

HOUSTON INDEPENDENT SCHOOL DISTRICT

PART I

GENERAL TERMS AND CONDITIONS DOCUMENT

TABLE OF CONTENTS

Section	Heading	
1.1	Definition and Terms.....	1
1.2	Code of Silence and Conflicts of Interest.....	1
1.3	Specifications.....	3
1.4	Proposal Information Required.....	3
1.5	Submission of Proposals	3
1.6	Financial Information	4
1.7	Discussions/Negotiations	4
1.8	Best and Final Offers	4
1.9	Modification or Withdrawal of Proposals	4
1.10	Opening Proposals	4
1.11	Pre-Proposal Conference	4
1.12	Retention of Proposal Documentation	5
1.13	Reservation of Rights	5
1.14	Appeal Process	5
1.15	Agreement, Integration, Term & Transition, Purchase Order Requirements	6
1.16	Non-Assignment	7
1.17	Use of District Name or Logo(s).....	7
1.18	Authorization: Licenses/Permits/Fees.....	7
1.19	Supplier Nationwide Criminal Background Checks.....	7
1.20	Supplier Document Audit and Inspection/Record Retentions/Student Information	9
1.21	Confidential and Proprietary Information.....	9
1.22	Data and Proprietary Information.....	10
1.23	Texas Public Information Act (TPIA).....	10
1.24	Student Confidentiality	10
1.25	Insurance	10
1.26	Taxes.....	11
1.27	Invoices/Payment.....	11
1.28	Quantity	12
1.29	Bonding	12
1.30	Governing Law	13
1.31	Relationship of the Parties	13

1.32	No Waiver of Immunity	13
1.33	Indemnification.....	13
1.34	Notice.....	14
1.35	Section Headings	14
1.36	Third Party Beneficiaries	14
1.37	Dispute Resolution	14
1.38	Termination	14
1.39	Defective/Non-Conforming Work	15
1.40	Default Conditions	15
1.41	Warranties	15
1.42	Use By Other Government Entities	16
1.43	Third Parties	16
1.44	Unenforceable Sections	16
1.45	MWBE Participation Goal	16
1.46	Subcontracting.....	16
1.47	Work Stopage.....	16
1.48	Hazardous Materials	16
1.49	Business Ethics	16
1.50	Business Certificates/HISD Taxes	16
1.51	Attorney Fees	17

Unless otherwise stated in the solicitation, the following terms and conditions are incorporated into all RFPs issued by the Houston Independent School District and are hereby incorporated into any agreement between HISD and the successful Proposer(s).

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

1.1.1 "Agreement" is defined in this General Terms and Conditions Document.

1.1.2 "HISD, owner, district, and/or government entity" refers to Houston Independent School District.

1.1.3 "Proposer" refers to the person/firm that submits the proposal to this RFP.

1.1.4 "Project" means the Scope of Work for furnishing goods and services.

1.1.5 "Proposal" refers to the document submitted by an entity that addresses the scope and requirements of this RFP.

1.1.6 "RFP" refers to the Request for Proposal.

1.1.7 "Scope of Work" is set forth in Part II under section I of the RFP.

1.1.8 "Supplier" and/or "Vendor" refer to the person(s)/firm(s)/entity(ies) to whom a contract is awarded pursuant to this RFP.

1.1.9 Singular terms shall include the plural and vice versa. A gender reference includes both genders.

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

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

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

The "Code of Silence" time period shall begin when the Request for Proposal (RFP) is issued and ends upon the execution of the contract. During the "Code of Silence",

campaign contributions, gifts, donations, loans, and any other items of value are prohibited between these parties, including candidates who have filed for election to the Board.

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

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

1.2.2 By submitting a proposal, the Proposer agrees to provide the goods/services in full accordance with the specifications and other contract documents notwithstanding existing material and labor markets conditions.

1.2.3 The designated Sourcing Specialist during the proposal process is identified in the introduction Section of the RFP.

1.2.4 **Questions concerning the RFP will be answered only if sent to the Sourcing Specialist via email per Part II of the RFP.** Questions submitted prior to the pre-proposal conference will be answered in the addendum posted and uploaded to Procurement Services “Solicitation of Bids”.

The Board of Education has approved a resolution establishing policy requiring Supplier(s) to have paid all assessed taxes and be free of any indebtedness to the District before a project is awarded.

Proposer(s) shall provide the District with a statement concerning any indebtedness, including personal and real property taxes, when submitting responses.

1.2.5 In an effort to encourage minority and women owned businesses to participate in HISD business and submit proposals based upon their capacity to perform and be successful, this project will be awarded to more than one Proposer if it is in the best interest of the District to do so. Interested Proposer(s) should obtain additional information concerning the District’s location of schools and offices and consider submitting their proposal for any one or more schools and/or departments, or the entire District.

1.2.6 All costs related to the preparation and submission of this proposal shall be paid by the Proposer. Issuance of this RFP does not commit HISD, in any way, to pay any costs in the preparation and submission of the proposal. Nor does the issuance of the RFP obligate HISD to award, enter into an agreement, or purchase any goods and services stated in the RFP.

1.3 SPECIFICATIONS: Proposer(s) are expected to examine and be familiar with all

requirements and obligations of this entire RFP. Failure to do so will be at the Proposer(s) risk. The evaluation criteria for the award of this RFP are set forth in Part II of this RFP. All exceptions to the specifications and requirements of the RFP must be noted in detail in the Proposal Exception Form (Part III, Form H) and included in the proposal.

1.4 PROPOSAL INFORMATION REQUIRED:

1.4.1 To achieve a uniform review process and obtain the maximum degree of comparability, it is required that proposals be organized in the manner specified in Part II, Section I of the RFP.

1.5 SUBMISSION OF PROPOSALS: The Proposer(s) should propose his/her lowest and best price, (as applicable), on each good/service which is the subject of this RFP. Proposals shall be submitted in strict compliance with the instructions set out in this RFP.

1.5.1 All prices shall be entered on the proposal in ink or typewritten. All required signatures shall be original and in ink.

1.5.2 Proposed prices should be firm (fixed). If the Proposer(s), however, believes it necessary to include in his/her price an economic price adjustment, such a proposal may be considered, but only as an alternate proposal and should be noted in the Exception Form (Part III, Form H). The economic price adjustment should give the maximum price increase or decrease (either % or \$) and the date and/or event at which the increase would be effective. Additionally, if a Proposer has reason to believe a better (more cost effective) method is practical, then the Proposer may offer that better pricing option as an alternative.

1.5.3 All costs associated with the project must be enumerated in the proposal. Any costs associated with the project not explicitly enumerated and discussed in the proposal will not be honored. Proposer(s) shall provide information on their standard fee arrangement for any goods and/or services proposed, and any discounts offered. Proposer(s) must include in the cost proposal all travel and accommodation expenses associated with travel to perform this project. Travel expenses associated with the project must conform to a "reasonableness" test for travel expenditures associated with governmental travel and must be pre-approved by the District before being incurred.

1.5.4 The District's standard freight terms are F.O.B., destination, prepaid and allowed. HISD may specify various and different locations within the District for "destination" during the term of the Agreement, or extension of the term, and prices should include allowances for such freight contingencies. No C.O.D. shipments will be accepted. If the goods are not shipped in accordance with HISD's directions and the instructions set out in the Agreement, the Supplier shall pay to HISD any excess cost incurred by District.

1.5.5 Proposer(s) are required to provide HISD with a menu of any optional services offered. Each service must be priced separately and independent of any other services offered or rendered.

1.5.6 HISD is exempt from and will not be responsible for payment of any taxes.

1.5.7 Failure to manually sign the required forms of this proposal may result in rejection of the proposal.

1.5.8 A signed submitted proposal constitutes an offer to perform the work and/or deliver the product(s) specified in this RFP.

1.6 FINANCIAL INFORMATION: Proposer(s) may be required to submit audited financial statements for the last two years at the District's discretion. If required, detail information will be provided under Part II of this solicitation. In the event the Proposer(s) does not have an audited statement, other information such as an unaudited statement or copies of the Proposer(s)' federal income tax returns, with all amendments, is required for Proposer(s) bid to be considered.

1.7 DISCUSSIONS / NEGOTIATIONS: Discussions/negotiations may be conducted with Proposer(s) who are deemed to be within the final competitive range; however, HISD reserves the right to award a contract without discussions/negotiations. The competitive range will be determined by HISD and will include only those initial proposals that HISD determines have a reasonable chance of being awarded a contract. If discussions/negotiations are conducted, Proposer(s) may be required to submit a best and final offer. The best and final offer may be required as early as 24 hours after completion of negotiations/discussions.

1.8 BEST AND FINAL OFFERS: Best and final offers must be received by the date/time provided during discussions/negotiations, or the originally submitted proposal will be used for further evaluation and award recommendation.

1.9 MODIFICATION OR WITHDRAWAL OF PROPOSALS: Proposals may be modified or withdrawn by written or electronic notice received by the Sourcing Specialist prior to the exact hour and date specified for receipt of proposals. A proposal may also be withdrawn in person by a Proposer's authorized representative prior to the Proposal Due Date and time, provided the Proposer's identity is confirmed and Proposer's representative signs a receipt for the proposal.

1.10 OPENING PROPOSALS: All proposals may be opened as soon as received. A formal public "opening" will not be held. Trade secrets and confidential information contained in proposals shall not generally be open for public inspection, but HISD's records are subject to the State of Texas Public Information Act requirements.

1.11 PRE-PROPOSAL CONFERENCE:

1.11.1 Proposer(s) are strongly encouraged to attend the pre-proposal conference. The conference will start promptly at the stated time and be moderated by the Sourcing Specialist. General rules of business meeting protocol will be observed during the meeting. Admittance for individuals arriving late is at the discretion of the Sourcing Specialist. In the event that an individual is admitted late, questions already discussed will not be revisited during the remaining portion of the conference.

Individuals attending the pre-proposal conference will be required to sign an attendance roster. In addition to their name and company name, each person will be asked to supply an email address and, telephone number, if needed. This attendance roster will be posted as an addendum on the District's website along with the RFP and other related documents.

1.11.2 At the District's discretion, one or more Proposer(s) may be invited to

demonstrate their solution(s) and/or system(s) and interview, based on a District pre-defined agenda and time line. Said Proposer(s) will be notified by e-mail if the District determines that such demonstrations and interviews are needed. Proposer(s) shall demonstrate their competence, qualifications and/or ability to satisfy the District's RFP requirements.

1.11.3 Award of the Project to Proposer(s) will be confirmed by a fully executed Agreement, an Agreement Letter and/or confirming Purchase Order.

1.11.4 Timelines set forth herein may be strictly enforced by the District. The District, however, maintains sole discretion to adjust any deadline or timeline to suit the best interests of the District.

1.11.5 **Late Proposals:** Responses submitted after the due date and time noted in this RFP shall not be considered and shall be destroyed unless the proposal is picked up by the supplier within 30 days of notification by HISD. . The District is not responsible for lateness of U.S. Mail, Commercial (Professional) Carrier, personal delivery, or any other delivery method. The time and date stamp clock in the Houston ISD's Board Services Department, Hattie Mae White Educational Support Center, 4400 West 18th Street, Houston, Texas 77092, shall be the official date and time of receipt. It shall be the sole responsibility of the Proposer(s) to ensure that his or her bid is received at the appropriate location by the specified deadline. **There shall be no exceptions to these requirements.**

1.12 RETENTION OF PROPOSAL DOCUMENTATION: All proposal materials and supporting documentation that are submitted in response to this proposal becomes the permanent property of HISD.

1.13 RESERVATION OF RIGHTS: The District reserves the right to reject any and all proposals. The District reserves the right in its sole discretion to accept the proposal(s) it considers the best value for the District, and the right to waive any and all minor irregularities in the proposal(s). Additionally, the District reserves the right to waive any requirements of the RFP. The District further reserves the right to reject all proposals and seek new proposals when such action would be deemed in the best interests of the District.

1.14 APPEAL PROCESS: Any Proposer(s) that submitted a proposal may appeal the District's award, if the appeal is based on deviations from laws, rules, regulations, or Board of Education policies. Board of Education GF Local applies to Proposer(s) wishing to appeal a proposal and/or award of a contract: Proposer(s) shall submit appeals via U.S. mail or electronic-mail (e-mail), utilizing the District Dispute Resolution Form, to the General Manager – Procurement Services, and appeals must be received no later than 4:00 P.M. on or before the fifteenth (15th) business day after Board Award. In the event that a Proposer is unsure about the Board Award, it is the Proposer's responsibility to contact Procurement Services on the next business day after the Board Award is announced, and verify the specifics concerning the Award. Proposers need to conduct whatever research is necessary to verify the Award, and, in the event that an appeal is filed, must meet the fifteenth business day rule stated in GF Local. The 15 days begins to run on the first business day after Board Award is announced.

1.15 AGREEMENT, INTEGRATION, TERM & TRANSITION, PURCHASE ORDER REQUIREMENTS:

1.15.1 The terms, conditions, specifications, stipulations and requirements stated in this RFP, and any and all Addenda issued by HISD shall become part of the Agreement entered into between the District and the Supplier, unless otherwise determined by the District per the Agreement provisions. The Supplier, as determined by the District, may be required to execute a written contract to furnish all goods and/or services and other deliverables required for successful completion of the proposed project. **No Supplier shall obtain any interest or rights in any award until the District has executed the Agreement.** The District reserves the right to require any modification, or modifications to the Agreement terms if the modifications are deemed to be in the best interest of the District and do not substantially change the scope of the Board award.

1.15.2 The District does not sign Supplier contract forms. Supplier(s) should be familiar with the District's Agreement form, Agreement letter and/or purchase order and indicate in its proposal that this type of project documentation is acceptable. This information should be included in the transmittal letter. In the event that a project is awarded to a Supplier and the Supplier requests changes to the District standard Agreement form, the District reserves the right to cancel the award and re-award the project to an alternate Supplier(s).

1.15.3 In the event of a license agreement or other contract document requested by the Supplier for execution, the District reserves the right to review and amend such document at the District's discretion.

1.15.4 The Request for Proposals, with all Addenda, those provisions in the proposal that are satisfactory to the District, and the District's Agreement form(s), which may include, but are not limited to a written contract, agreement letter or purchase order constitute the Agreement between the Supplier and the District (collectively, the, "Agreement"). NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ANY SUPPLIER FORM, PROPOSAL OR DOCUMENTATION, THE TERMS AND CONDITIONS OF THE AGREEMENT AS INTEGRATED ABOVE SHALL BE CONTROLLING IN ALL INSTANCES. To the extent there is any conflict between or among the documents composing the Agreement, the following hierarchy (from most to least authoritative) shall prevail: (i) District's Agreement forms (written contract, agreement letter or purchase order as applicable), and (ii) RFP as provided by the District all Addenda, and (iii) any Proposal provisions agreed to by the District.

1.15.5 Unless otherwise provided in the Section I of the RFP, or required by the District, a standard agreement which results from this RFP shall be for a period of one (1) year from the effective date of the Agreement with an exclusive option by the District to renew for an additional four (4) one year terms, or as otherwise stated in the Agreement. Alternately, the District may approve longer or shorter terms of agreement upon the mutual consent of the parties. At the District's option, there may be an additional 90-day transitional period added to the end of the initial term or any renewal term. The Agreement prices, terms and conditions are to remain in force during the transitional period unless mutually agreed upon by both parties.

Should the Agreement with the Supplier terminate during the initial or any renewal term for any reason, the District reserves the right to have the same transitional period, prices, terms and conditions as if the Agreement terminated at the expiration of that term.

1.15.6 At the discretion of the District, purchases may require the issuance of an official HISD purchase order from the District's Procurement Services Department. If so required, then all goods provided without a purchase order will be returned at Supplier's expense. All services provided without a purchase order may be considered a contribution to the District.

1.15.7 HISD reserves the right to make changes to a purchase order (e.g., increase/decrease quantities, change delivery date, delivery address). Any changes to a purchase order shall be communicated to the awarded supplier by the issuance of a formal change purchase order. Only an HISD procurement staff member may make a change to the purchase order by issuing and sending a formal change purchase order to the awarded supplier.

1.15.8 Once the performance of the Agreement has begun, any change orders or requests will be made in accordance with Texas Education Code Sections 44.0411 and applicable HISD procedures and policies. If Supplier acts on the direction of a District employee that is not authorized to make changes, Supplier does so at his or her own risk or peril and risks termination of the Agreement for cause. Also, if a Supplier attempts, or receives, a modification/amendment from a District employee that is not authorized to make changes, the Supplier does this at his or her own risk or peril and risks termination of the Agreement for cause.

1.16 NON-ASSIGNMENT: The Supplier may not assign, sell, or otherwise transfer its interest in the Agreement award or any part thereof, without prior written consent from the District. The Supplier shall have full responsibility for the completion and performance of all services and the delivery of all goods awarded to Supplier pursuant to this RFP.

1.17 USE OF DISTRICT NAME OR LOGO(S): Supplier may not use the District's official name or logo, or any phrase associated with the District, without the written permission from the Board of Education, the Superintendent of Schools, or their designee.

1.18 AUTHORIZATION: LICENSES/PERMITS/FEES: The Supplier must have current licenses, permits, fees and similar authorizations required by the City of Houston, Harris County, and the State of Texas to conduct business and provide awarded goods and/or services to the District and, upon the request of the District, must provide copies of all licenses, permits and fees as being paid and current that are required to do business by the city, county and State for the type of business they are seeking to provide to the District. Supplier will maintain all such licenses, permits, fees and similar authorizations current for the duration of the Agreement term.

1.19 SUPPLIER NATIONWIDE CRIMINAL BACKGROUND CHECKS: Pursuant to Sections 22.0834, 22.0835 and 22.085 of the Texas Education Code, Provider hereby certifies that all employees, subcontractors and volunteers of the Provider who are hired by Provider on or after January 1, 2008, who have or will have continuing duties related to the contracted services, and have or will have direct contact with students, have passed a national criminal history background record information review as required by those sections. Provider must provide a list of the names and dates of birth of all employees

who have passed the background check to District's Office of Ethics & Compliance in person or via email at ethics@houstonisd.org. If Provider's employees, subcontractors or volunteers have no contact with HISD students, Provider shall so certify on a prescribed form to the Office of Ethics & Compliance, and will be considered to be in compliance with the requirements of this contract.

Provider shall send or ensure that the employee or applicant sends to the Texas Department of Public Safety ("DPS") information that is required by the DPS for obtaining national criminal history record information, which may include fingerprints and photographs. DPS shall obtain the person's national criminal history record information and report the results through the criminal history clearinghouse as provided by Section 411.0845, Government Code.

Providers that have more than 4 employees must set up an account with the Texas Department of Public Safety ("DPS") in order to obtain criminal histories on their covered employees. To set up an account with DPS, a Provider should contact the crime records service bureau at 512-424-2365. **In order for an account to be created with DPS, the provider must receive an Award Letter from the District. However, the provider must submit the Criminal History Background Form requested under Part III of this solicitation – Form O at the moment of submitting the proposal to the District.**

Providers with up to 4 employees must obtain a FAST PASS from the District in order to obtain their criminal history. Appointments must be made with IdentoGo, in accordance with the instructions included with the FAST Pass, who will then notify HISD electronically that the background checks have been done. Providers should contact the District's Human Resources Department to obtain the FAST PASS and scheduling instructions at 713 556-7491.

Providers must present a list of all employees who may have direct contact with students to HISD.

Provider must also obtain certifications from all subcontractors that their employees to whom Section 22.0834 applies have also passed a national criminal history background record information review.

Provider must also provide assurances that all of its employees, subcontractors and volunteers, including those hired before January 1, 2008, who have contact with students have passed a criminal history background check current within the last year. If an employee, subcontractor or volunteer of the Provider has a criminal conviction or has received deferred adjudication for a felony offense or a misdemeanor involving moral turpitude, the District may elect not to enter into this Contract, or cancel the Contract.

WARNING: Section 44.034 of the Texas Education Code requires that a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.

The District may terminate this Contract if the district determines that the person or business entity failed to comply with any of these provisions, failed to give notice as required by Section 44.034 (a) or misrepresented the conduct resulting in the conviction. The District will compensate the person or business entity for undisputed services performed before the termination of the contract.

1.20 SUPPLIER DOCUMENT AUDIT AND INSPECTION/RECORD RETENTION/STUDENT INFORMATION:

1.20.1 The District reserves the right to audit various Supplier documents as requested by the District. From time to time, the District may desire to audit certain Supplier documents to ensure compliance with the Agreement and/or proposal response. Some audits may include but are not limited to: checking Supplier's invoices, authenticating the origin, Material Safety Data Sheet (MSDS), shelf life of products and/or other similar types of documents. The Supplier agrees to furnish the District, in a reasonable time at a mutually agreeable place, documents requested by the District to perform any such reviews or audits.

1.20.2 HISD, or its authorized representative, shall be afforded unrestricted access to and permitted to inspect and copy all Supplier's records, which shall include but not be limited to accounting records (hard copy as well as computer readable data), correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this project. Supplier shall preserve all such records for a period of five (5) fiscal years or for such longer period as may be required by law, after final payment relating to this project. If this project is funded from contract/grant funds provided by the U. S. Government or the State of Texas, all documentation, including books, and records shall be available for review and audit by the Comptroller General of the U. S. and/or the Inspector General of the federal sponsoring agency, or the State of Texas and its duly authorized representatives.

1.21 CONFIDENTIAL AND PROPRIETARY INFORMATION: The District and the Supplier may provide technical information, documentation and expertise to each other that is either (1) marked as being confidential or, (2) if delivered in oral form is summarized in writing within 10 working days and identified as being confidential ("Confidential Information"). The receiving party shall for a period of five (5) years from the date of disclosure (i) hold the disclosing party's Confidential Information in strict confidence, and (ii), except as previously authorized in writing by the disclosing party, not publish or disclose the disclosing party's Confidential Information to anyone other than the receiving party's employees on a need-to-know basis, and (iii) use the disclosing party's Confidential Information solely for performance of this project. The foregoing requirement shall not apply to any portion of a party's Confidential Information which (a) becomes publicly known through no wrongful act or omission on the part of the receiving party; (b) is already known to the receiving party at the time of the disclosure without similar nondisclosure obligations; (c) is rightfully received by the receiving party from a third party without similar nondisclosure obligations; (d) is approved for release by written authorization of the disclosing party; (e) is clearly demonstrated by the receiving party to have been independently developed by the receiving party without access to the disclosing party's Confidential Information; or (f) is required to be disclosed by order of a court or governmental body or by applicable law, provided that the party intending to make such required disclosure shall notify the other party of such intended disclosure in order to allow such party to seek a protective order or other remedy.

1.22 DATA AND PROPRIETARY INFORMATION: All work, regarding this project, shall be deemed “Work Made For Hire” as defined by the United States Copyright Law, and HISD retains for itself sole ownership of all proprietary rights in and to all designs, engineering details and other data pertaining to any discoveries, inventions, patent rights, software, improvements and the like made by the Supplier’s personnel in the course of performing the work.

HISD acknowledges and agrees that (i) as between Provider and HISD, Provider owns all right, title and interest in and to Provider’s Intellectual Property, (ii) nothing in this Contract shall confer in HISD or any of its affiliates any right of ownership in any of Provider’s Intellectual Property, and (iii) HISD shall not now or in the future contest the validity of any of Provider’s Marks.

1.23 TEXAS PUBLIC INFORMATION ACT (TPIA): Supplier acknowledges that the District is subject to the Texas Public Information Act (TPIA). As such, upon receipt of a request under the TPIA, the District is required to comply with the requirements of the TPIA. In the event that the request involves documentation that the Supplier has clearly marked as confidential and/or proprietary, the District will provide the Supplier with the notices under the TPIA. Supplier acknowledges that it has the responsibility to file exceptions with the Texas Attorney General’s Office on why the documents identified as confidential and/or proprietary fall within an exception to public disclosure.

1.24 STUDENT CONFIDENTIALITY: Supplier acknowledges that the District has a legal obligation to maintain the confidentiality and privacy of student records in accordance with applicable law and regulations, including, but not limited to the Family Educational Rights and Privacy Act (“FERPA”). Any student information provided to Supplier shall be provided in compliance with the requirements and exceptions outlined in FERPA. Supplier must comply with said law and regulations and safeguard student information. Supplier may not disclose student information to a third party without prior written consent from the parent or eligible student. Supplier must destroy any student information received from the District when no longer needed for the purposes of the Agreement.

1.25 INSURANCE:

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

<u>Type of Coverage</u>		<u>Minimum Limits</u>
1.	Workers’ Compensation and Employer’s Liability	Statutory \$100,000 per accident
2.	Automobile Liability: Bodily Injury & Property Damage For all owned, non-owned vehicles and hired vehicles.	\$1,000,000 Combined Single Limit
3.	Commercial General Liability	\$1,000,000 Per Occurrence
4.	Professional Liability (errors and omissions) may be required at the discretion of the Sourcing Specialist.	

1.25.2 With their proposal, the Supplier must furnish either certificates of insurance (Acord Form,) or a letter from the insurance carrier on the insurance carrier's letterhead to HISD indicating compliance with this paragraph under Tab 2 – Form L.

1.25.3 Upon receipt of a letter of intent to award from Procurement Services, the Supplier must submit to Procurement Services the actual Acord Form prior to being recommended to the Board of Education for contract approval. The supplier will have three (3) business days from the date of the letter to submit their certificates of insurance; failure to provide all the requirements will cause your proposal to be non-responsive.

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

1.25.5 HISD shall be named as an additional insured on the automobile and commercial general liability policies.

1.25.6 A waiver of subrogation shall be issued in favor of HISD in the workers' compensation, automobile and commercial general liability policies. HISD shall be named as an alternate employer on the workers' compensation policy. At the District discretion HISD will accept the Occupational Accident with Employers Liability as an alternative of workers compensation.

1.25.7 The Supplier shall provide HISD with original certificates of insurance (Acord Form,) acceptable to HISD.

Insofar as allowed by law, such certificates shall indicate an agreement by each carrier not to cancel or diminish coverage without a minimum of thirty (30) days prior written notice to HISD.

1.25.8 In the event there is a deductible on any policy, the Supplier may be asked to provide evidence to the satisfaction of HISD that it is able to satisfy the deductible. HISD reserves the right to accept alternate insurance policies.

1.25.9 Notice regarding insurance and **cancellation or changes** should be mailed to the Sourcing Specialist as stated in **Part II** of this RFP.

1.25.10 HISD reserves the right to require additional insurance coverage to be carried by the Supplier as deemed desirable by HISD, depending on the type of project.

1.26 TAXES: HISD is exempt from local, state and federal taxes. In the event that taxes are imposed on the goods and/or services purchased, the District will not be responsible for payment of the taxes. The Supplier shall absorb the taxes entirely. The District will supply tax exemption information upon request.

1.27 INVOICES/PAYMENT:

1.27.1 HISD standard payment terms are net 30 days after receipt of invoice. Supplier may offer the District a cash discount for payment of an invoice(s) with stated discount terms. Supplier's invoices should be sent as a prefer method to the email address: **HISD_VendorInvoices@houstonisd.org** or by mail to Houston Independent School District, Controller's Office, Accounts Payable Department, 4400 West 18th Street,

Houston, Texas 77092 Accounts Payable will receive your invoice to be processed. Alternative payment terms may be accepted at HISD discretion.

1.27.2 Invoices will be date and time stamped upon receipt in the Accounts Payable Department, and the cash discount, when applicable, will be calculated from the "receipt date" stamped on the invoice. **If a discount is offered in the proposal, this discount will also apply to all other RFPs that the supplier has been previously awarded.** Supplier's invoices **must** contain the appropriate HISD purchase order number on the face of the invoice. Each line item on the invoice should contain the corresponding line item number shown on the purchase order. Invoices submitted without the correct purchase order number shown may be returned to the Supplier for correction. Corrected invoices will be subject to the same payment provisions as original invoices.

1.27.3 Invoices should be provided to the District in a timely manner. Supplier is requested to invoice the District within 30 days of providing goods and/or services to the District.

1.27.4 In the event a Supplier presents the District with invoices, statements, reports, etc. that are incomplete, inaccurate or in need of substantial internal research, such action could result in delay of payment. The District will not be responsible for any interest charges and/or late fees as a result of delayed payment due to time delays caused by inadequate or incomplete information provided in invoices by Supplier.

1.28 QUANTITY:

1.28.1 There is no guaranteed amount of business, expressed or implied, to be purchased, or contracted for by HISD. However, the Supplier shall furnish all required goods and/or services to the District at the stated price, when and if required.

1.28.2 The District's agreement may be offered to other school districts or governmental entities. If applicable and at the discretion of the District, a forecast of planned usage will be issued as part of the project. This forecast is based upon the District's historical usage. If the District exceeds that forecast of usage and the Supplier experiences a higher volume of sales, the District may request a value consideration to compensate the District for said increased sales in the form of a volume usage rebate. Supplier should include, in their proposal, the method(s) they will use to calculate the usage rebate and discuss how the rebate will be calculated and paid.

1.28.3 The District expressly reserves the right to procure any goods or services from other sources or by other means.

1.29 BONDING: At the District discretion, Performance and Payment Bonds may be required on certain projects valued in excess of designated amounts (\$100,000 for Performance Bond & \$25,000 for Payment Bond). The District will determine the necessity of Performance and Payment Bond on a project by project basis. The procurement Sourcing Specialist will advise potential Proposers if a particular project requires bonding. A sample of the Performance Bond and the Payment Bond can be found at the following web address:

<http://www.houstonisd.org/cms/lib2/TX01001591/Centricity/Domain/8017/PerformanceBondForm.docx>

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

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

1.32 NO WAIVER OF IMMUNITY: The District does not waive or relinquish any immunity or defense on behalf of itself and its trustees, officers, employees, and agents as a result of entering into any agreement or contract relating to this project or by performing any of the functions or obligations relating to the project. Nothing in any agreement shall be construed as creating any personal liability on the part of any trustee, officer, employee, or representative of HISD. No waiver of a breach of any provision of the contract and/or agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision shall be construed to be a waiver of such breach.

1.33 INDEMNIFICATION: THE SUPPLIER SHALL INDEMNIFY, AND HOLD HARMLESS AND DEFEND HISD AND EACH OF IT'S RESPECTIVE PAST, PRESENT AND FUTURE OFFICERS, TRUSTEES, AGENTS, AND EMPLOYEES IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES, FROM AND AGAINST ALL CLAIMS, LOSSES OR DAMAGES, INCLUDING ATTORNEY'S AND EXPERT'S FEES, COURT COSTS AND EXPENSES INCURRED BY HISD AND IT'S OFFICERS, TRUSTEES, AGENTS AND EMPLOYEES, FOR INJURY, INCLUDING DEATH, TO PERSONS, OR DAMAGE TO OR DESTRUCTION OF PROPERTY, AND LAWSUITS, DEMANDS OR CAUSES OF ACTION OF WHATSOEVER KIND OR NATURE BASED UPON, RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH ANY NEGLIGENT ACT, ERROR, OMISSION, MISREPRESENTATION, OR MISCONDUCT BY SUPPLIER AND ITS EMPLOYEES, OFFICERS, SUB-CONSULTANTS, OR AGENTS ARISING OUT OF OR IN CONNECTION WITH SUPPLIER'S PERFORMANCE OF THE AGREEMENT.

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

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

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

To: ***Supplier's Contact Name and Address as listed in the Proposal Response***

To: Houston Independent School District
Attn: Superintendent of Schools
4400 West 18th Street
Houston, Texas 77092

Copy To: Houston Independent School District
Attn: General Manager – Procurement Services
4400 West 18th Street
Houston, Texas 77092

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

1.35 SECTION HEADINGS: The headings of sections and paragraphs contained in any document related to this project are for convenience only, and they shall not, expressly or by implication, limit, define, extend, or construe the terms or provisions relating to the project.

1.36 THIRD PARTY BENEFICIARIES: Nothing relating to this project shall be deemed or construed to create any third party beneficiaries or otherwise give any third party any claim or right of action against HISD or the Supplier(s).

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

1.38 TERMINATION:

1.38.1 The District reserves the right to terminate, without cause and for any reason, the Agreement resulting from this RFP upon thirty (30) calendar days prior written

notice, or five (5) days prior written notice for cause.

1.38.2 HISD also has the right to terminate the Agreement for convenience, without penalty, for non-appropriation or non-availability of funds by delivery to the Supplier of a "Notice of Termination" specifying the extent to which performance hereunder is terminated and the date upon which such termination becomes effective.

1.39 DEFECTIVE/NON-CONFORMING WORK:

1.39.1 If, following seven (7) calendar days of a written notice to a Supplier identifying defective or nonconforming work, the Supplier or its subcontractors fail to correct such defective or nonconforming work, HISD may order the Supplier to stop further work, or any portion thereof, until the defect or nonconformance has been properly corrected by the Supplier or its subcontractors.

1.39.2 Should the Supplier not proceed with the correction of defective or non-conforming work within three (3) additional calendar days of HISD's order to stop further work, as set forth above, HISD may cause the removal, repair or correction of the defective or nonconforming work and may charge all associated costs of the same to the Supplier.

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

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

1.42 USE BY OTHER GOVERNMENT ENTITIES: The Texas Education Code 44.031 (a)(4) allows for government entities, i.e. state agencies, local governments and school districts, to enter into cooperative agreements to allow the procurement process to be performed by a single entity on behalf of all those electing to participate. Any of the above entities may be granted the privilege of joining the awarded Agreement. In the event HISD allows another governmental entity to join the Agreement, it is expressly understood that HISD shall in no way be liable for the obligations of the joining governmental entity.

1.43 THIRD PARTIES: Nothing in this RFP shall create a contractual relationship with or a cause of action in favor of a third party against either HISD or the Supplier.

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

1.45 MWBE PARTICIPATION GOAL: The Supplier shall report their MWBE participation goal as a percent of the total compensation. This information shall be identified per firm, discipline and participation.

1.46 SUBCONTRACTING: The Supplier shall not subcontract services provided in this RFP without prior written approval by HISD.

1.47 WORK STOPPAGE: In no event shall HISD be liable or responsible to the Supplier or any other person for our on account of, any stoppage or delay in work.

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

1.49 BUSINESS ETHICS: During the course of the project awarded by this RFP, the Supplier will maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No substantial gifts over \$50, entertainment, payments, loans, or other considerations beyond that which may be collectively categorized as incidental shall be made to any employees or officials of HISD, its authorized agents and representatives, or to family members of any of them. At any time the Supplier believe there may have been a violation of this obligation, the Supplier shall notify HISD of the possible violation. HISD is entitled to request a representation letter from the Supplier, its subcontractors or suppliers at any time to disclose all things of value passing from the Supplier, its subcontractors or suppliers to HISD's personnel or its authorized agents and representatives.

1.50 BUSINESS CERTIFICATES / HISD TAXES: All individuals or entries entering into a contract with HISD must adhere to the following applicable Texas laws as they pertain to their individual type of ownership.

1.50.1 Corporations: (domestic [formed under Texas law] or foreign [formed under laws of another state]) shall be properly registered with the Texas Secretary of State and the Comptroller of Public Accounts as required by TITLE 34, Part 1, Chapter 3, Subchapter V, Rule 3.546 of the Texas Administrative Code. A current "Certificate of Good Standing"

from the Texas Comptroller of Public Accounts shall be made available upon request stating that the corporation charter is current and all Texas Franchise Reports and taxes are paid.

1.50.2 Partnerships and Joint Stock Companies, and Limited Liability Partnerships: (domestic [formed under Texas law] or foreign [formed under laws of another state]) shall be, properly registered with the Texas Secretary of State in accordance with the Texas Secretary of State in accordance with TITLE 105 – PARTNERSHIPS and JOINT STOCK COMPANIES, CHAPTER ONE- PARTNERSHIPS, LIMITED PARTNERSHIPS, TEXAS REVISED PARTNERSHIP ACT, Article 6132a-1, “Texas Revised Limited Partnership Act. All partners in a partnership must file a “Certificated of Limited Partnership” with the secretary of state, which shall be made available for inspection upon request.

1.50.3 Entities whether, Corporate, Partnership, or Sole Owner must be current on HISD Property Taxes: If commercial personal property is located within HISD’s jurisdiction, current renditions of these properties must be filed with the Chief Appraiser, as required by Chapter 22k Section 22.01 of the Texas “PROPERTY TAX CODE”.

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