

OGC CONTRACT NO. ___/F20

SC NO.: _____

ABC CODE: _____

AGREEMENT FOR SERVICES

Project:
Reproduction Services for the Offices of Capital Programs

In consideration of the mutual promises set forth below, intending to be legally bound, **THE SCHOOL DISTRICT OF PHILADELPHIA**, a body corporate and political subdivision formed and existing under the laws of the Commonwealth of Pennsylvania (the "School District"), located at the Education Center, 440 North Broad Street, Philadelphia, Pennsylvania 19130-4015, and _____, a _____ (the "Contractor"), located at _____, have executed and delivered this Agreement for Services (the "Contract") as of _____, 2020.

1. *The Engagement, the Work, the Standard Terms and Conditions.* Subject to the terms and conditions set forth in this Contract, the School District engages the Contractor to carry out the work (the "Work") set forth in the attached Exhibit "A" – Request for Proposal ("RFP") to Provide Reproduction Services for the Offices of Capital Program, and Exhibit "B" – the Contractor's Fee Proposal (the "Fee Proposal"). The Work includes all Materials the Contractor has agreed to provide, the time frames in which the Contractor has agreed to complete the Work, and all other requirements the Contractor must satisfy in order to complete the Work during the Term (defined in Section 3 below). The terms and conditions of this Contract include the School District Standard Terms and Conditions (the "Standard Terms and Conditions") attached hereto as Exhibit "C".

2. *Action Item.* The Board of Education authorized this Contract by its Action Item number __, dated _____. The Parties have attached the Action Item to this Contract as Exhibit "D" for reference but have not made the Action Item a part of this Contract. The School District has no power to contract for the Work outside the scope of the Action Item.

3. *Contract Term.* The term of the Contract shall begin _____ and end _____ (the "Term"), unless terminated sooner by the School District as provided in this Contract. The Contractor shall commence the Work promptly on the first day of the Term and complete the Work not later than the last day of the Term, except for those matters which contemplate performance after the expiration or termination of this Contract.

4. *Compensation.* As compensation for the satisfactory performance of the Work carried out by the Contractor hereunder, the School District shall pay the Contractor, in arrears, a total fee not to exceed _____ Dollars (\$ _____), **conditioned, however, upon the continued availability of funds, as set forth in Sections 6 and 7 of the Standard Terms and Conditions** (the "Compensation").

a. *Budget.* The Contractor shall carry out the Work and bill the School District strictly in conformity with the Contractor's Fee Proposal attached as Exhibit "B", and the School District shall pay the Contractor strictly in conformity with the Contractor's Fee Proposal.

b. *Fee Structure.* The Contractor shall earn the Compensation on the following basis (check one):

- flat fee, pro-rated and billed monthly, or otherwise, as provided in Section 5 below;
- at the hourly rate or rates per hour of labor specified in Exhibit "B" or Exhibit "A", and billed monthly, or otherwise, as provided in Section 5 below; or
- on such other basis as the Parties have specified, if any, in Exhibit "B" or Exhibit "A", and billed monthly, or otherwise, as provided in Section 5 below.

5. *Invoices.* The Contractor shall submit timely invoices to the School District Responsible Official named in Section 7 below and, unless the Parties have agreed to a different schedule as set forth in Exhibit "A" or Exhibit "B" hereto, the Contractor shall submit not more than *one invoice per month*. The Contractor shall submit its final invoice not later than ten (10) business days after the last day of the Term. The Contractor shall submit invoices in accordance with Section 3 of the Standard Terms and Conditions. All invoices shall include an itemization of charges and, at a minimum, a detailed description of the Work performed. The School District shall have no obligation to make any payment to the Contractor before receipt of an invoice that conforms to the requirements of this Contract.

6. *Federal Employer Identification Number.* The Contractor's federal employer identification number is: - .

7. *Notices.* The Parties shall give notices and other communications required under this Contract in conformity with Section 21 of the Standard Terms and Conditions, and shall send all notices to:

School District Responsible Official: Contractor:

Name:	Ahmed Sultan	_____
Title:	Director of Capital Programs	_____
Party:	The School District of Philadelphia	_____
Address:	Office of Capital Programs	_____
	440 North Broad Street, Suite 371	_____
	Philadelphia, PA 19130-4015	_____

Telephone: (215) 400-4730
Fax: (215) 400-4731
Email address: asultan@philasd.org
Program Office Capital Programs
(School District)

8. *Order of Precedence.* The Parties have attached the following Exhibits to this Contract, each of which the Parties have agreed to incorporate in and make a part of this Contract:

<i>Exhibit</i>	<i>Exhibit Name</i>
"A"	RFP to Provide Reproduction Services for the Offices of Capital Programs (description of Work or the Contractor's Proposal)
"B"	Contractor's Fee Proposal
"C"	School District Standard Terms and Conditions

In the event of a conflict between any Exhibit and another Exhibit, or this Agreement for Services, the following order of precedence shall apply: first, this Agreement for Services; second, Exhibit "C"; third, Exhibit "A"; and fourth, Exhibit "B".

In witness whereof, the Parties, intending to be legally bound, have executed and delivered this Contract as of the day and year set forth above.

By: _____
_____ [Name]
_____ [Title]

Approved as to form:

THE SCHOOL DISTRICT OF PHILADELPHIA

Attorney, The School District
of Philadelphia

By: _____
William R. Hite, Jr., Ed.D.
Superintendent

Exhibit "A"

Request for Proposal To Provide Reproduction Services For The Offices of Capital Programs

Exhibit "B"

The Contractor' Fee Proposal

Exhibit "C"

The School District Standard Terms and Conditions

Exhibit "C"

School District Standard Terms and Conditions Agreement for Services

1. *General Conditions of the Work.*

a. *Standard of Performance.* In carrying out the Work, the Contractor shall exercise the highest degree of competence and diligence exercised by providers in the Contractor's field. The Contractor shall cooperate with the School District and all other Persons contracting with the School District whose work affects the Contractor's Work, or whose work the Contractor's Work affects. The Contractor shall perform all Work under this Contract to the satisfaction of the School District.

b. *Compliance with Applicable Law.* The Contractor shall comply with all Applicable Law, defined in subsection 23.b., page 14, below, in connection with this Contract, including but not limited to the Pennsylvania Right-to-Know Law ("RTKL"), 65 Pa. Stat. §§ 67.101 to 67.3104, and 24 Pa. Stat. § 1-111.1, Employment History Review, as amended.

c. *Warranty.* To the extent that the Work includes the sale or the furnishing of Materials, the Contractor warrants that the Materials shall be good, free of defects, merchantable and fit for the particular purposes for which the School District intends to use them.

d. *Contractor Responsibility for Quality of the Work.* Payment by the School District or acceptance of the Work, including any Materials, shall not relieve the Contractor of responsibility for the substance and quality of all Materials and Work. Without any additional compensation, the Contractor shall diligently and expeditiously correct any errors, deficiencies or omissions in the Work, including any Materials, and shall remain liable in accordance with this Contract and Applicable Law for all damages to the School District caused by the Contractor or the Work, including any Materials.

e. *Contractor Staff.* The Contractor shall not assign any Person dismissed from School District employment to perform any Work under this Contract. The Contractor shall, within seven (7) days of notice by the Responsible Official to the Contractor that, in the reasonable opinion of the Responsible Official, any employee is incompetent or incapable of carrying out any part of the Work assigned to that Person, reassign that employee from any Work.

f. *Meetings.* Upon reasonable prior notice from the School District, the Contractor shall attend any meetings requested by the School District, at a location reasonably determined by the School District.

g. *Site License(s).* To the extent that the Statement of Work, Exhibit "A" to this Contract, requires the Contractor to carry out any portion of the Work on premises of the School District, the School District, subject to the terms, covenants and conditions set forth in this Contract, hereby grants the Contractor a limited, revocable license to use such School District premises, and only such School District premises, as are expressly provided or by necessary implication required in order for the Contractor to complete the Work in conformity with the requirements of this Contract. The School District shall have the right at any time and for any reason to terminate the foregoing license. The Contractor covenants and agrees to comply with all rules, regulations and directives concerning the use of School District premises imposed by the School District, including but not limited to rules, regulations and directives set by a principal concerning his or her school. The Contractor shall promptly and fully reimburse the School District for the actual costs of repairing any and all damage to School District premises caused by the Contractor or any of the Contractor's officers, agents, employees or Subcontractors.

h. *Contract Reporting.* The Contractor shall comply promptly with the School District's reporting requirements for contracts, including electronic or other reporting of Contractor and contract data.

i. *Whistleblower Protection.* Anything to the contrary set forth elsewhere in this Contract notwithstanding, neither Party shall construe this Contract or any term, covenant or condition in this Contract to prohibit either Party or any of its employees, Subcontractors, grantees, or subgrantees from filing a charge with, reporting possible violations to, or participating or cooperating with any governmental agency or entity having jurisdiction, including but not limited to a member or committee of Congress, an Inspector General, the Government Accountability Office, a federal employee responsible for contract or grant oversight, a law enforcement agency, a court or grand jury, or a management official or other employee who has responsibility to

investigate, discover, or address misconduct, or making other disclosures protected under the whistleblower, anti-discrimination, or anti-retaliation provisions of Applicable Law, including but not limited to 41 U.S.C. § 4712, for the purpose of reporting or investigating a suspected violation of law.

j. *Time.* Time is of the essence of the Contractor's performance of the Work, including the delivery of any Materials to the School District, under this Contract.

k. *Act 126 Child Abuse Recognition, etc., Training.* Before starting any Work, the Contractor shall submit to the School District for the Contractor, if the Contractor is an individual, and for each of the Contractor's employees, officers, agents, servants, volunteers and Subcontractors, if any, who may have Direct Contact or Direct Volunteer Contact with children, as defined by 23 Pa. Cons. Stat. Ann. § 6303(a), as amended, while performing any of the Work, a copy of the certificate of completion of Mandated Reporter Training as required by Act 126 of 2012, codified at 24 Pa. Stat. § 12-1205.6.

l. *Right-to-Know Requests.* The Contractor acknowledges and agrees that this Contract and records related to or arising out of this Contract remain subject to requests made pursuant to the RTKL. If the Commonwealth of Pennsylvania (the "Commonwealth") or the School District need the Contractor's assistance in any matter arising out of the RTKL related to this Contract, the Commonwealth or the School District shall notify the Contractor using the contact information provided in the Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior notice to the Commonwealth and the School District.

2. **Background Checks.**

a. *Required Background Checks.* In accordance with Applicable Law, including 24 Pa. Stat. § 1-111, as amended, and 23 Pa. Cons. Stat. Ann. §§ 6344, 6344.2., as amended, before starting any Work, the Contractor shall submit to the School District for the Contractor, if the Contractor is an individual, and for each of the Contractor's employees, officers, agents, servants, volunteers and Subcontractors, if any, who may have Direct Contact or Direct Volunteer Contact with children, as defined by 23 Pa. Cons. Stat. Ann. § 6303(a), as amended, while performing any of the Work, copies, true, correct, complete and current, of all of the following:

- i. the Pennsylvania State Police criminal history record information report;
- ii. the child abuse history official certification;
- iii. the report of the Federal Bureau of Investigation federal criminal history record information; and
- iv. a sexual misconduct/abuse disclosure release required by Act 168 of 2014 (24 Pa. Stat. § 1-111.1) and all relevant matters and materials disclosed.

b. *Current; Direct Contact; Failure to Provide.* For purposes of subsection 2.a., "current" means processed by the issuing agency or organization within five (5) years prior to the later of the individual's hiring or engagement by the Contractor or Subcontractor, or the commencement of the Term, unless the School District has in the preceding five (5) years received and properly reviewed the individual's checks, in which case the Parties may rely on the individual's prior submission. For an individual who has Direct Contact or Direct Volunteer Contact with children the School District shall have the right, at any time and in its sole discretion, to require the Contractor to deliver new reports, certifications, clearances or certificates as required by the more restrictive of School District policies, or Applicable Law, and the Contractor shall comply promptly with any such request. If the Contractor fails to deliver any such report, clearance certification or certificate on behalf of the Contractor, if an individual, or on behalf of any individual officer, employee, director or Subcontractor, then each such individual may not and shall not carry out any of the Work unless and until the Contractor delivers that individual's report, clearance, certification or certificate to the School District.

c. *Arrests; Convictions.* The Contractor shall comply and shall ensure that its officers, employees, agents and Subcontractors who carry out any of the Work comply with the requirements of 24 Pa. Stat. § 1-111(j), which mandates, among other things, reporting within seventy-two (72) hours by any officer, employee or agent of the Contractor or of any Subcontractor of an arrest or conviction for an offense listed in 24 Pa. Stat. § 1-111(e). The Contractor shall report to the School District, in a prompt and timely manner, all notices and reports required, and all checks conducted, under § 1-111(j).

3. **Compensation; Invoices.**

a. *Invoices Exclusive of Taxes.* Invoices shall be exclusive of state or local sales, use or gross receipts taxes, and federal excise taxes. The School District's Pennsylvania Sales Tax Blanket Exemption Number is 76-51500-1; its Federal Tax ID Number is 23-6004102; and its Federal Excise Tax Number is 23-63-0021-K.

b. *Support for Invoices.* If the Contractor, after a request by the School District, does not provide evidence satisfactory to the School District to support any item or items set forth on an invoice, the School District shall have no liability to make any payment with respect to that item or items. If the School District has already made payment for that item or items, the School District may by notice to the Contractor require the Contractor to refund promptly to the School District the amount of any such overpayment, or the School District, at its option, may set off such overpayment against any payments accruing thereafter to the Contractor under this Contract or any other contract between the Parties.

4. **The Contractor's Duties Concerning Taxes and Other Obligations.**

a. *Tax Policy.* The School Reform Commission (the "Commission") by its Resolution SRC-2, dated February 21, 2013, adopted its Tax Compliance of Vendors Policy (the "Tax Policy") for School District vendors, including the Contractor. The Tax Policy provides that in general the Commission will not permit the School District to contract with Persons delinquent in payments of any City of Philadelphia (the "City") or Commonwealth taxes or other indebtedness or obligation, at the execution and delivery of the Contract and at any time during the Term.

b. *Contractor's Covenants.* In compliance with the requirements of the Tax Policy, the Contractor covenants and agrees that throughout the Term, for itself and any Person controlling, controlled by or under common control with the Contractor, the Contractor shall comply with the following requirements.

i. At any time during the Term upon notice from the School District the Contractor shall deliver to the School District proof of its tax compliance in the form of a "Certificate of Tax Clearance" from the City's Department of Revenue.

ii. At any time during the Term upon notice from the School District the Contractor shall deliver to the School District proof in writing of its execution and delivery of a settlement agreement, payment plan or other necessary and appropriate documentation in satisfaction of any indebtedness to (A) the City for or on account of any City tax, including any tax collected by the City on behalf of the School District, or in satisfaction of any other indebtedness or obligation owed by the Contractor to the City; and (B) the Commonwealth for or on account of any Commonwealth tax, or in satisfaction of any other indebtedness or obligation owed by the Contractor to the Commonwealth.

iii. The Contractor shall promptly pay and otherwise promptly and diligently comply with and carry out its duties and obligations under any such settlement agreement, payment plan or other documentation with the City or the Commonwealth, until it has discharged its obligation to the City or the Commonwealth by satisfying any such tax or other indebtedness or obligation.

iv. The Contractor may in good faith, diligently and expeditiously, pursue any bona fide claim, contest or appeal with the Commonwealth, or the City, as the case may be, of its liability for, or the amount of, any indebtedness or obligation to the Commonwealth, or the City for or on account of any tax, including but not limited to any tax collected by the City on behalf of the School District, or other indebtedness or obligation, to the final appeal, adjudication, resolution or compromise thereof with the Commonwealth or the City. The Contractor shall promptly pay all uncontested taxes and other indebtedness or obligations to the Commonwealth and the City.

c. *The Contractor's Taxes, etc. – School District Set-Off.* The Contractor agrees that the School District shall have the right to set off against, or to withhold payment of, or both, any and all Compensation accruing and payable to the Contractor under this Contract and any other contract, in order to provide for and assure the payment by or on behalf of the Contractor of any and all sums of taxes or other indebtedness or obligations then lawfully due and owing by the Contractor or any Person controlling, controlled by or under common control with the Contractor, to either the City or the Commonwealth. Each Party shall have the right to rely on certificates and other official documents provided by either the City or the Commonwealth in proceeding to withhold or set off under this subsection 4.c.

5. **Best Pricing.** The Contractor shall perform the Work at the lowest price the Contractor charges to other school districts or other governmental entities for like work. If the School District pays a price for the Work in excess of the lowest price the

Contractor charges or has recently charged to a governmental entity, in addition to all other remedies, the School District shall have a right, as damages, to a refund equal to the difference between the price charged to the School District and the lowest price the Contractor charges or has recently charged to another school district or governmental entity, together with interest at a rate equal to the prime rate of interest as published from time to time by the *Wall Street Journal*, plus five percent (5.0%).

6. *Unavailability of Funds; Crossing Fiscal Years.*

a. *Unavailability of Funds.* In the event the School District, in its sole determination, does not or cannot obtain or continue the funding for this Contract from any source or sources at an aggregate level sufficient to allow for payment for the Work, the School District may exercise one of the following alternatives: (i) terminate this Contract effective upon a date specified in a Termination Notice; or (ii) continue this Contract by reducing, through written notice to the Contractor, the amount of this Contract and the scope of the Work, consistent with the nature, amount and circumstances of the loss of funding. Any termination or reduction of this Contract pursuant to this subsection 6.a. shall not affect any obligations or liabilities of either Party accruing prior to such termination or reduction. The School District shall not face any liability or penalty as a result of such termination or reduction of this Contract.

b. *Crossing Fiscal Years.* If the School District will pay any portion of the Compensation in any School District fiscal year subsequent to the current fiscal year (the School District's fiscal year runs July 1 – June 30), the portion of the Compensation that may accrue hereunder in a subsequent fiscal year remains subject to legally mandated budget authorization by the Commission, or the Board of Education, as the case may be, of the School District, under Applicable Law. If for any reason funds for that portion of the Compensation that may accrue hereunder in a subsequent fiscal year are not continued in any subsequent School District fiscal year, this Contract and the School District's liability under this Contract shall automatically terminate at the end of the fiscal year for which the Board of Education authorized funds.

7. *Grant-Funded Contracts; Trust-Funded Contracts.*

a. *Compliance with Grant.* If the School District pays for all or any portion of the Work with funds received by the School District as grants or under other terms and conditions from any source, including the United States of America, the Commonwealth, the City, or any department or agency of said governments, or from any public or private charitable trust or corporation, then the Contractor shall comply with the terms of the applicable grant agreement, contract or trust indenture, as the case may be, in carrying out the Work, and the School District shall comply with the terms of said grant agreement, contract or trust indenture, as the case may be, in making any payment or payments hereunder to the Contractor. The Contractor shall not take any action, or omit to act, if such act or omission would cause a breach or default under any such grant agreement, contract or trust indenture.

b. *Timely Submission of Invoices.* If the School District pays any of the Compensation from federal government or Commonwealth grant funds, the Contractor shall bill the School District for any outstanding Compensation owed to the Contractor within ten (10) business days after the end of the Term (*see*, Section 3 of the Agreement for Services). In the event the Contractor does not bill the School District for the balance of any Compensation within said ten (10) day period, the School District reserves the right to withhold payment of the balance of the Compensation to the Contractor based upon the loss of federal government or Commonwealth funds caused by the Contractor's delay, in which event the School District shall have no liability to the Contractor for said balance of the Compensation.

8. *Independent Contractor; No Partnership or Agency.*

a. The School District has engaged the Contractor as an independent contractor to carry out the Work, and neither the Contractor nor any of the Contractor's agents, employees or Subcontractors shall in any way or for any purpose whatsoever be deemed an agent or employee of the School District. Neither the Contractor nor any of its agents, employees or Subcontractors constitute employees of the School District, and these Persons shall have no right to receive any School District employee benefits or any other privileges available to School District employees. Neither the Contractor nor its agents, employees or Subcontractors shall represent themselves in any way as agents or employees of the School District, and none of the Contractor, its agents, employees or Subcontractors has any power to bind legally the School District to any third party.

b. Anything set forth elsewhere in this Contract to the contrary notwithstanding, including but not limited to any references in any exhibits to a "partnership" or "partner" relationship, the Parties have not created, do not intend to create, and no Party, nor any other Person, including any court or other tribunal, shall construe anything set forth in this Contract as creating a joint venture or partnership between the School District and the Contractor with respect to the Work. Neither the Contractor nor

the School District shall have any power to bind the other Party in any manner whatsoever to any third party. The Contractor does not function as an agent of the School District in any dealings with any third party.

9. **Non-Discrimination.** The Contractor, for itself, its officers, agents, employees and Subcontractors, covenants and agrees that it shall not discriminate against or intimidate any employee or other Person on account of age, race, color, sex, sexual orientation, handicap, disability, religious creed, ancestry, national origin, gender identity, marital status, genetic information, or Vietnam-era or any other veteran status. The School District operates as an equal opportunity employer under Applicable Law; the Contractor shall likewise operate in all respects as an equal opportunity employer under Applicable Law. The School District shall not do business with any Person that unlawfully discriminates on the basis of age, race, color, sex, sexual orientation, handicap, disability, religious creed, ancestry, national origin, gender identity, marital status, genetic information, or Vietnam-era or any other veteran status, or any other impermissible ground in hiring, promotion, subcontracting or procurement practices. The Contractor shall include the first three sentences of this Section 9, with appropriate adjustments for the identity of the parties, in any Subcontracts that it executes and delivers. If the School District has selected the Contractor pursuant to a public solicitation or through a request for proposals or comparable process and the Contractor submitted a plan describing the participation of minority-owned, women-owned or disadvantaged businesses as part of the solicitation or the RFP, then the Contractor shall comply with its participation plan.

10. **Subcontracts.**

a. **School District Consent Required.** The Contractor shall not delegate or enter into any Subcontract for the performance of any of its obligations under this Contract, including any portion of the Work, in whole or in part, without in each instance first giving notice to and obtaining the written consent of the School District, which consent the School District may grant, withhold, condition or delay in its sole discretion. The School District hereby consents to any Subcontract entered into by the Contractor specifically referenced in Exhibit "A", the Contractor's Statement of Work, to this Contract. Any subcontract or assignment made in violation of this Section 10 shall be null and void. The School District shall have no obligation to any Subcontractor. Each Subcontract shall contain clauses to the effect that (i) the Subcontractor shall have no recourse to the School District for any payment, or for performance under such Subcontract; (ii) the Subcontractor consents to any assignment of the Subcontract by the Contractor to the School District, at the School District's sole option; and (iii) the Contractor shall make payment to any Subcontractor within five (5) business days after receipt of payment from the School District with respect to work properly invoiced by a Subcontractor to the Contractor and reflected in the payment by the School District to the Contractor.

b. **No Change in the Contractor's Obligations.** The existence of any Subcontract shall not alter or limit the obligations of the Contractor to the School District under this Contract. The Contractor shall at all times remain fully responsible for its Subcontractors, and shall ensure that it legally binds all Subcontractors to the same terms and conditions as the Contractor under this Contract, including without limitation, non-discrimination, warranties, confidentiality, maintenance and preservation of records and audit by government representatives.

11. **Non-Assignment.** The Contractor acknowledges that the Work constitutes personal or professional services, or both, of the Contractor. Except through a Subcontract subject to Section 10 above, the Contractor shall not assign this Contract, or any part of this Contract, nor delegate performance of any part of this Contract, without the prior written consent of the School District, which consent the School District may grant, withhold, condition or delay in its sole discretion. This Contract legally binds the Parties and their respective successors and assigns. Any purported assignment in violation of this provision shall be void and of no effect. The School District's consent to an assignment shall not release the assignor from any liability accrued or thereafter accruing under this Contract. Any assignment shall be in writing and shall contain an express assumption by the assignee of all liability accrued or thereafter accruing under this Contract. Consent by the School District to any assignment shall not constitute a course of conduct, dealing or performance with respect to any other assignment or proposed assignment. For purposes of this Section 11, an assignment includes the acquisition of the Contractor, or a controlling interest therein, through an asset sale or a corporate or other merger, the appointment of a receiver or bankruptcy trustee for the Contractor, and the transfer of this Contract or the Contractor in any bankruptcy or other insolvency-related proceeding. A receiver or trustee of or for the Contractor in any federal or state bankruptcy, insolvency or other proceeding concerning the Contractor shall comply with the requirements set forth in this Contract, including but not limited to this Section.

12. **Audits; Records and Payments; Inspectors General.**

a. **Audits.** From time to time during the Term, and for a period of six (6) years after the expiration or termination of this Contract (*see*, 24 Pa. Stat. § 5-518), the School District, the Controller of the City, the Commonwealth, including without limitation its Auditor General and the Pennsylvania Department of Education, or a department, agency or instrumentality of the

United States of America, if the School District funds this Contract with federal funds, or any of their authorized representatives (each, for the purposes of this Section, an "Auditor") may audit any and all aspects of the Contractor's performance under this Contract, including but not limited to its billings and invoices and payments received.

b. *Inspection.* If requested by an Auditor or the School District, the Contractor shall submit to the Auditor and the School District for review or inspection, all invoices presented for payment pursuant to this Contract, all cancelled checks, Materials, invoices, vouchers, reports, work product, work papers, books, records and accounts upon which the invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to this Contract. The Contractor acknowledges and agrees that any Auditor may inspect or review all of its Work and Materials, and all of its sites, locations and facilities related to its performance under this Contract. Inspection and review of Work and Materials shall take place at the offices of the Contractor in the City, or in another location with the Auditor's consent. The Contractor shall cooperate with all School District, City, Commonwealth and federal inspections and reviews conducted in accordance with the provisions of this Contract. The scope of such inspection and review of the Work and Materials, and sites, locations and facilities, including, without limitation, programs, lies in the sole discretion of the Auditor. Such inspection or review may include, without limitation, meetings with persons receiving services under this Contract, review of staffing ratios and job descriptions, and meetings with any of the Contractor's staff members who either directly or indirectly participate or participated in carrying out any of the Work, including preparing, delivering or installing any Materials.

c. *Retention and Availability of Records.* The Contractor shall retain all records, books of account and documentation pertaining to this Contract for the greater of (i) the period required by Applicable Law, or (ii) six (6) years following expiration or termination of this Contract; provided that if, however, any litigation, claim or audit commences prior to expiration of said six (6) year period, then the Contractor shall retain the records until all litigation, claims or audit findings have been completely terminated or resolved without right of further appeal. The Contractor shall make available, at the Contractor's office in the City or another Contractor office in reasonable proximity to the City, at reasonable times during the Term and for the period set forth in this Section 12, all records pertaining to this Contract for the purpose of inspection, audit or reproduction by any Auditor. The Contractor shall provide such records without unreasonable delay when requested by an Auditor.

d. *Inspector General; Inspectors General.* The School District's Inspector General shall enjoy all the rights, powers and privileges of an Auditor under this Contract, and any and all additional rights, powers and privileges as provided by Applicable Law and by delegation from the Board of Education or other duly constituted authority having jurisdiction, e.g., a commission. The Contractor shall cooperate and comply with any audit or investigation by the School District's Inspector General, or by any City, Commonwealth or federal inspector general having jurisdiction, and any joint investigation. The Contractor and its partners, members, shareholders, directors, officers, employees, agents, contractors and Subcontractors shall cooperate fully with the School District's Inspector General by providing true, correct and complete information and records, as well as all necessary or appropriate assistance in any matter investigated by the Inspector General. In any investigation the School District's Inspector General shall have and enjoy complete and unimpeded access to all papers, workpapers, books, records, documents, information, personnel, processes, e.g., meetings, data, computer hard drives and networks, e-mail, text or instant messages, facilities and other assets owned, leased, licensed or used by or for the School District, including but not limited to information regarding the Contractor or other School District contractors, or any other Person involved in any way with the School District, as deemed necessary in performing investigative or audit activities pertaining in any way to the business, operations or public functions of the School District or the Board of Education, and in the custody of the Contractor or any Subcontractor.

13. *Indemnification; Litigation Cooperation; Notice of Claims.*

a. *Indemnification.* The Contractor shall indemnify, defend and hold harmless the School District, its officers, employees, agents and the members of the Board of Education and the Commission, from and against any and all losses and expenses, including, but not limited to, litigation and settlement costs and attorneys' fees and costs, claims, suits, actions, damages, and liability for or on account of actual or alleged loss of life, bodily injury, personal injury, damage to property, or the use of facilities or equipment furnished to the Contractor, that arise out of or are related to the performance or non-performance of the Work by the Contractor or the Contractor's agents, Subcontractors, assignees, independent contractors, employees or servants. The Contractor shall indemnify, defend and hold harmless the School District, its officers, employees, agents and the members of the Board of Education and the Commission, from and against any and all losses and expenses, including, but not limited to, litigation and settlement costs and attorneys' fees and costs, claims, suits, actions, damages and liability for or on account of actual or alleged violation of any third party's copyright, trademark, patent, trade secret or other valid proprietary right, employment discrimination, contamination of or adverse effects on the environment, intentional acts or omissions, failure to pay any Subcontractors or suppliers, any Event of Default under this Contract, and breach, if any, of any Subcontract, that arise out of or are related to the performance or non-performance of the Work by the Contractor or the Contractor's agents, Subcontractors,

assignees, independent contractors, employees or servants.

b. *Indemnification; Contractor's Employees.* Except as set forth below in this subsection 13.b., this Section 13 does not require the Contractor to indemnify the School District to the extent of the School District's own negligent act or omission. This Section 13 protects the School District, its officers, employees, agents and the members of the Board of Education and the Commission from all claims arising during the Term asserted by employees, agents or workers of the Contractor or any Subcontractor who are injured on or by School District real or personal property, or who assert an employment claim of any kind against the School District, including but not limited to any claim or claims relating to the termination of employment, regardless of when the claimant makes the claim. Except as expressly set forth below in this subsection 13.b., the Parties shall not construe this Section 13 to alter, limit, negate, abridge or otherwise reduce any other right or obligation that would otherwise exist as to any Party or Person described in this Contract. This Section 13 functions independently of the Contractor's or its Subcontractors' insurance or lack thereof, and the Parties do not intend that rights set forth in this Section 13 be deemed limited by the Pennsylvania's Worker's Compensation Act. This Section 13 shall apply, particularly, but not exclusively, to the claims of the Contractor and all of its Subcontractors, and all of their respective officers, agents, representatives and employees, against the School District, its officers, employees and agents, and the members of the Board of Education and the Commission. The Contractor and all of its Subcontractors, and all of their respective officers, agents, representatives and employees, shall have no claim against the School District, its officers, employees and agents and the members of the Board of Education or the Commission, for the acts, failures to act or negligence of the School District, or its officers, employees and members of the Board of Education or the Commission.

c. *Litigation Cooperation.* If at any time, including after the expiration or earlier termination of the Term, the School District becomes involved in a dispute or receives notice of a claim, or is involved in litigation concerning the Work and Materials provided under this Contract, the resolution of which requires the services or cooperation of the Contractor, and the Contractor does not otherwise have a duty to indemnify and defend the School District pursuant to the provisions of subsection 13.a. above, the Contractor shall provide such services and shall cooperate with the School District in resolving such claim or litigation as part of the Work and Materials under this Contract.

d. *Notice of Claims.* If the Contractor receives notice of a legal claim against it in connection with or in any way related to this Contract, the Contractor shall (i) submit appropriate written notice of such claim to its insurance carrier within the time frame required for submission of claims by the applicable insurance policy and, (ii) within five (5) business days of receipt of notice of the claim, give notice of such claim to the School District.

14. School District Statutory Immunity. Any other term, covenant or condition of this Contract to the contrary notwithstanding, the School District, its officers, employees and agents and the members of the Board of Education and the Commission, retain their statutory governmental, official and any other immunity provided pursuant to Applicable Law, including 42 Pa. Cons. Stat. Ann. §§ 8501 and 8541 *et seq.*, and do not waive the defenses of governmental and official immunity derived from such laws. The School District does not waive for itself or for its officers, employees, or agents, or for the members of the Board of Education and the Commission, any other defenses or immunities available to it or any of them.

15. Insurance. Prior to the commencement of any of the Work and until the latest of completion of the Work, final payment by the School District, or final acceptance of the Work, the Contractor shall provide and maintain the following minimum levels of insurance at the Contractor's own expense. The Contractor shall include in its bid, proposal, or quote its cost of the required insurance; the Parties shall make no adjustment to the Compensation on account of these insurance costs. The term "Contractor" shall include Subcontractors and Sub-Subcontractors at every tier. The Contractor shall deliver to the School District a certificate or certificates of insurance evidencing and reflecting the effective date of coverage, as set forth below in subsection 15.e. In no event shall the Contractor commence or permit commencement of any of the Work unless and until the Contractor delivers and the School District has approved the required evidence of insurance in conformity with this Contract. If the School District finds the Contractor's evidence of insurance non-compliant, the School District shall have the right, but not the duty, at its discretion, to purchase the required insurance coverage or coverages, at the sole cost and expense of the Contractor, by set-off against Compensation accrued or accruing, or through the Contractor's direct payment or reimbursement to the School District. The School District by notice or other communication may require additional coverage or coverages, or higher coverage limits, aggregate limits or sub-limits, at any time during the Term if in the School District's sole judgment a risk or risks warrant such additional coverage or limits.

a. *Rating.* The Contractor shall procure all insurance from insurers permitted to do business in the State in which the Work takes place, having an A.M. Best Rating of at least "A-, Class VIII".

b. *Self-Insured Retention.* The Contractor shall not have a Self-Insured Retention (“SIR”) on any policy greater than \$50,000; any and all SIRs shall remain the Contractor’s responsibility. In the event any policy includes an SIR, the Contractor shall provide the additional insured requirements specified herein within the SIR.

c. *Occurrence Basis.* The Contractor shall ensure that its insurer or insurers write all insurance required hereunder, with the exception of the Professional Liability Insurance, on an “occurrence” basis. Claims-Made coverage must include:

i. a retroactive date on or prior to the start of Work under this Contract; and

ii. “tail coverage/an extended reporting period” or coverage for a period of three (3) years subsequent to the later of completion of the Work or final payment.

d. *Notice of Cancellation or Non-Renewal.* The Contractor’s insurance carrier or carriers each shall agree to provide at least thirty (30) days prior written notice to the School District in the event of any cancellation or non-renewal of any coverage. In the event of cancellation or non-renewal of any coverage or coverages, the Contractor shall replace any such coverage or coverages so as to comply with the insurance requirements set forth in this Contract, with no lapse of coverage for any time period. In the event the Contractor’s insurance carrier or carriers do not issue or endorse their policy or policies to comply with this subsection 15.d, above, the Contractor shall give notice to the School District of its receipt of any notice of cancellation or non-renewal at least thirty (30) days prior to the effective date of the proposed cancellation or non-renewal.

e. *Certificates.* The Contractor shall deliver to the School District the required certificate or certificates of insurance, evidencing the insurance coverages required under this Contract, at least ten (10) days prior to the start of the Work and thereafter promptly before or on renewal or replacement of each coverage. The Contractor shall not begin any Work until the School District has reviewed and in its discretion approved the certificate of insurance. The required insurance shall not contain any exclusions or endorsements unacceptable to the School District. The Contractor shall send all certificates of insurance to:

The School District of Philadelphia
Office of Risk Management
440 North Broad Street, Suite 325
Philadelphia, PA 19130-4015
Attn.: Riccardo Zucaro, Director of Insurance Risk Management
E-mail: rzucaro@philasd.org and crollins@philasd.org

Failure of the School District to demand these certificates or other evidence of full compliance with these insurance requirements or failure of the School District to identify a deficiency from evidence that is provided shall not constitute a waiver of the Contractor's obligation to maintain such insurance.

With respect to insurance maintained after final payment in compliance with a requirement below, an additional certificate(s) evidencing such coverage shall be provided to the School District with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the time period for which such insurance must be maintained.

f. *Additional Insured.* The Contractor shall add the School District, and such other public entities as the School District may require, as additional insureds on all liability policies, except Workers’ Compensation and Professional Liability Policy, where applicable, for ongoing operations and completed operations, using ISO Endorsements CG 2010 and CG 2037, or their equivalents, on a primary noncontributory basis. Coverage shall include ongoing and completed operations. Each of the additional insured’s respective directors, officers, board members, employees, agents and representatives shall also constitute covered additional insureds. The Contractor and its insurer or insurers shall provide coverage for a period of three (3) years subsequent to the later of completion of Work or final payment. The School District reserves the right to require the Contractor to name other parties as additional insureds. There shall be no “Insured versus Insured Exclusion” on any policies (other than “Named Insured versus Named Insured”); all policies will provide for “cross liability coverage”, per standard ISO policy forms.

g. *Waiver of Rights of Subrogation.* The Contractor shall waive all rights of recovery against the School District and all the additional insureds for loss or damage covered by any of the insurance maintained by the Contractor.

h. *No Limitation of Liability.* Neither the Parties nor any tribunal or adjudicatory body shall or may construe the amount of insurance set forth in the insurance coverages required in this Section 15, as a limitation of the liability of the Contractor. The carrying of insurance as set forth in this Section 15 shall not relieve the Contractor of any duty or liability under

the Contract, except to the extent of insurance proceeds paid. Any type of insurance, or any increase in limits of liability, not described above, which the Contractor requires for its own protection or on account of statute shall be its own expense.

i. Notice of Accidents, Claims and Suits. The Contractor shall promptly notify the School District = and the appropriate insurance company(ies) in writing of any accident(s) as well as any claim, suit or process received by the Contractor arising in the course of operations under the Contract. The Contractor shall forward such documents received to its insurance company(ies), as soon as practicable, or as required by their insurance policy(ies).

j. Required Coverages. The following may be provided through a combination of primary and excess policies in order to meet the minimum limits set forth below:

i. Workers' Compensation and Employer's Liability: Provided in the State in which the Contractor performs the Work and elsewhere as required, and shall include:

A. Workers' Compensation Coverage: Statutory Requirements

B. Employers' Liability Limits not less than:

- | | | |
|-----|----------------------------|-------------------------|
| (1) | Bodily Injury by Accident: | \$100,000 Each Accident |
| (2) | Bodily Injury by Disease: | \$100,000 Each Employee |
| (3) | Bodily Injury by Disease: | \$500,000 Policy Limit |

C. Includes coverage for sole proprietors, partners, members or officers who will be performing the Work.

ii. Commercial General Liability: Provided on ISO form CG 00 01 04 13 or an equivalent form including Premises - Operations, Independent Contractors, Products/Completed Operations, Broad Form Property Damage, Contractual Liability, and Personal Injury and Advertising Injury.

A. Occurrence Form with the following limits:

- | | | |
|-----|--|-------------|
| (1) | General Aggregate: | \$2,000,000 |
| (2) | Products/Completed Operations Aggregate: | \$2,000,000 |
| (3) | Each Occurrence: | \$1,000,000 |
| (4) | Personal and Advertising Injury: | \$1,000,000 |

B. Products/Completed Operations Coverage must be maintained for a period of at least three (3) years after final payment/completion of the Work, including coverage for the additional insureds as set forth in this Section 15.

C. The General Aggregate Limit must apply on a Per Project basis.

D. Coverage for "Resulting Damage".

E. No sexual abuse or molestation exclusion.

F. No amendment to the definition of an "Insured Contract".

iii. Automobile Liability:

A. Coverage to include All Owned, Hired and Non-Owned Vehicles, or "Any Auto". If the Contractor does not have any Owned Vehicles the Contractor shall nevertheless maintain coverage for Hired and Non-Owned Vehicles as either a stand-alone policy or endorsed onto the Commercial General Liability policy above.

B. Per Accident Combined Single Limit: \$1,000,000

iv. Professional Liability Insurance, including Technology E&O: