

Bibb County School District
Office of Procurement

AGREEMENT BETWEEN

Bibb County School District

AND

_____

FOR: _____

RFP/RFQ: _____

Dated: _____

STATE OF GEORGIA COUNTY OF BIBB

This Agreement ("Agreement") is made and entered into by and between the Bibb County School District, an independent school system chartered under the laws of the state of Georgia, having a headquarters at 484 Mulberry Street, Macon, Georgia 31201 (hereinafter referred to as the "School District ") and _____ (*insert full legal name of contractor)* a company organized and existing under the laws of the state of _____ located at_____ _____*(insert contractor's address)* (hereinafter referred to as the "**Contractor**", and together with the School District, the "Parties", and each a "Party").

WITNESSETH

WHEREAS, the School District sought proposals from vendors to provide_____ _____ *(insert solicitation name)* in _____*(insert RFQ or RFP, include number)*.

WHEREAS, **Contractor** submitted a proposal to the School District for the provision of said goods and/or services; and

WHEREAS, the Director of Procurement and Warehouse Operations Services for the School District recommended that Contractor be awarded a Contract to provide said goods and/or services to the School District; and

WHEREAS, at its meeting on _____*(insert date)* the Bibb County Board of Education ("Board of Education") authorized the School District to enter into a Contract with Contractor.

NOW, THEREFORE, for and in consideration of the mutual agreements between the parties hereinafter contained, and for other good and valuable consideration, the parties hereto do agree as follows:

ARTICLE I. DEFINITIONS

1.1 Contract Documents.

The Contract Documents consist of: *(update list as needed)*

a. This Agreement.

b. Solicitation_____*(insert solicitation name & number).*

c. The Contractor's Proposal to the above-numbered Solicitation, including pricing, and any applicable Scope of Services and any applicable Payment and Payment Terms Schedule attached except that objections or amendments by a Contractor that have not been explicitly accepted by the School District in writing in this Agreement shall not be included in the Contract Documents or this Agreement and shall be given no weight or consideration.

d. Board Approval, If applicable: All Contract over $150,000.00 in value:

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Completed on _____, dated_____*(insert board item number and date).*

This Agreement together with the aforementioned documents collectively form **the Contract**. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement along with the aforementioned documents, which form the Contract. The School District shall not be bound by any additional terms and conditions, including but not limited to, terms and conditions related to any provided service or good, limitations of the Contractor's liability or any other third party's liability, limitation of warranties, packaging, invoices, service catalog, brochure, technical data sheet, electronic disclosures, electronic agreements, or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions of the Contract.

1.2 Inconsistency.

Any inconsistency or conflict among the specific provisions of this Agreement and the other Contract Documents shall be resolved as follows:

a. First, by giving preference to the specific provisions of this Agreement.

b. Second, by giving preference to the specific provisions of the Solicitation, attached hereto.

c. Third, by giving preference to the specific provisions of Contractor's Proposal, including pricing and any applicable Scope of Services and any applicable Payment and Payment Terms Schedule attached hereto as **Exhibit B**, except that objections or amendments by a Contractor that have not been explicitly accepted by the School District in writing in this Agreement shall not be included in the Contract Documents or this Agreement and shall be given no weight or consideration.

ARTICLE II. SCOPE OF CONTRACT

2.1 Contractor will provide, and the School District hereby engages Contractor for the purpose of providing_____(*insert name* or *general description of goods/services to be provided*) to the School District in accordance with the statement of Work included in Contractor's Proposal, and/or outlined in the Solicitation dated___, 20 . *(insert date of solicitation)*

Contractor agrees to provide said goods or services to or for the School District and to perform all other tasks required by this Contract.

2.2 Contractor will provide the goods and/or services to the School District in the manner defined in Contractor's Proposal attached hereto as Exhibit B and incorporated herein reference.

ARTICLE III. TERM

The term of the Contract is as follows:

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3.1 Initial Term.

The performance period for the Contract is one (1) year, subject however to paragraph 3.2 and Article VII below. Contract performance shall begin on_____, 20___. (*insert start date for contract)*

3.2 Optional Renewal Terms.

The parties may elect to renew the Contract beyond the one-year initial term. As set forth above, the "Initial Term" of the Contract will begin on [ ], 20[__] (the "Starting Date") and will end on [ ], 20[__]. The Contract will automatically renew for one successive calendar year term (the "Renewal Term"), and a final term (the "Ending Term") beginning on [ ], 20[__]and ending on [ ], 20[__] (the "Ending Date"). As required by Official Code of Georgia Annotated § 20-2-506, the Contract will terminate absolutely and without further obligation on the part of the School District at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed, but will be automatically renewed for each subsequent calendar year during the term, unless School District gives a Nonrenewal Notice on or prior to [ ] unless the Contract is terminated earlier. The "Contract Term" is the period from the Starting Date to the Ending Date, subject to the expiration or termination of the Contract.

3.3 Same Terms.

Unless mutually agreed upon in writing by the parties, or otherwise indicated herein, all provisions and conditions of any Subsequent or Renewal Term shall be the same as those contained within in the Contract.

3.4 Statutory Compliance Regarding Purchase Contracts.

The parties intend that the Contract shall operate in conformity with and not in contravention of the requirements of O.C.G.A. § 20-2-506, as applicable, and in the event that the Contract would conflict therewith, then the Contract shall be interpreted and implemented in a manner consistent with such statute.

ARTICLE IV. CONTRACTOR SERVICES AND RESPONSIBILITIES

4.1 Performance.

Contractor by the execution of this Agreement, acknowledges that it possesses that degree of care, learning, skill, and ability which is ordinarily possessed by other members of its profession and further represents that in the performance of the services herein set forth it will exercise such degree of care, learning, skill and ability as is ordinarily employed by Contractor under similar conditions and like circumstances and shall perform such duties without neglect and shall be liable for failure to exercise such degree of care, learning and ability. Any equipment, supplies, or materials used in the performance of the Contract shall be at the expense of the Contractor.

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4.2 Contractor's Responsibilities.

a. General

It is the Contractor's responsibility to comply with all of the terms and conditions of this Contract. The Contractor is also expected to make every effort to support the mission and duties of the School District.

b. Personnel and Staffing.

Contractor is solely responsible for all matters concerning the recruitment, performance, and retention of Contractor's personnel. Contractor must fully comply with all federal, state, and local laws/regulations regarding employment and immigration, including, but not limited to, nondiscrimination, compensation, taxation, and benefits.

Contractor understands and agrees that employees of the School District are not permitted to work under this Contract, nor can they have ownership in a company that bids for or works under this Contract, either as a prime contractor or as a sub-contractor. Any breach of this provision shall result in immediate termination of the Contract and termination of employment with the School District.

Contractor warrants that all persons assigned to perform the services under the Contract are either lawful employees of Contractor or lawful employees of a subcontractor authorized by the School District. All of Contractor's and all of subcontractor's personnel shall comply with the confidentiality requirements of the Contract, any confidentiality requirements required by the School District, and the security requirements of the School District while on school property or at a school related function. In the event that any of Contractor's or subcontractor's personnel do not comply with such confidentiality and security requirements, the School District may have the personnel removed from the premises. Contractor agrees that any obligation to provide health insurance to any individual employed, utilized, or subcontracted by Contractor shall be the sole and exclusive responsibility of Contractor or the subcontractor of Contractor.

Contractor warrants that all persons assigned to perform the services under the Contract are qualified to perform such Services. Personnel assigned by Contractor shall have all professional licenses required to perform the Services. If the School District believes that the performance or conduct of any person employed or retained by Contractor to perform any Services hereunder is unsatisfactory for any reason or is not in compliance with the provisions of this Contract, the School District shall notify Contractor in writing and Contractor shall promptly address the performance or conduct of such person, or, at the request of the School District , immediately replace such person with another person acceptable to the School District and with sufficient knowledge and expertise to perform the services in accordance with this Contract.

Contractor warrants that an adequate number of appropriately qualified personnel will be employed and available to provide the services in accordance with the schedule and maintenance requirements set forth in the Contract.

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Contractor warrants that person assigned by Contractor to provide the services to the School District possess all licenses, training and certifications required by the State of Georgia.

Contractor understands and agrees that is responsible for paying the wages of Contractor's personnel and will be responsible for withholding and remitting all income and social security taxes from their wages and for paying workers' compensation insurance premiums, state, and federal unemployment insurance taxes and the employer's share of social security taxes on the behalf of its personnel, as required by law. Contractor further agrees to comply with any applicable provisions of the Davis-Bacon Act.

Contractor recognizes that personnel who are assigned to provide the services may have access to certain information, which may be proprietary and confidential. Contractor will require each of the personnel to treat this information as confidential and agree not to disclose it to any third person in accordance with the terms of this Contract.

Contractor agrees to relinquish to the School District any and all proprietary rights which it may have in work product created or contributed to by personnel while on assignment.

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee for Contractor to solicit or secure the Contract; and that it has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

For the breach or violation of the above warranty and after notice, the School District shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the Contract price or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

4.3 Warranties.

The School District does not waive, amend, or abridge any stated or implied contractual or warranty rights provided to the School District under state or federal law. In addition, Contractor warrants and agrees as follows:

a. Any goods, applications or software purchased or provided under the Contract will be defect free in design, materials, and workmanship, be of the quality, size and dimensions ordered, be of first quality material and workmanship, merchantable, fit for the purposes specified by the School District in the Solicitation and shall conform to all the requirements of the Solicitation. The packaging, packing, marking, and shipping of such goods will conform with the requirements of the Solicitation and as set forth in Contractor's Proposal. This express warranty shall not be waived by reason of acceptance of the goods or payment thereof by the School District.

SAMPLE

b. Any services purchased under the Contract will be performed by Contractor according to its best efforts for the Term(s) of this Contract. This express warranty shall not be waived by reason of acceptance of the services or payment thereof by the School District.

c. Contractor is fully aware of the School District's business requirements and intended uses of the goods, applications, software, processes, services, and products and warrants that such shall be fit for such intended uses.

d. Contractor represents and warrants that all the concepts, materials, applications, products, and services produced, or provided to the School District shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials, products, applications and services. Contractor represents and warrants that the concepts, materials, applications, products and services and the School District's' use of same shall not infringe upon any other work, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials, products and services will not infringe upon the copyright, trademark, trade name, trade dress, patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. This express warranty shall not be waived by reason of acceptance of the goods or payment thereof by the School District.

ARTICLE V. FINANCIAL ARRANGEMENTS

5.1 Compensation and Payment.

The School District shall pay Contractor for the satisfactory performance of the services and satisfactory delivery of the goods solicited, approved, and accepted under this Contract, the terms and rates set forth in the Contractor's Proposal. Contractor acknowledges and agrees that this is a nonexclusive requirements type contract. Regarding Contractor's provision of goods and/or services under this Contract, the School District will utilize Contractor's services on an as needed basis, based on approved statement of work and as such the School District will only be responsible for payment for goods and/or services related to Contractor's Proposal and Statement of Work that are satisfactorily performed and meet the School District's required specifications.

Contractor further acknowledges and agrees that the value of the Contract shall not exceed **_____Dollars ($ _____ .00) annually**; *(Insert estimated annual expenditure)* however, the School District is under no obligation to solicit goods or services totaling this amount and Contractor will only be paid for services rendered and goods accepted. Nothing in the Contract shall serve as a guarantee that Contractor will receive any purchase orders for goods or services solicited under this Contract.

Contractor shall submit periodic invoices in triplicate detailing the services performed and the goods delivered (as applicable). The School District shall make payments in accordance with the School District Finance Department's payment procedures.

Any delay in the approval of an invoice or any delay in the payment will not excuse failure-to-

perform by Contractor. The School District shall have fifteen (15) days to approve or disapprove an invoice. Once approved, the School District will have thirty (30) days to pay any approved invoiced. The School District will not be subject to any late fees by Contractor.

5.2 Payments Withheld.

The School District may decline to approve an invoice and may withhold any payment, in whole or in part, to the extent necessary to reasonably protect the School District from loss, because of any of the following:

a. Services not performed in accordance with the terms of the Contract, and which have not been remedied in accordance with the Contract.

b. Contractor supplies the School District with nonconforming goods and fails to cure the deficiency (at Contractor's sole expense) to the School District's reasonable satisfaction in accordance with the Contract.

c. Persistent failure of Contractor to perform or provide its good or services in accordance with the Contract schedule and the milestones established.

d. Liens filed by Contractor's sub-consultants or subcontractors, or third-party claims based on Contractor's failure to make payments for services performed or materials provided;

e. Failure of Contractor to make payments properly to its own sub-consultants or subcontractors for services performed or materials provided;

f. Damage to the School District or to another contractor by Contractor; or,

g. Failure of Contractor to provide upon request by the School District documentation sufficient to substantiate charges on any invoice submitted for payment.

h. Breach of any warranties contained in the Contract.

5.3 Final Payment.

The acceptance of final payment shall, after the date of completion of the services and/or delivery of goods required under this Contract, constitute a release and a waiver of all claims by Contractor for payment for services and./or good delivered under the Contract (and any amendments thereto) against the School District, , the Board of Education, and their respective agents, representatives, administrators, employees, officers, directors, attorneys, successors and assigns of and from any and all claims, actions or causes of actions, charges, damages, liabilities, responsibilities, demands, liens, judgments or suits of any kind or nature whatsoever, whether in law or equity, for damages of every kind, character or description, as well as all costs, expenses, including attorney fees and cost of litigation, compensation, consequential damages, or any other claim which Contractor has, may have, or claims to have in the future, whether known or unknown, relating to or arising out of in any way the Contract (and any amendments thereto) between the School District and Contractor.

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5.4 Accounting Records.

All records of expenses pertaining to the Contract shall be kept on a sound accounting basis. Contractor shall maintain full and complete records and such records shall be available for review by the School District or its authorized representative at mutually convenient times. All records must be maintained for a minimum of seven (7) years after the final payment by the School District or until all litigation, claims, or audit findings involving the records have been resolved if such claim or audit is started before the expiration date of the three-year period. In addition, the School District shall have the authority to audit any and all records pertinent or relative to the Contract, the Contractor's records and any and all of its subcontractors' records pertinent or relative to the Contract, at any time for a period of at least three (3) years after close-out of the Contract and Contractor shall surrender such records upon request and provide access to the School District and any reviewing agencies during such period.

5.5 Risk of Loss for Delivery of Goods

For all goods purchased by the School District under this Agreement, Delivery shall be FOB destination, the School District's place of business. Insurance during shipment and until the goods are accepted by the School District is the responsibility of Contractor.

5.6 Rejection or Revocation of Acceptance of the Goods

All goods are subject to final inspection and acceptance within a reasonable time after delivery and the right to reject defective or non-conforming goods is reserved despite any prior inspection by the School District.

ARTICLE VI. CONFIDENTIALITY AND SECURITY

6.1 Definition

Confidential information is defined as follows:

a. Any information about the School District or its business that is stamped "Confidential."

b. Identified in writing as confidential to Contractor or any of its representatives by or on behalf of the School District at the time of or promptly following the information's written or oral disclosure All notes, analyses, compilations, studies, summaries, and other material (tangible or intangible), however documented, containing or based, in whole or in part, on any information described in subsection (a) above (collectively, the "Derivative Materials").

c. Any information that is excluded from disclosure by the School District by the Georgia Open Records Act OCGA 50-18-70 et. seq. ("the Open Records Act"), including but not limited to, student educational records and information.

SAMPLE

d. Despite any other provision in this Section, the failure by the School District to identify information as Confidential Information is not an acknowledgement of admission by the School District that the information is not confidential or a waiver by the School District of any of its rights with respect to the information.

The term "Confidential Information" does not include information that Contractor demonstrates:

i. Was or becomes generally publicly available, other than as a result of a disclosure by Contractor or any if its Representatives in violation of the Contract.

ii. Is in the lawful possession of the Recipient or any of it is Representatives prior to its disclosure by or on behalf of the School District or any of its Representatives; or

iii. Was or becomes available to Contractor or any of its Representatives on a non-confidential basis prior to its disclosure by or on behalf of the School District or its Representatives from a third party that to Contractor's knowledge after due inquiry is not bound by a similar duty of confidentiality (contractual, legal, fiduciary, or other).

6.2 Contractor's Obligation Regarding Confidential Information

During and after the Term of this Contract, Contractor shall take all commercially reasonably measures necessary to keep the Confidential Information confidential, including, without limitation, all measures it takes to protect its confidential information of a similar nature.

Without limiting the effect of the preceding sentence, Contractor will take commercially reasonable actions, legal or otherwise, necessary to cause its Representatives to comply with the provisions of the Contract and to prevent any disclosure of the Confidential Information by any of them.

Contractor shall give prompt written notice to the School District of any suspected or actual security breach that may or does impact the School District data or of any unauthorized use or disclosure of the Confidential Information. Contractor shall assist the School District in remedying each unauthorized use of disclosure.

Giving assistance does not waive any breach of this Section by Contractor, nor does acceptance of the assistance constitute a waiver of any breach of this Section.

The Contractor shall comply with Federal and State laws and regulations regarding confidentiality of student records. Specifically, Contractor shall comply and shall assist the School District in compliance, in all material respects, with applicable laws and regulations, including with Family Educational Rights and Privacy Act (FERPA), 20 U.S.C 1232g and the Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. 1232h, and all applicable privacy laws.

To the extent Contractor or a subcontractor comes into contact with any student data or information, Contractor or subcontractor will not disclose such information without eligible

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student/parent/guardian and the School District written permission. Personally identifiable student information and education records as defined pursuant to O.C.G.A. Title 20 and FERPA, will be, and will be deemed to have been, received in confidence and will be used only for purposes of the services contemplated in this Contract.

In its own discretion, the School District may designate Contractor as a "school official" within the meaning of FERPA, if the School District determines that the Services under the Contract are functions that would normally be provided by the School District and if the School District determines that Contractor has a legitimate educational interest in student educational records and information. Contractor will be under the direct control of the School District with respect to the use and maintenance of personally identifiable information and education records, as those terms are defined by FERPA, and use personally identifiable information and education records may only be for the purpose of performing its obligations under the Contract. the School District retains all ownership rights in education records and personally identifiable student information.

Notwithstanding any other term of the Contract, Contractor will not disclose personally identifiable information or education records to any third party except as permitted by 34 C.F.R. 99.33(a). The School District may have access to student records maintained by Contractor with ten (10) business days' notice to Contractor as provided for in this Agreement. With respect to information protected by FERPA, Contractor may not continue to maintain education records or personally identifiable information of Students after termination, and must return or destroy, as requested by the School District, all such records and information to the School District as the owner of that information within ten (10) days of termination for any reason, unless otherwise agreed to in writing by the Parties.

6.3 Breach of Confidentiality

Contractor acknowledges and agrees that an award of money damages is inadequate for any breach of this Section by Contractor, or any of its respective agents, representatives, administrators, employees, officers, directors, attorneys, successors, and assigns; and that any breach causes the School District irreparable harm. Therefore, in the event of any breach or threatened breach of this Section by Contractor or any of its Representatives, the School District is entitled to equitable relief, including injunctive relief and specific performance, without proof of actual damages and without the posting of a bond.

6.4 Georgia Public Records.

Contractor understands and agrees that the School District must comply with the Open Records Act and release public documents as defined by the Open Records Act upon request, including the Contract and all records created and maintained in relation to the Contract, unless otherwise exempt under other provisions of the Open Records Act. Contractor understands and agrees that the School District will respond to requests under the Open Records Act at its discretion.

Contractor shall assist the School District in compliance with all provisions of the Open Records Act and make records pertaining to the performance of services or functions under the Contract available to the School District at the request of the School District.

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If Contractor asserts that any information in its response or in any information provided to the School District with respect to the services or products under the Contract are a protectable trade secret, as that term is defined in O.C.G.A. § 10-1-761, then Contractor ***must*** follow the requirements of the Act set forth at O.C.G.A. § 50-18-72(a)(34) and submit an affidavit declaring and specifically describing their trade secrets, including those of their subcontractor.

6.5 Data Security

Contractor understands and agrees that it is imperative to protect the School District data in order to protect public resources and to prevent identity theft or other malicious and damaging acts. Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations, as the same may be amended or supplemented from time to time, including but not limited to those pertaining in any way to the privacy, confidentiality, security, management, and disclosure of the School District data and information. Contractor shall also adhere to all applicable industry standards concerning privacy, data protection, confidentiality, and information security as well as all the School District policies, procedures, and operating guidelines regarding privacy, confidentiality, and security.

ARTICLE VII. TERMINATION

The Contract may be terminated as follows (in addition to the termination provisions set forth in the Solicitation, if any):

7.1 Termination Without Cause

a. The School District may, at any time upon thirty (30) days prior written notice to Contractor, terminate (without prejudice to any right or remedy of the School District) the whole or any portion of the Contract for the convenience of the School District. If the School District terminates the whole or any portion of the Contract at the School District's convenience, then the School District shall only be liable to Contractor for the goods and/or services satisfactorily provided and or performed by Contractor up to the date of termination.

b. The School District may terminate the Contract pursuant to O.C.G.A. § 20-2-506, by providing Contractor with at least thirty (30) days notice prior to the end of the calendar year.

c. Further and pursuant to O.C.G.A. § 20-2-506, in the event appropriated funds are determined no longer to exist or to be insufficient for purposes of fulfilling the School District's obligations hereunder, the School District may terminate the Contract by providing at least fifteen (15) days written notice of termination to the Contractor. Notice of termination shall include a certification by the School District of the unavailability or insufficiency of funding, and such certification shall constitute an agreement by the School District not to replace the services covered hereunder in whole or in part with any service obtained from a provider other than the Contractor before the earlier of the end of the calendar year following the year in which the notification of

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such certification is received by the Contractor or the date this Contract expires on its own terms, whichever first occurs. The School District shall be obligated for payments to the Contractor through the date of termination.

d. The Contract may be terminated by the School District if the School District gives the Contractor a written notice indicating non-renewal no less than 15 days prior to any automatic renewal date under the Contract. The written notice of non-renewal notice will evidence the School District's intention not to renew the Contract.

7.2 For Cause Termination and Other Remedies.

The occurrence of any one or more of the following events shall a default by Contractor under the Contract:

a. Contractor fails to deliver the goods and services ordered by the School District under the Contract or has delivered nonconforming goods or services or fails to perform, to the satisfaction of the School District, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;

b. Contractor fails to make substantial and timely progress toward performance of the Contract; or the School District determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;

c. Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law; or the Contractor terminates or suspends its business; or the School District reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

d. The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations or orders when performing within the scope of the Contract;

e. The Contractor has engaged in conduct that has or may expose the School District to liability, as determined in the School District's sole discretion; or

f. The Contractor has infringed on a patent, trademark, copyright, trade dress or any other intellectual property rights of a third party.

In the event of default Contractor, the School District shall provide written notice to the Contractor requesting that the breach or noncompliance be cured or remedied within the period of time specified in the School District' written notice to the Contractor. If the breach or noncompliance is not cured or remedied within the period of time specified in the written notice, then the School District may: (1) Immediately terminate the Contract without additional written notice; and/or (2) Procure substitute goods or services from another source and charge the difference between the Contract and the substitute Contract to the defaulting Contractor including without limitation offsetting amounts owed by the School District to the Contractor; and/or (3) Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

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7.3 Termination by Contractor

Contractor may terminate the Contract if the School District fails to make timely payment (within 30 days of invoice) of an invoice that has been approved by the School District. Prior to terminating the Contract, Contractor shall provide 15 days written notice to the School District, notifying the School District of its failure to pay. The School District may cure its default within 15 days of receipt of the notice.

ARTICLE VIII. INSURANCE

8.1 General Insurance Requirements.

The following general insurance requirements apply to any and all work under the Contract by all Contractors and Subcontractors of any tier:

a. Contractor shall provide insurance as required by the Contract Documents. Any and all insurance required by the Contract shall be maintained during the entire length of this Contract, including any extensions thereto, and until all work has been completed to the satisfaction of the School District. Any and all insurance must be on an occurrence basis. No Contractor or Subcontractor shall commence any work of any kind under the Contract until all insurance requirements contained within the solicitation have been complied with, and until evidence of all insurance requirements in each and every contract, with each and every Subcontractor of any tier, and shall require the same to comply with all such requirements.

b. The School District shall be covered as an Additional Insured under any and all insurance required by the Contract (other than Contractor's workers compensation and employer's liability insurance). Confirmation of this shall appear on all Certificates of Insurance and on any and all applicable policies.

c. The School District shall be given no less than thirty (30) days' notice of cancellation of any insurance required under the Contract. The School District shall be given not less than thirty (30) days prior written notice of material changes of any insurance required under the Contract. The School District shall be given written notice of renewal of coverage not less than thirty (30) days prior to the expiration of any particular policy.

d. Each and every agent shall warrant when signing the Certificate of Insurance that he is acting as an authorized representative on behalf of the companies affording insurance coverage under the Contract and that he is licensed by the State of Georgia and is currently in good standing with Commissioner of Insurance for the State of Georgia.

e. Any and all companies providing insurance required by the Contract must meet the minimum financial security requirements as set forth below. The rating for each company must be indicated on the Certificate of Insurance. For all contracts, regardless

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of risk, companies providing insurance under the Contract must have a current:

i. Best's Rating not less than A, and
ii. Best's Financial Size Category not less than size VII.

f. In the event the Contractor neglects, refuses, or fails to provide the insurance required by the Contract, or if such insurance is canceled for any reason, the School District shall have (a) the right, but not the duty, to procure the same, and the cost thereof shall be deducted from monies then due or thereafter to become due to the Contractor or (b) the right to terminate the Contract.

8.2 Worker's Compensation and Employer's Liability Insurance.

The Contractor shall procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits. Such insurance is to cover each and every employee who is or may be engaged in work under the Contract.

Workers' Compensation	Statutory
Employer's Liability	
Bodily Injury by Accident	$100,000 each accident
Bodily Injury by Disease	$100,000 each employee
Bodily Injury by Disease	$500,000 policy limit

This requirement does not apply to any business that has regularly in service less than three employees in the same business within the state of Georgia.

8.3 Comprehensive General Liability Insurance.

The Contractor shall procure and maintain Comprehensive Insurance in an amount not less than $1,000,000 for bodily injury and property damage combined single limit. The following specific extensions of coverage shall be provided and indicated on the certificate of insurance:

(1) Comprehensive Form
(2) Contractual Insurance
(3) Personal Injury
(4) Broad Form Property Damage
(5) Premises-Operations
(6) Completed Operations

This coverage shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under this Contract. Policy coverage must be on an occurrence basis.

8.4 Automobile Liability Insurance.

The Contractor shall procure and maintain Automobile Liability Insurance in an amount not less

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than $1,000,000 for bodily injury and property damage combined single limit. The following extensions of coverage shall be provided and indicated on the certificate of insurance:

(1) Comprehensive Form
(2) Owned, Hired, Leased and non-owned vehicles to be covered

If the Contractor does not own any vehicles in the corporate name, non-owned vehicles coverage shall apply and must be endorsed on either the Contractor's personal automobile policy or the Comprehensive General Liability coverage required under the Contract.

8.5 Umbrella Liability Insurance.

The Contractor shall procure and maintain Umbrella Liability Insurance in an amount not less than $1,000,000 per occurrence / $1,000,000 aggregate.

ARTICLE IX. THE SCHOOL DISTRICT PROHIBITS UNLAWFUL DISCRIMINATION AND HARASSMENT, INCLUDING SEXUAL HARASSMENT

9.1 The School District does not discriminate on the basis of race, religion, color, sex, gender identity, sexual orientation, national origin, age, disability, or any other basis prohibited by law in any educational programs or activities or in employment policies and practices. Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, gender identity, sexual orientation, national origin, age, disability, or other basis prohibited by law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Contractor.

9.2 The School District prohibits unlawful discrimination or harassment including sexual harassment. Contractor and Subcontractors, if any, must not engage in unlawful harassment including sexual harassment or discrimination while on school premises.

9.3 The School District may suspend or terminate Contractor and Subcontractor or both if it violates these laws, policies, regulations, or provisions while on school premises.

ARTICLE X. DRUG/ALCOHOL/TOBACCO/WEAPONS FREE WORKPLACE

10.1 Contractor and all subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess, or use controlled substances or marijuana, as defined by law, during the performance of the Contract while on school premises or at school related functions. Failure to comply with this provision may be considered a material breach.

10.2 Contractor and all subcontractors, if any, shall not possess any weapon, as defined by law on school property, at school related functions, or within 1000 feet of school property or school functions. Failure to comply with this provision may be considered a material breach.

10.3 Contractor and all subcontractors, if any, also shall adhere to all policies and regulations of the School District and the Board of Education that prohibit the possession, distribution, sale,

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dispensation, or use of any alcohol or tobacco products while on school premises or at school related functions. Failure to comply with this provision may be considered a material breach.

10.4 The School District may suspend or terminate Contractor, subcontractor, or both if it violates these laws, regulations, or policies while within 1,000 feet of school property or school related functions, pursuant to Georgia law.

ARTICLE XI. SALES TAX

The School District is exempt from all state sales tax and federal excise taxes; and shall not pay any such taxes under the Contract. The School District, upon written request, will provide Contractor with applicable sales tax exemption certificates.

ARTICLE XII. NO WARRANTY DISCLAIMER

Contractor warrants that its services or goods or both fit the need or purpose of the Solicitation attached as Exhibit A. Contractor cannot disclaim these warranties. Should any third-party warranties exist, Contractor agrees to pass along all such warranties to and for the benefit of the School District, and to serve as the School District's contact to facilitate its rights under such warranties.

ARTICLE XIII. GENERAL TERMS AND CONDITIONS

13.1 Assignment and Modification.

Contractor shall not assign or transfer any interest in the Contract without the prior written consent of the School District. No modification of the Contract shall be binding upon the Parties, unless consented to in writing, and signed by both Parties.

13.3 Subcontractors.

Contractor shall not subcontract services or any part of the Contract without the prior written consent of the School District.

13.4 Third Party Beneficiaries.

The Contract does not and is not intended to confer any rights or remedies upon any Person other than the signatories.

13.5 Ownership.

Contractor retains all rights, title, and interest in and to its intellectual property and copyright materials, provided in connection with Contractor's services (collectively, "Contractor IP").
Contractor grants to the School District a personal, nonexclusive license to use Contractor IP for its own non- commercial, incidental use as contemplated herein. All data of the School District shall remain the property of the School District.

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13.6 Indemnification.

The School District shall not be liable for any injuries incurred by Contractor or any of its employees, representatives, or agents during the performance of Contractor's duties as outlined in the Contract. Contractor agrees to indemnify, hold harmless and defend the School District, the Board of Education and any of their current, future, or past officers, agents, and employees from any and against all claims, liabilities, damages, losses, judgments, charges, expenses (including attorney fees) and/or causes of action out of any alleged negligence or misconduct of Contractor and for which the School District , the Board of Education, or any of their agents, officers, representatives, administrators, servants, or employees are alleged to be liable.

Contractor further agrees to indemnify, hold harmless and defend the School District, the Board of Education and any of their agents, officers, representatives, administrators, servants, and employees from and against any claim, demand, liability, loss, charges, expenses (including attorney fees) and/or causes of action of whatever kind or nature arising out of any conduct or misconduct of Contractor not included in the paragraph above and for which the School District, the Board of Education or any of their agents, officers, representatives, administrators, servants or employees are alleged to be liable.

Contractor further agrees that its agreement to indemnify and hold harmless the School District, the Board of Education and any of their current, future or past officers, agents, representatives, administrators, and employees shall not be limited to the limits of any insurance that may be required under the Contract.

Nothing contained herein is intended to be a waiver in any respect whatsoever of the School District's or the Board of Education's right to assert under any circumstances whatsoever its claims of governmental and/or official immunity from any liability or damages asserted against it by any natural person or entities created by law.

This Subsection represents the entire agreement between the Parties regarding indemnification and replaces any other references to indemnification in the Contract Documents or Exhibits.

13.7 Disputes.

In the event of any controversy, claim, dispute, or other matter in question arising out of or relating to the Contract or the breach thereof or otherwise with the Contract, which has not been resolved pursuant to other conditions of the Contract (hereinafter referred to as the "dispute"), Contractor, prior to pursuing any legal action, shall appeal the dispute to the Executive Director of Purchasing and Warehouse Operations Services via the School District's Purchasing Dispute Resolution Provisions.

XX.X Dispute Resolution Process

Before pursuing legal action, the parties agree to hold a meeting or conference between representatives of the contractor and the School District to resolve any problems or to discuss issues regarding the implementation of the Contract. Such meeting or conference shall be held within ten

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(10) business days of the date of any such request. Any requests to meet to discuss a potential dispute will be made to the Director of Procurement and Warehouse Operations Services.

13.8 No Waiver of Legal Rights.

Any waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach, or of any right, that the School District or Contractor may have for damages.

The Parties may waive any provision in the Contract only by a writing executed by the Party or Parties against whom the waiver is sought to be enforced.

No failure or delay (1) in exercising any right or remedy, or (2) in requiring the satisfaction of any condition under the Contract, and no act, omission, or course of dealing between the parties – operates as a waiver or estoppel of any right, remedy, or condition.

A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other Person.

13.9 Obligation to Perform.

Contractor shall continue to perform notwithstanding all disputes or disagreements with the School District, other than the School District's nonpayment of an approved invoice, following notice and cure as provided in this Agreement. Contractor's performance under the Contract shall not be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and the School District may otherwise agree to in writing.

13.10 Rights and Remedies.

The duties and obligations imposed by the Contract and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or available by law.

13.11 Organization, Licenses, and Regulations.

Contractor must be organized under the laws of the State of Georgia, or otherwise registered to do business in the State of Georgia pursuant to O.C.G.A § 14-2-1501. The School District may require Contractor to furnish a copy of documents evidencing such registration prior to or subsequent to the execution of this Agreement. Contractor's failure to provide such documents upon demand by the School District will constitute grounds for termination of the Contract by the School District .

Contractor shall secure and keep in full force and effect during the term of the Contract, without additional cost to the School District, all business licenses and permits required for Contractor's performance of the services contemplated herein.

Contractor shall keep all records, give all notices, and provide all certificates or other assurances and otherwise comply with all applicable Federal, State, and local laws, rules, and regulations

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applicable to an organization engaged in the Contractor's business including but not limited to, those bearing upon labor standards or practices, non-discrimination, equal employment opportunity and the like.

13.12 Notices.

Except as otherwise expressly provided, any notice, instruction or other written communication required or permitted to be given under the Contract shall be deemed to have been delivered or received:

a. Upon personal delivery to Contractor or its authorized representative, which delivery may be accomplished by in person hand delivery, or via bona fide overnight express services; or

b. Five (5) days after depositing in the United States mail a letter, which is either certified or registered, addressed to Contractor or the School District at its official address, for use under the Contract, as the case may be. For purposes of the Contract, notices, instructions, or other written communications shall be sent or delivered at the following address:

To Contractor: _____
_____
_____
_____

And to The School District:

Superintendent
Bibb County School District
484 Mulberry Street
Macon, Georgia 31201

With Copies To:

Bibb County School District Legal Department
Bibb County School District
484 Mulberry Street, Suite 400
Macon, Georgia 31201

Director of Procurement and Warehouse Operations Services
Procurement
4580 Cavalier Drive
Macon, Georgia 31220

13.13 Publicity.

Any publicity regarding the services or goods provided under this Contract, including but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar

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public notices prepared by or for the Contractor shall not be released without prior written approval by the School District. Contractor may, however, reference the Contract in proposals for other contracts or in client lists without prior School District approval.

13.14 Extent of Agreement.

The Contract represents the entire and integrated Contract between the School District and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. The School District and Contractor hereby waive and mutually release each other from any and all prior representations, negotiations or agreements not embodied in the Contract. The Contract is not intended to and shall not be construed to create any rights against the parties hereto by any persons or entities not a named party to the Contract. The Contract may be amended only by written instrument and only after such amendment has been authorized by the Bibb County School District.

13.15 Venue & Governing Law.

Venue of any action brought under the Contract shall lie exclusively in the Macon, Bibb County, State of Georgia, or in the United States District Court for the Middle District of Georgia, Macon Division, without giving effect to its choice of law principles. Contractor hereby waives any and all objections to the exercise of personal jurisdiction and venue in these courts.

All matters giving arise under or relating to the Contract shall be governed and construed by the laws of the State of Georgia now in force and as hereafter amended from time to time. This paragraph represents the entire agreement between the parties regarding venue and governing law and replaces any other references to governing law or venue in the Contract Documents or Exhibits.

13.16 Force Majeure.

Both the School District and Contractor shall not be considered in default in the performance of its obligations under the Contract to the extent that the performance of its obligations is prevented or delayed by any cause beyond either's reasonable control, including without limitation: acts of God; pandemics or epidemics designated by state or federal authorities; acts or omissions of governmental authorities; strikes, lockouts or other industrial disturbances.

13.17 Severability.

In the event any provision or any portion of any provision of the Contract, or application thereof to any person or circumstances shall to any extent be held invalid or unenforceable, the remainder of the Contract or the application of such remaining provisions or remaining portion of said provision to any other person or circumstances shall not be affected thereby. Said remainder shall continue in full force and effect and shall be valid and enforceable to the fullest extent permitted by law. If any provision of the Contract is held to be invalid, illegal, or unenforceable for any reason, the validity, legality, and enforceability of the remaining provisions of the Contract will not be adversely affected.

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13.18 Multiple Counterparts.

The Contract may be executed in multiple counterparts, each of which shall be deemed an original instrument, and such counterparts together shall constitute one and the same instrument.

13.19 Section Headings.

The section headings of this Agreement are for the convenience of the parties only and in no way alter, modify, amend, limit, or restrict the contractual obligations of the parties.

13.20 Number and Gender.

Any reference in this Agreement to the singular includes the plural where appropriate, and any reference in this Agreement to the masculine gender includes the feminine and neuter genders where appropriate.

13.21 Rights and Remedies Cumulative.

Any enumeration of the School District's rights and remedies set forth in the Contract are not exhaustive. The School District's exercise of any right or remedy pursuant to the Contract does not preclude the exercise of any other right or remedy. All the School District's rights and remedies are cumulative and are in addition to any other right or remedy set forth in the Contract, any other agreement between the Parties, or which may now or subsequently exist at law or in equity, by statute or otherwise.

13.22 Time Is of The Essence.

Time is of the essence with regard to performance of any services under the Contract, unless the parties agree otherwise in writing.

13.23 Relationship Among Parties.

The Contract creates no relationship of joint venture, partnership, limited partnership, agency, or employer- employee between the Parties, and the Parties acknowledge that no other facts or relations exist that would create any such relationship between them. Neither Party has any right or authority to assume or to create any obligation or responsibility on behalf of the other Party except as provided by written instrument signed by both parties.

13.24 Authority.

The Parties hereby represent and warrant that the individuals executing this Agreement have the authority to legally bind the School District and Contractor respectively.

13.25 Interpretation.

The Contract is the joint product of negotiations between the Parties and shall not be interpreted or construed against either party hereto, regardless of which Party has been primarily responsible for

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its preparation.

13.26 Background Check.

The School District requires that all individuals who will work on the School District site (including full-time, part-time, and temporary employees, contractors and subcontractors) must be fingerprinted by the School District and cleared through the Georgia Criminal Information Center System (GCIS) before they are assigned to work at the School District. The cost of fingerprinting is **$50.00** per individual and is the responsibility of Contractor. Any failure to comply with this requirement constitutes a breach of the Contract.

13.27 Georgia Security and Immigration Compliance Act.

Contractor's full compliance with all applicable federal and state security and immigration laws, including without limitation O.C.G.A. § 13-10-90, *et seq.* as amended and Georgia Department of Labor Rule 300-10-1, *et seq.* is required. Contractor is required to affirm compliance by completing the appropriate Georgia Security and Immigration Compliance documents. Pursuant to O.C.G.A. § 13-10-91 no Contractor or subcontractor may propose a contract or enter into a contract with a public employer for the physical performance of services unless the Contractor or subcontractor is registered with and participates in the federal work authorization program to verify information of all newly hired employees and provides certain required affidavits. Any Contractor, subcontractor, or sub-subcontractor of such Contractor or subcontractor, shall also be required to satisfy the requirements set forth herein.

IN WITNESS WHEREOF, The School District and the Contractor have caused this Agreement to be executed by the duly authorized representative of the day, month and year first above written.

The Bibb County School District	**Contractor:** _____
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

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