



HOUSTON INDEPENDENT SCHOOL DISTRICT

AGREEMENT TERMS AND CONDITIONS

(RFx PART II)

TABLE OF CONTENTS

1.1	Definitions and Terms	4
1.2	Code of Silence; Conflicts of Interest; Business Ethics	4
1.3	Specifications	5
1.4	Reservation of Rights	6
1.5	Entire Agreement.....	6
1.6	Term	7
1.7	Pricing.....	7
1.8	Purchase Orders.....	9
1.9	Invoices; Payment	9
1.10	Insurance.....	10
1.11	Authorization.....	11
1.12	Safety; Workforce.....	11
1.13	Certification of Vendor - Nationwide Criminal Background Checks:.....	12
1.14	Hazardous Materials	13
1.15	Support.....	13
1.16	Record Retention and Right to Audit	13
1.17	Confidential Information.....	14
1.18	Student Confidentiality	14
1.19	Ownership of Work Product	14
1.20	Quantity; Other Governmental Entities' Use of Agreement	15
1.21	Bonding; Prevailing Wage Rates	16
1.22	Defective/Non-Conforming Work.....	16
1.23	Default Conditions	16
1.24	Warranties	16
1.25	Work Stoppage.....	17
1.26	Dispute Resolution.....	17
1.27	Termination.....	17
1.28	Non-Appropriation of Funds	17
1.29	Non-Assignment.....	17
1.30	Force Majeure	18
1.31	Equal Opportunity.....	18
1.32	Governing Law; Venue	18
1.33	Relationship of the Parties.....	18
1.34	Compliance with Laws	19
1.35	No Waiver of Immunity.....	19
1.36	No Waiver of Breach	19
1.37	Indemnification	19

1.38 Notice 19

1.39 Section Headings; Interpretation 19

1.40 Third Party Beneficiaries 19

1.41 Unenforceable Sections 20

1.42 Business Certificates/HISD Taxes 20

1.43 Attorneys’ Fees 20

This Agreement (as defined in Section 1.1.1 and Section 1.5) shall govern each purchase by HISD from Vendor and are part of the terms and conditions of each purchase/work order issued in connection with this solicitation.

A response to this solicitation (i.e., a submitted proposal) is an offer to contract with HISD based upon the terms, conditions, scope of work, and specifications contained in this solicitation and this Agreement. A solicitation/proposal does not become a contract unless and until it is accepted by HISD after all necessary approvals, including any required approval by the HISD Board of Education ("Board award"). A contract is formed when an authorized HISD representative(s) signs the Execution of Offer form. The proposer must submit a signed Execution of Offer Form in the Response Attachment section of the HISD electronic bidding portal, thus eliminating the need for the formal signing of a separate contract.

This Agreement is entered into between Houston Independent School District and Vendor, having submitted a proposal in response to a procurement solicitation issued by HISD and whose proposal has been accepted and awarded by HISD. In consideration of the mutual covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, HISD and Vendor, intending to be legally bound, and subject to the terms, conditions, and provisions of this Agreement, agree as follows:

1.1 DEFINITIONS AND TERMS: In this solicitation, terms are used as follows:

- 1.1.1** "Agreement" means the terms and conditions of this Part II Agreement Terms and Conditions and as further defined in Section 1.5.
- 1.1.2** "HISD" or the "District" refers to Houston Independent School District.
- 1.1.3** "Proposal" includes a proposer's entire submission submitted in response to this solicitation, including documents, forms, information, etc. submitted by a proposer in response to this solicitation.
- 1.1.4** "Solicitation" refers to the procurement solicitation issued by HISD to request proposals for goods and/or services. The term includes any method used by the District to request goods and/or services (i.e., RFP, RFQ, CB, CSP, etc.). The words "bids," "requests for proposals," "solicitation," "procurement solicitation," "procurement," "RFP," and their derivatives may be used interchangeably. The solicitation includes all parts/sections of the solicitation, including all Addenda thereto.
- 1.1.5** "Term" as used in this Agreement means the then-current term of the Agreement, whether the initial term or a renewal term. The Term is further defined in Section 1.6.
- 1.1.6** "Vendor" refers to the person(s), firm(s), and entity(ies) that submit proposals to this solicitation and/or to whom a contract is awarded pursuant to this solicitation.
- 1.1.7** Singular terms shall include the plural and vice versa. A gender reference includes both genders.

1.2 CODE OF SILENCE; CONFLICTS OF INTEREST; BUSINESS ETHICS: The Board of Education (Board) has adopted a "Code of Silence" policy (ref. [Board Policy CAA \(Local\)](#)) and a "Conflict of Interest Disclosures" policy (ref. [Board Policy BBFA \(Local\)](#)) to enforce its commitment to ethical contracting standards and improve accountability and public confidence. It is important to avoid both the appearance of conflicts and actual conflicts of interest.

1.2.1 The “Code of Silence” shall mean a prohibition on any communication regarding any solicitation, bid, or other competitive solicitation between:

1. Any person who seeks an award from the District or its affiliated entities (including, but not limited to, the HISD Foundation and the HISD Public Facility Corporation), including a potential Vendor or Vendor's representative, and
2. Board members, the Superintendent of Schools, senior staff members, principals, department heads, directors, managers, or other District representatives who have influence in the evaluation or selection process.

The “Code of Silence” time period shall begin when the solicitation is issued and ends upon the execution of the contract. During the “Code of Silence”, campaign contributions, gifts, donations, loans, and any other items of value are prohibited between these parties, including candidates who have filed for election to the Board.

The “Conflicts of Interest Disclosures” requires a Board member to disclose and recuse himself or herself from voting on any contract, agreement, or any other District transaction involving an entity or related officer and/or key employee who has provided campaign contributions during the preceding 12-month period in excess of \$2,000.

Board Policy CAA (Local) [http://pol.tasb.org/Policy/Download/592?filename=CAA\(LOCAL\).pdf](http://pol.tasb.org/Policy/Download/592?filename=CAA(LOCAL).pdf) pertaining to the “Code of Silence” and Board Policy BBFA (Local) [http://pol.tasb.org/Policy/Download/592?filename=BBFA\(LOCAL\).pdf](http://pol.tasb.org/Policy/Download/592?filename=BBFA(LOCAL).pdf) pertaining to “Conflicts of Interest Disclosures” are attached by URL link above and incorporated by reference. Please review the policies carefully and ensure that the policies are followed in all respects. Vendor agrees and understands that non-compliance with the “Code of Silence” policy may result in disqualification. Furthermore, the failure of a Board member to disclose a conflict of interest may result in the debarment of a Vendor for 24 months.

1.2.2 During the course of this Agreement, Vendor will maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No gift, favor, loan, service, entertainment, or anything of more than token value shall be accepted by a District employee from any District vendor or prospective vendor seeking to do business with the District. See HISD Policy CDC (Local). Items of token value include trinkets of minimal value such as coffee mugs, key chains, caps, and the like. If at any time Vendor believes there may have been a violation of this obligation Vendor shall notify HISD of the possible violation. HISD is entitled to request a representation letter from Vendor, its subcontractors or agents at any time to disclose all things of value passing from Vendor, its subcontractors or agents to HISD's personnel or its authorized agents and representatives.

1.3 SPECIFICATIONS: By submitting a proposal, Vendor agrees to provide the goods/services in full accordance with the specifications outlined in the solicitation and this Agreement, as requested by HISD, notwithstanding existing material and/or labor market conditions. Vendor shall examine and be familiar with all requirements and obligations of the entire solicitation. Failure to do so will be at the Vendor's risk. Whenever an article or material is defined by HISD in this solicitation by describing a proprietary product or by using the name of a manufacturer or brand name, the term “or equal” if not inserted shall be implied (as applicable). The specified article or material shall be understood as indicating type, function, minimum

standard of design, efficiency and quality desired and shall not be construed as to exclude other manufactured products or comparable quality, design and efficiency (as applicable).

The evaluation criteria for the award of this solicitation are set forth in Part I of this solicitation. All exceptions to the specifications and requirements of the solicitation and/or to this Agreement must be noted in detail in the "Note to Buyer" section of Vendor's eBid submitted proposal. HISD reserves the right to review, negotiate, and/or reject any exception(s) to the solicitation and/or to this Agreement in its sole discretion. In the event that a project is awarded to a Vendor and the Vendor requests changes to the Agreement or the District's purchase order that were not included as exceptions in the Vendor's proposal and were accepted by the District at the time of contract award, the District reserves the right to cancel the award and re-award the project to an alternate vendor.

All costs related to the preparation and submission of a proposal shall be paid by Vendor. Issuance of this solicitation does not commit HISD, in any way, to pay any costs in the preparation and submission of the proposal. The issuance of the solicitation in no way obligates HISD to award, enter into an agreement, or purchase any goods and services.

1.4 RESERVATION OF RIGHTS:

- 1.4.1** HISD reserves the right to cancel this solicitation in whole or in part by issuance of a revised or amended procurement solicitation.
- 1.4.2** HISD further reserves the right to award one or more contracts, in part or in whole, to a single or to multiple prospective vendors or proposers. The decision to award multiple contracts, award only one contract, or to make no awards rests solely with HISD. HISD may make multiple awards, and this fact should be taken into consideration by each proposer.
- 1.4.3** HISD assumes no financial responsibility for any costs incurred by prospective vendors in developing and submitting a proposal or any amendments or addenda, participating in pre-proposal conferences, participating in any negotiation sessions or discussions, or any other costs incurred by proposers prior to award of a contract pursuant to this solicitation.
- 1.4.4** HISD reserves the right to reject any and/or all proposals, to award contracts for individual goods or services as may appear advantageous, and to negotiate separately in any manner necessary to serve the best interests of the District. HISD further reserves the right to accept, reject, or negotiate modifications in any terms of a proposed vendor's proposal or any parts thereof. HISD further reserves the right to waive any formalities or technicalities if deemed in the best interest of the District. HISD also reserves the right as sole judge of quality and equality.
- 1.4.5** The District reserves the right in its sole discretion to accept the proposal(s) it considers the best value for the District and the right to waive any minor irregularity in the proposal(s). Additionally, the District reserves the right to waive any requirements of the solicitation. The District further reserves the right to reject all proposals and seek new proposals when such action would be deemed in the best interests of the District.

1.5 ENTIRE AGREEMENT:

- 1.5.1** This Agreement, the procurement solicitation issued by HISD (including Parts I, II, and III and the bid attributes included in the eBid system), and Vendor's proposal submitted in response to HISD's procurement solicitation, and the attached and incorporated addendum, exhibits,

and/or forms, including Vendor's completed HISD Vendor Packet/Bid Attributes (including all certifications therein), contain the entire agreement of the parties relative to the purpose(s) of the Agreement and supersede any other representations, agreements, arrangements, negotiations, or understanding, oral or written, between the parties to this Agreement.

- 1.5.2 The District reserves the right to require any modification(s)/amendment(s) to the Agreement terms if the modifications/amendments are deemed to be in the best interest of the District and do not substantially change the scope of the Board award. Further, no amendment of this Agreement shall be permitted unless first approved in writing by HISD, and no such amendments shall have any effect unless and until a written amendment to this Agreement is executed by HISD's Superintendent or its Chief Financial Officer (or their designees) after any necessary approvals have been obtained from the HISD Board of Education.
- 1.5.3 In the event Vendor desires that HISD execute a license agreement or other contract document, Vendor must upload the document(s) with its proposal in HISD's eBid system, and the District reserves the right to review and amend any such document or reject the document in its entirety, in the District's sole discretion.
- 1.5.4 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ANY VENDOR FORM, PROPOSAL OR DOCUMENTATION, THE TERMS AND CONDITIONS OF THE AGREEMENT AS INTEGRATED HEREIN SHALL BE CONTROLLING IN ALL INSTANCES. No pre-published terms on Vendor's order acknowledgments, invoices, or other forms shall have any force or effect.
- 1.5.5 To the extent there is any conflict between or among the documents composing the Agreement, the following hierarchy (from most to least authoritative) shall prevail: (i) Vendor's completed HISD Vendor Packet/Bid Attributes (including all certifications there); (ii) this Agreement and the District's issued purchase/work order, (iii) the procurement solicitation issued by the District, and (iv) the portion(s) of Vendor's proposal agreed to and accepted by the District.

1.6 TERM: Unless otherwise provided in the Section I of the solicitation, or required by the District, this Agreement shall be for a period of one (1) year from the effective date of the Agreement. Subject to Section 1.28 of the Agreement, the Agreement will automatically renew in one-year increments (for a maximum of four (4) one-year renewal terms) unless either party provides notice to the other party sixty (60) days in advance of the renewal date stating that the party wishes to discuss modification of the terms or not renew the Agreement. At the District's option, there may be an additional 90-day transitional period added to the end of the initial term or any renewal term. The Agreement prices, terms and conditions are to remain in force during the transitional period unless mutually agreed upon by both parties. Should the Agreement with the Vendor terminate during the initial or any renewal term for any reason, the District reserves the right to have the same transitional period, prices, terms and conditions as if the Agreement terminated at the expiration of that term.

1.7 PRICING: Vendor should propose Vendor's lowest and best price (as applicable) on each good/service that is the subject of this solicitation.

- 1.7.1 All prices in Vendor's proposal shall be firm for the Term of the Agreement. Pricing may be negotiated during the Contract renewal period. If Vendor's prices will be adjusted or escalated upon a renewal (if any) and Vendor believes it necessary to include an economic price adjustment in its proposal, such a proposal may be considered, but only as an alternate proposal and should be noted in the "Note to Buyer" section of Vendor's proposal submitted

in the HISD eBid system. The economic price adjustment should give the maximum price increase or decrease (either % or \$) and the date and/or event at which the increase would be effective (i.e., prices adjusted by the Consumer Price Index at the time of renewal). Additionally, if Vendor has reason to believe a better (i.e., more cost effective) method is practical, then Vendor may offer that pricing option as an alternative. All price changes shall be presented to HISD for acceptance or rejection by HISD, in its sole discretion, using the same format as was accepted in Vendor's original proposal; all price changes for products and/or services provided under this Agreement must be approved, in writing, by HISD prior to taking effect. The following documentation shall be provided to support a request for a price change:

- justification for change/increase
- market conditions
- terms and conditions
- manufacturers'/distributors' impact, if any

All price decreases shall be allowed for all products and/or services.

- 1.7.2** All costs associated with this Agreement must be enumerated in Vendor's proposal. Any costs associated with the Agreement not explicitly enumerated and discussed in the proposal will not be honored. Vendor shall provide information on its standard fee arrangement for any goods and/or services proposed and any discounts offered. Vendor must include in the cost proposal all travel and accommodation expenses associated with travel to perform a project under this Agreement. Travel expenses associated with the Agreement must conform to a "reasonableness" test for travel expenditures associated with governmental travel and must be pre-approved by the District before being incurred.
- 1.7.3** In the event of a catalog discount type proposal, Vendor may be allowed to make additions and/or deletions from Vendor's offerings on an annual basis during the Agreement renewal period, in HISD's sole discretion, provided the item(s) substituted are of a like quality and category. These changes will be compliant with the format of Vendor's original proposal (i.e. manufacturer name, product category, or entire catalog discount). HISD will send notification to Vendor seeking any additions and/or deletions, and Vendor will return these proposed changes on company letterhead within the given timeframe. If HISD, in its sole discretion, accepts Vendor's proposed changes, such changes will remain in effect for the entire year until the next renewal period.
- 1.7.4** New goods/services that meet the specifications detailed in the solicitation may be added to this Agreement, with prior written approval from HISD. Pricing of any new goods/services shall be equivalent to the percentage discount or proposed prices for other similar goods/services. Vendor may replace or add goods/services to an existing contract if: the replacing goods/services are equal to or superior to the original goods/services offered; are discounted in a similar or to a greater degree; and the goods/services meet the requirements of the original solicitation. No goods/services may be added to avoid competitive procurement procedures. HISD may reject any proposed additions, without cause, in its sole discretion.
- 1.7.5** The District's standard freight terms are F.O.B., destination, prepaid and allowed. HISD may specify various and different locations within the District for "destination" during the Term of the Agreement, and prices should include allowances for such freight contingencies. No C.O.D. shipments will be accepted. If the goods are not shipped in accordance with HISD's directions and the instructions set out in the Agreement, the Vendor shall pay to HISD any excess cost incurred by District. Whenever HISD is purchasing (and not leasing) an item under this Agreement, title and risk of loss shall pass upon the later of HISD's acceptance of the item or payment of the applicable invoice.

- 1.7.6 Vendor is required to provide HISD with a menu of any optional goods/services offered. Each good/service must be priced separately and independent of any other goods/services offered or rendered.
- 1.7.7 HISD is exempt from and will not be responsible for payment of any taxes, including local, state and federal taxes. If taxes are imposed on the goods and/or services purchased, the District will not be responsible for payment of the taxes; Vendor shall absorb the taxes entirely. The District will supply tax exemption information upon request.

1.8 PURCHASE ORDERS

- 1.8.1 This Agreement is intended to allow the District to purchase goods/services from the Vendor through the HISD Procurement Services Department by using the District's requisition and purchase order process. Any order issued pursuant to this Agreement shall conform to the specifications, descriptions, and service terms identified in this Agreement and in the solicitation. Unless otherwise agreed to in advance by HISD, Vendor will not deliver substitutes without prior authorization from HISD. Vendor agrees that contracted personnel will not begin work at HISD until Vendor receives a valid District purchase order by the Procurement Services Department. In the event that the contracted personnel begin work before Vendor receives a valid purchase order, Vendor agrees that the District is not liable for payment of such services rendered.
- 1.8.2 At the discretion of the District, purchases may require the issuance of an official HISD purchase order from the District's Purchasing Services Department. If so required, then all goods provided without a purchase order will be returned at Vendor's expense. All services provided without a purchase order may be considered a donated contribution to the District.
- 1.8.3 HISD reserves the right to make changes to a purchase order (e.g., increase/decrease quantities, change delivery date, delivery address). Any changes to a purchase order shall be communicated to the awarded Vendor by the issuance of a formal change purchase order. Only an HISD purchasing staff member may make a change to the purchase order by issuing and sending a formal change purchase order to the awarded Vendor.
- 1.8.4 Once the performance of the Agreement has begun, any change orders or requests will be made in accordance with Texas Education Code Section 44.0411 and applicable HISD procedures and policies. If Vendor acts on the direction of a District employee who is not authorized to make changes, Vendor does so at his or her own risk or peril and risks termination of the Agreement. Also, if a Vendor attempts, or receives, a modification/amendment from a District employee who is not authorized to make changes, Vendor accepts such at its own risk or peril and risks termination of the Agreement.

1.9 INVOICES; PAYMENT:

- 1.9.1 HISD standard payment terms are net 30 days after receipt of invoice. Vendor may offer the District a cash discount for payment of an invoice(s) with stated discount terms. Vendor's invoices should be sent as a preferred method to the email address: HISD_VendorInvoices@houstonisd.org or by mail to Houston Independent School District, Controller's Office, Accounts Payable Department, 4400 West 18th Street, Houston, Texas 77092. Accounts Payable will receive your invoice to be processed. Alternative payment terms may be accepted at HISD discretion. Invoices shall be directed to HISD's Accounts Payable Department. All invoices shall be itemized to include the type of good(s) and/or service(s) rendered. Vendor shall submit invoices within a timely manner during HISD's fiscal year in

which the good(s) and/or services are purchased. In accordance with Texas Government Code § 2251.021, payments are due to Vendor within thirty (30) days after the later of the following: (1) the date HISD receives the goods under the Agreement; (2) the date the performance of the service under the Agreement is completed; or (3) the date HISD receives an invoice for the goods or service. Vendor agrees to pay any subcontractors, if any, the appropriate share of the payment received from HISD not later than the tenth (10th) day after the date Vendor receives the payment from HISD. The exceptions to payments made by HISD and/or Vendor listed in Texas Government Code § 2251.002 shall apply to this Agreement.

- 1.9.2** Invoices will be date and time stamped upon receipt in the Accounts Payable Department, and the cash discount, when applicable, will be calculated from the "receipt date" stamped on the invoice. If Vendor offers a discount in the proposal, this discount will also apply to all other solicitations that the Vendor has been previously awarded. Vendor's invoices must contain the appropriate HISD purchase order number on the face of the invoice. Each line item on the invoice should contain the corresponding line item number shown on the purchase order. Invoices submitted without the correct purchase order number may be returned to the Vendor for correction. Corrected invoices will be subject to the same payment provisions as original invoices.
- 1.9.3** In the event Vendor presents the District with invoices, statements, reports, etc. that are incomplete, inaccurate or in need of substantial internal research, such action could result in delay of payment. The District will not be responsible for any interest charges and/or late fees because of delayed payment due to time delays caused by inadequate or incomplete information provided in invoices by Vendor.
- 1.9.4** In addition to all other rights and remedies that the District may have, the District shall have the right to setoff, against any and all amounts due to Vendor by the District, whether due under this Agreement or any other agreement between HISD (including any division of HISD) and Vendor, any sums for which the District is entitled to under this Agreement, as determined by the District in its sole discretion, including, without limitation, sums due by Vendor to HISD as a result of indemnification obligations, warranty claims, and/or HISD Administrative Fee(s), as applicable.
- 1.9.5** Payment will be made upon receipt and acceptance by HISD of item(s) ordered and receipt of a valid invoice, in accordance with the State of Texas Prompt Payment Act, Chapter 2251, Government code VTCA. Vendor is required to pay subcontractors within ten (10) days.

1.10 INSURANCE: Vendor must carry insurance with responsible carriers acceptable to HISD rated A or better, by A.M. Best, with minimum limits of liability coverage, as stated below, against claims for damages caused by bodily injury, including death, to employees and third parties, and claims for property damage.

<u>Type of Coverage</u>		<u>Minimum Limits</u>
1.	Workers' Compensation and Employer's Liability	Statutory \$100,000 per accident
2.	Automobile Liability: Bodily Injury & Property Damage Limit For all owned, non-owned vehicles and hired vehicles.	\$1,000,000 Combined Single

3. **Commercial General Liability** **\$1,000,000 Per Occurrence**
4. **Professional Liability (errors and omissions) may be required at the discretion of the Category Specialist/Manager.**

With its proposal, Vendor must furnish either certificates of insurance (Acord Form,) or a letter from the insurance carrier on the insurance carrier's letterhead to HISD indicating compliance with this paragraph. Upon notification of intent to award from HISD's Risk Management, Vendor must submit to Risk Management the actual Acord Form prior to being recommended to the Board of Education for contract award. Vendor shall provide HISD with original certificates of insurance (Acord Form,) acceptable to HISD. Insofar as allowed by law, such certificates shall indicate an agreement by each carrier not to cancel or diminish coverage without a minimum of thirty (30) days prior written notice to HISD. **Vendor will have three (3) business days from the date of the letter to submit its certificates of insurance; failure to provide all the requirements may cause the proposal to be deemed non-responsive and rejected by HISD.**

Vendor shall maintain such insurance in full force and effect throughout the Term of the Agreement. In the event Vendor does not maintain the appropriate insurance coverage during the Agreement, such shall be grounds for immediate termination of the Agreement.

HISD shall be named as an additional insured on the automobile and commercial general liability policies. A waiver of subrogation shall be issued in favor of HISD in the workers' compensation, automobile and commercial general liability policies. HISD shall be named as an alternate employer on the workers' compensation policy. At the District's discretion, HISD may accept the Occupational Accident with Employers Liability as an alternative of workers compensation. **Include name of bid project and the assigned bid project number to the Acord Form under description of operations, locations, and vehicles.**

In the event there is a deductible on any policy, Vendor may be asked to provide evidence to the satisfaction of HISD that Vendor is able to satisfy the deductible. HISD reserves the right to accept alternate insurance policies. Notice regarding insurance and **cancellation or changes** should be mailed to the Category Specialist as stated in **Part I** of this solicitation. HISD reserves the right to require additional insurance coverage to be carried by Vendor as deemed desirable by HISD, depending on the type of project.

1.11 AUTHORIZATION: For the entire duration of this Agreement, Vendor and all subcontractors shall maintain all required licenses, certifications, permits, and any other documentation and/or authorization(s) necessary to perform this Agreement, including, without limitation, authorizations required by any governing entity(ies), including, but not limited to, the City of Houston, Harris County, the State of Texas, etc. Vendor must comply with all state and local building code requirements unless otherwise specifically provided in the HISD's purchase or work order, and Vendor must pay all fees and charges for connections to outside services and for use of property outside the project site. When required or requested by HISD, Vendor shall furnish HISD with satisfactory proof of Vendor's compliance with this provision.

1.12 SAFETY; WORKFORCE:

1.12.1 Vendor, its subcontractors, and their respective employees shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules, and regulations in the performance of services under this Agreement, including, without limitation, those

promulgated by HISD and by the Occupational Safety and Health Administration (“OSHA”). In case of conflict, the most stringent safety requirements shall govern. Vendor shall comply with all other safety guidelines and standards as required by HISD. Vendor shall indemnify and hold HISD harmless from and against all claims, demands, suits, actions, judgments, fines, penalties, and liability of every kind arising from the breach of Vendor’s obligations under this provision.

1.12.2 Vendor shall employ only orderly and competent workers, skilled in the performance of the services, if any, which shall be performed under this Agreement. Vendor, its employees, subcontractors, and subcontractor’s employees may not use or possess any firearms, alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on HISD’s property, nor may such workers be intoxicated or under the influence of alcohol or drugs on HISD’s property.

1.12.3 In the event of loss, damage, or destruction of any property owned by or loaned by HISD that is caused by Vendor or Vendor’s representative, agent, employee, or contractor, Vendor shall indemnify HISD and pay to HISD the full value of or the full cost of repair or replacement of such property, whichever is greater, within thirty (30) days of Vendor’s receipt of written notice of HISD’s determination of the amount due. If Vendor fails to make timely payment, HISD may obtain such money from Vendor by any means permitted by law, including, without limitation, offset or counterclaim against any money otherwise due to Vendor by HISD.

1.13 CERTIFICATION OF VENDOR (and if applicable, subcontractor) NATIONWIDE CRIMINAL BACKGROUND CHECKS: Pursuant to sections 22.085 and 22.0834 of the Texas Education Code and HISD Policy CJA (Legal), Vendor must complete the requirements related to “Contractor and Subcontractor Certification” regarding the criminal history of employees, including providing certification of compliance with the criminal history background check requirements for contractor’s and subcontractor’s covered employees under the "Attributes" Tab on HISD's electronic bidding portal and completing the “Contractor Criminal History Background Check Certification” “Pre-Employment/Pre-Service Certification” and preemployment affidavit form and uploading the completed copy thereof to the “Attachments” Tab on HISD’s electronic bidding portal.

Acknowledgement of Pre-Employment/Pre-Service Affidavit for Service Providers - Pursuant to Texas Education Code §22A.001(8), a “Service Provider” is defined as a person who provides services to an educational entity, including a contractor or subcontractor of an educational entity; a provider of tutoring services; an entity that contracts to operate a district campus under §11.174; a staffing provider for an educational entity; and person employed by or under the control of any of the aforementioned contractors, subcontractors, providers, and entities (“Service Provider”). By entering into this Agreement, Vendor acknowledges that all Service Providers must complete and return the Pre-Employment/Pre-Service Affidavit in the form adopted by the Texas Education Agency (“Affidavit”) prior to delivering services. Vendor further acknowledges and agrees that it has a continuing duty throughout the term of this Agreement to ensure that the information provided in each affidavit remains accurate. Vendor shall ensure that all employees and subcontractors promptly update and provide to the District any revised Affidavit or supplemental disclosure if circumstances change such that the information previously provided is no longer complete or accurate. Vendor shall ensure that any new employees or subcontractors engaged after commencement of services complete and return the Affidavit before providing services. Service Providers who fail to comply with these requirements are subject to termination and are prohibited from providing services to the District.

1.14 HAZARDOUS MATERIALS: In the performance of Vendor's services, Vendor shall not cause any release of Hazardous Substances, including asbestos, or contamination of the environment, including the soil, the atmosphere or any water course or ground water. Vendor shall be liable for any claims or damages resulting from such release of or exposures to any such substances as a result of Vendor's activities.

1.15 SUPPORT: Vendor shall provide timely and accurate technical advice and sales support to HISD and HISD staff. Vendor shall respond to requests for customer support within one (1) business day after receipt of the request. Vendor shall provide training to HISD staff regarding products and/or services supplied by Vendor, at no additional charge, if requested by HISD.

1.16 RECORD RETENTION AND RIGHT TO AUDIT: The District, upon written notice, shall have the right to audit all of Vendor's records and accounts relating to this Agreement. Records subject to audit shall include, but are not limited to, records which may have a bearing on matters of interest to HISD in connection with Vendor's work for HISD, such as, but not limited to, Vendor's invoices, authenticating the origin, Material Safety Data Sheet (MSDS), shelf life of products and/or other similar types of documents, and shall be open to inspection and subject to audit and/or reproduction by the District and its authorized representative(s) to the extent necessary to adequately permit evaluation and verification of:

- a. Vendor's compliance with this Agreement and the requirements of this solicitation,
- b. compliance with HISD procurement policies and procedures,
- c. compliance with provisions for computing billings to HISD, and/or
- d. any other matters related to this Agreement.

Vendor shall maintain its records and accounts in a manner that shall assure a full accounting for all goods and/or services provided by Vendor to HISD under this Agreement. Vendor shall preserve all records relating to this Agreement for a period of five (5) fiscal years, or for such longer period as may be required by law, after final payment relating to this Agreement.

When federal funds are expended by HISD pursuant to this Agreement, Vendor certifies that it will comply with the record retention requirements detailed in 2 C.F.R. § 200.334. Vendor further certifies that Vendor will retain all records as required by 2 C.F.R. § 200.334, including, without limitation, financial records, supporting documentation, and statistical records, for a period of five (5) years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed. Vendor further agrees that HISD, any federal entity or agency with jurisdiction, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any records of Vendor, and its successors, transferees, assignees, and subcontractors that are pertinent to the Agreement for the purpose of performing audits, executing site visits, or any other official use. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents, this Agreement, or the Federal award in general. Vendor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

1.17 CONFIDENTIAL INFORMATION: In the course of performing duties under this Agreement, Vendor may view, obtain, or have access to financial, accounting, statistical, personnel, and other information of a confidential nature concerning students and school districts being served by HISD and employees of HISD. All such information is confidential and shall not be disclosed, directly or indirectly, to any person other than authorized officials of HISD, either during the Term of this Agreement or after such Term.

Vendor acknowledges that HISD would be irreparably injured if Vendor were to disclose such information to third parties not entitled to receive such information or to misappropriate such confidential information for Vendor's own purposes or benefit and that money damages would not compensate HISD for such irreparable injury.

1.18 STUDENT CONFIDENTIALITY: Vendor acknowledges that the District has a legal obligation to maintain the confidentiality and privacy of students' personally identifiable information and education records in accordance with applicable law and regulations, including, but not limited to, the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g ("FERPA"). Any student information provided to Vendor shall be provided in compliance with the requirements and exceptions outlined in FERPA. Vendor must comply with said law and regulations and safeguard student information. Vendor acknowledges that to the extent Vendor receives confidential student information during the performance of duties under this Agreement, Vendor is considered a "school official" in accordance with FERPA. Vendor may not disclose confidential student information to a third party without prior written consent from the parent or eligible student. Vendor must destroy any student information received from the District when no longer needed for the purposes of the Agreement.

1.19 OWNERSHIP OF WORK PRODUCT: Vendor represents that it has all intellectual property rights necessary to enter into and perform its obligations in this Agreement. All work product, including any concepts, products, software, research, reports, studies, data, photographs, negatives, or other documents, drawings or materials prepared by Vendor in the performance of its obligations under this Agreement will be deemed works for hire and the exclusive property of HISD, the Texas Education Agency, the State of Texas, and/or the federal government, as applicable. Vendor shall deliver all such materials to HISD upon completion, termination, or cancellation of this Agreement. Any programs, data, or other materials furnished by HISD for use by Vendor in connection with the Services performed under this Agreement will remain HISD's property. Any pre-existing programs, data, or other materials furnished and owned by Vendor for use by Vendor in connection with the Services performed under this Agreement will remain Vendor's property. Vendor may not use the District's official name or logo, or any phrase associated with the District, without the written permission from the Board of Education, the Superintendent of Schools, or their designee.

1.20 QUANTITY; OTHER GOVERNMENTAL ENTITIES' USE OF AGREEMENT:

1.20.1 Any contract resulting from this solicitation is non-exclusive and shall be awarded with the understanding and agreement that it is for the sole convenience of HISD. There is no guaranteed amount of business, expressed or implied, to be purchased, or contracted for by HISD. However, the Vendor shall furnish all required goods and/or services to the District at the stated price, when and if required by HISD. HISD is free to have multiple contracts for the awarded goods and services and may initiate other procurement solicitations or purchasing activity with other vendors at any time, in HISD's sole discretion. The District expressly reserves the right to procure and/or purchase any goods and services from other sources and/or by other means.

1.20.2 Pursuant to applicable law, including the Interlocal Cooperation Act (Chapter 791 of the Texas Government Code), HISD may permit other governmental entities to "piggy-back" onto this Agreement. In the event that Vendor is awarded a contract by HISD, Vendor's proposal, including pricing information, may be provided to a requesting governmental entity desiring to establish separate, independent contracts with Vendor. Vendor expressly agrees that HISD may disclose Vendor's proposal, including, but not limited to, pricing information, to other

governmental entities. Governmental entities are authorized to enter into separate, independent contracts with Vendor that employ the same negotiated terms and conditions contained in an existing contract(s) between HISD and Vendor. However, there is no obligation on either party to participate unless both parties agree. If another governmental entity chooses to utilize a contract established by this procurement solicitation and this Agreement, contracts will be awarded individually by those governmental entities, and goods/services would be provided under the same contract pricing and purchasing terms established by this procurement solicitation and Agreement. Any such separate, independent contract developed as a result of this procurement solicitation and/or the Agreement is exclusively between such other governmental entity and Vendor and shall have no effect or impact on HISD or HISD's contract with Vendor. It is expressly understood that HISD shall in no way be liable for the obligations of any other governmental entity contracting with Vendor pursuant to this section.

- 1.20.3** If applicable and at the discretion of the District, a forecast of planned usage will be issued as part of the Agreement. This forecast is based upon the District's historical usage. If the District exceeds that forecast of usage and the Vendor experiences a higher volume of sales, the District may request a value consideration to compensate the District for said increased sales in the form of a volume usage rebate. Vendor should include, in their proposal, the method(s) they will use to calculate the usage rebate and discuss how the rebate will be calculated and paid.

1.21 BONDING; PREVAILING WAGE RATES:

- 1.21.1** At the District's discretion or as required by applicable law, performance and payment bonds may be required on certain projects valued in excess of designated amounts (\$100,000 for performance bond and \$25,000 for payment bond). The District will determine the necessity of performance and payment bonds on a project-by-project basis. The purchasing Category Specialist/Manager will advise potential Vendors if a project requires bonding. If performance and/or payment bond(s) are required, Vendor must provide bonds with responsible carriers acceptable to HISD rated A- or better, by A.M. Best. Samples of a performance bond and a payment bond can be found at the following web address: <http://www.houstonisd.org/cms/lib2/TX01001591/Centricity/Domain/8017/PerformanceBondForm.docx>.
- 1.21.2** Vendor and all subcontractors of Vendor shall comply with all laws regarding wage rates including, but not limited to, Texas Government Code Chapter 2258 and any related federal requirements applicable to this Agreement and to this solicitation by HISD.

1.22 DEFECTIVE/NON-CONFORMING WORK:

- 1.22.1** If, following seven (7) calendar days of a written notice to a Vendor identifying defective or nonconforming work, Vendor fails to correct such defective or nonconforming work, HISD may order Vendor to stop further work, or any portion thereof, until the defect or nonconformance has been properly corrected by Vendor.
- 1.22.2** Should Vendor not proceed with the correction of defective or non-conforming work within three (3) additional calendar days of HISD's order to stop further work, as set forth above, HISD may cause the removal, repair or correction of the defective or nonconforming work and may charge all associated costs of the same to Vendor.

1.23 DEFAULT CONDITIONS: If Vendor: (i) breaches any provision of the Agreement; (ii) , becomes insolvent, enters voluntary or involuntary bankruptcy, or receivership proceedings, or makes an

assignment for the benefit of creditors; or (iii) is in violation of any state or federal law (collectively, "event(s) of default"), HISD will have the right (without limiting any other rights or remedies that it may have in the Agreement or by law) to terminate the Agreement with five (5) days prior written notice to Vendor. HISD will then be relieved of all obligations, except to pay the reasonable value of Vendor's prior performance, satisfactory to HISD (at a cost not exceeding the Agreement rate and subject to any claims, costs and expenses incurred by HISD as a result of Vendor's default). In the event of Vendor's default, HISD is expressly authorized to obtain the goods or services that would have been provided by Vendor under this Agreement from an alternative source. Vendor will be liable to HISD for all costs exceeding the Agreement price that HISD incurs in completing or procuring the services and goods as provided for in the Agreement. HISD's right to require strict performance of any obligation in the Agreement will not be affected by any previous waiver, forbearance, or course of dealing.

1.24 WARRANTIES: VENDOR EXPRESSLY WARRANTS THAT ALL THE GOODS AND SERVICES COVERED BY THE AGREEMENT WILL BE IN EXACT ACCORDANCE WITH THE REQUIREMENTS OF THE SOLICITATION AND AGREEMENT AND FREE FROM DEFECTS IN MATERIALS AND/OR WORKMANSHIP. VENDOR EXPRESSLY WARRANTS MERCHANTABILITY FOR ALL GOODS PROVIDED PURSUANT TO THE AGREEMENT. ALL WARRANTIES SHALL SURVIVE DELIVERY OF THE GOODS AND COMPLETION OF THE SERVICES AND SHALL NOT BE DEEMED WAIVED EITHER BY REASON OF THE DISTRICT'S ACCEPTANCE OF SAID GOODS AND SERVICES OR BY PAYMENT FOR THEM. ANY DEVIATIONS FROM THE AGREEMENT, OR DESCRIPTIONS OR SPECIFICATIONS FURNISHED THEREUNDER, OR ANY OTHER EXCEPTIONS OR ALTERATIONS MUST BE APPROVED IN WRITING BY THE DISTRICT'S PURCHASING GENERAL MANAGER.

1.25 WORK STOPPAGE: In no event shall HISD be liable or responsible to Vendor or any other person for us on account of, any stoppage or delay in work.

1.26 DISPUTE RESOLUTION: At the sole option of the District, Vendor and the District agree that prior to filing any suit, administrative proceeding, or other legal proceeding related to this Agreement, each party shall submit any and all disputes to the alternative dispute resolution process of non-binding mediation. Vendor and the District further agree to attend the mediation and to participate in settlement negotiations in a good faith effort to resolve all disputes through a written settlement agreement. The mediation shall take place in Harris County, Texas, and will be conducted by a mediator mutually selected by the parties. If the parties are unable to agree on a mediator, each party shall submit a list of up to three names as a mediator along with a curriculum vitae and costs associated with each name submitted. Each party will alternate in striking one name from the list until only one name remains. The remaining name will be the agreed-upon mediator. HISD will have the first opportunity to strike a name from the list. All fees and costs of the mediator shall be shared equally between the parties. No formal record shall be made of the mediation.

1.27 TERMINATION: This Agreement shall remain in effect until (1) the Agreement expires by its terms or (2) the Agreement is terminated by mutual agreement of HISD and Vendor. In the event of a breach or default of the Agreement and/or the procurement solicitation by Vendor, HISD reserves the right to enforce the performance of the Agreement and/or the procurement solicitation in any manner prescribed by law or deemed to be in the best interest of HISD. HISD further reserves the right to terminate the Agreement immediately in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in this Agreement, the procurement solicitation, and/or a purchase or work order; (2) make any payments owed; or (3) otherwise perform in accordance with this Agreement and/or the procurement solicitation. HISD also reserves the right to terminate the Agreement immediately, with written notice to Vendor, if HISD believes, in its sole discretion, that it is in the best interest of HISD to do

so. Vendor agrees that HISD shall not be liable for damages in the event that HISD declares Vendor to be in default or breach of this Agreement and/or the procurement solicitation. Vendor further agrees that upon termination of the Agreement for any reason, Vendor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and/or vendor.

1.28 NON-APPROPRIATION OF FUNDS: The Term of this Agreement is a commitment of HISD current revenue only. Notwithstanding anything to the contrary in this Agreement, HISD is obligated to make payments only as approved each year by HISD's Board of Education. HISD's Board of Education retains the right to terminate the Agreement at the expiration of each budget period of HISD. To the extent that HISD will use federal grant funds to fulfill its obligations under this Agreement, Vendor acknowledges that federal funds will be used to pay for all or a portion of funds due under this Agreement and that this Agreement is only effective upon receipt of the Notice of Grant Award ("NOGA") by HISD from the awarding agency. As such, if HISD does not receive sufficient funding for the services provided in this Agreement, HISD may terminate this Agreement without penalty or further obligation to Vendor, at any time upon written notice to Vendor.

1.29 NON-ASSIGNMENT: Vendor may not assign this Agreement or any of its rights, duties, or obligations hereunder without the prior written approval of HISD. Any attempted assignment of this Agreement by Vendor shall be null and void. Any purchase or work order made as a result of this Agreement may not be transferred, assigned, subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way by Vendor without the prior written approval of HISD. Vendor is required to notify HISD when any material change in operations occurs, including but not limited to, changes in distribution rights for awarded products, bankruptcy, material changes in financial condition, change of ownership, and the like, within three (3) business days of such change. In the event HISD approves of any assignment, Vendor shall have full responsibility for the completion and performance of all services and the delivery of all goods awarded to Vendor pursuant to this solicitation.

1.30 FORCE MAJEURE: Neither HISD nor Vendor shall be deemed to have breached any provision of this Agreement as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, civil disturbances, wars, energy crises, fires, transportation contingencies, interruptions in third-party telecommunications or Internet equipment or service, other catastrophes, or any other occurrences which are reasonably beyond such party's control. The parties to this Agreement are required to use due caution and preventive measures to protect against the effects of force majeure, and the burden of proving that a force majeure event has occurred shall rest on the party seeking relief under this provision. The party seeking relief due to force majeure is required to promptly notify the other party in writing, citing the details of the force majeure event and relief sought, and shall resume performance immediately after the obstacles to performance caused by a force majeure event have been removed, provided the Agreement has not been terminated. Delay or failure of performance, by either party to this Agreement, caused solely by a force majeure event, shall be excused for the period of delay caused solely by the force majeure event. Neither party shall have any claim for damages against the other resulting from delays caused solely by force majeure. Notwithstanding any other provision of this Agreement, in the event the Vendor's performance of its obligations under this Agreement is delayed or stopped by a force majeure event, HISD shall have the option to terminate this Agreement. This section shall not be interpreted as to limit or otherwise modify any of HISD's contractual, legal, or equitable rights.

1.31 EQUAL OPPORTUNITY: It is the policy of HISD not to discriminate on the basis of race, color, national origin, gender, limited English proficiency or handicapping conditions in its programs. Vendor agrees not

to discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Vendor further agrees that every subcontract entered into for the performance of this Agreement shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Agreement.

1.32 GOVERNING LAW; VENUE: This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas without regard to the conflicts or choice of law principles thereof. The parties irrevocably consent to the jurisdiction of the State of Texas and agree that any court of competent jurisdiction sitting in the County of Harris, State of Texas, shall be an appropriate and convenient place of venue, and shall be the sole and exclusive place of venue, to resolve any dispute with respect to the Agreement.

1.33 RELATIONSHIP OF THE PARTIES: HISD and Vendor are independent contractors and have no power or authority to assume or create any obligation or responsibility on behalf of the other party. This Agreement shall not be construed or deemed an endorsement of a specific company or product. It is the intention of the parties that Vendor is independent of HISD and is not an employee, agent, joint venture, or partner of HISD, and nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venture or partner, between HISD and Vendor or HISD and any of Vendor's agents.

It is understood and agreed that the Vendor is a separate legal entity from HISD and neither it nor any employees, volunteers, or agents contracted by it shall be deemed for any purposes to be employees or agents of HISD. The Vendor assumes full responsibility for the actions of its personnel and volunteers while performing any services incident to the Agreement, and shall remain solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), workers' compensation, disability benefits and like requirements and obligations.

The Vendor shall not subcontract services provided in this solicitation without prior written approval by HISD. If Vendor uses subcontractors in the performance of any part of this Agreement, Vendor shall be fully responsible to HISD for all acts and omissions of the subcontractors just as Vendor is responsible for Vendor's own acts and omissions. Nothing in this Agreement shall create for the benefit of any such subcontractor any contractual relationship between HISD and any such subcontractor, nor shall it create any obligation on the part of HISD to pay or to see to the payment of any moneys due any such subcontractor except as may otherwise be required by law.

1.34 COMPLIANCE WITH LAWS: Vendor shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, including, as applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations, the Davis-Bacon Act (40 U.S.C. § 276a / 29 CFR Part 5), the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 / 29 CFR Part 5), the Equal Opportunity Employment requirements (Executive Orders 11246 and 11375 / 41 CFR Chapter 60), the McNamara-O'Hara Service Contract Act (41 U.S.C. 351), Section 306 of the Clean Air Act (42 U.S.C. § 1857h, Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, Environmental Protection Agency regulations (40 CFR Part 15), the Contract Work Hours and Safety Act (40 U.S.C. § 3701-3708; 29 C.F.R. Part 5), the Uniform Administrative

Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), the Education Department General Administrative Regulations, 2 C.F.R. Parts 200 and 3474, and 34 C.F.R. Parts 75-77 and 81 ("EDGAR"), mandatory standards and policies contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871), and all applicable requirements and regulations, including those related to reporting, patent rights, copyrights, data rights and those mandated by federal agencies making awards of federal funds to HISD. Vendor understands that Vendor is ineligible to receive a contract award with HISD if Vendor or its principal(s) is listed on the government wide exclusions in the System for Award Management (Debarment and Suspension Orders Executive Orders 12549 and 12689).

1.35 NO WAIVER OF IMMUNITY: The District does not waive or relinquish any immunity or defense on behalf of itself and its trustees, officers, employees, and agents as a result of entering into this Agreement or by performing any of the functions or obligations relating to the Agreement. Nothing in any agreement shall be construed as creating any personal liability on the part of any trustee, officer, employee, or representative of HISD.

1.36 NO WAIVER OF BREACH: No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision shall be construed to be a waiver of such breach.

1.37 INDEMNIFICATION: VENDOR SHALL INDEMNIFY AND HOLD HISD HARMLESS FROM ALL CLAIMS, LIABILITIES, COSTS, SUITS OF LAW OR IN EQUITY, EXPENSES, ATTORNEYS' FEES, FINES, PENALTIES OR DAMAGES ARISING FROM THE ACTS OR OMISSIONS OF VENDOR, VENDOR'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS, IN CONNECTION WITH THIS AGREEMENT.

All obligations as set forth in this paragraph shall survive the completion of or termination of the Agreement.

It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation, such legal limitations are made a part of the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

1.38 NOTICE: Any notice required to be given relating to the Agreement shall be in writing and shall be duly served when hand-delivered to the addressees set forth below, or shall have been deposited, duly registered or certified, return receipt requested, via the United States Postal Service, addressed to the other party at the following addresses:

FROM:	Vendor's Contact Name and Address as listed in the Proposal
TO:	Houston Independent School District Attn: Superintendent of Schools 4400 West 18 th Street Houston Texas 77092
COPY TO:	Houston Independent School District

Attn: Director of Purchasing Services
Purchasing Services 4400 West 18th Street
Houston, Texas 77092

Any party may designate a different address by giving the other party ten (10) days prior written notice in the manner provided above.

1.39 SECTION HEADINGS; INTERPRETATION: The headings of sections and paragraphs contained in any document related to this Agreement are for convenience only, and they shall not, expressly or by implication, limit, define, extend, or construe the terms or provisions relating to the Agreement. Vendor agrees that the normal rules of construction that require that any ambiguities in this Agreement are to be construed against the drafter shall not be employed in the interpretation of this Agreement.

1.40 THIRD PARTY BENEFICIARIES: Nothing relating to this Agreement shall be deemed or construed to create any third-party beneficiaries or otherwise give any third party any claim or right of action against HISD or Vendor.

1.41 UNENFORCEABLE SECTIONS: If any portion of this solicitation or Agreement is deemed to be unenforceable, the remainder of the solicitation and Agreement shall be construed as if such unenforceable provisions had never been contained therein.

1.42 BUSINESS CERTIFICATES / HISD TAXES: All individuals or entities entering into a contract with HISD must adhere to applicable Texas laws as they pertain to their individual type of ownership. Vendor represents and warrants that it has and will maintain all business certificates and registrations required to do business with HISD under applicable Texas law during the Term of this Agreement. Vendor further acknowledges that it is and will remain current on HISD Property Taxes; if commercial personal property is located within HISD's jurisdiction, current renditions of these properties must be filed with the Chief Appraiser, as required by Chapter 22k Section 22.01 of the Texas "PROPERTY TAX CODE".

1.43 ATTORNEYS' FEES: In connection with HISD's defense of any suit against it and/or HISD's prosecution of any claim, counterclaim or action to enforce any of its rights and/or claims related to this solicitation or Agreement, in which HISD prevails as to all or any portion of its defense(s), claims, counterclaims or actions, HISD shall be entitled to recover its actual attorney's fee and expenses incurred in defending such suit and/or in prosecuting such claim or action.