



VIRGINIA BEACH CITY PUBLIC SCHOOLS CHARTING THE COURSE

INTERNET SERVICES

Contract No. 5210

In consideration of the mutual covenants, provisions and agreements set forth herein, this Agreement (the “Contract”) is effective upon the final date of signing between **The School Board of the City of Virginia Beach** (“**The Virginia Beach City Public Schools**” or “**VBCPS**” or “**School Board**”), and **(Enter Contractor)** (also known as the “**Contractor**”) a **Enter State of Corporation or where entity was formed** **(Enter type of entity-corporation, partnership, limited corporation)** whose address is **(Enter Address)** for the purpose of providing the services set forth herein.

1. SCOPE OF WORK

Contractor shall perform services as specified in a certain proposal of Contractor dated _____, which is attached hereto and made a part of this Contract by reference as if repeated verbatim herein. In the event that a conflict exists between the referenced proposal of Contractor dated _____ and the terms of this Contract, the terms of this Contract shall govern and supersede any such conflicting terms of the proposal.

2. COMPENSATION AND METHOD OF PAYMENT

In consideration of the work to be performed by the Contractor, as set forth under the Scope of Work, VBCPS shall order goods and services as needed and pay Contractor after such goods and services are delivered per the pricing schedules and discounts as per **Attachment A: Pricing Schedule**.

Contractor(s) shall not be permitted, under any circumstance, to charge VBCPS for procurement/credit card swipe fees/surcharges on all credit card transactions.

3. TERM OF CONTRACT

The contract will be effective from the July 1, 2027 through June 30, 2028, with the option to renew annually for four (4) additional one-year periods, upon mutual agreement of both parties. All prices shall remain firm throughout the initial contract period.

4. CONTRACT ADMINISTRATOR

The Contract Administrator for this project shall be **Muhammad Babar, Director of Technology – Infrastructure**. Contact can be made at **757-263-1100**.

5. FIRM PRICING

All pricing shall remain firm for the initial contract period and for each renewal period. No price increase of any kind, including any increase based on a cost index, tariff change, pass-through, surcharge, or fuel or labor adjustment, will be permitted during the term of the Contract or any renewal of it.

For each renewal term, the contract rate shall be the lesser of (a) the rate in effect immediately prior to the renewal, or (b) the Contractor's then-current Lowest Corresponding Price as defined under applicable E-Rate rules and Section 4.3 of this RFP.

If the Contractor reduces its rates for comparable services to similarly situated customers at any time during the term, VBCPS shall receive a corresponding price reduction effective as of the same date.

6. DOCUMENTS

This Contract and any exhibits or attachments thereto will constitute the final Contract Document ("Contract Document"). The Contract Document will be incorporated by reference into all purchase orders processed as part of this Contract.

In the event of a conflict in interpretation between the applicable Contract Document and this Contract, any such conflict will be resolved by giving precedence in the following order, most recently dated document first:

1. Amendments and Change Orders to this Contract;
2. The Contract and any Exhibits or Attachments thereto;
3. Best and Final Offer (BAFO);
4. The Proposal;
5. The RFP and Subsequent Addenda.

7. CONTRACTUAL DISPUTES

All contractual disputes arising under or related to this Contract shall be handled in accordance with **Virginia Public Procurement Act § 2.2-4363**, as amended. The Contractor and VBCPS shall attempt to resolve disputes in good faith. Any unresolved disputes may be submitted to the Director of Procurement Services for final administrative resolution prior to any legal action.

8. VENUE

Any and all suits for any claims or for any and every breach or dispute arising out of this Contract shall be maintained in a court of competent jurisdiction in the City of Virginia Beach, Virginia or in the United States District Court for the Eastern District of Virginia, Norfolk Division.

9. APPLICABLE LAW

This Contract shall be governed exclusively by the laws of the Commonwealth of Virginia, including matters of validity, interpretation, obligations, and performance. All questions arising under or related to this Contract shall be resolved in accordance with Virginia law.

Regardless of where the goods or services are delivered or accepted, this Contract shall be deemed to have been executed and accepted within the Commonwealth of Virginia. Sales to schools are not subject to any fair-trade agreements.

10. COMPLIANCE WITH ALL LAWS AND REGULATIONS

Contractor's attention is directed to the fact that all applicable federal, state, and local laws and ordinances, including all rules and regulations of authorities having jurisdiction over the project, shall apply to this Contract. Such laws and regulations shall be deemed to be included in this Contract as if fully set forth herein.

The Contractor shall possess all licenses and permits required to legally conduct its business and shall obtain any additional licenses or permits necessary for performance of this Contract prior to commencing work.

Contractor further expressly represents that it is a corporation, partnership, or limited liability company, as identified on the first page of this Contract, in good standing in the Commonwealth of Virginia, and shall maintain such good standing throughout the term of this Contract and any extensions thereof.

11. GOOD STANDING WITH THE VIRGINIA STATE CORPORATION COMMISSION

If the Contractor is a corporation, limited liability company, general partnership, limited partnership, or business trust organized or authorized to transact business in the Commonwealth of Virginia pursuant to **Title 13.1 or Title 50 of the Code of Virginia, 1950**, as amended, the Contractor shall remain in good standing with the Virginia State Corporation Commission throughout the term of this Contract.

12. DRUG-FREE WORKPLACE

During the performance of this Contract, the Contractor shall:

- **Maintain a Drug-Free Workplace:** The Contractor shall provide a drug-free workplace for all employees engaged in work under this Contract.
- **Posting Requirements:** The Contractor shall post in conspicuous places, accessible to employees and job applicants, a statement notifying that the unlawful manufacture, sale, distribution, dispensation, possession, or use of controlled substances or marijuana is prohibited in the Contractor's workplace. The notice shall specify the actions that will be taken against employees for violations of this policy. All employment solicitations or advertisements placed by or on behalf of the Contractor shall indicate that the Contractor maintains a drug-free workplace.
- **Subcontractor and Vendor Compliance:** The Contractor shall include the provisions of this section in every subcontract or purchase order exceeding \$10,000 related to this Contract, so that these requirements are binding upon all subcontractors and vendors.
- **Definition:** For purposes of this section, "drug-free workplace" means a worksite for the performance of this Contract where employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of the Contract.
- **Prohibited Acts:** The Contractor acknowledges and certifies that it understands the following acts are prohibited for the Contractor, its employees, and agents performing services on School Board property: The unlawful manufacture, distribution, dispensing, possession, or use of alcohol or other drugs; Any impairment from the use of alcohol or other drugs, except for legitimate medical purposes.
- **Breach of Contract:** The Contractor further acknowledges that violation of these prohibitions constitutes a material breach of this Contract. VBCPS may take default action, in addition to any applicable criminal penalties, in response to any such violation.

13. CONTRACTOR/EMPLOYEE BACKGROUND CERTIFICATION

As a condition of awarding a Contract for the provision of services that require the Contractor or his/her employees to have direct contact with students on school property during regular school hours or during school-sponsored activities, the School Board shall require the Contractor to provide certification of whether any individual who will provide such services has been convicted of any violent felony offense set forth in the definition of barrier crime in **subsection A of §19.2-392.02**, as amended; any offense involving the sexual molestation, physical or sexual abuse, or rape of a child, or the solicitation of any such offense; or any crime of moral turpitude.

Contracts may or may not be awarded to contractors or their employees who have felony convictions or convictions for crimes of moral turpitude in accordance with §22.1-296.1, as amended. The Contractor may require the above listed individuals to personally certify this information, but the Contractor will be responsible for submitting such certifications to the School Board. The certification requirement will be binding throughout the term of the contract and Contractor has a continuing duty to inform the School Board of any event that renders the certifications untrue. The Contractor certifies that it has procedures in place to inform its employees, agents, subcontractors or subcontractors' employees of these requirements. Certifications with materially false statements may constitute reason to terminate the Contract and may subject the person certifying the information to criminal prosecution.

Contractor must submit the appropriate **CONTRACTOR BACKGROUND CERTIFICATION FORM** as necessary to remain compliant.

14. EMPLOYMENT OF UNAUTHORIZED ALIENS

The Contractor represents and warrants that it does not currently, and shall not during the performance of this Contract, knowingly employ an unauthorized alien, as defined in the **Federal Immigration Reform and Control Act of 1986 (8 U.S.C. §1324a)**.

15. THE SCHOOL BOARD OF THE CITY OF VIRGINIA BEACH DOES NOT DISCRIMINATE AGAINST FAITH BASED ORGANIZATIONS.

16. NONDISCRIMINATION

Employment discrimination by Contractor shall be prohibited. During the performance of this Contract, Contractor agrees as follows:

- The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation/gender identity, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification/consideration reasonably necessary to the normal operation of the Contractor. The Contractor will comply with the [Virginia Human Rights Act, § 2.2-3900](#), et seq. as amended. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- The Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that Contractor is an equal opportunity employer.
- Notices, advertisements, and solicitations placed in accordance with federal law, rules or regulations will be deemed sufficient for the purpose of meeting the requirements of this section.
- The Contractor will include the provisions of the foregoing first three paragraphs of this section in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

17. ANTI-COLLUSION CLAUSE

Contractor hereby certifies that this Contract, or any claims resulting there from, is not the result of, or affected by, any act of collusion with, or any act of, another person or persons, firm or corporation engaged in the same line of business or commerce; and, that no person acting for, or employed by, VBCPS has an interest in, or is concerned with, this Contract, and, that no person or persons, firm or corporation other than Contractor, have, or are, interested in this Contract.

18. FAILURE TO PERFORM

Contractor shall be liable to VBCPS for all costs VBCPS incurs as a result of Contractor's failure to perform this Contract in accordance with its terms. Contractor's liability shall include but not limited to: damages and other delay costs incurred resulting in improper Contractor work, VBCPS increased costs of performance, such as extended overhead and increased performance costs resulting from Contractor-caused delays or improper Contractor work, warranty and rework costs, liability to third party, excess costs, reasonable attorney's fees and related costs.

19. FORCE MAJEURE

Neither party will be responsible for any resulting loss if the fulfillment of any of the terms or provisions of this agreement is delayed or prevented by a force majeure event, including, but not restricted to, revolutions, insurrections, riots, wars, acts of enemies, national emergency, pandemics, diseases, measures of any governmental authority, freight embargoes, strikes, catastrophic disasters, hurricanes, floods, fires, acts of God, or by any cause not within the control of the party whose performance is interfered with, which by the exercise of reasonable diligence such party cannot prevent, whether of the class of causes enumerated above or not.

Upon occurrence of a force majeure event, the Contractor must promptly notify VBCPS that a force majeure event has occurred and its anticipated effect on performance, including its expected duration. The Contractor's obligation to notify VBCPS is an express condition to invoke this clause.

The Contractor must furnish VBCPS with periodic reports regarding the progress of the force majeure event. The Contractor must use reasonable diligence to minimize damages and to resume performance. VBCPS is relieved from performance even if the underlying applicable event is foreseeable at the time of execution of the contract. If the Contractor cannot resume performance to comport with the initial Contract, VBCPS may cancel the initial Contract after providing written notice to the Contractor.

20. BREACH OF CONTRACT

The Contractor shall be deemed in breach of this Contract if the Contractor:

- Fails to comply with any term of this Contract;
- Fails to cure such noncompliance within **ten (10) business days** from the date of VBCPS's written notice, or within any longer period specified by the VBCPS Contract Administrator in the notice; or
- Fails to submit a written response to VBCPS's notification of noncompliance within **ten (10) business days** from the date of such notice.

21. NON-RENEWAL/TERMINATION WITHOUT CAUSE

VBCPS may, at any time and for any reason, terminate or elect not to renew this Contract by providing **written notice via email** to the Contractor. Such notice shall specify the termination date, which shall be **no less than thirty (30) calendar days** from the date the email is sent to the address provided in the Contractor's Proposal.

Upon termination or non-renewal:

1. The Contractor shall be paid for all work **satisfactorily completed and accepted by VBCPS** through the termination date.
2. The Contractor shall **withdraw all personnel and equipment**, cease further work under the Contract, and **deliver to VBCPS all completed or in-progress work** for which payment has been made.

This clause is in addition to, and does not limit, any other remedies or rights available to VBCPS under applicable law or the Contract.

22. TERMINATION WITH CAUSE/DEFAULT/CANCELLATION

If the Contractor fails to perform or otherwise **defaults** on any term of this Contract, VBCPS may provide **written notice via email** to the Contractor at the address provided in the Contractor's Proposal.

1. **Opportunity to Cure:** Unless otherwise specified, the Contractor shall have **ten (10) business days** from the date the notice is emailed to **cure the default**.
2. **Failure to Cure:** If the Contractor fails to cure the default within the specified period, VBCPS may **immediately terminate** the Contract as of the date of the default notice. Upon termination, the Contractor shall:
 - Withdraw all personnel and equipment;
 - Cease all further work under the Contract; and
 - Deliver to VBCPS any work in progress for which payment has been made.
3. **Immediate Termination:** In cases involving violations of law, or applicable safety or health standards, VBCPS may **immediately terminate** the Contract. The opportunity to cure shall **not** apply in such cases.

Termination or cancellation for cause may result in the Contractor being deemed **non-responsible** for future VBCPS contracts.

23. HOLD HARMLESS/INDEMNIFICATION

It is understood and agreed that Contractor hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Contractor, its subcontractors, agents or employees under or in connection with this Contract or the performance or failure to perform any work required by this Contract. Contractor agrees to indemnify and hold harmless VBCPS and its agents, volunteers, servants, employees and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Contract, and (c) the performance of the work by Contractor or those for whom Contractor is legally liable. Upon written demand by VBCPS, Contractor shall assume and defend at Contractor's sole expense any and all such suits or defense of claims made against VBCPS, its agents, volunteers, servants, employees or officials.

24. CONTRACTOR PERSONNEL STANDARDS

The Contractor's personnel shall be trained/qualified to perform the requested services. If any of the Contractor's personnel are not satisfactory in the performance of services to be furnished hereunder in a proper manner and satisfactory to VBCPS, the Contractor shall remove any such personnel and replace them with satisfactory personnel.

Contractor shall use all reasonable care, consistent with its rights to manage and control its operations, not to employ any persons or use any labor or have any equipment or permit any condition to exist which shall or may cause or be conducive to pose any liability to the general public as well as any activity to be construed as a nuisance. VBCPS retains the right to require the Contractor to halt all work activities until such conditions are resolved.

25. ENVIRONMENTAL CONSIDERATIONS

Any costs or expenses associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or releases of hazardous substances, including, but not limited to, the costs of any cleanup activities, removals, remediation, responses, damages, fines, administrative or civil penalties or charges imposed on VBCPS, whether because of actions or suits by any governmental or regulatory agency or by any private party, as a result of the storage, accumulation,

or release of any hazardous substances, or any noncompliance with or failure to meet any federal, state or local standards, requirements, laws, statutes, regulations or the law of nuisance by Contractor (or by its agents, officers, employees, subcontractors, consultants, sub-consultants, or any other persons, corporations or legal entities employed, utilized, or retained by Contractor) in the performance of this Contract or related activities, shall be paid by Contractor. This paragraph shall survive the termination, cancellation or expiration of this Contract.

26. CONTRACT WAIVER

Any waiver of any provision of this Contract shall be in writing and shall be signed by the duly authorized agent of Contractor or VBCPS. The waiver by either party of any term or condition of this Contract shall not be deemed to constitute a continuing waiver thereof nor of any further or additional right that such party may hold under this Contract.

27. NOTICES

All notices, requests, demands, and elections under this Contract, other than routine operational communications, shall be provided in writing by email and shall be deemed duly given on the date the email is sent, provided the sender does not receive a bounce-back, delivery failure, or similar notice of non-delivery.

Notices shall be addressed as follows:

To VBCPS:

Director of Procurement
2512 George Mason Drive, Room 210
Virginia Beach, VA 23456
Alicia.Smith@vbschools.com

To Contractor:

[Name and Title]
[Address Line 1]
[Address Line 2]
[Email Address]

Either party may update the designated recipient, mailing address, or email address for notices by providing written notice to the other party in accordance with this Section.

28. RESPONSIVENESS

If Contractor fails to deliver goods or services or fails to replace rejected articles immediately or within a reasonable time as interpreted by VBCPS, when so requested, the right is reserved to procure these goods or services from other sources. VBCPS reserves the right to authorize immediate purchase from other sources against rejections on any contract when necessary. On such purchases, Contractor agrees to reimburse VBCPS promptly for excess costs occurred by such purchases. Such purchases will be deducted from Contract amount. Should the cost be less, Contractor shall have no claim to the difference. Contractor shall remove all rejected materials, equipment or supplies from the premises of VBCPS within ten (10) days of notification. Rejected items left longer than ten (10) days will be regarded as abandoned and VBCPS shall have the right to dispose of them as its own property.

VBCPS reserves the right to procure these services from another firm if the Contractor does not respond to the needs of VBCPS in accordance with any schedules dictated by VBCPS.

29. SEVERABILITY

If any provision of this Contract is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this Contract, and all other provisions of this Contract shall remain in full force and effect.

30. FORCED AND INDENTURED CHILD LABOR PROHIBITION

Per **Va. Code Ann. § 2.2-4311.4**, as amended, for a public contract for goods or services exceeding \$10,000, (1) the use of forced or indentured child labor in the performance of a contract is prohibited and (2) the Contractor must include this prohibition in every subcontract or purchase order that exceeds \$10,000, so the prohibition will be binding on each subcontractor or vendor.

31. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

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

1. Contractor shall ensure all web content including but not limited to: information and experiences available on the web like text, images, sound, videos, and documents; created and posted externally on behalf of or as an agent of VBCPS shall meet web accessibility requirements of Title II of the Americans with Disabilities Act and specifically WCAG 2.1, Level AA.

Contractor shall ensure all content created and posted externally on a mobile application on behalf of or as an agent of VBCPS shall meet web accessibility requirements of Title II of the Americans with Disabilities Act, specifically WCAG 2.1, Level AA or an equivalent facilitation.

32. AUDITS

VBCPS shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this Contract or Agreement (including any and all documents and other materials, which support or underlie those books and records), kept by or under the control of Contractor, including, but not limited to those kept by Contractor, its employees, agents, assigns, successors and subcontractors. Contractor shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Contract and for at least three (3) years following the completion of this Contract including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to VBCPS, through its employees, agents, representatives, contractors or other designees, during normal business hours at Contractor's office or place of business in Virginia Beach, Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Virginia Beach, Virginia, which is convenient for VBCPS.

This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which VBCPS may have by State, VBCPS, or Federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are expressed or implied.

33. PERMITS, INSPECTIONS AND LICENSING

The Contractor shall be solely responsible for obtaining and paying for all permits, inspections, consents, authorizations, and impact fees required to perform the work under this Contract.

The Contractor must ensure that all applicable licenses and certifications are current and maintained in compliance with federal, state, local laws, as well as VBCPS rules and regulations.

34. COPYRIGHT / PATENT INDEMNITY

Contractor shall pay all royalty and license fees relating to the items covered by this Contract. In the event any third party shall claim that the manufacture, use and sales of the goods supplied under this Contract constitute an infringement of any copyright, trademark, or patent, the Contractor shall indemnify VBCPS and hold VBCPS harmless from any cost, expense, damage or loss incurred in any manner by VBCPS on account of any such alleged or actual infringement.

35. CONTRACTOR IS NOT AN AGENT

Contractor will be considered an independent Contractor and shall not be deemed to be an agent, servant, employee or representative of VBCPS. Additionally, Contractor certifies that it does not have any relationship (ownership, contractual or otherwise) with any person or entity, which could have an effect on the Contractor's ability to fairly and effectively provide services pursuant to this Contract. **If any such relationship does exist, Contractor must disclose such information.**

36. ADDITIONAL SERVICES

Any services not specifically covered under this Contract shall require prior written agreement between VBCPS and the Contractor. Such additional services shall be performed only after the parties have mutually agreed on the scope of work and applicable rates.

- **Approval of Rates:** All rates for services not included in the Contract must be approved in writing by VBCPS prior to performance; payment for unauthorized services will not be made.
- **Alternative Procurement:** VBCPS reserves the right to procure these additional services by other means at its discretion.

37. INVOICES

Contractor shall submit to VBCPS, all invoices promptly upon completion of the requirements for installation, delivery, and acceptance of the products and services required under this Contract. **(Confirm payment/invoice method with Contractor and detail here)**

Invoices shall not include any costs other than those identified in the executed VBCPS purchase order processed under this Contract or any subsequent change orders issued by VBCPS's Procurement Division.

Invoices shall be emailed to both the Contract Administrator and to e.invoice@vbschools.com for processing.

All shipping costs are the Contractor's responsibility, except to the extent such charges are identified in the executed VBCPS purchase order or change orders. Contractor's invoices shall provide at a minimum:

- Type and description of the product or service installed, delivered and accepted;
- The Contract number and/or VBCPS Purchase Order number.

38. TAXES

VBCPS is exempt from all federal, state, and excise taxes. The Contractor shall not include such taxes in any invoices submitted under this Contract. Exemption certificates, if required, will be provided upon request.

The Contractor shall be responsible for payment of all applicable sales, use, consumer, or similar taxes for work performed or materials provided under this Contract, including those legally enacted at the time of Contract award, whether or not yet in effect. The Contractor is also responsible for all local taxes, including but not limited to the City of Virginia Beach business license, personal property, and real estate taxes.

VBCPS assumes no responsibility for any taxes associated with this Contract.

39. PAYMENTS

Any costs related to the performance of the Contract must be included in this Contract. Payment terms shall be Net 45 days. Payment of invoices will be certified promptly by VBCPS for any item or service received in accordance with the specifications of this contract.

Payment shall not preclude VBCPS from making a claim for adjustment on any item or service received later found not to have been in accordance with the conditions of this contract. Payment will be made on an adjusted price basis for any item or service received later found to be inferior. Partial payments on a total order will be made only by a special arrangement with VBCPS.

40. PAYMENTS TO SUBCONTRACTORS

In accordance with **Va. Code § 2.2-4354**, the Contractor shall make payment to all subcontractors within seven (7) days of receiving payment from VBCPS. If the Contractor intends to withhold all or part of the amount due, it shall notify both VBCPS and the subcontractor in writing of the amount being withheld and the reason for nonpayment.

Any undisputed amounts that remain unpaid after seven (7) days shall accrue interest at the rate of one (1) percent per month, unless otherwise provided in the Contract. Interest shall apply to all late payments except for those properly withheld as permitted herein.

The Contractor is responsible for the full amount owed to any subcontractor with which it contracts, except where a reduction is justified due to the subcontractor's noncompliance with contractual requirements. If the Contractor withholds payment, it must notify the subcontractor in writing of the reason for withholding.

Payment from VBCPS to the Contractor shall not be a condition precedent to payment to any lower-tier subcontractor, regardless of whether the Contractor has received payment for the amounts owed. Any contract provision to the contrary is unenforceable.

These requirements shall be included in every subcontract and shall apply to each lower-tier subcontractor. The Contractor shall provide VBCPS with its federal taxpayer identification number or social security number before any payment is made under this Contract.

The Contractor's obligation to pay interest to a subcontractor under this section shall not be construed as an obligation of VBCPS. No contract modification shall be issued for the purpose of reimbursing the Contractor for any such interest, and no cost reimbursement claim may include any request for reimbursement of such interest.

41. NON-APPROPRIATION AVAILABILITY OF FUNDS

It is understood and agreed between the parties hereto that VBCPS shall be bound and obligated hereunder only to the extent that the funds shall have been appropriated and budgeted for the purpose of this Contract. In the event funds are not appropriated and budgeted in any fiscal year for payments due under this Contract, VBCPS shall notify Contractor of such occurrence, and this Contract shall terminate on the last day of the fiscal year for which an appropriation(s) was (were) received without penalty or expense to VBCPS of any kind whatsoever.

42. MODIFICATION

All modifications to this Contract shall be mutually agreed to by both parties, in writing, and authorized by VBCPS's Director of Procurement or assigned designee.

43. ASSIGNMENT OF CONTRACT

The Contractor shall not, without the prior written consent of VBCPS, assign, delegate, or otherwise transfer, in whole or in part, the Contract or any of the Contractor's rights or obligations arising hereunder. VBCPS may, in its sole discretion, consent or decline to consent to any such assignment, delegation, or transfer, or may give its conditional consent thereto. In the event VBCPS conditionally consents to such an assignment, delegation, or transfer, such consent may, without limitation, be conditional upon Contractor's remaining fully and unconditionally liable to VBCPS for any breach of the terms of this Contract by Contractor's transferee and for any damage or injury sustained by a third party or parties as a result of the intentional act or omission, negligence, or breach of warranty by Contractor's transferee.

44. WARRANTY

The Contractor warrants that all materials, equipment, and workmanship provided under this Contract shall be free from defects for a period of at least one (1) year from the date of acceptance by VBCPS. The Contractor shall provide adequate protection for all work and shall repair, at its own expense, any damage of any kind caused by the Contractor or its employees to the building, equipment, its own work, or the work of others.

Any merchandise, equipment, or services provided under this Contract that are or become defective during the warranty period shall be replaced or corrected by the Contractor at no additional cost to VBCPS. All replacements or corrective services shall carry the same warranty as the original materials or services and shall be warranted for one (1) year from the date of acceptance of the replacement or correction. The Contractor shall make any such replacement or correction promptly upon receiving notice from VBCPS.

45. FEDERALLY IMPOSED TARIFFS

In the event that the President of the United States, the United States Congress, Customs and Border Protection, or any other federal entity authorized by law, imposes an import duty or tariff (a "tariff"), on an imported good that results in an increase in contractor's costs to a level that renders performance under the Contract impracticable, VBCPS may agree to an increase to the purchase price for the affected good. No increase in purchase price may exceed 25% of the tariff imposed on the goods imported or purchased by the Contractor that are provided to VBCPS under this Contract.

Prior to VBCPS agreeing to a price increase pursuant to this Section, Contractor must provide to VBCPS, the following documentation, all of which must be satisfactory to VBCPS:

- A. Evidence demonstrating: (i) the unit price paid by contractor as of the date of award for the good or raw material used to furnish the goods to VBCPS under this Contract, (ii) the applicability of the tariff to the specific good or raw material, and (iii) Contractor's payment of the increased import duty or tariff (either directly or through an increase to the cost paid for the good or raw material). The evidence submitted shall be sufficient in detail and content to allow VBCPS to verify that the tariff is the cause of the price change.
- B. A certification signed by the Contractor that it has made all reasonable efforts to obtain the good or the raw materials comprising the good procured by VBCPS at a lower cost from a different source located outside of the country against which the tariff has been imposed.
- C. A certification signed by the Contractor that the documentation, statements, and any other evidence it submits in support of its request for a price increase under this Section are true and correct, and that the Contractor would otherwise be unable to perform under this contract without such price increase.
- D. As requested by VBCPS, written instructions authorizing VBCPS to request additional documentation from individuals or entities that provide the good or the raw materials to verify the information submitted by the Contractor.
- E. If VBCPS agrees to a price increase pursuant to this Section, the parties further agree to add the following terms to the contract:
 - 1. During the Contract term and for five (5) years after the termination of this Contract, Contractor shall retain, and the Commonwealth VBCPS and its authorized representatives shall have the right to audit, examine, and make copies of, all of Contractor's books, accounts, and other records related to this Contract and Contractor's costs for providing goods to VBCPS, including, but not limited to those kept by the Contractor's agents, assigns, successors, and subcontractors.
 - 2. Notwithstanding anything to the contrary in the Contract, VBCPS shall have the right to terminate the Contract for VBCPS' convenience upon five (5) days' written notice to Contractor.
 - 3. In the event the import duty or tariff is repealed or reduced prior to termination of this Contract, the increase in VBCPS's contract price shall be reduced by the same amount and adjusted accordingly.
 - 4. Any material misrepresentation of fact by Contractor relating in any way to VBCPS's payment of additional sums due to tariffs shall be fraud against the taxpayer² of Virginia Beach, Virginia, and subject Contractor to treble damages pursuant to the Virginia Fraud Against Taxpayers Act.

46. INSURANCE

The Contractor will be required to carry adequate insurance to protect VBCPS from loss in case of accident, fire, theft, etc., prior to acceptance by a responsible person representing VBCPS. The Contractor shall require each of its Subcontractors to take out and maintain during the life of its Subcontract the same insurance coverage required of the Contractor.

Contractor agrees to secure and maintain in full force and effect at all times during the term of this Contract, the following policies of insurance:

- Comprehensive General Liability Insurance, including contractual liability and products and completed operations liability coverages, in an amount not less than one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate. Such insurance shall name VBCPS as an additional insured for both ongoing and completed operation on a primary and non-contributory basis. Coverage will include a Waiver of Subrogation in favor of VBCPS.
- Automobile Liability Insurance including coverage for non-owned and hired vehicles in an amount not less than one million dollars (\$1,000,000) combined single limits (CSL).
- Umbrella / Excess liability Insurance including coverage with minimum limits of four million dollars (\$4,000,000) per occurrence and aggregate which shall attach over above noted policy coverages.

- Workers' Compensation Insurance as required under [Code of Virginia, Title 65.2](#), not less than Five Hundred Thousand Dollars (\$500,000) per accident/employee and policy limit. Coverage will include a Waiver of Subrogation in favor of VBCPS.

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to VBCPS, and shall carry the provision that the insurance will not be cancelled or materially modified without thirty days (30) prior written notice to VBCPS.

NO PAYMENT WILL BE MADE UNTIL THE WORK IS INSPECTED AND APPROVED.