizations, educational institutions, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries, and all other entities recognized at law by the Commonwealth of Massachusetts.

(h) "Service Contract" means a contract let to a contractor by the City of Cambridge for the furnishing of services, to or for the City, except contracts where services are incidental to the delivery of products,

equipment or commodities. A contract for the purchase or lease of goods, products, equipment, supplies or other property is not a “service contract” for the purposes of this definition.

(i) “Service Subcontract” means a subcontract primarily for the furnishing of services, to or for a recipient of Assistance, except where services are incidental to the delivery of products, equipment or commodities. A contract for the purchase or lease of goods, products, equipment, supplies or other property is not a “service subcontract” for the purposes of this definition.

(j) “Covered Building Service Employee” means any person performing building service work for a Covered Building Service Employer, either directly or through a contract or subcontract.

(k) “Building Services” or “Building Service Work” means work performed in connection with the cleaning of buildings and security guard services.

(l) “Covered Building Service Contract” means a contract or subcontract to provide Building Services to the City of Cambridge or any of its departments or subdivisions.

(m) “Covered Building Service Contractor” or “Covered Building Service Employer” means an entity providing Building Services on a Covered Building Service Contract or subcontract with the City or any of its departments or subdivisions.

(n) “Standard Compensation” has the meaning stated in Section 2.121.040.

2.121.030 Living Wage.

(a) Applicability. Covered Employers shall pay no less than the Living Wage to their employees.

(b) Amount of wage. The Living Wage shall be calculated on an hourly basis and shall be no less than \$10.00, subject to adjustment as provided herein. The Living Wage shall be upwardly adjusted each year no later than March first in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Annual Average Consumer Price Index for All Urban Consumers (CPI -U) Boston-Lawrence-Salem, MA - NH, as published by the Bureau of Labor Statistics, United States Department of Labor applied to \$10.00.

(c) No reduction in collective bargaining wage rates. Nothing in this Chapter shall be read to require or authorize any beneficiary to reduce wages set by a collective bargaining agreement.

(d) Cuts in non-wage benefits prohibited. No Beneficiary will fund wage increases required by this Chapter, or otherwise respond to the provisions of this Chapter, by reducing the health, insurance, pension, vacation, or other non-wage benefits of any of its employees.

2.121.040 Standard Compensation

(a) Applicability. Covered Building Services Employers shall pay no less than the Standard Compensation to Covered Building Service Employees.

(b) Standard Compensation shall include the standard hourly rate of pay for the relevant classification.

(c) Amount.

(i) The “Standard Hourly Rate of Pay” for Covered Building Service Employees other than for security guards shall be the greatest of the following:

(1) The Living Wage rate as defined in 2.121.030; or

(2) the prescribed rate of wages as determined by the director of the department of labor standards pursuant to section 27H of chapter 149 of the General Laws of Massachusetts;

(ii) The “Standard Hourly Rate of Pay for security guards” shall be the greatest of the following:

(1) The Living Wage rate as defined in 2.121.030; or

(2) the prescribed rate of wages as determined by the director of the department of labor standards pursuant to section 3 of chapter 195 of the Massachusetts Acts of 2014; or

(3) the hourly rate paid to workers in the relevant classification under a preceding Building Service Contract.

(iii) The Standard Hourly Rate of Pay for Covered Building Service Employees other than for security guards shall be annually adjusted to be no less than the greatest of the following:

(1) the previous hourly rate of pay increased by the annual percentage difference between the current Boston-Lawrence-Salem, MA - NH Consumer Price Index (CPI) for all items for All Urban Consumers and the same CPI for the same month of the previous year, or

(2) the current prescribed rate of wages as determined by the director of the department of labor standards pursuant to section 27H of chapter 149 of the General Laws of Massachusetts.

(iv) The Standard Hourly Rate of Pay for security guards shall be annually adjusted to be no less than the greatest of the following:

(1) the previous hourly rate of pay increased by the annual percentage difference between the current Boston-Lawrence-Salem, MA - NH Consumer Price Index (CPI) for all items for All Urban Consumers and the same CPI for the same month of the previous year, or

(2) the current prescribed rate of wages as determined by the director of the department of labor standards pursuant to section 3 of chapter 195 of the Massachusetts Acts of 2014.

(v) “Standard Benefits” for Covered Building Service Employees other than for security guards shall be an hourly supplement furnished by a Covered Building Service Employer to a Covered Building Service Employee in one of the following ways: (1) in the form of health and other benefits (not including paid leave) that cost the Covered Building Service Employer the entire required hourly supplemental amount; (2) by providing a portion of the required hourly supplement in the form of health and other benefits (not including paid leave) and the balance in cash; or (3) by providing the entire

supplement in cash. The required hourly supplemental rate shall be equal to the greatest of the following: (1) the monetary value of the health and other benefits (not including paid leave) provided under the prescribed rate of wages as determined by the director of the department of labor standards pursuant to section 27H of chapter 149 of the General Laws of Massachusetts; or (2) twenty percent (20%) of the standard hourly rate of pay.

(vii) “Standard Benefits for security guards” shall be an hourly supplement furnished by a Covered Building Service Employer to a Covered Building Service Employee in one of the following ways: (1) in the form of health and other benefits (not including paid leave) that cost the Covered Building Service Employer the entire required hourly supplemental amount; (2) by providing a portion of the required hourly supplement in the form of health and other benefits (not including paid leave) and the balance in cash; or (3) by providing the entire supplement in cash. The required hourly supplemental rate shall be equal to the greatest of the following: the monetary value of the health and other benefits (not including paid leave) provided under the prescribed rate of wages as determined by the director of the department of labor standards pursuant to section 3 of chapter 195 of the Massachusetts Acts of 2014; or (2) twenty percent (20%) of the standard hourly rate of pay.

(viii) For the purposes of this section, “benefits” shall not include workers compensation or other legally mandated insurance, nor shall it include the value of any benefit for which the Covered Building Service Employee is eligible, but for which no payment is actually made by a Covered Building Service Employer to the Covered Building Service Employee or to any other party on the Covered Building Service Employee’s behalf, because the Covered Building Service Employee either does not actually utilize or does not elect to receive the benefit for any reason

(ix) Standard benefits for Covered Building Service Employees other than for security guards shall be adjusted annually to be no less that equal to the value of the greatest of the following: (1) the value of the previous standard benefits increased by the annual percentage difference between the current Boston-Lawrence-Salem, MA - NH Consumer Price Index (CPI) for all items for All Urban Consumers and the same CPI for the same month of the previous year, or (2) the current monetary value of the health and other benefits (not including paid leave) provided under the prescribed rate of wages as determined by the director of the department of labor standards pursuant to section 27H of chapter 149 of the General Laws of Massachusetts.

(x) Standard benefits for security guards shall be adjusted annually to be no less that equal to the value of the greatest of the following: (1) the value of the previous standard benefits increased by the annual percentage difference between the current Boston-Lawrence-Salem, MA - NH Consumer Price Index (CPI) for all items for All Urban Consumers and the same CPI for the same month of the previous year, or (2) the current monetary value of the health and other benefits (not including paid leave) provided under the prescribed rate of wages as determined by the director of the department of labor standards pursuant to section 3 of chapter 195 of the Massachusetts Acts of 2014.

2.121.050 Waivers and Exceptions.

(a) Waivers. A Covered Employer may request that the City Manager grant a partial or whole waiver to the requirements of this Chapter. There shall be no waivers or exceptions made with respect to the Standard Compensation for Covered Building Service Employees.

(b) General Waivers. Waivers may be granted where application of this Chapter to a particular form of Assistance is found by the City Solicitor to violate a specific state or federal statutory, regulatory or constitutional provision or provisions, and the City Manager approves the waiver on that basis.

(c) Hardship Waivers for certain not- for-profit employers. An employer, who has a contract with the City of Cambridge which is not subject to the provisions of G.L. c. 30B, may apply to the City Manager for a specific waiver where payment of the Living Wage by a not-for-profit Covered Employer would cause a substantial hardship to the Covered Employer.

(d) Chapter 30B contract waivers. Prior to issuing an invitation for bids for a procurement contract subject to the provisions of G.L. c. 30B, any Applicable Department may apply to the City Manager for a waiver of the application of the Living Wage to the contract where payment of the Living Wage by a Covered Employer would make it inordinately expensive for the City to contract for the services or would result in a significant loss of services, because the contracted work cannot be segregated from the other work of the Covered Employer.

(e) General Waiver Request Contents. All General Waiver requests shall include the following:

- (1) The nature of the Assistance to which this Chapter applies;
- (2) The specific or official name of the Assistance and Assistance program, the statutory or regulatory authority for the granting of the Assistance, and a copy of that authority;
- (3) The conflicting statutory, regulatory, or constitutional provision or provisions that makes compliance with this Chapter unlawful, and a copy of each such provision; and
- (4) A factual explication and legal analysis of how compliance with this Chapter would violate the cited provision or provisions, and the legal consequences that would attach if the violation were to occur.

(f) Hardship Waiver Request Contents. All Hardship Waiver requests shall include the following:

- (1) The nature of the Assistance to which this Chapter applies;
- (2) A detailed explanation of why payment of the Living Wage would cause a substantial hardship to the Covered Employer; and
- (3) A statement of proposed wages below the Living Wage.

(g) Chapter 30B Contract Waiver Request Contents. A Chapter 30B contract waiver request shall include the following:

- (1) The nature of the Assistance to which this Chapter applies;
- (2) A detailed explanation of why the contracted work cannot be segregated from the other work of the bidding Covered Employers thereby making the cost of the contract with the payment of the Living Wage inordinately expensive or would result in a significant loss of services;

(h) Community Advisory Board review and recommendation regarding waiver requests. The Community Advisory Board, as described in Section 2.121.070 of this ordinance, shall consider waiver requests along with their supporting documentation and analysis, and may hold a public hearing to consider the views of the public before making a recommendation to the City Manager regarding the waiver request. For a hardship waiver, the Community Advisory Board shall offer an opportunity to be

heard to employees of the Covered Employer. After reviewing the recommendation of the Community Advisory Board, the City Manager may approve and grant or deny all or part of a request. The City Manager may in his or her discretion grant a temporary hardship waiver pending the hearing before the Community Advisory Board. For Chapter 30B contract waivers, the Community Advisory Board shall make its recommendation to the City Manager no more than thirty days after it is notified of the request for a Chapter 30B contract waiver.

(i) Terms of exceptions. If an employer is subject to this Chapter as a result of its receipt of more than one kind of Assistance covered by this Chapter, and if the City Manager grants a waiver with respect to one form of Assistance, the City Manager need not find that this Chapter is inapplicable to the employer with respect to another form of Assistance received by the employer.

(j) Exceptions. The following positions will be excepted from the requirement of the payment of the Living Wage upon certification in an affidavit in a form approved by the Applicable Department and signed by a principal officer of the Covered Employer that the positions are as follows:

- (1) youth hired pursuant to a city, state, or federally funded program which employs youth as defined by city, state, or federal guidelines, during the summer, or as part of a school to work program, or in other related seasonal or part-time program;
- (2) work-study or cooperative educational programs;
- (3) trainees who are given a stipend or wage as part of a job training program that provides the trainees with additional services, which may include, but are not limited to, room and board, case management, or job readiness services.
- (4) persons working in a recognized supported employment program that provides workers with additional services, which may include, but are not limited to, room and board, case management, counseling, or job coaching;
- (5) positions where housing is provided by the employer;
- (6) employees who are exempt from federal or state minimum wage requirements; and
- (7) individuals employed by the City of Cambridge where the employment of such individuals is intended primarily to provide a benefit or subsidy to such individuals, although the City is compensating them for work performed.

2.121.060 Notification Requirements.

All Applicable Departments shall provide in writing an explanation of the requirements of this ordinance in all requests for bids for service contracts and to all persons applying for Assistance as defined by this ordinance. All persons who have signed a service contract with the City of Cambridge or a contract for Assistance shall forward a copy of such requirements to any person submitting a bid for a subcontract on the Assistance contract.

All Covered Building Service Contracts and all solicitations for Building Services issued by the City of Cambridge or any of its departments or subdivisions, shall contain a provision indicating the number of hours or work required and stating the Standard Compensation for the relevant classification that is applicable to the Covered Building Service Employees and shall contain a stipulation that the Covered

building Service employees shall be paid not less than the Standard Compensation for the relevant classifications.

All requests for proposals or other solicitations and all specifications for Building Service Work, shall include specific reference to this chapter, shall state the required number of hours, and shall require prospective building service contractors to submit pricing on a standard worksheet furnished by the City that specifies the components of hourly pricing for the duration of the contract.

2.121.070 Duties of Covered Employers.

(a) Notification Requirements.

Covered employers and Covered Building Service Employers shall provide each Covered employee with a fact sheet about this ordinance and shall post a notice about the ordinance in a conspicuous location visible to all employees. The fact sheet and poster shall be provided to the Covered Employer by the Applicable Department and shall include:

- (1) notice of the Living Wage amount and notice of the Standard Compensation amount;
- (2) a summary of the provisions of this ordinance;
- (3) a description of the enforcement provisions of the ordinance;
- (4) the name, address, and phone number of a person designated by the Applicable Department to whom complaints of noncompliance with this ordinance should be directed.

(b) Contract for Assistance. At the time of signing a contract for assistance with the City of Cambridge or with a Beneficiary, or a Covered Building Service Contract, the contract must include the following:

- (1) the name of the program or project under which the contract or subcontract is being awarded;
- (2) a local contact name, address, and phone number for the Beneficiary;
- (3) a written commitment by the Beneficiary to pay all Covered Employees not less than the Living Wage or Standard Wage if applicable, as subject to adjustment under this ordinance and to comply with the provisions of this ordinance;
- (4) a list of Covered Employees and Covered Building Service Employees under the contract with the employees' job titles;
- (5) a list of all subcontracts either awarded or that will be awarded to Beneficiaries with funds from the Assistance. Upon signing any subcontracts, the Covered Employer shall forward a copy of the subcontract to the Applicable Department.

(c) Maintenance of payroll records. Each Covered Employer shall maintain payrolls for all Covered Employees and basic records relating thereto and shall preserve them for a period of three years. The records shall contain the name and address of each employee, the job title and classification, the number of hours worked each day, the gross wages, deductions made, actual wages paid, and copies of social security wage and withholding reports, and evidence of payment thereof and such other data as may be required by the Applicable Department from time to time.

(d) Applicable Department duties. The Applicable Department shall cause investigations to be made as

may be necessary to determine whether there has been compliance with this Ordinance. The Applicable Department shall report the findings of all such investigations to the Community Advisory Board.

(e) Covered Employer to cooperate. The Covered Employer shall submit payroll records on request to the Applicable Department. The Covered Employer shall permit City representatives to observe work being performed upon the work site, to interview employees and to examine the books and records relating to the payrolls being investigated to determine payment of wages.

(f) City Assistance Reports. Each Applicable Department shall file a City Assistance Report with the City Manager and the Community Advisory Board by July 31 of each year. The report shall include, for each Assistance package or contract approved during the preceding fiscal year:

- (1) the name of the Applicable Department (awarding agency), the name of the specific program under which the Assistance was awarded, and the origin of funds for Assistance;
- (2) a description of the purpose or project for which the Assistance was awarded;
- (3) the name, address, and phone number of a local contact person for the Covered Employer;
- (4) the total cost to the City of Assistance provided to each Beneficiary, including both face-value of Assistance, as well as revenue not collected as a result of the Assistance.

(g) Payroll reporting. Every six (6) months, a Covered Building Service Employer, shall file with the City a complete certified payroll showing the Covered Building Service Employer's payroll records for each Covered Building Service Employee. Upon request, the Covered Building Service Employer shall produce for inspection and copying the payroll records for any or all applicable Covered Building Service Employees for the prior three (3) year period.

(h) Transitional Employment Period. The City shall give advance notice to a Covered Building Service Contractor and any collective bargaining representative of the Covered Building Service Contractor that a Covered Building Service Contract will be terminated, and the City shall also provide the name, address, and telephone number of the successor Covered Building Service Contractor or contractors where known. The terminated Covered Building Service Contractor shall, within five (5) days after receipt of such notice, provide to the successor Covered Building Service Contractor, the name, address, date of hire, and employment occupation classification of each employee employed at the site or sites covered by the building service contract at the time of receiving said notice. If a successor Covered Building Service Contractor has not been identified by the City by the end of the five (5) day pay period, the terminated Covered Building Service Contractor shall provide the information to the City, at the same time that the terminated contractor shall provide each affected employee with notice of his/her right to obtain employment with the successor Covered Building Service Contractor.

A successor Covered Building Service Contractor or subcontractor where applicable shall retain for a 90-day transitional employment period all employees who were employed by the terminated Covered Building Service Contractor and its subcontractors at the building(s) covered by the terminated contract. This requirement shall not apply in the event the City chooses to employ building service employees directly.

If at any time the successor Covered Building Service Contractor determines that fewer employees are required to perform the new service contract than had been performing such services under the terminated

contract, the successor Covered Building Service Contractor shall retain the employees by seniority within job classification. Except for such layoffs, during the 90-day transition period, the successor Covered Building Service Contractor shall not discharge without cause an employee. During the 90-day transition period, the successor Covered Building Service Contractor shall maintain a preferential hiring list of those employees not retained from which the successor contractor or its subcontractors shall hire additional employees.

2.121.080 Community Advisory Board.

(a) Purpose. The purpose of the Community Advisory Board shall be to review the effectiveness of this Ordinance at creating and retaining Living Wage jobs, to make recommendations to the City Manager regarding the granting of Waivers to Covered Employers, to review the implementation and enforcement of this ordinance, and to make recommendations from time to time in connection therewith.

(b) Composition. The Community Advisory Board shall be composed of nine members and shall include representatives of labor unions, community organizations and the business community. All members will be appointed by the City Manager. Members of the Board shall serve a three-year term. Whenever a vacancy shall occur the City Manager shall appoint a replacement within thirty days of said vacancy.

(c) Meetings. The Community Advisory Board shall meet quarterly and in special session as required. All meetings of the Board shall be open to the public and will allow for public testimony on the uses of the City Assistance generally, and on specific instances of Assistance or proposed Assistance as received or sought by individual enterprises.

(d) Conflict of Interest. No member of the Community Advisory Board shall participate in any proceeding concerning a Beneficiary, a Covered Employer or a Covered Employee, or applicant for waiver or exemption, if the member or any member of his or her immediate family has a direct or indirect financial interest in the outcome of said proceeding.

2.121.090 Enforcement.

(a) Enforcement powers. In order to enforce this Chapter, the Applicable Department may, with the approval and assistance of the City Solicitor, issue subpoenas, compel the attendance and testimony of witnesses and production of books, papers, records, and documents relating to payroll records necessary for hearing, investigations, and proceedings. In case of failure to comply with a subpoena, the City may apply to a court of appropriate jurisdiction for an order requiring the attendance and testimony of witnesses and the productions of books, papers, records, and documents. Said court, in the case of a refusal to comply with any such subpoena, after notice to the person subpoenaed, and upon finding that the attendance or testimony of such witnesses or the production of such books, papers, records, and documents, as the case may be, is relevant or necessary for such hearings, investigation, or proceedings, may issue an order requiring the attendance or testimony of such witnesses or the production of such documents and any violation of the court's order may be punishable by the court as contempt thereof.

(b) Complaint procedures. An employee who believes that he or she is a Covered Employee or an applicant for a position to be filled by a Covered Employee who believes that his or her employer is not complying with requirements of this Chapter applicable to the employer may file a complaint with the Applicable Department or with the Community Advisory Board. Complaints of alleged violations may also

be filed by concerned citizens or by the City Council. Complaints of alleged violations may be made at any time, but in no event more than three years after the last date of alleged violation, and shall be investigated promptly by the Applicable Department. Statements written or oral, made by an employee, shall be treated as confidential and shall not be disclosed to the Covered Employer without the consent of the employee.

(c) Investigations and hearings. The Applicable Department shall investigate the complaint, and may, in conjunction with the City Solicitor, and in accordance with the powers herein granted, require the production by the employer of such evidence as required to determine compliance. Prior to ordering any penalty the applicable Department shall give notice to the employer and conduct a hearing. If at any time during these proceedings, the employer voluntarily makes restitution of the wages not paid to the employee making the complaint and to any similarly situated employees, by paying all back wages owed plus interest at the average prior year Massachusetts passbook savings bank rate, or otherwise remedies the violation alleged if the violation involves matters other than wages, then the Applicable Department shall thereafter dismiss the complaint against the employer.

(d) Remedies. In the event that the Applicable Department, after notice and hearing, determines that any Covered Employer has failed to pay the Living Wage rate or has otherwise violated the provisions of this Chapter, the Applicable Department may order any or all of the following penalties and relief:

- (1) Fines up to the amount of \$300 for each Covered Employee for each day that the Covered Employer is in violation of this Ordinance, except if the violation was not knowing and willful, then the total fine shall not exceed the amount of back wages plus interest owed;
- (2) Suspension of ongoing contract and subcontract payments;
- (3) Ineligibility for future City Assistance for up to three years beginning when all penalties and restitution have been paid in full. In addition, all Covered Employers having any principal officers who were principal officers of a barred beneficiary shall be ineligible under this section; and
- (4) Any other action deemed appropriate and within the discretion and authority of the city. Remedies in this section shall also apply to the party or parties aiding and abetting in any violation of this chapter.

(e) Private right of action. Any Covered Employee, or any person who was formerly employed by a Beneficiary, may bring an action to enforce the provisions of this Chapter to recover back pay and benefits, attorneys fees and costs, by filing suit against a Beneficiary in any court of competent jurisdiction.

(f) Remedies herein non-exclusive. No remedy set forth in this Chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce the right granted under this Chapter in a court of law. This Chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

(g) Retaliation and discrimination barred. A Covered Employer shall not discharge, reduce the compensation or otherwise retaliate against any employee for making a complaint to the City, otherwise asserting his or her rights under this Chapter, participating in any of its proceedings or using any civil remedies to enforce his or her rights under the Chapter. The City shall investigate allegations of retaliation or discrimination and shall, if found to be true, after notice and a hearing, order appropriate relief as set out in paragraphs (c) and (d) herein.

2.121.100 Severability.

In the event any provision of this ordinance shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

2.121.110 Effective Date.

This law shall be effective sixty (60) after final passage.

In City Council December 21, 2015.
Passed to be ordained by a yeas and nays vote:-
Yeas 9; Nays 0; Absent 0; Present 0.
Attest:- Donna P. Lopez, City Clerk.

A true copy;

ATTEST:-

Donna P. Lopez
City Clerk

The Living Wage Ordinance (2.121) provides, at 1.121.030(b) that the wage shall be upwardly adjusted each year no later than March 1st in proportion to the increase in the Annual Average Consumer Price Index for the prior calendar year for All Urban Consumers (CPI-U) in the Boston area, as published by the federal Bureau of Labor Statistics.

For calendar year 1999, the CPI-U increased by 2.5%. Therefore the new living wage, as of March 1, 2000 is \$10.25.

For calendar year 2000, the CPI-U increased by 4.3%. Therefore the new living wage, as of March 1, 2001 is \$ 10.68.

For calendar year 2001, the CPI-U increased by 4.3%. Therefore the new living wage, as of March 1, 2002 is \$11.11.

For calendar year 2002, the CPI-U increased by 2.6%. Therefore the new living wage, as of March 1, 2003 is \$11.37.

The City Council has voted to amend the section of the Living Wage Ordinance (1.121.030 (b) that provides the method for calculating cost of living increases each year. As a result of this change, the living wage as of March 30, 2003 is \$11.44.

For calendar year 2003, the CPI-U increased by 3.76%. Therefore the new living wage, as of March 1, 2004 is \$11.87.

For calendar year 2004, the CPI-U increased by 2.7%. Therefore the new living wage, as of March 1, 2005 is \$12.19.

For calendar year 2005, the CPI-U increased by 3.3%. Therefore the new living wage, as of March 1, 2006 is \$12.59.

For calendar year 2006 the CPI-U increased by 3.1 %. Therefore the new living wage, as of March 1, 2007 is \$12.98.

For calendar year 2007 the CPI-U increased by 1.9 %. Therefore the new living wage, as of March 1, 2008 is \$13.23.

For calendar year 2008 the CPI-U increased by 3.5 %. Therefore the new living wage, as of March 1, 2009 is \$13.69.

For calendar year 2009 the CPI-U decreased by .67 %. Therefore the new living wage, as of March 1, 2010 will remain at \$13.69.

For calendar year 2010 the CPI-U increased by 1.57%. Therefore the new living wage, as of March 1, 2011 is \$13.90.

For calendar year 2011 the CPI-U increased by 2.71%. Therefore the new living wage, as of March 1, 2012 is \$14.28.

For calendar year 2012 the CPI-U increased by 1.58%. Therefore the new living wage, as of March 1, 2013 is \$14.51.

For calendar year 2013 the CPI-U increased by 1.37%. Therefore the new living wage, as of March 1, 2014 is \$14.71.

For calendar year 2014 the CPI-U increased by 1.61%. Therefore the new living wage, as of March 1, 2015 is \$14.95.

For calendar year 2015 the CPI-U increased by .06%. Therefore the living wage, as of March 1, 2016 is \$15.04.

For calendar year 2016 the CPI-U increased by 1.47%. Therefore the new living wage, as of March 1, 2017 is \$15.26.

For calendar year 2017 the CPI-U increased by 2.51%. Therefore the new living wage, as of March 1, 2018 is \$15.64.

For calendar year 2018 the CPI-U increased by 3.29%. Therefore the new living wage, as of March 1, 2019 is \$16.15.

For calendar year 2019 the CPI-U increased by 1.91%. Therefore the new living wage, as of March 1, 2020 is \$16.46.

For calendar year 2020 the CPI-U increased by 1.13%. Therefore the new living wage, as of March 1, 2021 is \$16.65.

For calendar year 2021 the CPI-U increased by 3.26%. Therefore the new living wage, as of March 1, 2022 is \$17.19.

For calendar year 2022 the CPI-U increased by 7.10%. Therefore, the new living wage as of March 1, 2023 is \$18.41.

ORDINANCE #2022-15 - FINAL PUBLICATION

CITY OF CAMBRIDGE

In the Year Two Thousand and Twenty-Two

AN ORDINANCE

In amendment to the Ordinance
entitled "Cambridge Municipal Code."

Be it ordained by the City Council of the City of Cambridge that the Municipal Code of the City of Cambridge, Chapter 2.112.080, entitled "Truck Safety Ordinance" be amended by substitution to read as follows:

2.112.080 Truck Safety Ordinance.

2.112.081 Short title.

Sections 2.112.081 to 2.112.089 may be cited as the "Truck Safety Ordinance" of the City of Cambridge.

(Ord. No. 2020-20,11-2-2020)

2.112.082 Declaration of findings and policy-Scope.

The City Council hereby finds that the provisions of these sections are intended to promote the public purpose of effectively protecting Vulnerable Road Users, as defined in Section 2.112.083 below, against the risks associated with sharing the road with Large Vehicles, as defined in Section 2.112.083 below. These sections seek to minimize the potential for injury to Vulnerable Road Users, specifically relating to falling under the sides of or being caught under the wheels of Large Vehicles.

(Ord. No. 2020-20, 11-2-2020)

2.112.083 Definitions.

The following words shall for the purposes of these sections, unless the context clearly requires otherwise, have the following meanings:

- A. "City" shall mean the City of Cambridge.
- B. "City Solicitor" shall mean the city solicitor for the City of Cambridge.
- C. "City Vendor" shall mean any individual, firm, business, consultant, contractor, or supplier of goods and/or services to the City of Cambridge, or any subcontractors, employees or agents thereof.
- D. "Contract" shall mean any contract executed between the City and a City Vendor for \$10,000 or more for goods, services, design or construction.
- E. "Centralized Purchase" shall mean a statewide contract to purchase through the Commonwealth of Massachusetts, a Commonwealth of Massachusetts department supply or service contract, a collective purchase, a purchase through a General Services Administration procured supply schedule, or a cooperative purchase.
- F. "DPW Commissioner" shall mean the Commissioner of the Department of Public Works or his or her designee.
- G. "Large Vehicle" shall mean any Class 3 or above motor vehicle, trailer, semi-trailer or semi-trailer unit, with a gross vehicle weight rating (GVWR) exceeding 10,000 pounds and are able to travel at speeds more than 15 miles per hour, when travelling within the City of Cambridge to supply the goods, services, design or construction that are the subject of a contract with the City.
- H. "Purchasing Agent" shall mean the purchasing agent for the City of Cambridge.
- I. "Third-Party Freight Brokerage Contractor" shall mean a brokerage contractor that is used by City Vendors to supply Large Vehicles to City Vendors to transport goods and services to the City of Cambridge.
- J. "TPT Director" shall mean the Director of the Traffic, Parking & Transportation Department or his or her designee.
- K. "Vulnerable Road User" shall mean (a) a pedestrian, including but not limited to those persons actually engaged in work upon a way, or in work upon utility facilities along a way, or engaged in the provision of emergency services within the way, or (b) a person operating a bicycle, handcycle, tricycle, skateboard, roller skates, in-line skates, moped, other non-motorized or electric personal mobility or recreational device other than an automobile or motorcycle, wheelchair, personal assistive mobility device, horse-drawn carriage, motorized bicycle, motorized scooter, farm tractor, agricultural trailer, or similar vehicle designed primarily for farm use, or other motorized vehicle which has a maximum speed of less than 20 miles per hour, or (c) a person riding an animal.

(Ord. No. 2020-20, 11-2-2020)

2.112.084 Applicability.

- A. These sections shall apply to every Large Vehicle used by a City Vendor while under a City Contract, except as provided in Section B below.
- B. The provisions of these sections shall not apply to:
 - 1. A motor vehicle which has a maximum speed not exceeding fifteen (15) mph;
 - 2. A fire apparatus;
 - 3. An emergency medical vehicle;
 - 4. A vehicle which is being driven or towed to a place whereby previous arrangement has been scheduled to install any safety requirements for large vehicles such that it complies with these sections;
 - 5. Vehicles used by City Vendors solely for the purpose of snow clearance or removal;
 - 6. Vehicles used by City Vendors solely for the purpose of street sweeping;
 - 7. Vehicles used by City Vendors solely for the purpose of street paving.

(Ord. No. 2020-20, 11-9-2020)

2.112.085 Requirements for large vehicles.

- A. All Large Vehicles subject to the provisions of these sections shall be equipped with convex mirrors, cross- over mirrors, decals, and side under-ride guards affixed to the sides of Large Vehicles in a manner consistent with these sections.
- B. The DPW Commissioner and the TPT Director shall have the authority to promulgate regulations to accomplish any of the provisions of these sections, including but not limited to required specifications for convex mirrors, cross-over mirrors, decals, and side under-ride guards affixed to the sides of Large Vehicles.
- C. As future technical innovations to improve safety for Vulnerable Road Users become available, the DPW Commissioner and the TPT Director may research and test such technical innovations, and update any rules and regulations promulgated hereunder consistent with such research and tests.

(Ord. No. 2020-20, 11-9-2020)

2.112.086 Enforcement.

Any violation of any provision of these sections by a City Vendor shall constitute a breach of the subject contract the City Vendor has with the City and will be considered a default under such contract with the City, and shall subject the City Vendor to any and all penalties contained in such contract. Any violations of these sections shall be reported to the Purchasing Agent and the City Solicitor.

(Ord. No. 2020-20, 11-9-2020)

2.112.087 Waiver.

- A. If the Purchasing Agent believes that extenuating circumstances exist which would prevent any City Vendor(s) from complying with the provisions of these sections, the Purchasing Agent, upon the recommendation of both the DPW Commissioner and the TPT Director, may approve a waiver of some or all of the requirements of these sections prior to issuing a procurement solicitation for any procurement contract or for any contract not requiring competition. If the Purchasing Agent is unable to secure any responsible and responsive bid in response to a procurement solicitation for a contract for goods, services, design, or construction or for any procurement contract not requiring competition, then the Purchasing Agent may issue a waiver of some or all of the requirements of these sections upon the recommendation of the DPW Commissioner and the TPT Director.
- B. If the DPW Commissioner and the TPT Director believe that extenuating circumstances exist which would prevent a City Vendor from complying with the provisions of these sections for a specific delivery or operation, the DPW Commissioner and TPT Director may approve a limited waiver of the requirements of these sections for the specific delivery or operation not to exceed one month.
- C. If the DPW Commissioner and the TPT Director believe that extenuating circumstances exist as a result of a contract executed with a City Vendor where goods, services, design or construction are procured through a Centralized Purchase, or requires a Third-Party Freight Brokerage contractor, the DPW Commissioner and TPT Director may recommend and the Purchasing Agent may approve a waiver of some or all of the requirements of these sections.
- D. Waivers will be issued in a form and manner consistent with the provisions of these sections and the rules and regulations promulgated hereunder.
- E. On an annual basis, the City Manager shall provide a report to the City Council that includes: the number of waivers issued, the number of responsive contracts executed without a waiver, and the total number of contracts executed during the previous fiscal year, as well as any trends (positive or negative) and any other relevant information

regarding the effectiveness of this Ordinance in increasing the safety of trucks operated in Cambridge.

(Ord. No. 2020-20 , 11-9-2020)

2.112.088 Conformity with existing state and federal law and severability.

These sections shall be implemented in conformity with all applicable provisions of federal, state and local laws, and the provisions of these sections are severable; if any provision, or portion thereof, should be held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the remaining provisions, which shall remain in full force and effect.

(Ord. No. 2020-20, 11-9-2020)

2.112.089 Effective date.

These amendments shall be effective upon enactment.

(Ord. No. 2020-20, 11-9-2020)

In City Council June 6, 2022.

Ordained as amended by a yeas and nays vote:-

Yeas 9; Nays 0; Absent 0.

Attest:- Paula M. Crane, Interim City Clerk

A true copy;

ATTEST:-



Paula M. Crane
Interim City Clerk

City of Cambridge Truck Safety Ordinance Regulations

The City of Cambridge Commissioner for Public Works (the “DPW Commissioner”) and the City of Cambridge Director of Traffic, Parking and Transportation (the “TPT Director”) hereby adopt the following Truck Safety Ordinance Regulations pursuant to the Truck Safety Ordinance, Chapter 2.112, Section 2.112.080 of the Cambridge Municipal Code (“Truck Safety Ordinance” or “Ordinance”). The provisions of the Truck Safety Ordinance, including but not limited to the definitions contained in the Ordinance, shall apply to these regulations. Additionally, for purposes of these Regulations a “Side Under-Ride Guard” shall mean a piece of equipment that is installed on a Large Vehicle between the front and rear wheels to help prevent injuries to Vulnerable Road Users, and particularly to protect against the risk of falling under the side of the vehicle and being caught under the wheels of the vehicle.

1. All Large Vehicles subject to the provisions of the Truck Safety Ordinance shall be equipped with convex mirrors, cross-over mirrors, decals, and Side Under-Ride Guards affixed to the sides of Large Vehicles in a manner consistent with the specifications detailed in Section 2 below.
2. The following technical specifications shall be met in order for equipment to meet the provisions of the Truck Safety Ordinance for Side Under-Ride Guards, convex mirrors, convex cross-over mirrors, and safety decals.

2.1 Side Under-Ride Guards

(a) Equipping Large Vehicles with Side Under-Ride Guards

Large Vehicles must be constructed or equipped in such a way as to offer, throughout their length, effective protection to Vulnerable Road Users against the risk of falling under the side of the vehicle and being caught under the wheels of the vehicle. This requirement may be considered satisfied:

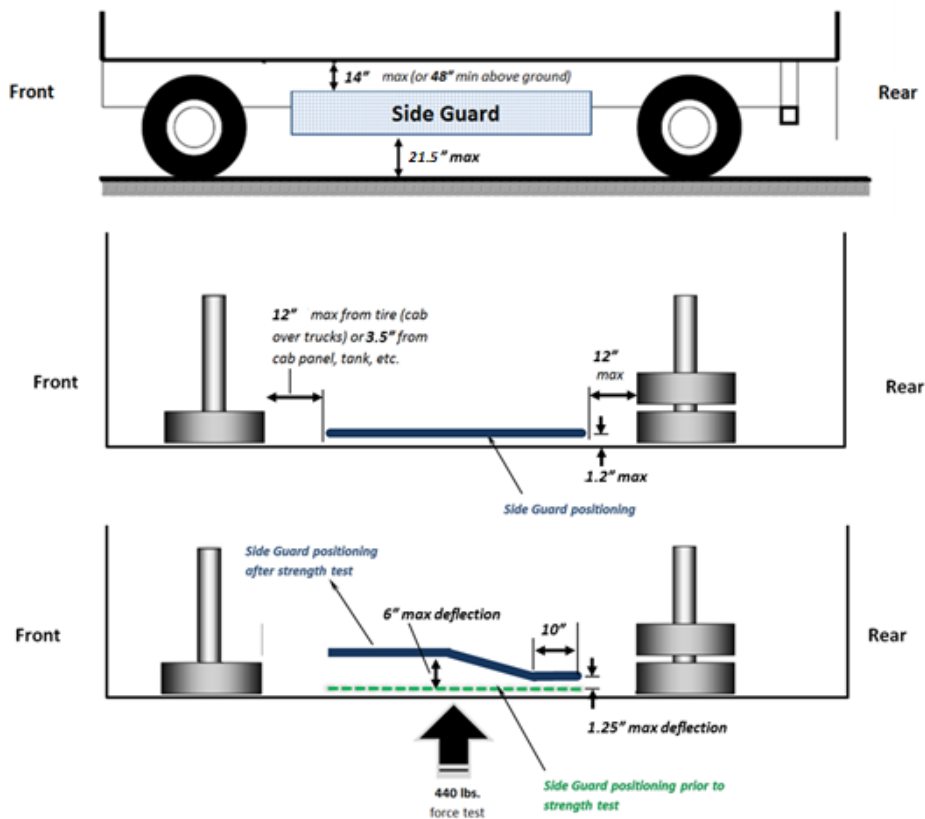
- 1) if the Large Vehicle is equipped with Side Under-Ride Guards in accordance with the requirements of Section 2.1(b) and depicted in diagram (1) below, or if
- 2) the Large Vehicle is designed and/or equipped such that by virtue of its shape and characteristics, its component parts can be incorporated and/or regarded as a replacement for the Side Under-Ride Guards, but the component parts’ combined functions must satisfy the requirements set out in Section 2.1(b) and diagram (1) below.

(b) Technical Specifications

Side Under-Ride Guards may use horizontal rails or a continuous flat surface that meets the following requirements:

- 1) The lower edge of Side Under-Ride Guards shall at no point be more than twenty-one and one-half (21.5") inches above the ground. It is preferred that the lower edge be no more than thirteen and eight tenths (13.8") inches above the ground.
- 2) The upper edge of Side Under-Ride Guards shall be no more than fourteen (14") inches below the structure of the vehicle as shown in the top schematic in diagram (1), which on a vertical plane must be tangential to the outer surface of the tires, as shown in the middle schematic in diagram (1).
- 3) The rear and forward edges of Side Under-Ride Guards shall not be more than twelve (12") inches from the tire on the wheel immediately adjacent to the Side Under-Ride Guards, as shown in the middle schematic in diagram (1).
- 4) Every Side Under-Ride Guard shall be essentially rigid and securely mounted and shall not be subject to loosening due to vibration in normal use of the vehicle. Side Under-Ride Guards shall be capable of withstanding a force of 440 pounds applied perpendicularly to any part of its surface by the center of a ram the circular face of which is not more than eight and one half (8.5") inches in diameter.
- 5) No part of a Side Under-Ride Guard shall be subject to deflection by more than six (6") inches by the ram referenced above, as shown in the bottom schematic in diagram (1), and
- 6) No part of a Side Under-Ride Guard which is less than ten (10") inches from its rear edge shall be subject to deflection by more than one and one quarter (1.25") inches from the ram referenced above, as shown in the bottom schematic in diagram (1).

DIAGRAM (1)



2.2 Convex Mirrors

Large Vehicles must be equipped with convex mirrors to enable the operator of the Large Vehicle to see all points on an imaginary horizontal line which is three (3') feet above the road, starting from five (5') feet directly behind the placement of the convex mirror, and which view extends rearward beyond the full length of such large vehicle on both the left and right sides of the Large Vehicle.

2.3 Cross-Over Mirrors

Large Vehicles must be equipped with a convex cross-over mirror on the front of the vehicle to enable the operator of the Large Vehicle to see any person or object at least three (3') feet tall passing in front of the vehicle.

2.4 Safety Decals

Large Vehicles must be equipped with a minimum of two (2) safety decals on the rear of the Large Vehicle, two (2) safety decals on the left side of the Large

Vehicle, and two (2) safety decals on the right side of the Large Vehicle, that warn Vulnerable Road Users of blind spots, with the following requirements:

- (a) Decals must be "safety yellow" in color.
- (b) Decals must include language or images warning of the blind spot locations on the vehicle.
- (c) Decals on the sides of Large Vehicle must be placed on or within one (1') foot of the Side Under-Ride Guards.

3. Compliance

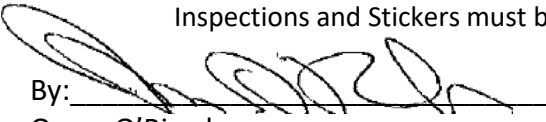
3.1 All Large Vehicles subject to the Ordinance and these Regulations shall comply with these Regulations and the City of Boston Code of Ordinances, Chapter 4, Section 4-8, and shall have all convex mirrors, cross-over mirrors, Side Under-Ride Guards, and decals inspected and approved by the City of Boston Inspectional Services Department. Upon successful completion of the inspection and approval by the City of Boston, all Large Vehicles shall be affixed with the City of Boston Inspectional Services Department's compliance certification sticker ("Sticker").

3.2 A fee to cover the costs associated with the City of Boston's inspection and Sticker shall be determined by the City of Boston Commissioner of the Inspectional Services Department and paid by the applicant / owner of the Large Vehicle.


3.3 Certification and receipt of the City of Boston Sticker must occur prior to any delivery of supplies, services, design and /or construction within the City of Cambridge by any Large Vehicle subject to the requirements of the Ordinance and these Regulations.

3.4 Any Large Vehicle that already has a current City of Boston Sticker does not need to submit to further inspection by the City of Boston Inspectional Services Department until two years has passed since its original certification, unless the convex mirrors, cross-over mirrors, Side Under-Ride Guards, or decals have been damaged, worn, removed, replaced or modified in any way since the last inspection.

3.5 Large Vehicles must display their Sticker, which shall denote the year of inspection. Inspections and Stickers must be updated biennially.

By: 
Owen O'Riordan
Commissioner of Public Works

Date: July 1st 2021

By: 
Joseph Barr
Director of Traffic, Parking and Transportation

Date: July 1, 2021

SAMPLE ARTICLES OF AGREEMENT

City of Cambridge Articles of Agreement for Information Technology Contracts

Commodity:
File Number:

This agreement is made and entered into this, [insert date], by and between the **City of Cambridge** a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, located at City Hall, 795 Massachusetts Avenue, Cambridge MA 02139 ("the City"), and [insert contractor name], a corporation duly organized and existing under the laws of the **State of [insert State Name]** ("the Contractor") (collectively the "Parties" and each a "Party").

Address: [insert contractor mailing address]
Telephone: [insert contractor telephone]
Email: [insert contractor email address]

Article I. Definition. "This Contract" as used herein shall mean these Articles of Agreement for Information Technology Contracts ("Articles") together with the [list all other documents, addendums, links, etc. that are intended to be part of the contract and note after each, "attached hereto as Exhibit "---"]. The City does not accept or agree to additional terms or conditions not specified in these Articles or Exhibits attached hereto.

Article II. Duration. The Contractor shall commence the performance of this Contract for the period beginning on [insert start date] and ending on [insert end date].

Article III. Terms. The Contractor agrees to provide the services set forth in the Contract all in accordance with the with the [insert State Contract info (e.g., State Contract ----) or other controlling agreement, if any] (the "Services").

Contract Value: [\$ -----]

Article IV. Payment. The City agrees to pay to Contractor the sum set forth in the Contractor's bid or proposal. **Contractor shall invoice the City's Information Technology ("IT") Department located at 831 Massachusetts Avenue, Cambridge, MA 02139 to which it provides the Services, not the City's Purchasing Department.**

Article V. Termination. The following shall constitute events of default under this Contract requiring immediate termination: a) any material misrepresentation made by the Contractor, b) any failure by the Contractor to perform any of its obligations under this Contract including, but not limited to, the following: (i) failure to commence performance of this Contract at the time specified in this Contract due to a reason or circumstance within the Contractor's reasonable control, (ii) failure to perform this Contract with sufficient personnel and equipment or with sufficient material to ensure the completion of this Contract within the specified time due to a reason or circumstance within the Contractor's reasonable control, (iii) failure to perform this Contract in a manner reasonably satisfactory to the City, (iv) failure to promptly re-perform within reasonable time the Services that were rejected by the City as erroneous or unsatisfactory, (v) discontinuance of the Services for reasons not beyond the Contractor's reasonable control, (vi) failure to comply with a material term of this Contract, including, but not limited to, the provision of insurance and nondiscrimination, and (vii) any other acts specifically and expressly stated in this Contract as constituting a basis for termination of this Contract.

Except as otherwise provided in the Articles, the City may terminate the Contract upon thirty days' notice. In the event that both parties agree to an immediate termination, it will take effect upon the parties acknowledging such termination in writing.

SAMPLE ARTICLES OF AGREEMENT

Article VI. Damages. From any sums due to the Contractor for services, the City may keep for its own the whole or any part of the amount for expenses, losses, and/or damages as directed by the Purchasing Agent, incurred by the City as a consequence of procuring services from another contractor as a result of any failure, omission, or mistake of the Contractor in providing the Services set forth in this Contract.

Article VII. Conflict. In the event there is a conflict between these Articles and Exhibit(s) [insert Exhibits identified in Article I above] the Articles shall supersede said Exhibit(s).

OR

In the event there is a conflict between these Articles and the State Contract -----, the State Contract -----¹ shall supersede these Articles. In the event there is a conflict between either of these Articles or the State Contract -----, and Exhibit(s) -----, these Articles and/or the State Contract -----, shall supersede Exhibit(s) -----.

Article VIII. Governing laws and ordinances. This Contract is made subject to all the laws, regulations and rules of the United States, the Commonwealth of Massachusetts, and the Ordinances of the City. If any clause of the Contract does not conform to such laws, ordinances, regulations and rules, such clause shall be void and the laws, ordinances, regulations and rules shall be operative in lieu thereof. Such a determination shall have no effect on the validity of the remainder of the Contract.

Article IX. Confidentiality, Privacy, and Protection of Data. The Contractor shall comply with M.G.L. c. 66A if the Contractor becomes a “holder” of “personal data” and shall comply with M.G.L. c. 93H if the Contractor accesses “personal Information.” The Contractor is required to comply with M.G.L. c. 93I for the proper disposal of all paper and electronic media, backups, or systems containing personal data and information. Any Contractor having access to credit card or banking information of the City or its customers shall certify that the Contractor is PCI-DSS compliant in accordance with the Payment Card Industry Council Standards and shall provide confirmation of compliance during the Contract. The Contractor shall immediately notify the City in the event of any security breach, including the unauthorized access, disbursement, use, and/or disposal of personal data or information. Additionally, in the event of a security breach the Contractor shall fully cooperate with the City and provide full and complete access to any information necessary for the City to respond to the security breach. The Contractor shall be fully responsible for any damages associated with the Contractor’s breach, including but not limited to M.G.L. c. 214, s. 3B. Contractor shall acknowledge the City’s OR the City School Department’s Written Information Security Policy (“WISP”). The City’s OR the City School Department’s WISP is incorporated into these Articles, and attached hereto as Exhibit -----, and can be found here: <https://www.cambridgema.gov/-/media/Files/informationtechnologydepartment/WISP.pdf> OR [11-14-22 WrittenInformationandResearchDataSecurityProgram.docx \(sharpschool.com\)](https://www.cambridgema.gov/-/media/Files/informationtechnologydepartment/WISP.pdf).

¹ All terms and conditions as stated in the User Guide, Master Blanket Purchase Order and exhibits for State Contract ----- are agreed to herein with the City serving in place of the Commonwealth of Massachusetts.

SAMPLE ARTICLES OF AGREEMENT

Article X. Right to Data. The City and Contractor agree that as between them, all rights, including all intellectual property rights, in and to the Data shall remain the exclusive property of the City, and Contractor has a limited, non-exclusive license to access and use the Data as provided to Contractor solely for performing its obligations under the Contract. "Data" means any information, or other content that the City, the City's employees, agents, and end users upload, create, or modify using the software, goods, or services pursuant to this Contract. Data also includes user identification information and metadata which may contain Data or from which the Data may be ascertainable. Nothing herein shall be construed to confer any license or right to the Data, including user tracking Data within the City's system, by implication, estoppel, or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of Data by Contractor or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of Data, stored or transmitted by the service, for unrelated commercial purposes, advertising, or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized. The City may access and download the Data at any time during the Term of this Contract.

Article XI. Performance Security. Upon execution of this Contract by the Contractor, the Contractor shall furnish to the City security for the faithful performance of this Contract in the amount of 0% of the value of the bid in the form of a performance bond issued by a surety satisfactory to the City or in the form of a certified check.

Article XII. Indemnification for Information Technology Contracts. Contractor agrees to indemnify, defend, and hold harmless the City, its officers, agents, and employees from all third party liabilities, suits, claims, damages, costs (including without limitation reasonable attorneys' fees), and losses related to (i) the injury or death of any individual, or (ii) loss or damage to any real or tangible personal property, arising out of the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract; (iii) Contractor's breach of its confidentiality, data security or privacy obligations; and (iv) to the fullest extent permitted by law, for infringement or violation of any U.S. intellectual property rights, including copyright or patent, by any goods, services, software, or intangible deliverables provided hereunder, provided that the foregoing obligation shall not apply to the extent of an action or claim resulting from the City's misuse of Contractor's deliverables.

Article XIII. Liability for Information Technology Contracts. Contractor's liability for damages to the City for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the greater of One Hundred Thousand Dollars (\$100,000.00) or two times the Purchase Price. The "Purchase Price" will mean the Not to Exceed Contract amount, including amendments. The foregoing limitation of liability shall not apply (i) to liability for copyright or patent infringement, or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (ii) to claims arising under provisions herein calling for indemnification that include third party claims against the City for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; or (iii) to Contractor's breach of its confidentiality, data security or privacy obligations, including without limitation, indemnification obligations.

In no event will either the Contractor or the City be liable for consequential, incidental, indirect, or special damages, including lost profits, lost revenue, or damages from lost data or records (unless the Contract requires the Contractor to back-up data or records), even if notification has been given as to the possibility of such damages, except (i) to the extent that Contractor's liability for such damages is specifically set forth in a document incorporated hereto, and identified in Article I or (ii) to the extent that Contractor's liability for such damages arises out of sub-section (i), (ii), or (iii) above. Notwithstanding any other provision in this Contract, nothing herein is intended to limit the City's ability to recover, where applicable, the reasonable costs the City incurs to repair, return, replace or seek cover (purchase of comparable substitute goods or services) under a contract. Nothing in this section shall limit the City's ability to negotiate higher limitations of liability in a particular contract.

SAMPLE ARTICLES OF AGREEMENT

Article XIV. Work for Hire. If Deliverables are identified as works made for hire, this paragraph applies. All rights in deliverables made by either Party under this Contract, including all rights, title, and interest in all intellectual property rights, are works made for hire and shall be owned by the City. To the extent, if any, that the City does not own full right, title, and interest in and to the deliverables pursuant to the previous sentence, Contractor hereby assigns all right, title, and interest in the deliverables made or created by Contractor alone or jointly with others under this Contract, to the City. Contractor shall retain all right, title, interest, and proprietary rights in and to any methods, materials, technologies, tools (including software tools), design code, templates, applications, techniques, and other know-how developed by or for Contractor prior to and/or independent of the Services provided hereunder.

Article XV. Equal Opportunity. The Contractor in the performance of all work under this Contract will not discriminate on the grounds of race, color, sex, age, religious creed, disability, national origin or ancestry, sexual orientation, gender identity, marital status, family status, military status, or source of income in the employment practices or in the selection or retention of subcontractors, and in the procurement of materials and rental of equipment. The City may cancel, terminate, or suspend the Contract in whole or in part for any violation of this Article. Contractor must comply with the City's American with Disabilities Act (42 U.S.C. 12131) Section 504 of the Rehabilitation Act of 1973 Tax Compliance/Anti-Collusion Statement Debarment Statement ("ADA Statement"). The City's ADA Statement is incorporated into these Articles, and is attached hereto as **Exhibit ---**.

Article XVI. Assignability. Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under this Contract must be in writing, previously authorized in writing by the City and shall be consistent with and subject to the provisions of these Articles and this Contract. Subcontractors will not relieve or discharge the Contractor from any duty, obligation, responsibility, or liability arising under this Contract. The Contractor shall be responsible for any acts and/or omissions of its subcontractors. The City is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

Article XVII. Contract Interpretation. Severability. Conflicts with Law. Integration. Any amendment to this Contract which contains conflicting language or has the effect of deleting, replacing or modifying any printed language of these Articles or of any printed language in the Contract, shall be interpreted as superseded by the official printed language of these Articles and this Contract. If any provision of this Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both Parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments to this Contract must be in writing and executed by all Parties. The Terms of these Articles shall supersede any conflicting verbal or written agreements relating to the performance of this Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor.

Article XVIII. Electronic Signatures. This Contract and any amendments thereto may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, together, shall be deemed to be one and the same agreement or document. A signed copy of this Contract or any amendment thereto transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Contract or such amendment for all purposes.

**MASSACHUSETTS STUDENT DATA PRIVACY AGREEMENT
VERSION**

Cambridge Preschool Program

and

[Name of Company]

[Date]

This Massachusetts Student Data Privacy Agreement (“DPA”) is entered into by and between the Cambridge Preschool Program (hereinafter referred to as “LEA”) and [Name of Company] (hereinafter referred to as “Provider”) on [Date]. The Parties agree to the terms as stated herein.

RECITALS

WHEREAS, the Provider has agreed or will agree to provide the Local Education Agency (“LEA”) with certain digital educational services (“Services”) as described in Article I and Exhibit “A”; and

WHEREAS, the Provider, by signing this Agreement, agrees to allow the LEA to offer school districts in Massachusetts the opportunity to accept and enjoy the benefits of the DPA for the Services described, without the need to negotiate terms in a separate DPA; and

WHEREAS, in order to provide the Services described in Article 1 and Appendix A, the Provider may receive or create and the LEA may provide documents or data that are covered by several federal statutes, among them, the Federal Educational Rights and Privacy Act (“FERPA”) at 20 U.S.C. 1232g and 34 CFR Part 99, Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. 6501-6502; Protection of Pupil Rights Amendment (“PPRA”) 20 U.S.C. 1232h; the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400 et. seq.; and

WHEREAS, the documents and data transferred from Massachusetts LEAs and created by the Provider’s Services are also subject to several Massachusetts student privacy laws, including Massachusetts student record regulations, 603 C.M.R. 23.00, Massachusetts General Law, Chapter 71, Sections 34D to 34H and 603 CMR 28.00; and

WHEREAS, the Parties wish to enter into this DPA to ensure that the Services provided conform to the requirements of the privacy laws referred to above and to establish implementing procedures and duties.

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

ARTICLE I: PURPOSE AND SCOPE

- Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect Student Data (as defined in Exhibit “C”) transmitted to Provider from the LEA pursuant to Exhibit “A”, including compliance with all applicable state privacy statutes, including the FERPA, PPRA, COPPA, IDEA, 603 C.M.R. 23.00, 603 CMR 28.00, and Massachusetts General Law, Chapter 71, Sections 34D to 34H. In performing these services, to the extent Personally Identifiable Information (as defined in Exhibit “C”) from Pupil Records (as defined in Exhibit “C”) are transmitted to Provider from LEA, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. Provider shall be under the direct control and supervision of the LEA. Control duties are set forth below.
- Nature of Services Provided.** The Provider has agreed to provide the following digital educational services described in Exhibit “A”.

3. **Student Data to Be Provided.** In order to perform the Services described in this Article and Exhibit “A”, LEA shall provide the categories of data described in the Schedule of Data, attached hereto as Exhibit “B”.
4. **DPA Definitions.** The definition of terms used in this DPA is found in Exhibit “C”. In the event of a conflict, definitions used in this DPA shall prevail over terms used in all other writings, including, but not limited to, a service agreement, privacy policies or any terms of service.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Student Data Property of LEA.** All Student Data or any other Pupil Records transmitted to the Provider pursuant to this Agreement is and will continue to be the property of and under the control of the LEA , or to the party who provided such data (such as the student or parent.). The Provider further acknowledges and agrees that all copies of such Student Data or any other Pupil Records transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are also subject to the provisions of this Agreement in the same manner as the original Student Data or Pupil Records. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data or any other Pupil Records contemplated per this Agreement shall remain the exclusive property of the LEA. For the purposes of FERPA and state law, the Provider shall be considered a School Official, under the control and direction of the LEAs as it pertains to the use of student data notwithstanding the above. The Provider will cooperate and provide Student Data within ten (10) days at the LEA’s request. Provider may transfer pupil-generated content to a separate account, according to the procedures set forth below.
2. **Parent Access.** LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review personally identifiable information on the pupil’s records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account, consistent with the functionality of services. Provider shall cooperate and respond within ten (10) days to the LEA’s request for personally identifiable information in a pupil’s records held by the Provider to view or correct as necessary. In the event that a parent of a pupil or other individual contacts the Provider to review any of the Pupil Records of Student Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.
3. **Separate Account.** Provider shall, at the request of the LEA, transfer Student Generated Content to a separate student account.
4. **Third Party Request.** Should a Third Party, including, but not limited to law enforcement, former employees of the LEA, current employees of the LEA, and government entities, contact Provider with a request for data held by the Provider pursuant to the Services, the Provider shall redirect the Third Party to request the data directly from the LEA and shall cooperate with the LEA to collect the required information. Provider shall notify the LEA in advance of a

compelled disclosure to a Third Party, unless legally prohibited. The Provider will not use, disclose, compile, transfer, sell the Student Data and/or any portion thereof to any third party or other entity or allow any other third party or other entity to use, disclose, compile, transfer or sell the Student Data and/or any portion thereof, without the express written consent of the LEA or without a court order or lawfully issued subpoena. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student's use of Provider's services.

5. **No Unauthorized Use.** Provider shall not use Student Data or information in a Pupil Record for any purpose other than as explicitly specified in this DPA.
6. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions pursuant to this DPA, whereby the Subprocessors agree to protect Student Data in manner consistent with the terms of this DPA.

ARTICLE III: DUTIES OF LEA

1. **Provide Data In Compliance With Laws.** LEA shall provide data for the purposes of the DPA in compliance with the FERPA, PPRA, IDEA, 603 C.M.R. 23.00, 603 CMR 28.00, and Massachusetts General Law, Chapter 71, Sections 34D to 34H, and the other privacy statutes quoted in this DPA. LEA shall ensure that its annual notice under FERPA includes vendors, such as the Provider, as "School Officials."
2. **Reasonable Precautions.** LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted data.
3. **Unauthorized Access Notification.** LEA shall notify Provider promptly of any known or suspected unauthorized access. LEA will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance.** The Provider shall comply with all Massachusetts and Federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRA, , 603 C.M.R. 23.00 and Massachusetts General Law, Chapter 71, Sections 34D to 34H.
2. **Authorized Use.** Student Data shared pursuant to this DPA, including persistent unique identifiers, shall be used for no purpose other than the Services stated in this DPA and as authorized under the statutes referred to in subsection (1), above. Provider also acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, any student data, meta data, user content or other non-public

information and/or personally identifiable information contained in the Student Data, without the express written consent of the LEA, unless it fits into the de-identified information exception in Article IV, Section 4, or there is a court order or lawfully issued subpoena for the information.

3. **Employee Obligation.** Provider shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the data shared under this DPA. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Student Data pursuant to the DPA.

4. **No Disclosure.** De-identified information, as defined in Exhibit “C”, may be used by the Provider for the purposes of development, research, and improvement of educational sites, services, or applications, as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). The Provider and LEA agree that the Provider cannot successfully de-identify information if there are fewer than twenty (20) students in the samples of a particular field or category of information collected, *i.e.*, twenty students in a particular grade, twenty students of a particular race, or twenty students with a particular disability. Provider agrees not to attempt to re-identify de-identified Student Data and not to transfer de-identified Student Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to the LEA who has provided prior written consent for such transfer. Provider shall not copy, reproduce or transmit any data obtained under this DPA and/or any portion thereof, except as necessary to fulfill the DPA.

5. **Disposition of Data.** Provider shall dispose or delete all personally identifiable data obtained under the DPA when it is no longer needed for the purpose for which it was obtained and transfer said data to LEA or LEA’s designee within sixty (60) days of the date of termination and according to a schedule and procedure as the Parties may reasonably agree. Nothing in the DPA authorizes Provider to maintain personally identifiable data obtained under any other writing beyond the time period reasonably needed to complete the disposition. Disposition shall include (1) the shredding of any hard copies of any Pupil Records; (2) Erasing; or (3) Otherwise modifying the personal information in those records to make it unreadable or indecipherable. Provider shall provide written notification to LEA when the Data has been disposed. The duty to dispose of Student Data shall not extend to data that has been de-identified or placed in a separate Student account, pursuant to the other terms of the DPA. The LEA may employ a “Request for Return or Deletion of Student Data” FORM, A Copy of which is attached hereto as Exhibit “D”). Upon receipt of a request from the LEA, the Provider will immediately provide the LEA with any specified portion of the Student Data within three (3) calendar days of receipt of said request.

6. **Advertising Prohibition.** Provider is prohibited from using Student Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing or advertising efforts by a Provider; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to Client; or (d) use the

Student Data for the development of commercial products or services, other than as necessary to provide the Service to Client.

ARTICLE V: DATA PROVISIONS

1. **Data Security.** The Provider agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. The general security duties of Provider are set forth below. Provider may further detail its security programs and measures in Exhibit “F” hereto. These measures shall include, but are not limited to:
 - a. **Passwords and Employee Access.** Provider shall secure usernames, passwords, and any other means of gaining access to the Services or to Student Data, at a level suggested by Article 4.3 of NIST 800-63-3. Provider shall only provide access to Student Data to employees or contractors that are performing the Services. Employees with access to Student Data shall have signed confidentiality agreements regarding said Student Data. All employees with access to Student Records shall pass criminal background checks.
 - b. **Destruction of Data.** Provider shall destroy or delete all Personally Identifiable Data contained in Student Data and obtained under the DPA when it is no longer needed for the purpose for which it was obtained or transfer said data to LEA or LEA’s designee, according to a schedule and procedure as the parties may reasonable agree. Nothing in the DPA authorizes Provider to maintain personally identifiable data beyond the time period reasonably needed to complete the disposition.
 - c. **Security Protocols.** Both parties agree to maintain security protocols that meet industry best practices in the transfer or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. Provider shall maintain all data obtained or generated pursuant to the DPA in a secure computer environment and not copy, reproduce, or transmit data obtained pursuant to the DPA, except as necessary to fulfill the purpose of data requests by LEA. The foregoing does not limit the ability of the Provider to allow any necessary service providers to view or access data as set forth in Article IV, section 4.
 - d. **Employee Training.** The Provider shall provide periodic security training to those of its employees who operate or have access to the system. Further, Provider shall provide LEA with contact information of an employee who LEA may contact if there are any security concerns or questions.
 - e. **Security Technology.** When the service is accessed using a supported web browser, Secure Socket Layer (“SSL”), or equivalent technology shall be employed to protect data from unauthorized access. The service security measures shall include server authentication and data encryption. Provider shall host data pursuant to the DPA in an environment using a firewall that is periodically updated according to industry standards.
 - f. **Security Coordinator.** Provider shall provide the name and contact information of Provider’s Security Coordinator for the Student Data received pursuant to the DPA.
 - g. **Subprocessors Bound.** Provider shall enter into written agreements whereby Subprocessors agree to secure and protect Student Data in a manner consistent with the

terms of this Article V. Provider shall periodically conduct or review compliance monitoring and assessments of Subprocessors to determine their compliance with this Article.

- h. Periodic Risk Assessment.** Provider further acknowledges and agrees to conduct periodic risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner.
 - i. Backups.** Provider agrees to maintain backup copies, backed up at least daily, of Student Data in case of Provider’s system failure or any other unforeseen event resulting in loss of Student Data or any portion thereof.
 - j. Audits.** Upon receipt of a request from the LEA, the Provider will allow the LEA to audit the security and privacy measures that are in place to ensure protection of the Student Record or any portion thereof. The Provider will cooperate fully with the LEA and any local, state, or federal agency with oversight authority/jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or LEA, and shall provide full access to the Provider’s facilities, staff, agents and LEA’s Student Data and all records pertaining to the Provider, LEA and delivery of Services to the Provider. Failure to cooperate shall be deemed a material breach of the Agreement.
- 2. Data Breach.** In the event that Student Data is accessed or obtained by an unauthorized individual, Provider shall provide notification to LEA within ten (10) days of the incident. Provider shall follow the following process:
- a.** The security breach notification shall be written in plain language, shall be titled “Notice of Data Breach,” and shall present the information described herein under the following headings: “What Happened,” “What Information Was Involved,” “What We Are Doing,” “What You Can Do,” and “For More Information.” Additional information may be provided as a supplement to the notice.
 - b.** The security breach notification described above in section 2(a) shall include, at a minimum, the following information:

 - i.** The name and contact information of the reporting LEA subject to this section.
 - ii.** A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
 - iii.** If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
 - iv.** Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.
 - v.** A general description of the breach incident, if that information is possible to determine at the time the notice is provided.

- c. At LEA’s discretion, the security breach notification may also include any of the following:
 - i. Information about what the agency has done to protect individuals whose information has been breached.
 - ii. Advice on steps that the person whose information has been breached may take to protect himself or herself.
- d. Provider agrees to adhere to all requirements in the Massachusetts Data Breach law and in federal law with respect to a data breach related to the Student Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
- e. Provider further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Student Data or any portion thereof, including personally identifiable information and agrees to provide LEA, upon request, with a copy of said written incident response plan.
- f. At the request and with the assistance of the District, Provider shall notify the affected parent, legal guardian or eligible pupil of the unauthorized access, which shall include the information listed in subsections (b) and (c), above.

ARTICLE VI: MISCELLANEOUS

1. **Term**. The Provider shall be bound by this DPA for so long as the Provider maintains any Student Data. Notwithstanding the foregoing, Provider agrees to be bound by the terms and obligations of this DPA for three (3) years.
2. **Termination**. In the event that either party seeks to terminate this DPA, they may do so by mutual written consent and as long as any service agreement or terms of service, to the extent one exists, has lapsed or has been terminated.

The LEA may terminate this DPA and any service agreement or contract with the Provider if the Provider breaches any terms of this DPA.

3. **Effect of Termination Survival**. If the DPA is terminated, the Provider shall destroy all of LEA’s data pursuant to Article V, section 1(b).
4. **Priority of Agreements**. This DPA shall govern the treatment of student records in order to comply with the privacy protections, including those found in FERPA, IDEA, COPPA, PPR, 603 CMR 28.00, 603 C.M.R. 23.00, and Massachusetts General Law, Chapter 71, Sections 34D to 34H. In the event there is conflict between the terms of the DPA and any other writing, such as service agreement or with any other bid/RFP, terms of service, privacy policy, license agreement, or writing, the terms of this DPA shall apply and take precedence. Except as described in this paragraph herein, all other provisions of any other agreement shall remain in effect.

5. **Notice.** All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, facsimile or e-mail transmission (if contact information is provided for the specific mode of delivery), or first class mail, postage prepaid, sent to the designated representatives below.

The designated representative for the Provider for this Agreement is:

Name _____
Title _____
Address _____
Telephone Number _____
Email _____

The designated representative for the LEA for this Agreement is:

Name _____
Title _____
Address _____
Telephone Number _____
Email _____

6. **Entire Agreement.** This DPA constitutes the entire agreement of the parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the parties relating thereto. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both parties. Neither failure nor delay on the part of any party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.

7. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.

8. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND

CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MASSACHUSETTS, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS OF [COUNTY OF LEA] COUNTY FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY.

9. **Authority.** Provider represents that it is authorized to bind to the terms of this Agreement, including confidentiality and destruction of Student Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Student Data and portion thereof stored, maintained or used in any way.
10. **Waiver.** No delay or omission of the LEA to exercise any right hereunder shall be construed as a waiver of any such right and the LEA reserves the right to exercise any such right from time to time, as often as may be deemed expedient.
11. **Electronic Signature:** The parties understand and agree that they have the right to execute this Agreement through paper or through electronic signature technology, which is in compliance with Massachusetts and Federal law governing electronic signatures. The parties agree that to the extent they sign electronically, their electronic signature is the legally binding equivalent to their handwritten signature. Whenever they execute an electronic signature, it has the same validity and meaning as their handwritten signature. They will not, at any time in the future, repudiate the meaning of my electronic signature or claim that their electronic signature is not legally binding. They agree not to object to the admissibility of this Agreement as an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

Each party will immediately request that their electronic signature be revoked in writing if they discover or suspect that it has been or is in danger of being lost, disclosed, compromised or subjected to unauthorized use in any way. They understand that they may also request revocation at any time of their electronic signature for any other reason in writing.

If either party would like a paper copy of this Agreement, they may request a copy from the other party.

12. **Multiple Counterparts:** This Agreement may be executed in any number of identical counterparts. If so executed, each of such counterparts shall constitute this Agreement. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart. Execution and delivery of this Agreement by .pdf or other electronic format shall constitute valid execution and delivery and shall be effective for all purposes (it being agreed that PDF email shall have the same force and effect as an original signature for all purposes).

EXHIBIT "A"

DESCRIPTION OF SERVICES

[INSERT DETAILED DESCRIPTION OF SERVICES HERE]

EXHIBIT “B”

SCHEDULE OF DATA

Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.	
	Other application technology meta data-Please specify:	
Application Use Statistics	Meta data on user interaction with application	
Assessment	Standardized test scores	
	Observation data	
	Other assessment data-Please specify:	
Attendance	Student school (daily) attendance data	
	Student class attendance data	
Communications	Online communications that are captured (emails, blog entries)	
Conduct	Conduct or behavioral data	
Demographics	Date of Birth	
	Place of Birth	
	Gender	
	Ethnicity or race	
	Language information (native, preferred or primary language spoken by student)	
	Other demographic information-Please specify:	
Enrollment	Student school enrollment	
	Student grade level	
	Homeroom	
	Guidance counselor	
	Specific curriculum programs	
	Year of graduation	
Parent/Guardian Contact Information	Address	
	Email	
	Phone	
Parent/Guardian ID	Parent ID number (created to link parents to students)	
Parent/Guardian	First and/or Last	

Category of Data	Elements	Check if used by your system
Name		
Schedule	Student scheduled courses	
	Teacher names	
Special Indicator	English language learner information	
	Low income status	
	Medical alerts	
	Student disability information	
	Specialized education services (IEP or 504)	
	Living situations (homeless/foster care)	
Category of Data	Other indicator information-Please specify:	
	Check if used by your system	
Student Contact Information	Address	
	Email	
	Phone	
Student Identifiers	Local (School district) ID number	
	State ID number	
	Vendor/App assigned student ID number	
	Student app username	
	Student app passwords	
Student Name	First and/or Last	
Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	
Student Survey Responses	Student responses to surveys or questionnaires	
Student work	Student generated content; writing, pictures etc.	

Category of Data	Elements	Check if used by your system
	Other student work data - Please specify:	
Transcript	Student course grades	
	Student course data	
	Student course grades/performance scores	
	Other transcript data -Please specify:	

Category of Data	Elements	Check if used by your system
Transportation	Student bus assignment	
	Student pick up and/or drop off location	
	Student bus card ID number	
	Other transportation data - Please specify:	
Other	Please list each additional data element used, stored or collected by your application	

EXHIBIT “C”

DEFINITIONS

De-Identifiable Information (DII): De-Identification refers to the process by which the Vendor removes or obscures any Personally Identifiable Information (“PII”) from student records in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them. The Provider’s specific steps to de-identify the data will depend on the circumstances, but should be appropriate to protect students. Some potential disclosure limitation methods are blurring, masking, and perturbation. De-identification should ensure that any information when put together cannot indirectly identify the student, not only from the viewpoint of the public, but also from the vantage of those who are familiar with the individual. Information cannot be de-identified if there are fewer than twenty (20) students in the samples of a particular field or category, i.e., twenty students in a particular grade or less than twenty students with a particular disability.

NIST 800-63-3: Draft National Institute of Standards and Technology (“NIST”) Special Publication 800-63-3 Digital Authentication Guideline.

Personally Identifiable Information (PII): The terms “Personally Identifiable Information” or “PII” shall include, but are not limited to, student data, metadata, and user or pupil-generated content obtained by reason of the use of Provider’s software, website, service, or app, including mobile apps, whether gathered by Provider or provided by LEA or its users, students, or students’ parents/guardians. PII includes, without limitation, at least the following:

First Name	Home Address
Last Name	Subject
Telephone Number	Email Address
Discipline Records	Test Results
Special Education Data	Juvenile Dependency Records
Grades	Evaluations
Criminal Records	Medical Records
Health Records	Social Security Number
Biometric Information	Disabilities
Socioeconomic Information	Food Purchases
Political Affiliations	Religious Information
Text Messages	Documents
Student Identifiers	Search Activity
Photos	Voice Recordings
Videos	Date of Birth
Grade	Classes

General Categories:

Indirect Identifiers: Any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty

Information in the Student’s Educational Record

Information in the Student’s Email

Provider: For purposes of the DPA, the term “Provider” means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records.

Pupil Generated Content: The term “pupil-generated content” means materials or content created by a pupil during and for the purpose of education including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of pupil content.

Pupil Records: Means both of the following: (1) Any information that directly relates to a pupil that is maintained by LEA and (2) any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other local educational LEA employee.

School Official: For the purposes of this Agreement and pursuant to 34 CFR 99.31 (B), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) Is subject to 34 CFR 99.33(a) governing the use and re-disclosure of personally identifiable information from student records. The definition of “school official” encompasses the definition of “authorized school personnel” under 603 CMR 23.02.

Student Data: Student Data includes any data, whether gathered by Provider or provided by LEA or its users, students, or students’ parents/guardians, that is descriptive of the student including, but not limited to, information in the student’s educational record or email, first and last name, home address, telephone number, email address, or other information allowing online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information text messages, documents, student identifies, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Pupil Records for the purposes of this Agreement, and for the purposes of Massachusetts and Federal laws and regulations. Student Data as specified in Exhibit B is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student’s use of Provider’s services.

Subscribing LEA: An LEA that was not party to the original Services Agreement and who accepts the Provider’s General Offer of Privacy Terms.

Subprocessor: For the purposes of this Agreement, the term “Subprocessor” (sometimes referred to as the “Subcontractor”) means a party other than LEA or Provider, who Provider uses for data collection, analytics, storage, or other service to operate and/or improve its software, and who has access to PII.

Targeted Advertising: Targeted advertising means presenting an advertisement to a student where the selection of the advertisement is based on student information, student records or student generated

content or inferred over time from the usage of the Provider's website, online service or mobile application by such student or the retention of such student's online activities or requests over time.

Third Party: The term "Third Party" means an entity that is not the provider or LEA.

EXHIBIT "D"

DIRECTIVE FOR DISPOSITION OF DATA

[Name or District or LEA] directs [Name of Company] to dispose of data obtained by Company pursuant to the terms of the DPA between LEA and Provider. The terms of the Disposition are set forth below:

1. Extent of Disposition

___ Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:

[Insert categories of data here]

___ Disposition is Complete. Disposition extends to all categories of data.

2. Nature of Disposition

___ Disposition shall be by destruction or deletion of data.

___ Disposition shall be by a transfer of data. The data shall be transferred to the following site as follows:

[Insert or attach special instructions.]

3. Timing of Disposition

Data shall be disposed of by the following date:

___ As soon as commercially practicable

___ By (Insert Date)

4. Signature

(Authorized Representative of LEA)

Date

5. Verification of Disposition of Data

OPTIONAL: EXHIBIT “F”

DATA SECURITY REQUIREMENTS

Having robust data security policies and controls in place are the best ways to ensure data privacy. Please answer the following questions regarding the security measures in place in your organization:

1. Does your organization have a data security policy? Yes No

If yes, please provide it.

2. Has your organization adopted a cybersecurity framework to minimize the risk of a data breach? If so which one(s):

___ ISO 27001/27002

___ CIS Critical Security Controls

___ NIST Framework for Improving Critical Infrastructure Security

___ Other: _____

3. Does your organization store any customer data outside the United States? Yes No

4. Does your organization encrypt customer data both in transit and at rest? Yes No

5. Please provide the name and contact info of your Chief Information Security Officer (CISO) or the person responsible for data security should we have follow-up questions.

Name: _____

Contact information: _____

6. Please provide any additional information that you desire.

