



**AGREEMENT BETWEEN**

**Bibb County School District**

**AND**

**Schneider Electric Buildings Americas, Inc.**

**FOR:** Investment Grade Audit Services

**Dated:** \_\_\_\_\_

## STATE OF GEORGIA COUNTY OF MACON-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 **Schneider Electric Buildings Americas, Inc.**, a foreign for-profit corporation duly registered and authorized to conduct business in the State of Georgia with a principal office address of **1650 W Crosby Rd., Carrollton, Texas 75006** (hereinafter referred to as the “Contractor”, and together with the School District, the “Parties”, and each a “Party”).

### WITNESSETH

**WHEREAS**, the School District seeks to retain Contractor to perform an Investment Grade Audit to (i) identify energy conservation measures (“ECMs”) that are available to and appropriate for School District’s facilities, (ii) determine the guaranteed savings that would result from implementing such ECMs as part of a comprehensive energy conservation improvement program, and (iii) propose a scope of work and project price for ESCO’s implementation of such ECMs under and pursuant to an Energy and Construction Services Contract.

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

**WHEREAS**, the Parties now wish to enter into the Contract to provide said 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. CONTRACT DOCUMENTS

### 1.1 Contract Documents.

The Contract consists of the following documents: (*update list as needed*)

- a. This Agreement;
- b. The Contractor’s proposal or quote, including pricing, and any applicable Scope of Services, Statement of Work, Payment and Payment Terms Schedule, terms, conditions, privacy policy, or other agreements, collectively the “Contractor Documents” (Exhibit A);
- d. Board Approval, if applicable, for all contracts over \$150,000.00 in value:

Completed on \_\_\_\_\_, dated \_\_\_\_\_ (*insert board item number and date*); and

e. E-Verify Documents (Exhibit B).

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 Contractor's Documents, attached hereto as Exhibit A.

## **ARTICLE II. SCOPE OF CONTRACT**

**2.1 Services.** Contractor will provide, and the School District hereby engages Contractor for the purpose of providing the Investment Grade Audit ("IGA") services detailed on Exhibit A attached hereto and incorporated herein by reference.

**2.2 Future Goods and Services.** If the School District elects to have Contractor implement some or all of the Energy Conservation Measures proposed by the Contractor, the Parties will enter into an Energy and Construction Services Contract setting forth the scope of work, project price and schedule, as more fully described in Exhibit A. The School District is not obligated to enter into the Energy and Construction Contract but may elect to do so. The Construction Services Contract will be subject to review and negotiation by the School District.

**2.3 Relationship of the Parties.** This Contract is not intended by the Parties to constitute or create a joint venture, pooling arrangement, partnership, or formal business organization of any kind, and the rights and obligations of the Parties shall be only those expressly set forth herein. The Contractor shall be deemed an independent contractor, and the employees and agents of the Contractor shall not be deemed to be the employees or agents of School District. Contractor shall have no right, power, or authority to act or create any obligation, whether express or implied, on behalf of School District. Contractor shall at its own expense, comply with federal, state, and local laws, rules and regulations that are now or may in the future become applicable to Contractor, Contractor's business, or Contractor's personnel engaged in the Services covered by this Contract, including but not limited to, the withholding and payment of all federal, state, and local income and/or sales taxes, Social Security, unemployment,

sickness, disability, workers compensation, and other payroll taxes with respect to its employees, including contributions from them when and as required by law. Contractor shall provide all of the tools, materials, equipment, and other business items necessary to perform the Services. Contractor shall be solely responsible for paying, and shall pay, all of its own expenses, debts, accounts, obligations, liabilities, employees, taxes, and fees incurred by it in the performance of the Services hereunder.

### **ARTICLE III. TERM**

#### **3.1 Initial Term.**

The performance period for the Contract is one (1) year, beginning [insert start date for contract] and ending on [insert end date], subject to paragraph 3.2 and Article VII below.

#### **3.2 Optional Renewal Terms.**

In addition to the base period of one (1) year, there are ( ) (insert number of renewals) one-year optional renewal terms (each a "Renewal Term") to be exercised at the sole discretion of School District.

#### **3.3 Same Terms.**

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

#### **3.4 Statutory Compliance.**

As required by O.C.G.A. § 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 thirty (30) days prior to December 31<sup>st</sup>, unless the Contract is terminated earlier as provided herein.

### **ARTICLE IV. CONTRACTOR SERVICES AND RESPONSIBILITIES**

#### **4.1 Performance.**

Contractor, by the execution of this Contract, acknowledges that it possesses that degree of care, learning, skill, and ability which is ordinarily possessed by other members of its profession or industry and further represents that in the performance of the services it will exercise such degree of care, learning, skill and ability as is ordinarily employed by Contractor under similar conditions and like circumstances. Contractor 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.

#### **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, retention, payment, insurance, taxes, social security, and workers compensation benefits 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, benefits, and the Davis-Bacon Act, as applicable.

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 and security requirements of the Contract and applicable state and federal law 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 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, training, and certifications 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 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 and after Contractor has failed to cure or commence the cure of such breach or violation within 10 days of receipt of such 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, . The packaging, packing, marking, and shipping of such goods will conform with Contractor's Proposal or quote. This express warranty shall not be waived by reason of acceptance of the goods or payment thereof by the School District.
- 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 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.
- d. 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 V. FINANCIAL ARRANGEMENTS

### 5.1 Compensation and Payment.

The School District shall pay Contractor for the satisfactory performance of the services and/or satisfactory delivery of the goods provided under this Contract, the terms and rates set forth in the Contractor's Documents attached as Exhibit A.

Contractor acknowledges and agrees that this is a nonexclusive contract. The School District will utilize Contractor's services on an as-needed basis, based on an approved statement of work, and as such the School District will only be responsible for payment for services as set forth and agreed upon in Contractor's Documents 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 **Two Hundred Twenty-Five Thousand Dollars (\$ 225,000.00) annually**. Pricing for the IGA services is per OMNIA Partners Contract #R221504.

Contractor shall submit its invoice(s) to the School District 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, cancellation fees, interest fees, or collections fees imposed 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 goods 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;
- g. Failure of Contractor to provide upon request by the School District documentation sufficient to substantiate charges on any invoice submitted for payment; or
- 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 goods 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.

### **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 five (5) 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 audit 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 Contract, 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 O.C.G.A. 50-18-70 *et. seq.* (“the Open Records Act”), including but not limited to, student educational records and information.
- 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 of its representatives in violation of the Contract;
- ii. Is in the lawful possession of Contractor or any of its 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 Obligations Regarding Confidential Information**

During and after the Term of this Contract, Contractor shall take all commercially reasonable 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.

Contractor shall give prompt written notice to the School District of any unauthorized use or disclosure of the School District's Confidential Information. Contractor shall assist the School District in remedying each unauthorized use or disclosure.

The Contractor shall comply with all applicable state and federal 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 the 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.

### **6.3 Breach of Confidentiality**

Contractor acknowledges and agrees that an award of money damages may be inadequate for any breach of this Article by Contractor, or any of its respective agents, representatives, administrators, employees, officers, directors, attorneys, successors, and assigns; and that any breach may cause the School District irreparable harm. Therefore, in the event of any breach or threatened breach of this Article by Contractor or any of its Representatives, the School District may be entitled to equitable relief, including injunctive relief and specific performance.

### **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.

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.

## **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 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.

## **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 reasonable 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;
- 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 exposed the School District to liability; 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 by 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's 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.

### **7.3 Termination upon Assignment or Change in Control.**

In the event Contractor attempts to assign this Contract to a third party, or in the event Contractor changes control, School District shall have the right in its sole discretion to terminate the Contract immediately upon written notice.

### **7.4 Termination by Contractor**

Contractor may terminate the Contract if the School District fails to make timely payment (within 30 days of receipt 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 this Section 8 of 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 reasonable 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 included as an Additional Insured under any and all insurance required herein (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 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 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 VIII.
- 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.

| <u>Workers' Compensation</u> | <u>Statutory</u>        |
|------------------------------|-------------------------|
| <u>Employer's Liability</u>  |                         |
| 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 Commercial General Liability Insurance.**

The Contractor shall procure and maintain Commercial General Liability Insurance in an amount not less than \$4,000,000 for bodily injury and property damage combined single limit. The following specific extensions of coverage shall be provided:

- (1)
- (2) Contractual Liability
- (3) Personal Injury
- (4) 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 than \$3,000,000 for bodily injury and property damage combined single limit. The following extensions of coverage shall be provided:

(1)

(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 Commercial General Liability coverage required under the Contract.

#### **8.5**

### **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, 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. GENERAL TERMS AND CONDITIONS**

### **12.1 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.

### **12.2 Subcontractors.**

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

### **12.3 Third Party Beneficiaries.**

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

### **12.4 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.

### **12.5 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 (collectively "Indemnitees") 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 Indemnitees shall not be limited to the limits of any insurance that may be required under the Contract. Contractor shall, at its expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnitees. No settlement or compromise of any claim, loss or damage asserted against Indemnitees shall be binding upon Indemnitees unless expressly approved by the Indemnitees.

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 supersedes any other references to indemnification in the Contractor's Documents. Contractor shall not impose any indemnification or hold harmless obligations on School District. To the extent any of the Contractor Documents contain such language, such provisions are null and void.

## **12.6 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 (10) business days of the date of any such request.

## **12.7 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. 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.

No failure or delay (1) in exercising any right or remedy; (2) in requiring the satisfaction of any condition under the Contract; and/or (3) no act, omission, or course of dealing between the parties operates as a waiver or estoppel of any right, remedy, or condition.

## **12.8 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 Contract. 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.

## 12.9 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.

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

## 12.11 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: Schneider Electric Buildings Americas, Inc.,  
1650 W Crosby Rd.  
Carrollton, Texas 75006

Attn:

To School District:

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

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

#### **12.12 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 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.

#### **12.13 Extent of Contract.**

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 may be amended only by written instrument and only after such amendment has been authorized by the Bibb County School District.

#### **12.14 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 Contractor's Documents or Exhibits.

#### **12.15 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.

#### **12.16 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.

#### **12.17 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.

#### **12.18 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.

#### **12.19 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.

#### **12.20 Authority.**

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

#### **12.21 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.

## **12.22 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 Contract to be executed by the duly authorized representative of the day, month, and year first above written.

**"School District"**

**The Bibb County School District**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**"Contractor"**

**Schneider Electric Buildings Americas, Inc.**  
**Contractor License #GCCO004542**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A**

### **CONTRACTOR DOCUMENTS**

#### **1. Services**

As described more fully hereinbelow, Contractor will conduct an Investment Grade Audit of certain School District Facilities (defined below) in order to (i) identify ECMs that are available to and appropriate for such Facilities, (ii) determine the guaranteed savings that would result from implementing such ECMs as part of a comprehensive energy conservation improvement program, and (iii) propose a scope of work and project price for Contractor's implementation of such ECMs (the "IGA"). Contractor will provide School District with a report describing the scope and results of such IGA (the "IGA Report"). School District acknowledges that the IGA is not intended to serve as a comprehensive inspection of School District's Facilities and that, to facilitate the IGA and to assist Contractor in identifying and recommending ECMs appropriate for School District's Facilities, School District is responsible for providing Contractor with all such access, knowledge and history as may be relevant to Contractor's analysis, including, without limitation, with respect to School District's Facilities, systems, and equipment, as well as its accounting, maintenance, and operation practices.

#### **2. Ownership of Work Products**

All drawings, specifications and other documents and electronic data furnished by Contractor to School District under this Agreement ("Work Products") are deemed to be instruments of service and Contractor shall retain all ownership and property interest therein, including any copyrights and other intellectual property rights. Such Work Products are furnished solely for purposes of allowing School District to evaluate whether it wishes to execute an Energy and Construction Services Contract with Contractor and, in the event School District does enter into an Energy and Construction Services Contract with Contractor, for use in connection with Contractor's performance of the proposed Project (defined below). Work Products are not intended to be, and shall not be, used or relied upon by School District or any third party for designing or performing any portion of the proposed Project, and Work Products may not be shared with any third parties without the written permission of Contractor, except to the extent required by law.

#### **3. Deliverables**

Contractor agrees to and shall provide School District with the following:

- A. An IGA of each of the facilities described below (each, a "Facility"; collectively, the "Facilities");

| Facilities                                 | Address                          |
|--------------------------------------------|----------------------------------|
| Bibb County School District Central Office | 484 Mulberry St, Macon, GA 31201 |

- B. An IGA Report setting forth:

- i. a list of the ECMs recommended for each Facility;
  - ii. a description, based upon the information made available to Contractor during the IGA, of how the recommended ECMs would interact with the existing equipment in the Facilities;
  - iii. a financial analysis calculating the impact the ECMs would have on annual cash flow;
  - iv. a utility analysis outlining the impact the ECMS would have on School District's utility expenses;
  - v. a proposed scope of work to be performed by Contractor (the "Project"); and
  - vi. proposed pricing for Contractor's performance of the Project, which such pricing will be honored by Contractor for sixty (60) days following delivery of Contractor's IGA Report to School District; and
- C. A draft Energy and Construction Services Contract to be entered into if School District elects to move forward with the Project.

**4. School District agrees to provide Contractor with the following:**

- A. A list of any requirements and/or specifications that School District expects to be included in and/or associated with the scope of work;
- B. Complete access to the Facilities (including remote network access as appropriate) and to information concerning the Facilities, including without limitation such Facility access and information as will enable Contractor to accurately perform an energy efficiency analysis, measure actual energy use, take equipment inventory, determine operating schedules, and identify known operational deficiencies;
- C. Access to key personnel to discuss operating requirements;
- D. Copies or loans of building plans and other such documents for the purpose of facilitating Contractor's understanding of the Facility characteristics and the current sequences of operation; and
- E. All other insight, knowledge and history actually known and in the possession of the School District as may be relevant to Contractor's analysis, particularly with respect to the operation, maintenance and energy efficiency of the Facilities, as well as disclosure of all known or suspected deficiencies, defects and malfunctions of or affecting the Facilities or the systems, components and equipment therein.

**5. Fees and Payment:**

- A. Within sixty (60) days of receiving the IGA Report (as defined hereinabove), School District shall pay Contractor an Audit Services Fee (ASF) of \$225,000.
- B. If School District executes an Energy and Construction Services Contract with Contractor within sixty (60) days of receiving the IGA Report, the ASF will be credited against and reduce the "Project Price" to be paid by School District under the Energy and Construction Services Contract.

**EXHIBIT B**

**E-VERIFY DOCUMENTS**