

## GENERAL TERMS AND CONDITIONS

While effort has been made to separate substantive and procedural matters through the division of a solicitation or agreement into various parts, the distinctions between such categories are not always exact. Consequently, offerors are advised that all contents of a solicitation or agreement will constitute the substantive terms and conditions of the relationship, if any occurs, between the offeror and the District in accordance with this document.

### DEFINITIONS

The terms, “vendor”, “contractor”, “prime contractor”, “firm”, “offeror”, “proposer”, “responder”, “supplier”, “entity” or “bidder” may be used interchangeably and refers to the entity offering a proposal. These terms are defined as including a legal business association of one (1) or more persons existing at the time of the proposal submission. The term "Agreement" means any transaction or contractual arrangement contemplated or created as a result of, arising out of, or relating to the solicitation and subsequent award. The terms, “The School District of Greenville County”, “Greenville County Schools”, “Customer”, “Owner”, “District”, “SDGC”, “GCSD”, “GCS”, “Board of Trustees” and “Board” may be used interchangeably and refers to the entity issuing the solicitation, receiving and reviewing the proposals and issuing an award. The term “Day” or “Days” refers to calendar days, unless noted otherwise.

### GOVERNING LAW

The contractor or offeror shall comply with the laws of the State of South Carolina which require that it be authorized and/or licensed to bid and/or conduct business in said State. By signing an Agreement or by offering a bid or proposal or agreement, contractor agrees to subject itself to the jurisdiction and process of the District’s Procurement Code and Regulations, the courts of the State of South Carolina or federal courts as to all matters and disputes arising or may arise under and in regard to the solicitation, Agreement and the performance thereof, including any questions as to the liability for taxes, licenses or fees levied by the State.

The solicitation and/or Agreement and any dispute, claim or controversy relating to the solicitation and/or Agreement shall, in all respects, be interpreted, construed, enforced and governed by and in accordance with the Procurement Code and Regulations of The School District of Greenville County and the laws of the State of South Carolina. All disputes, claims or controversies relating to the Agreement shall be resolved exclusively by the District’s Chief Procurement Officer or Purchasing Agent/Procurement Director in accordance with Article XIV of The School District of Greenville County’s Procurement Code or in the absence of jurisdiction, the Court of Common Pleas for, or a federal court located in, Greenville County, State of South Carolina. Contractor or offeror agrees that any act by the District regarding the solicitation and/or Agreement is not a waiver of either the District’s sovereign immunity or the District’s immunity under the Eleventh Amendment of the United States’ Constitution. As used in this paragraph, the term “Agreement” means any transaction, contract, understanding or agreement arising out of, relating to, or contemplated by the pertinent solicitation and/or agreement between the proposer and the District.

The District shall not accept, enter into or sign any proposed agreement(s), document(s), offer(s), contract(s), leases(s) and/or provision(s) that materially conflicts with the District’s General Terms and Conditions, the requirements of a solicitation or which are determined not to be in the best interest of the District.

The solicitation and the District’s General Terms and Conditions shall govern and take precedence as the contract between the District and the awarded entity. The terms of the agreement between the District and the successful/awarded entity shall comply with the requirements contained in this solicitation and the District’s General Terms and Conditions.

### CONTRACTUAL NEGOTIATIONS

Contract negotiations, if applicable, may be started at the District's discretion, with the apparent successful offeror. If any points/issues exist that cannot be resolved, so that a final contract, to the mutual satisfaction of all parties, can be reached, negotiations may be initiated with the next qualified offeror. All contractual documents submitted will be subject to approval of the District.

### CONTRACT DOCUMENTS & ORDER OF PRECEDENCE

(a) Any contract resulting from this solicitation shall include the following documents: (1) a Record of Negotiations, if any, executed by the vendor and the District, (2) documentation regarding the clarification of an offer, if applicable, (3) the solicitation, as may be amended, (4) modifications, if any, to an offer, if accepted by the District, (5) the vendor's offer, (6) any statement reflecting the District's final acceptance (award), (7) purchase orders, and (8) any related contracts or agreements executed by the District and the proposer. These documents shall be read to be consistent and complimentary. Any document signed or otherwise agreed to by persons other than the Executive Director of Finance or a Procurement Officer shall be void and of no effect.

### OFFEROR RESPONSIBILITY

The offeror is the entity that is proposing or offering to perform work or supply service(s) and/or material(s) to the District. Each offeror shall fully acquaint itself with conditions relating to the scope and restrictions attending the performance of obligations under the conditions of this solicitation or agreement. The omission of an offeror to acquaint itself with existing pre-contract conditions or post-contract consequences shall in no way relieve such offeror of any obligation with respect to the proposal or to any contract resulting from a solicitation or agreement. Offerors are notified that failure to inspect, familiarize or otherwise gather information as to the total cost to the District will, in addition to any and all other remedies available, create cost difference liabilities and claims against the ultimately successful contractor. Offerors shall notify the District of all costs reasonably expected.

### BID/PROPOSAL/AGREEMENT CONSTITUTES OFFER

By submitting a bid/proposal or agreement, the offeror agrees to be governed by the terms and conditions as set forth in the solicitation document or proposed agreement and the District Procurement Code and Regulations. Any bid or proposal response or proposed agreement containing variations from the terms and conditions set forth herein may, at the sole discretion of the District, render such bid or proposal or agreement non-responsive. Any inconsistencies between the solicitation and any other contractual instrument shall be governed by the terms and conditions of the solicitation or proposed agreement, except where subsequent amendments to any contract resulting from the award are specifically agreed to in writing by the parties in order to supersede any such provisions of the solicitation or other contractual document.

### SPECIFICATIONS MANDATORY

The offeror must meet all of the mandatory specifications and requirements set forth in the solicitation or proposed agreement. By incorporating said specifications into the offeror's response, subject to acceptance by the District of any amendments hereto as submitted by the offeror, the offeror is agreeing to comply with said solicitation specifications or agreement. Failure to provide mandatory evidence of capability will result in a low evaluation ranking of the offeror's bid/proposal. Items designated as evaluation factors will be evaluated and rated in accordance with the evaluation criteria, if applicable.

### INQUIRIES

Every effort has been made to ensure that all information needed by an offeror is included herein. If an offeror finds that it cannot provide a response without additional information, it

may submit written questions to the person designated herein on or before the deadline set forth in the solicitation. Questions shall not be accepted by the District after the specified date. All replies to questions will be in writing and contained within an addendum. When a question received by the District is found to be previously and sufficiently addressed in the solicitation, that question will be returned to the proposer with a reference to the part of the solicitation containing the answer. All questions and written replies will be distributed to all known interested firms and individuals via an addendum and will be regarded as a part and parcel of the solicitation.

#### AMENDMENTS OR ADDENDA

If it becomes necessary to revise any part of the solicitation or agreement, amendments in the form of an addendum will be provided in writing to all known, interested firms and individuals.

#### ALL AMENDMENTS TO AND INTERPRETATIONS OF A SOLICITATION SHALL BE IN WRITING. THE DISTRICT SHALL NOT BE LEGALLY BOUND BY ANY AMENDMENT, ADDENDUM, INFORMATION OR INTERPRETATION THAT IS NOT IN WRITING.

#### COMPANY EXPERIENCE AND REFERENCE ACCOUNTS

If requested, interested firms and individuals must provide reference accounts where the services and/or equipment/material(s) offered were similar to the services and/or equipment/material(s) requested in the solicitation. The intent is to show company experience in receiving contracts for, and delivery of, goods and services similar to those proposed. Information should include the name, address, telephone number, and title of the person to contact for inquiry as to the proposer's experience and performance. Referenced accounts must not be company owned or an affiliate of the bidder or proposer.

The District reserves the right to consider historic information and facts about the bidder or proposer, whether gained from the submitted response, question and answer conferences, references or any other source, during the evaluation process.

#### SOLICITATIONS/AGREEMENTS SIGNED

All submittals shall be signed by a representative of the entity authorized to commit to the provisions of the submittal. Unsigned bids/proposals will be rejected unless an authorized representative is present at the bid/proposal opening and provides the needed signature, provided that the discovery is made prior to the recording of the contractor's bid/proposal. Any proposed and agreed upon contract shall be signed by an authorized representative of the offeror.

#### PUBLIC OPENING

All bids/proposals received in response to a solicitation will be recorded publicly at the time and place specified in the solicitation. The name of each offeror shall be announced, recorded and made available for scheduled public inspection.

#### POSTING OF AWARD

Solicitation awards shall be posted in the District's Procurement Department located at 2 Space Drive, Taylors, South Carolina. Awards may be viewed during normal business hours. The Procurement Department may be contacted to determine if a particular award has been posted.

#### RIGHT TO PROTEST

Any prospective bidder, proposer, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest in writing to the Purchasing Agent/Director of Procurement within fifteen (15) calendar days of the date of issuance of the

Invitation for Bid/Request for Proposal or other solicitation documents, whichever is applicable, or any amendment thereto, if the amendment is at issue.

Any actual bidder, proposer, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest in writing to the Purchasing Agent/Director of Procurement within fifteen (15) calendar days of the Posting Date as noted on the award document.

A protest shall be submitted in writing to the Purchasing Agent/Director of Procurement, The School District of Greenville County, 2 Space Drive, Taylors, South Carolina 29687 and shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.

It shall be noted that the District may exercise its right to require a protest bond or irrevocable letter of credit from a protesting party when applicable.

#### CLARIFICATIONS

The District reserves the right, at any time after opening and prior to award, to request from any apparently responsible bidder or proposer, clarification(s) of the bid/proposal submitted to the District, address questions or to seek or provide other information regarding the offeror's submittal/response. This process may be used for such purposes as providing an opportunity for the offeror to clarify its bid/proposal in order to assure mutual understanding and to determine acceptability.

#### PURCHASE ORDERS

Contractor shall not perform any work prior to the receipt of a Purchase Order from the District. The District shall order any supplies or services to be furnished via a solicitation method by issuing a Purchase Order. Purchase Orders may be used to elect any options available pursuant to a solicitation; e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of the solicitation.

#### PATENT AND COPYRIGHT LIABILITY

If notified promptly in writing by the District of any actions (and all prior claims relating to such action) brought against the District, based on a claim that the District's use of the services or any products offered, including software, infringes a United States patent or copyright, the contractor will defend and indemnify the District in such action at its expense and will pay the costs and damages awarded in such action, provided that the contractor shall have sole control of the defense of any such action and all negotiation for its settlement or compromise. The District shall give the Contractor prompt written notice of such claim and full right and opportunity to conduct the defense thereof, together with full information and reasonable cooperation. No cost or expenses shall be incurred for the account of the contractor without its written consent. If principles of government or public law are involved, the District may participate in the defense of any action. If, in the opinion of the contractor, the products furnished there under are likely to, or do become, the subject of a claim of infringement of a United States patent or copyright, then, without diminishing its obligation to satisfy a final award, the contractor may, at its option and expense, (a) obtain the right for the District to continue to use such goods; or (b) substitute, with prior notice and District approval, for the alleged infringing products other equally suitable products that are satisfactory to the District; or (c) take back, with District approval, such products, provided however, that the contractor will not exercise option (c) until the contractor and the District have evaluated options (a) and (b). In such event, contractor will reimburse the District for the purchase price of any goods removed pursuant to option (c).

#### TAXES

Prices shall include all applicable taxes unless otherwise noted. The current tax rate in South Carolina is six percent (6%). In the event that the contractor fails to pay or delays in paying to any taxing authorities sums paid by the District to the contractor, the contractor shall be liable to the District for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay.

#### PRICE ADJUSTMENT

Any request for price increase must be submitted to the user location and the District's Procurement Department by the contractor at least sixty (60) calendar days prior to any proposed contract extension. The price increase will only become effective if agreed to in writing by the District's Procurement Department. The maximum increase shall not exceed three percent (3%) or the adjusted percent change from the previously reported period shown in the Producers Price Index (PPI), or in the Consumer Price Index for all urban consumers (CPI-U), whichever is less at the time of renewal.

#### TERMINATION BY DISTRICT

##### Termination for Non-appropriations:

In the event no funds or insufficient funds are appropriated and budgeted in any fiscal year for payments due under this Agreement, or there is no further need for the equipment, material(s), service(s) and program products to satisfy the need for which same were acquired herein, then the District shall promptly notify the contractor of such occurrence, and this Agreement shall create no further obligation of the District as to such current or succeeding fiscal year and shall be null and void, except as to the portions of payments herein agreed upon for funds which shall have been appropriated and budgeted. In such event, this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the District of any kind whatsoever.

Subject to the provisions below, any contract resulting from this solicitation, or any portion thereof, may be terminated by the District providing a sixty (60) calendar day advance notice in writing is given to the contractor, unless the District agrees to a different notice period.

#### SUSPENSION BY DISTRICT

The District reserves the right to suspend Contractor's work, with or without cause, upon three (3) calendar day's written notice. If the suspension was not due to any default by Contractor, the District will reasonably and equitably adjust the amount(s) to be paid to Contractor when work is resumed.

#### TERMINATION BY CONTRACTOR

Requests for termination of a contract by the contractor must be received in writing by a District Procurement Officer at least sixty (60) calendar days prior to the requested contract termination date.

#### WAIVERS

No waiver of right, obligation, or default shall be implied, but must be in writing, signed by the party against whom the waiver is sought to be enforced. One or more waivers of any right, obligation, or default shall not be construed as a waiver of any subsequent right, obligation, or default.

#### APPROVAL OF PUBLICITY RELEASES

The contractor shall not have the right to include the District's name in its published list of customers or use of the District or individual school logo without prior approval of the District. The contractor agrees not to publish or cite in any form any comments or quotes from District

staff. Contractor further agrees not to refer to award of this contract in commercial advertising in such a manner as to state or imply that the products or services provided are endorsed or preferred by the District without the written consent of an authorized District official.

#### AFFIRMATIVE ACTION

The successful bidder shall perform this project in compliance with all Federal and State requirements concerning fair employment of all employees and applicants. Vendors shall promote the employment of the disabled and disadvantaged and shall employ without regard or discrimination due to the reason of ethnic background, age, color, religion, gender, national origin, or physical disability. Vendors should provide information regarding the use of minority subcontractors if applicable or if requested by the District. Assistance to minority and disadvantaged firms and individuals is available in accordance with the District's Minority Business Enterprise Utilization Plan. Vendors should contact the Procurement Department with questions regarding this plan.

#### BANKRUPTCY

(a) Notice. In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish written notification of the bankruptcy to the District. This notification shall be furnished within five (5) calendar days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all District contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(b) Termination. This contract is voidable and subject to immediate termination by the District upon the contractor's insolvency, including the filing of proceedings in bankruptcy.

#### INDEMNIFICATION

The School District of Greenville County, its officers, agents, and employees shall be held harmless from liability from any claims, damages, and actions of any nature arising from the use of any materials or equipment furnished by the contractor or actions by the contractor, provided that such liability is not attributable to negligence on the part of the District or failure of the District to use the materials in the manner outlined by the contractor.

**The District shall not indemnify and/or hold harmless any proposing entity or its representatives as this action is not statutorily allowed by South Carolina law.**

#### CONTRACTOR RESPONSIBILITY

The contractor alone will be held solely responsible to the District for performance of all contractor obligations under any contract resulting from the awarded solicitation.

The contractor warrants that services will be provided in a professional manner. The contractor shall be responsible for the full performance of any subcontractors and/or suppliers and the District shall rely solely upon said contractor for project compliance and proper contractual performance.

#### CONTRACTOR'S USE OF DISTRICT PROPERTY

Upon termination of the contract for any reason, the District shall have the right to possession of all District properties, including, but not limited to, current copies of all District application programs and necessary documentation, all data, files, intermediate materials and supplies held by the contractor. Contractor shall not use, reproduce, distribute, display, or sell any data, material, or documentation owned exclusively by the District without the District's written consent, except to the extent necessary to carry out the work. All District property and information is to be considered confidential in nature and shall not be disseminated or transferred without the District's written authorization.

**IMPORTANT: Student and Staff Safety**

The awarded entity shall be required to verify that criminal conviction inquiries/checks and pertinent criminal background inquiries/checks have been conducted on all of its employees and the subcontractors who may interact with staff and/or students during the performance of the solicitation requirements/awarded Scope of Work or who may have a need to enter District property related to the performance of the contract or who may have access to personal student or District personnel information.

Persons who are identified as a Sex Offender or violator as defined by the South Carolina Code of Laws (Ann. 2006), Paragraph 223-3-400 or other statute or any other states' statutes; are prohibited from entering any of The School District of Greenville County schools at any time, including all District grounds and all District facilities. Persons employed by or under the direction of the contractor or any subcontractor who are under investigation or have been charged with crimes against children or crimes of a sexual or violent nature shall not be allowed on District property.

While performing under this solicitation and subsequent award, a firm/individual/supplier who delivers material and/or a service to a District site at the direction of a contractor and/or a subcontractor shall be considered under the supervision of the contractor and/or subcontractor and shall be in compliance with this requirement. Contractor's and subcontractor's employees are not to interact with students at any time. Contractor's and subcontractor's employees are not to be in areas where students are present or may be present without prior authorization from the school's principal or designee.

Failure by the awarded firm, its subcontractors or any representative of the contractor or subcontractor to observe this requirement or any violation of this solicitation's requirements shall result in the immediate termination of any existing contract and no penalty or other costs shall be levied against the District.

NOTE: All personnel entering District property and/or having contact with students or staff on District property shall be subject to a South Carolina State Law Enforcement Division (SLED) background/criminal check/investigation prior to being allowed entry or the performance of any duties. All schools have automated equipment which allows instant verification of an individual's status.

**IMMIGRATION REQUIREMENTS**

By signing the bid or proposer, the bidder or proposer certifies that it will comply with the applicable requirements of Title 8, Chapter 14 of the *South Carolina Code of Laws* and agree to provide to the District upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to the bidder and/or its subcontractors or sub-subcontractors; or (b) that the bidder and its subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." The bidder agrees to include in any contracts with its subcontractors, language requiring the subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) to include in the subcontractor's contracts with the sub-subcontractors, language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. [07-7B097-1]

**Permits, Licenses and Taxes**

The bidder shall, at its own expense, prior to an award and prior to commencing services/operations on behalf of the District or under contract with the District, shall acquire all

necessary permits, licenses and other approvals as required by law to provide the required services and/or actions in conjunction with a contract award with the District. It is recommended that firms contact the following to learn of any pertinent requirements or licenses:

The South Carolina Secretary of State's office (www.scsos.com)  
The South Carolina Department of Revenue  
The City of Greenville , South Carolina

The District shall not interpret the requirements of other public entities on behalf of the proposer.

Firms shall obtain all necessary permits and licenses required by local, state and Federal law prior to any award or agreement and shall remain in compliance with all applicable statutes and pertinent regulations throughout the term of performance. Should any permits or licenses be revoked or lapse during the period of performance, the undersigned Procurement Officer shall be notified immediately.

The awarded entity shall pay all excise taxes, retail taxes and other fees imposed. The entity assumes full responsibility for payment of all State and Federal taxes for unemployment, pensions or any Social Security legislation for all its employees and will further comply with all requirements that may be specified in regulations hereafter promulgated by the District's administrative officials.

By submitting a bid/proposal the bidder/proposer affirms that it shall possess and maintain all required license(s) prior to award and throughout the period of performance.

#### INSURANCE

Contractor shall maintain, throughout the performance of its obligations under this Agreement, a policy or policies of Worker's Compensation insurance with such limits as may be required by law, and a policy or policies of general liability insurance insuring against liability for injury to, and death of, persons and damage to, and destruction of, property arising out of or based upon any act or omission of the contractor or any of its subcontractors or their respective officers, directors, employees or agents. Such general liability insurance shall have limits sufficient to cover any loss or potential loss resulting from a solicitation and/or contract.

#### CONTRACTOR'S LIABILITY INSURANCE

(1) Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in South Carolina such insurance as will protect the contractor from the types of claims set forth below which may arise out of or result from the contractor's operations under the contract and for which the contractor may be legally liable, whether such operations be by the contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: (a) claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of the contractor's employees; (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than the contractor's employees; (d) claims for damages insured by usual personal injury liability coverage; (e) claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting thereof; (f) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; (g) claims for bodily injury or property damage arising out of completed operations; and (h) claims involving contractual liability insurance applicable to the Contractor's obligations under the provision entitled Indemnification – Third Party Claims.



(2) Coverage shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the work until date of final payment. Coverage must include the following on a commercial basis: (i) Premises – Operations, (ii) Independent Contractor’s Protective, (iii) Products and Completed Operations, (iv) Personal and Advertising Injury, (v) Contractual, including specific provision for contractor’s obligations under the provision entitled Indemnification – Third Party Claims, (vi) Broad Form Property Damage including Completed Operations, and (vii) Owned, Non-owned and Hired Motor Vehicles.

(3) The insurance required by this paragraph shall be written for not less than the following limits of liability or as required by law, whichever coverage is greater.

**COMMERCIAL GENERAL LIABILITY:**

General Aggregate (per project) \$1,000,000

Products/Completed Operations \$1,000,000

Personal and Advertising Injury \$1,000,000

Each Occurrence \$1,000,000

Fire Damage (Any one fire) \$ 50,000

Medical Expense (Any one person) \$ 5,000

**BUSINESS AUTO LIABILITY** (including All Owned, Non-owned, and Hired Vehicles):

Combined Single Limit \$1,000,000

OR

Bodily Injury & Property Damage (each) \$750,000

**WORKER’S COMPENSATION:**

State Statutory

Employers Liability \$100,000 Per Acc.

\$500,000 Disease, Policy Limit; \$100,000 Disease, Each Employee

(4) Required Documentation. (a) Prior to commencement of the work, contractor shall provide to the District a signed, original certificate of liability insurance (ACORD 25). The certificate shall identify the types of insurance, state the limits of liability for each type of coverage, include a provision for 30 days notice prior to cancellation, name every applicable using governmental unit (as identified on the cover page) as a Certificate Holder, provide that the general aggregate limit applies per project, and provide that coverage is written on an occurrence basis. (b) Prior to commencement of the work, contractor shall provide to the District a written endorsement to the contractor’s general liability insurance policy that (i) names the District as an additional insured, (ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named governmental unit(s) has been given at least thirty (30) days prior written notice, and (iii) provides that the Contractor’s liability insurance policy shall be primary, with any liability insurance of the District as secondary and noncontributory. (c) Both the certificate and the endorsement must be received directly from either the contractor's insurance agent or the insurance company.

(5) Contractor shall provide a minimum of thirty (30) days written notice to the District of any proposed reduction of coverage limits (on account of revised limits or claims paid under the General Aggregate) or any substitution of insurance carriers.

(6) The District’s failure to demand either a certificate of insurance or written endorsement required by this paragraph is not a waiver of contractor's obligations to obtain the required insurance.

**INDEMNIFICATION - THIRD PARTY CLAIMS**

Notwithstanding any limitation in this agreement, Contractor shall defend and indemnify the District, its instrumentalities, agencies, departments, boards, and all their respective officers, agents and employees against all suits or claims of any nature (and all damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities attributable thereto) by any third party which arise out of, or result in any way from, any defect in the goods or services acquired hereunder or from any act or omission of Contractor, its subcontractors, their employees, workmen, servants or agents. Contractor shall be given written notice of any suit or claim. The

District shall allow the Contractor to defend such claim so long as such defense is diligently and capably prosecuted through legal counsel. The District shall allow the Contractor to settle such suit or claim so long as (i) all settlement payments are made by (and any deferred settlement payments are the sole liability of) Contractor, and (ii) the settlement imposes no non-monetary obligation upon the District. The District shall not admit liability or agree to a settlement or other disposition of the suit or claim, in whole or in part, without the prior written consent of Contractor. The District shall reasonably cooperate with the Contractor's defense of such suit or claim. The obligations of this paragraph shall survive termination of the parties' agreement.

#### ASSIGNMENT

No solicitation response, contract or any of its provisions may be assigned, sublet, or transferred without the prior written consent of the District.

#### PAYMENT

The District shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, including the purchase order, payment shall not be made on partial deliveries accepted by the District.

#### INTELLECTUAL PROPERTY INFRINGEMENT

(a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the District, its instrumentalities, agencies, departments, boards, and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. The District shall allow the Contractor to defend such claim so long as the defense is diligently and capably prosecuted. The District shall allow the Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes no non-monetary obligation upon the District. The District shall reasonably cooperate with Contractor's defense of such claim. (b) In the event an injunction or order shall be obtained against the District's use of any acquired item, or if in the Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, the Contractor shall, without in any way limiting the foregoing, and at its expense, either: (1) procure for the District the right to continue to use, or have used, the acquired item, or (2) replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by the District. If neither (1) nor (2), above, is practical, the District may require that the Contractor remove the acquired item from the District, refund to the District any charge(s) paid by the District, and take all steps necessary to have the District released from any further liability. (c) the Contractor's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by the Contractor's compliance with specifications furnished by the District unless the Contractor knew or reasonably had prior knowledge or suspected its compliance with the District's specifications would infringe an IP right, or (ii) that the claim is caused by the Contractor's compliance with specifications furnished by the District if the District knowingly relied on a third party's IP right to develop the specifications provided to the Contractor and failed to identify such product to the Contractor. (d) As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right. "Acquired item(s)" means the rights, goods, or services furnished under this agreement. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work. (e) Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.

#### OWNERSHIP OF DATA & MATERIALS

All data, information, material and documentation either specially prepared by Contractor for the District or provided by the District pursuant to this solicitation shall belong exclusively to the District.

#### PRIVACY – WEB SERVICES

The offeror agrees that any information acquired by about individuals or businesses which are available to the offeror as a result of the performance of this solicitation award/contract shall not be retained beyond the end of the term of the contracted project without the express written consent of the District. Such information shall not be sold, traded, or released in any form to another entity, including affiliates, and shall not be used for any purpose other than performing this contract. Upon request, the contractor shall provide written confirmation of compliance with this clause.

#### PROPRIETARY SOFTWARE (WHEN APPLICABLE)

##### Definition

Proprietary software is defined as data programs, non-custom written, non-made for hire software supplied by the contractor on a magnetic tape, disk, semiconductor device or other memory device; or system memory including hard wired logic instructions, microcode and documentation used to describe, maintain and use the programs.

##### License

The District is hereby granted a non-exclusive, fully paid perpetual license to use the contractor's proprietary software associated with the materials and/or hardware acquired, but only in conjunction with the material, equipment and/or service purchased pursuant to this Agreement.

##### Title

Title to any proprietary software, provided by the contractor to the District will remain with the contractor.

##### Trade Secrets

The District agrees that proprietary software is a trade secret of the contractor. The District agrees to take reasonable precautions to protect the trade secret nature of the proprietary software and to prevent its disclosure to unauthorized personnel. The license herein granted cannot be transferred, assigned, or made available by the District for use by any other individual, firm, partnership, or legal entity not affiliated, associated, or connected with the District without the prior expressed written consent of the contractor, which consent will not be unreasonably withheld. Such transfer shall also be conditioned upon the execution by the transferee of a written declaration agreeing to be bound by the terms and conditions of confidentiality provided for in this section.

##### Source Code

In the event the contractor, at any point during the continued installation and operation of the equipment herein acquired, discontinues the conduct of business, or for any reason fails to continue to support the proprietary software; the District will be provided a copy of the source code for said proprietary software, at no expense to the District.

Escrow for Source Code: In the event the contractor at any point during the continued installation and operation of the software herein acquired discontinues the conduct of business or for any other reason fails to continue to support the software, the District shall be provided a copy of the source code for said software within thirty days at no expense to the District.

For the effective term of this contract, contractor will provide, to a mutually agreed upon escrow agent in the United States, the most recent version of the source code on magnetic media. The proprietary source code shall be deposited into the escrow account within fifteen (15) calendar days of the initiation of the contract, or any major update, non-customized enhancement, version or release of said licensed software.

The source code may be accessed only upon the following conditions:

- a. The contractor refuses to provide software maintenance, bug fixes, upgrades, updates and/or enhancement services under the terms set forth in this contract or as generally provided similarly situated customers; or
- b. The contractor ceases to do business or exist as a valid business entity, as evidenced by an adjudication of bankruptcy or other definitive measure of cessation of operations.

With regards to proprietary software, the District may not sell, assign lease, or otherwise provide said source code(s) to any other person, firm or entity, regardless of modification, without the express written consent of the contractor, its successors, and assigns.

## CUSTOMIZED SOFTWARE

### Definition

Customized software is defined as made-for-hire, custom written and customer specific computer programs developed for the District by the contractor or by employees or agents of the District on magnetic tape, disk, semiconductor device or their memory device or system memory including hard wired logic instructions, microcode; and documentation used to describe, maintain and use the programs and any and all of the foregoing created in conjunction with this contract.

### Title

Title to the customized software rests in the District as set forth herein. The contractor shall thereafter have no right, title or interest in any customized software. As herein used, title includes providing to the District all intellectual elements of the customized software including, but not limited to, developmental, work product, notes, object and source codes and any other items or material regardless of form which would aid the District in understanding, using, maintaining, and enhancing the pertinent customized software.

### Software Tools

The contractor shall provide to the District, simultaneous with its initial installation and any subsequent enhancements, upgrades, modifications, "patches", fixes, etc., software tools (including, but not limited to compilers, editors, etc.) that the District may require to maintain or to enhance the customized software. The price for said tools and the cost to train District personnel to maintain and/or to enhance the customized software shall be noted separately and included in the contractor's cost bid/proposal submitted to the District in response to the solicitation.

## ETHICS ACT

By submitting an offer, the vendor certifies that it is in compliance with South Carolina's Ethics, Government Accountability, and Campaign Reform Act of 1991, as amended. The following statutes require special attention: (a) Offering, giving, soliciting, or receiving anything of value to influence action of a public employee – Section 8-13-790, (b) Recovery of kickbacks – Section 8-13-790, (c) Offering, soliciting, or receiving money for advice or assistance of a public official – Section 8-13-720, (d) Use or disclosure of confidential information – Section 8-13-725, and (e) Persons hired to assist in the preparation of specifications or evaluation of bids/proposals – Section 8-13-1150.

Any questions regarding the aforementioned General Terms and Conditions shall be directed to The School District of Greenville County Procurement Department, 2 Space Drive, Taylors, South Carolina 29687, (864) 355-1279. Rev. 4 16.

