



TERMS AND CONDITIONS for Consortium Solicitations

1. Washtenaw ISD Rights & Responsibilities

Washtenaw ISD has the right to amend a bid by one or more written addendums. Washtenaw ISD is responsible only for that, which is expressly stated in the solicitation document and any authorized written addenda thereto. Each addendum shall be made available to each person or organization, which Washtenaw ISD records indicate has received a bid.

Should any such addendum require additional information not previously requested, failure to address the requirements of such addendum may result in the Proposal not being considered, as determined in the sole discretion of Washtenaw ISD. Washtenaw ISD is not responsible for and shall not be bound by any representations otherwise made by any individual acting or purporting to act on its behalf.

2. Conflict of Interest

No Washtenaw ISD employee or agent whose position in Washtenaw ISD enables him/her to influence the selection of a Supplier for this Solicitation, or any competing solicitation, nor any spouse of economic dependent of such employees, shall be employed in any capacity by a Proposer or have any other direct or indirect financial interest in the selection of a Supplier.

3. Gratuities

It is improper for any Washtenaw ISD officer, employee or agent to solicit consideration, in any form, from a Proposer with the implication, suggestion or statement that the Proposer's provision of the consideration may secure more favorable treatment for the Proposer in the award of the Master Agreement or that the Proposer's failure to provide such consideration may negatively affect Washtenaw ISD's consideration of the Proposer's submission.

A Proposer shall not offer or give either directly or through an intermediary, consideration, in any form, to a Washtenaw ISD officer, employee or agent for the purpose of securing favorable treatment with respect to the award of the Master Agreement.

4. Laws

4.1 General Authority

This Contract is governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of another jurisdiction to the extent not inconsistent with or preempted by federal law.

4.2 Compliance with Laws

The Contractor must comply with all applicable federal, state, and local laws and ordinances in providing the products and services.

4.3 *Jurisdiction*

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, the Contractor consents to venue in Washtenaw ISD, Michigan, and irrevocably waives any objections to this venue that it may have, such as lack of personal jurisdiction or forum non-conveniens. The Contractor must appoint agents in the State of Michigan to receive service of process.

4.4 *Nondiscrimination*

In the performance of the Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. The Contractor further agrees that every subcontract entered into for the performance of this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

4.5 *Unfair Labor Practices*

Under 1980 PA 278, MCL 423.321, et seq., Washtenaw ISD must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A Contractor of Washtenaw ISD, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, Washtenaw ISD may void any Contract if, after award of the Contract, the name of the Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of the Contractor appears in the register.

4.6 *Environmental Provision*

For the purposes of this section, "Hazardous Materials" include asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state, or local laws governing the protection of the public health, natural resources, or the environment:

(a) The Contractor must use, handle, store, dispose of, process, transport, and transfer any Hazardous Material according to all federal, State, and local laws. Washtenaw ISD must immediately advise the Contractor of the presence of any known Hazardous Material at the work site. If the Contractor encounters material reasonably believed to be Hazardous Material that may present a substantial danger, the Contractor must: (i) immediately stop all affected work; (ii) notify Washtenaw ISD in accordance with Section 2.3.6, Notices; (iii) notify any entities required by law; and (iv) take appropriate health and safety precautions.

(b) Washtenaw ISD may issue a Stop Work Order if the material is a Hazardous Material that may present a substantial danger and the Hazardous Material was not brought to the site by the Contractor, or does not wholly or partially result from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials. Washtenaw ISD may remove the Hazardous Material, render it harmless, or terminate the affected work for Washtenaw ISD's convenience.

(c) If the Hazardous Material was brought to the site by the Contractor, or wholly or partially results from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs

involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to applicable laws.

The Contractor must comply with all applicable federal, state, and local laws and ordinances in providing the products and services.

4.7 Freedom of Information

This Contract and all information submitted to Washtenaw ISD by the Contractor is subject to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231, et seq.

4.8 Abusive Labor Practices

The Contractor may not furnish any deliverable(s) that were produced fully or partially by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

5. General Provisions

5.1 Bankruptcy and Insolvency

Washtenaw ISD may, without prejudice to any other right or remedy, fully or partially terminate this contract and, at its option, take possession of the work-in-progress and finish the work-in-progress by whatever method Washtenaw ISD deems appropriate if:

- (a) the Contractor files for bankruptcy protection;
- (b) an involuntary petition is filed against the Contractor and not dismissed within 30 days;
- (c) the Contractor becomes insolvent or a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can provide the deliverable(s) under this contract.

Contractor will place appropriate notices or labels on the work-in-progress to indicate ownership by Washtenaw ISD to the extent reasonably possible, work-in-progress must be stored separately from other stock and marked conspicuously with labels indicating Washtenaw ISD ownership.

5.2 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the solicitation and this Contract or the project to which it relates will not be made without prior approval by Washtenaw ISD, and only in accordance with the instructions from Washtenaw ISD

5.3 Antitrust Assignment

The Contractor assigns to Washtenaw ISD any claim for overcharges resulting from county or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the contract.

5.4 Legal Effect

Washtenaw ISD is not liable for costs incurred by the Contractor or for payment(s) under this contract until the Contractor is authorized to perform under Section 1.2.4, Ordering.

5.5 *Entire Agreement*

This contract constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter. All attachments referenced in this contract are incorporated in their entirety and form part of this contract.

5.6 *Order of Precedence*

Any inconsistency in the terms associated with this contract will be resolved by giving precedence to the terms in the following descending order:

- (a) Mandatory sections (Contract Term, Legal Effect, Insurance, Indemnification, Termination, Governing Law, Limitation of Liability);
- (b) The most recent Statement of Work related to this contract;
- (c) All sections from Section 4 - Terms and Conditions, not listed in subsection (a);
- (d) Any attachment or exhibit to the contract documents;
- (e) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under the contract; and
- (f) Proposer Responses contained in any of the solicitation documents.

5.7 *Headings*

The captions and section headings used in this contract are for convenience only and may not be used to interpret the scope and intent of this contract.

5.8 *Reformation and Severability*

Each provision of the contract is severable from all other provisions of the contract. If any provision of this contract is held unenforceable, then the contract will be modified to reflect the parties' original intent. All remaining provisions of the contract remain in full force and effect.

5.9 *Approval*

Unless otherwise provided in this contract, approval(s) must be in writing and must not be unreasonably withheld or delayed.

5.10 *No Waiver of Default*

Failure by a party to insist upon strict adherence to any term of the contract does not waive that party's right to later insist upon strict adherence to that term, or any other term, of the contract.

5.11 *Survival*

The provisions of this contract that impose continuing obligations, including warranties, indemnification, and confidentiality, will survive the expiration or termination of this contract.

5.12 *Electronic Payment Requirement*

The Contractor must state if they are able to receive electronic fund transfer (EFT) payments.

5.13 *Cooperation with Third Parties*

The Contractor and its Subcontractors must cooperate with Washtenaw ISD and its agents and other contractors, including Washtenaw ISD's quality assurance personnel. The Contractor must provide reasonable access to its personnel, systems, and facilities related to the contract to the extent that access will not interfere with or jeopardize the safety or operation of the systems or facilities.

5.14 *Relationship of the Parties*

The relationship between Washtenaw ISD and Contractor is that of client and independent contractor. No agent, employee, or servant of the Contractor, or any of its subcontractors, is an employee, agent or servant of Washtenaw ISD. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, and subcontractors during the performance of the Contract.

5.15 *Time of Performance*

(a) The Contractor must immediately notify Washtenaw ISD upon becoming aware of any circumstances that may reasonably be expected to jeopardize the completion of any Deliverable(s) by the scheduled due dates in the latest Washtenaw ISD-approved delivery schedule and must inform Washtenaw ISD of the projected actual delivery date.

(b) If the Contractor believes that a delay in performance by Washtenaw ISD has caused or will cause the Contractor to be unable to perform its obligations according to specified contract time periods, the Contractor must immediately notify Washtenaw ISD and, to the extent practicable, continue to perform its obligations according to the contract time periods. The Contractor will not be in default for a delay in performance to the extent the delay is caused by Washtenaw ISD

5.16 *Excusable Failure*

Neither party will be liable for any default, damage or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, acts or omissions of common carriers, fire, riots, civil disorders, labor disputes, embargoes, injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused), or any other cause beyond the reasonable control of a party; provided the non-performing party and any Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. The non-performing party must promptly notify the other party immediately after the excusable failure occurs, and when it abates or ends. Both parties must use commercially reasonable efforts to resume performance.

If any of the reasons listed substantially prevent, hinder, or delay the Contractor's performance of the deliverable(s) for more than 10 days, and Washtenaw ISD reasonably determines that performance is not likely to be resumed within a period of time that is satisfactory to Washtenaw ISD, Washtenaw ISD may: (a) procure the affected deliverable(s) from an alternate source without liability for payment so long as the delay in performance continues; or (b) terminate any portion of the Contract so affected and equitably adjust charges payable to the Contractor to reflect those deliverable(s) that are terminated. Washtenaw ISD must pay for all deliverable(s) for which Final Acceptance has been granted before the termination date.

The Contractor will not have the right to any additional payments from Washtenaw ISD as a result of any Excusable Failure or to payments for deliverable(s) not provided as a result of the Excusable Failure. The Contractor will not be relieved of a default or delay caused by acts or omissions of its Subcontractors except to the extent that a Subcontractor experiences an Excusable Failure and the Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

5.17 *Retention of Records*

(a) The Contractor must retain all financial and accounting records related to this Contract for a period of seven years after the Contractor performs any work under this contract (Audit Period).

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

5.18 *Examination of Records*

Washtenaw ISD, upon 10 days notice to the Contractor, may examine and copy any of the Contractor's records that relate to this contract. Washtenaw ISD does not have the right to review any information deemed confidential by the Contractor if access would require the information to become publicly available. This requirement also applies to the records of any parent, affiliate, or subsidiary organization of the Contractor, or any Subcontractor that performs services in connection with this contract.

5.19 *Audit Resolution*

If necessary, the Contractor and Washtenaw ISD will meet to review any audit report promptly after its issuance. The Contractor must respond to each report in writing within 30 days after receiving the report, unless the report specifies a shorter response time. The Contractor and Washtenaw ISD must develop, agree upon, and monitor an action plan to promptly address and resolve any deficiencies, concerns, or recommendations in the report.

5.20 *Errors*

(a) If an audit reveals any financial errors in the records provided to Washtenaw ISD, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of the contract. If a balance remains after four invoices, the remaining amount will be due as a payment or refund within 45 days of the last invoice on which the balance appeared or upon termination of the contract, whichever is earlier.

(b) In addition to other available remedies, if the difference between Washtenaw ISD's actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs.

5.21 *Disclosure of Litigation*

(a) Within 30 days after receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") that arises during the term of this Contract, the Contractor must disclose the following to the Contract Administrator:

- (i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;
- (ii) A parole or probation proceeding;
- (iii) A proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and
- (iv) A civil proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.

(b) Information provided to Washtenaw ISD from the Contractor's publicly filed documents will satisfy the requirements of this Section.

(c) If any proceeding that is disclosed to Washtenaw ISD or of which Washtenaw ISD otherwise becomes aware, during the term of this Contract, would cause a reasonable party to be concerned about:

- (i) the ability of the Contractor (or a Subcontractor) to continue to perform this Contract; or
- (ii) whether the Contractor (or a Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and would constitute a breach of this contract or a violation of federal or state law, regulations, or public policy, then the Contractor must provide Washtenaw ISD all requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform this contract.

5.22 *Other Disclosures*

The Contractor must notify Washtenaw ISD Administrator within 30 days of:

- (a) becoming aware that a change in the Contractor's ownership or officers has occurred or is certain to occur; or
- (b) any changes to company affiliations.

5.23 *CoPro+ Requirements*

- (a) The Contractor will work with CoPro+ to ensure that all purchasers are members before extending the Contract pricing.
- (b) To the extent that CoPro+ Members purchase Deliverable(s) under this contract, the quantities of Deliverable(s) purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.
- (c) The Contractor must submit invoices to and receive payment from CoPro+ Members, Participating Entities, on a direct and individual basis.

5.24 *Bid Protest Process*

Bid protests are filed by Vendors because they seek to remedy a wrong, actual or perceived, which could inflict or has inflicted injury or hardship to their company as a result of some action taken by Washtenaw ISD during the solicitation process. Common reasons for Vendors filing a bid protest include:

- The Master Agreement was awarded to Vendor with higher prices.
- The Vendor proposal was rejected for invalid reasons.
- The Vendor awarded the resultant Master Agreement did not comply with solicitation specifications.

1. General Authority

Washtenaw ISD Administrator maintains the exclusive authority and responsibility to purchase and rent all materials, supplies and equipment, furnishings, fixtures and all other personal property for use by Washtenaw ISD departments, districts or agencies which are governed by Washtenaw ISD's Board.

2. Protest Procedure

Upon a determination of Vendor selection from a bid process, the Purchasing Agent will post a "Notice of Intent to Award" on Washtenaw ISD's bid website and notify all solicitation participants of the intended award via email.

- A. Non-selected Vendors will have three (3) business days from the date the notice is posted to file a formal bid protest with Washtenaw ISD Administrator or the designee.
- B. The bid protest, which must be received by Washtenaw ISD Administrator or designee within the three (3) day period, shall be in writing, and include the specific facts, circumstances, reasons and/or basis for the protest. This written notice may be in the form of a letter, fax or email.
- C. Upon execution of the Master Agreement with the selected Vendor, Washtenaw ISD Administrator or designee will not take action on a bid protest, but a written response will be provided to the protesting Vendor.

- D. If a Vendor's bid protest is appropriately filed, Washtenaw ISD Administrator or designee may delay the award of the Master Agreement until the matter is resolved.
- E. Notwithstanding the foregoing, throughout the bid protest review process, Washtenaw ISD has no obligation to delay or otherwise postpone an award of a Master Agreement based on a bid protest. In all cases, Washtenaw ISD reserves the right to make an award when it is determined to be in the best interest of Washtenaw ISD to do so.
- F. Washtenaw ISD Administrator or designee will respond to all bid protests in a timely manner.

6. Insurance

6.1 Liability Insurance

For the purpose of this Section, "Washtenaw ISD" includes its departments, divisions, agencies, offices, commissions, officers, employees, and agents.

(a) The following apply to all insurance requirements:

- (i) Washtenaw ISD, in its sole discretion, may approve the use of a fully funded self-insurance program in place of any specified insurance identified in this Section.
- (ii) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, Washtenaw ISD is entitled to coverage to the extent of the higher limits. The minimum limits of coverage specified are not intended and may not be construed to limit any liability or indemnity of the Contractor to any indemnified party or other persons.
- (iii) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without Washtenaw ISD's approval, Washtenaw ISD may, after giving the Contractor at least 30-days notice, pay the premium or procure similar insurance coverage from another company or companies. Washtenaw ISD may deduct any part of the cost from any payment due the Contractor or require the Contractor to pay that cost upon demand.

(b) The Contractor must:

- (i) provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect Washtenaw ISD from claims that are alleged or may arise or result from the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.
- (ii) waive all rights against Washtenaw ISD for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.
- (iii) ensure that all insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by Washtenaw ISD
- (iv) obtain insurance, unless Washtenaw ISD approves otherwise, from any insurer that has an A.M. Best rating of "A" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by Washtenaw ISD. All policies of insurance must be issued by companies that have been approved to do business in Washtenaw ISD
- (v) maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three years following the termination of this Contract.
- (vi) pay all deductibles.

6.2 Subcontractor Insurance Coverage

Except where Washtenaw ISD has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 4.4.1,

Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

6.3 *Certificates of Insurance and Other Requirements*

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that Washtenaw ISD and its agents, officers, and employees are listed as additional insured's under each commercial general liability and commercial automobile liability policy. The Contractor must provide Washtenaw ISD Administrator with all applicable certificates of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in Section 4.4.1, Liability Insurance. Each certificate must be on the standard "accord" form or equivalent and **MUST CONTAIN THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER**. Each certificate must be prepared and submitted by the insurer and must contain a provision indicating that the coverage afforded will not be cancelled, materially changed, or not renewed without 30 days prior notice, except for 10 days for nonpayment of premium, to Washtenaw ISD Administrator.

7. **Indemnification**

7.1 *General Indemnification*

To the extent permitted by law, the Contractor must indemnify, defend, and hold Washtenaw ISD harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor, any of its subcontractors, or by anyone else for whose acts any of them may be liable.

7.2 *Employee Indemnification*

In any claims against Washtenaw ISD, its departments, agencies, commissions, officers, employees, and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation will not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts, or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

7.3 *Patent/Copyright Infringement Indemnification*

(a) To the extent permitted by law, the Contractor must indemnify and hold Washtenaw ISD harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest, and penalties) resulting from any action threatened or brought against Washtenaw ISD to the extent that the action is based on a claim that any piece of equipment, software, commodity, or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, infringes any United States patent, copyright, trademark or trade secret of any person or entity.

(b) If, in Washtenaw ISD's or the Contractor's opinion, any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, is likely to become the subject of an infringement claim, the Contractor must, at its expense: (i) procure for the State the right to continue using the equipment, software, commodity or service or, if this option is not reasonably available to the Contractor; (ii) replace or modify to Washtenaw ISD's satisfaction the same with equipment, software, commodity or service of equivalent function and

performance so that it becomes non-infringing, or, if this option is not reasonably available to Contractor; (iii) accept its return by Washtenaw ISD with appropriate credits to Washtenaw ISD against the Contractor's charges and reimburse Washtenaw ISD for any losses or costs incurred as a consequence of Washtenaw ISD ceasing its use and returning it.

(c) Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend Washtenaw ISD for, or to pay any costs, damages or attorneys' fees related to, any infringement claim based upon: (i) equipment, software, commodity or service developed based on written specifications of Washtenaw ISD; (ii) use of the equipment, software, or commodity in a configuration other than implemented or approved by the Contractor, including any modification of the same by Washtenaw ISD; or (iii) the combination, operation, or use of the equipment, software, or commodity with equipment, software, or commodities not supplied by the Contractor under this Contract.

7.4 *Continuing Obligation*

The Contractor's duty to indemnify continues in full force and effect, notwithstanding the expiration or early cancellation of the contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

7.5 *Limitation of Liability*

Neither the Contractor nor Washtenaw ISD is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this contract calling for liquidated damages; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this.

8. Warranties

8.1 *Warranties and Representations*

The Contractor represents and warrants:

- (a) It is capable of fulfilling and will fulfill all of its obligations under this contract. The performance of all obligations under this contract must be provided in a timely, professional, and workmanlike manner and must meet the performance and operational standards required under this contract.
- (b) The contract appendices, attachments, and exhibits identify the equipment, software, and services necessary for the Deliverable(s) to comply with the contract's requirements.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to Washtenaw ISD by Contractor or developed by the Contractor for this contract, and Contractor has all of the rights necessary to convey to Washtenaw ISD the ownership rights or licensed use, as applicable, of any Deliverable(s). None of the Deliverable(s) provided by Contractor to Washtenaw ISD, nor their use by Washtenaw ISD, will infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party.
- (d) If the Contractor procures any equipment, software, or other Deliverable(s) for Washtenaw ISD (including equipment, software, and other Deliverable(s) manufactured, re-marketed or otherwise sold by the Contractor or under the Contractor's name), then the Contractor must assign or otherwise transfer to Washtenaw ISD or its designees, or afford Washtenaw ISD the benefits of, any manufacturer's warranty for the Deliverable(s).
- (e) The contract signatory has the authority to enter into this contract on behalf of the Contractor.
- (f) It is qualified and registered to transact business in all locations where required.

- (g) Neither the Contractor nor any affiliates, nor any employee of either, has, will have, or will acquire, any interest that would conflict in any manner with the Contractor's performance of its duties and responsibilities to Washtenaw ISD or otherwise create an appearance of impropriety with respect to the award or performance of this contract. The Contractor must notify Washtenaw ISD about the nature of any conflict or appearance of impropriety within two days of learning about it.
- (h) Neither the Contractor nor any affiliates, nor any employee of either, has accepted or will accept anything of value based on an understanding that the actions of the Contractor, its affiliates, or its employees on behalf of Washtenaw ISD would be influenced. The Contractor must not attempt to influence any Washtenaw ISD employee by the direct or indirect offer of anything of value.
- (i) Neither the Contractor nor any affiliates, nor any employee of either, has paid or agreed to pay any person, other than bona fide employees and consultants working solely for the Contractor or the affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The Contractor arrived at its proposed prices independently, without communication or agreement with any other Proposer for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this contract to any other Proposer before the award of the contract. The Contractor made no attempt to induce any other person or entity to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by the Contractor to Washtenaw ISD in connection with the award of this contract fairly and accurately represent the Contractor's business, properties, financial condition, and results of operations as of the respective dates covered by the financial statements, reports, or other information. There has been no material adverse change in the Contractor's business, properties, financial condition, or results of operation.
- (l) All written information furnished to Washtenaw ISD by or for the Contractor in connection with the award of this contract is true, accurate, and complete, and contains no false statement of material fact nor omits any material fact that would make the submitted information misleading.
- (m) It will immediately notify Washtenaw ISD Administrator if any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the contract is awarded.

8.2 Warranty of Merchantability

The Deliverable(s) provided by the Contractor must be merchantable.

8.3 Warranty of Fitness for a Particular Purpose

The Deliverable(s) provided by the Contractor must be fit for the purpose(s) identified in this contract.

8.4 Warranty of Title

The Contractor must convey good title to any Deliverable(s) provided to Washtenaw ISD All Deliverable(s) provided by the Contractor must be delivered free from any security interest, lien, or encumbrance of which Washtenaw ISD, at the time of contracting, has no knowledge. Deliverable(s) provided by the Contractor must be delivered free of any rightful claim of infringement by any third person.

8.5 Consequences for Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in Section 4.6, Warranties, the breach may be considered a material default.

9. Contract Administration

9.1 Issuing Office

This Contract is issued by Washtenaw ISD on behalf of all counties and local units of government. Washtenaw ISD Administrator or designee is the only entity authorized to modify the terms and conditions of this contract, including the prices and specifications. The Contract Administrator will be designated at the time of the contract award.

9.2 Contract Administrator

The Contract Administrator will monitor and coordinate contract activities on a day-to-day basis.

9.3 Contract Changes

(a) If Washtenaw ISD requests or directs the Contractor to provide any Deliverable(s) that the Contractor believes are outside the scope of the Contractor's responsibilities under the contract, the Contractor must notify Washtenaw ISD before performing the requested activities. If the Contractor fails to notify Washtenaw ISD, any activities performed will be considered in-scope and not entitled to additional compensation or time. If the Contractor begins work outside the scope of the contract and then ceases performing that work, the Contractor must, at the request of Washtenaw ISD, retract any out-of-scope work that would adversely affect the contract.

(b) Washtenaw ISD or the Contractor may propose changes to the contract. If the Contractor or Washtenaw ISD requests a change to the Deliverable(s) or if Washtenaw ISD requests additional Deliverable(s), the Contractor must provide a detailed outline of all work to be done, including tasks, timeframes, listing of key personnel assigned, estimated hours for each individual per Deliverable, and a complete and detailed cost justification. If the parties agree on the proposed change, Washtenaw ISD Administrator will prepare and issue a notice that describes the change, its effects on the Deliverable(s), and any affected components of the contract (Contract Change Notice).

(c) No proposed change may be performed until Washtenaw ISD issues a duly executed Contract Change Notice for the proposed change.

9.4 Price Changes

Prices quoted on all bids, are the maximum for a period of 365 days from the date the contract becomes effective. Requested changes may include increases or decreases in price and must be accompanied by supporting information indicating market support of proposed modifications (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics).

(a) Washtenaw ISD may request a review upon 30 days written notice that specifies what deliverable is being reviewed. At the review, each party may present supporting information including information created by, presented, or received from third parties.

(b) Following the presentation of supporting information, both parties will have 30 days to review the supporting information and prepare any written response.

(c) In the event the review reveals no need for modifications of any type, pricing will remain unchanged unless mutually agreed to by the parties. However, if the review reveals that changes may be recommended, both parties will negotiate in good faith for 30 days unless extended by mutual agreement of the parties.

(d) If the supporting information reveals a reduction in prices is necessary and Contractor agrees to reduce rates accordingly, then Washtenaw ISD may elect to exercise the next one-year option, if available.

(e) If the supporting information reveals a reduction in prices is necessary and the parties are unable to reach agreement, then Washtenaw ISD may eliminate all remaining contract renewal options.

(f) Any changes based on the review must be implemented through the issuance of a Contract Change Notice.

9.5 *Covenant of Good Faith*

Each party must act reasonably and in good faith. Unless otherwise provided in this contract, the parties will not unreasonably delay, condition or withhold their consent, decision, or approval any time it is requested or reasonably required in order for the other party to perform its responsibilities under the contract.

9.6 *Assignments*

(a) Neither party may assign this contract or assign or delegate any of its duties or obligations under the contract, to another party (whether by operation of law or otherwise), without the prior approval of the other party. Washtenaw ISD may, however, assign this contract to any other Washtenaw ISD, or local unit of government without the prior approval of the Contractor.

(b) If the Contractor intends to assign this contract or any of the Contractor's rights or duties under the contract, the Contractor must notify Washtenaw ISD and provide adequate information about the assignee at least 90 days before the proposed assignment or as otherwise provided by law or court order. Washtenaw ISD may withhold approval from proposed assignments or subcontracts if Washtenaw ISD determines, in its sole discretion, that the transfer of responsibility would decrease Washtenaw ISD's likelihood of receiving performance on the contract or Washtenaw ISD's ability to recover damages.

(c) If Washtenaw ISD permits an assignment of the Contractor's right to receive payments, the Contractor is not relieved of its responsibility to perform any of its contractual duties. All payments must continue to be made to one entity.

9.7 *Criminal Background Checks*

Supplier hereby certifies that any employees, subcontractors and volunteers of the Supplier who will have duties related to the contracted services; have passed a Washtenaw ISD criminal history background check if required.

10. **Acceptance of Deliverables**

10.1 *Delivery Responsibilities*

Unless otherwise specified by Washtenaw ISD, the following are applicable to all deliveries:

(a) The Contractor is responsible for delivering the deliverable(s) by the applicable delivery date to the location(s) specified in the SOW or individual Purchase Order.

(b) The Contractor must ship the deliverable(s) "F.O.B. Destination, within Government Premises."

(c) Washtenaw ISD will examine all packages at the time of delivery. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at the time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

10.2 *Process for Acceptance of Deliverable(s)*

Washtenaw ISD's review period for acceptance of the deliverable(s) is governed by the applicable Statement of Work, and if the Statement of Work does not specify Washtenaw ISD's review period, it is by default 30 days for a deliverable (Washtenaw ISD Review Period). Washtenaw ISD will notify the Contractor by the end of Washtenaw ISD Review Period that either:

(a) the deliverable is accepted in the form delivered by the Contractor;

(b) the deliverable is accepted, but noted deficiencies must be corrected; or

(c) the deliverable is rejected along with notation of any deficiencies that must be corrected before acceptance of the deliverable.

If Washtenaw ISD delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Days resubmit the deliverable(s) with an explanation that demonstrates all corrections have been made to the original deliverable(s). The Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected deliverable from the Contractor, Washtenaw ISD will have a reasonable additional period of time, not to exceed 30 Days, to accept the corrected deliverable.

10.3 Acceptance of Deliverable(s)

(a) Washtenaw ISD's obligation to comply with any Washtenaw ISD Review Period is conditioned on the timely delivery of the deliverable(s). Washtenaw ISD Review Period will begin on the first business day following Washtenaw ISD's receipt of the deliverable(s).

(b) Washtenaw ISD may inspect the deliverable to confirm that all components have been delivered without material deficiencies. If Washtenaw ISD determines that the deliverable or one of its components has material deficiencies, Washtenaw ISD may reject the deliverable without performing any further inspection or testing.

(c) Washtenaw ISD will only approve a deliverable after confirming that it conforms to and performs according to its specifications without material deficiency. Washtenaw ISD may, in its discretion, conditionally approve a deliverable that contains material deficiencies if Washtenaw ISD elects to permit the Contractor to correct those deficiencies post-approval. The Contractor remains responsible for working diligently to correct within a reasonable time at the Contractor's expense, all deficiencies in the deliverable that remain outstanding at the time of Washtenaw ISD approval.

(d) If, after three opportunities the Contractor is unable to correct all deficiencies, Washtenaw ISD may: (i) demand that the Contractor cure the failure and give the Contractor additional time to do so at the sole expense of the Contractor; (ii) keep the Contract in force and perform, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the Contract price plus an additional amount equal to 10% of Washtenaw ISD's cost to cure the deficiency; or (iii) fully or partially terminate the Contract for default by giving notice to the Contractor. Notwithstanding the foregoing, Washtenaw ISD cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat Washtenaw ISD Review Period that could reasonably have been discovered during a prior Washtenaw ISD Review Period.

(e) Washtenaw ISD, at any time and in its reasonable discretion, may reject the deliverable without notation of all deficiencies if the acceptance process reveals deficiencies in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable.

11. Stop Work Order & Termination

11.1 Stop Work Order

Washtenaw ISD may, by issuing a Stop Work Order, require that the Contractor fully or partially stop work for a period of up to 90 calendar days, and for any further period to which the parties agree. Upon receipt of the Stop Work Order, the Contractor must immediately take all reasonable steps to minimize incurring costs. Within the period of the Stop Work Order, Washtenaw ISD must either: (a) terminate the Stop Work Order; or (b) terminate the work covered by the Stop Work Order.

11.2 Termination of Stop Work Order

The Contractor must resume work if Washtenaw ISD terminates a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, if: (a) the Stop Work Order results in an increase in the time required for, or the Contractor's costs properly allocated to, the performance of the Contract; and (b) the Contractor asserts its right to an equitable adjustment within 20 days after the end of the Stop Work Order by submission of a request for adjustment to Washtenaw ISD; provided that, Washtenaw ISD may receive and act upon the Contractor's request submitted at any time before final payment. Any adjustment will conform to the requirements of Section 4.7.3, Contract Changes.

11.3 *Allowance of the Contractor's Costs*

If Washtenaw ISD fully or partially terminates the work covered by the Stop Work Order, for reasons other than material breach, the termination is a termination for convenience under Section 4.9.6, Termination by Washtenaw ISD, and Washtenaw ISD will pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. Washtenaw ISD is not liable to the Contractor for lost profits because of a Stop Work Order issued under Section 4.9, Stop Work.

11.4 *Notice and Right to Cure*

If the Contractor breaches the Contract, and Washtenaw ISD, in its sole discretion, determines that the breach is curable, Washtenaw ISD will provide the Contractor notice of the breach and a period of at least 30 days to cure the breach. Washtenaw ISD does not need to provide notice or an opportunity to cure for successive or repeated breaches or if Washtenaw ISD determines, in its sole discretion, that a breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

11.5 *Termination for Cause*

(a) Washtenaw ISD may fully or partially terminate this Contract for cause by notifying the Contractor if the Contractor: (i) breaches any of its material duties or obligations (including a Chronic Failure to meet any SLA); or (ii) fails to cure a breach within the time period specified in a notice of breach provided by Washtenaw ISD

(b) The Contractor must pay all reasonable costs incurred by Washtenaw ISD in terminating this Contract for cause, including administrative costs, attorneys' fees and court costs, and any additional costs Washtenaw ISD incurs to procure the deliverable(s) from other sources. Re-procurement costs are not consequential, indirect, or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Deliverable(s).

(c) If Washtenaw ISD partially terminates this Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those deliverable(s) that are terminated. Washtenaw ISD must pay for all deliverable(s) for which final acceptance has been granted before the termination date. Any services or related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If Washtenaw ISD terminates this Contract for cause and it is determined, for any reason, that the Contractor was not in breach of the Contract, the termination will be deemed to have been a termination under Section 2.16.3, Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.

11.6 *Termination for Convenience*

Washtenaw ISD may fully or partially terminate this Contract for its convenience if Washtenaw ISD determines that a termination is in Washtenaw ISD's best interest. Reasons for the termination are within the sole discretion of Washtenaw ISD and may include: (a) Washtenaw ISD no longer needs the deliverable(s) specified in this Contract; (b) a relocation of office, program changes, or changes in laws, rules, or regulations make the Deliverable(s) no longer practical or feasible for Washtenaw ISD; (c) unacceptable prices for Contract changes; or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any solicitation issued by Washtenaw ISD. Washtenaw ISD may terminate this Contract for its convenience by giving Contractor notice at least 30 days before the date of termination. If Washtenaw ISD chooses to terminate this Contract in part, any charges payable to the Contractor must be equitably adjusted to reflect those deliverable(s) that are terminated.

11.7 Termination for Criminal Conviction

Washtenaw ISD may terminate this Contract immediately and without further liability or penalty if the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor is convicted of a criminal offense related to a Washtenaw ISD, public, or private Contract or subcontract.

11.8 Rights and Obligations upon Termination

(a) If Washtenaw ISD terminates this Contract for any reason, the Contractor must:

- (i) stop all work as specified in the notice of termination;
- (ii) take any action that may be necessary, or that Washtenaw ISD may direct, to preserve and protect deliverable(s) or other Washtenaw ISD property in the Contractor's possession;
- (iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of Washtenaw ISD;
- (iv) transfer title in and deliver to Washtenaw ISD, unless otherwise directed, all deliverable(s) intended to be transferred to Washtenaw ISD at the termination of the Contract (which will be provided to Washtenaw ISD on an "As-Is" basis except to the extent Washtenaw ISD compensated the Contractor for warranty services related to the materials);
- (v) to the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies; and
- (vi) take all appropriate action to secure and maintain Washtenaw ISD information confidentially.

(b) If Washtenaw ISD terminates this Contract under Section 4.9.6, Termination for Convenience, Washtenaw ISD must pay the Contractor all charges due for deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by Washtenaw ISD. All completed or partially completed deliverable(s) prepared by the Contractor, at the option of Washtenaw ISD, become Washtenaw ISD's property, and the Contractor is entitled to receive equitable compensation for those deliverable(s). Regardless of the basis for the termination, Washtenaw ISD is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to deliverable(s) not actually completed.

(c) If Washtenaw ISD terminates this contract for any reason, Washtenaw ISD may assume, at its option, any subcontracts and agreements for deliverable(s), and may pursue completion of the deliverable(s) by replacement contract or as Washtenaw ISD deems expedient.

11.9 Reservation of Rights

In the event of any full or partial termination of this contract, each party reserves all rights or remedies otherwise available to the party.

11.10 Contractor Transition Responsibilities

If this Contract terminates under, Termination by Washtenaw ISD, the Contractor must make reasonable efforts to transition the performance of the work, including all applicable equipment, services, software, and leases, to Washtenaw ISD or a third party designated by Washtenaw ISD within a reasonable period of time that does not exceed 30 days from the date of termination. The Contractor must provide any required reports and documentation.

11.11 Termination by Contractor

If Washtenaw ISD breaches the contract and the Contractor, in its sole discretion, determines that the breach is curable, the Contractor will then provide Washtenaw ISD with notice of the breach and a time period (not less than 30 days) to cure the breach.



The Contractor may terminate this Contract if Washtenaw ISD: (a) materially breaches its obligation to pay the Contractor undisputed amounts due; (b) breaches its other obligations to an extent that

makes it impossible or commercially impractical for the Contractor to complete the deliverable(s); or (c) does not cure the breach within the time period specified in a notice of breach. The Contractor must discharge its obligations under Section 4.10, Dispute Resolution, before it terminates the contract.