Exhibit "C"

School District
Standard Terms and Conditions
Agreement for Services
Updated August 2023

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*. In connection with this Contract, the Contractor shall comply with all Applicable Law, defined in subsection 23.b., below, 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. 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, the Contractor shall 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 reasonable location selected 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 School District premises, 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.

m. *Disaster Recovery/Business Continuity*. The Contractor shall maintain appropriate disaster recovery/business continuity and contingency plans providing for continued operation in the event of an adverse event or circumstance affecting the Contractor's business operations so as to minimize any interruption of the Work to the School District.

2. ***Background Checks***.

a. *Required Background Checks*. For the Contractor and 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 while performing the Work, as defined by 23 Pa. Cons. Stat. Ann. § 6303(a), as amended, the Contractor shall submit true, correct, complete, and current copies of the following clearances prior to starting any Work, in accordance with any and all Applicable Laws, including 24 Pa. Stat. § 1-111, as amended, and 23 Pa. Cons. Stat. Ann. §§ 6344, 6344.2., as amended:

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) with 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 (i) one (1) year for paid individuals (including employees, officers, agents, servants, and Subcontractors) prior to the later of the individual's hiring or engagement by the Contractor or Subcontractor, or the commencement of the Term, and (ii) five (5) years for unpaid volunteers prior to the later of the individual's engagement by the Contractor or Subcontractor or the commencement of the Term. In both cases, where the School District has received and properly reviewed the individual's background checks within the past five (5) years, the Parties may rely on the individual's prior submission provided that all individuals relying on prior submitted checks must submit an arrest or conviction report and a certification form, both in a form acceptable to the School District. 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, that any officer, employee or agent of the Contractor or of any Subcontractor report an arrest or conviction for an offense listed in 24 Pa. Stat. § 1-111(e) within seventy-two (72) hours of that arrest. The Contractor shall provide notice to the School District, in a prompt and timely manner, all notices and reports required, and all background 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 payment of any City of Philadelphia (the "City"), 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 written proof 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, to withhold payment of, or any combination of the these options as the School District sees fit, any and all Compensation accruing and payable to the Contractor under this Contract or 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 Board of Education 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. Further, neither the Contractor nor its agents, employees, or Subcontractors have any power to bind legally the School District in any way or for any purpose whatsoever, 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 and Compliance with Diversity Policies***.

a. The Contractor, for itself, its directors, 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.a., 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, as set forth in this

Contract.

b. The Board of Education has adopted a diversity policy, Policy 612: Business Diversity in the Procurement of Materials and Contracted Services ("Diversity Policy"), which relates to the solicitation and participation of Certified Minority-Owned Business Enterprises, Certified Women-Owned Business Enterprises (collectively "M/WBE"), and other Certified diverse, small, or disadvantaged businesses in School District procurements and contracts to further the School District's diversity and anti-discrimination goals. In furtherance of the Diversity Policy, the School District has the discretion to establish participation rates and ranges for Certified M/WBEs and other Certified diverse, small, or disadvantaged businesses in order to encourage meaningful participation of M/WBEs in the provision of quality goods and services to the School District.

c. The Contractor shall ensure that Certified M/WBEs and Certified diverse, small or disadvantaged businesses have a meaningful and substantial opportunity to participate in the performance of the Contract. The Contractor covenants, represents and warrants that the Contractor, its Subcontractors and partners commit to adhering to anti-discrimination laws and policies, diversity goals and workforce management practices that promote Meaningful and Substantial Participation of Certified M/WBEs and other Certified disadvantaged business enterprises throughout the Term of the Contract. If the Contractor has submitted a plan describing the participation of Certified M/WBEs and other Certified diverse, small, or disadvantaged businesses ("Participation Plan") as part of a public solicitation, Request for Proposal, or as required by School District policies, then the Contractor shall comply with its Participation Plan. The Contractor's Participation Plan shall be attached to this Contract and made a part hereof. The commitments made by the Contractor in the Participation Plan are material representations that the School District relies upon in awarding and entering into this Contract.

d. The Participation Plan must demonstrate that the participation of Certified M/WBEs and other Certified diverse, small, or disadvantaged businesses constitutes Meaningful and Substantial Participation in the Work , the Contract and any subsequent amendment. Participation shall be measured in terms of actual dollars received for work performed or services provided by Certified M/WBEs and other Certified diverse, small, or disadvantaged businesses and the Contractor's workforce management practices. The Contractor shall take good faith actions to achieve the requirements of the Diversity Policy in conformity with Board of Education policies, including but not limited to submitting a Participation Plan.

e. The Contractor shall not increase or decrease the percentages of Work, scope of Work, or dollar amounts for any Certified M/WBE and other Certified diverse, small, or disadvantaged businesses set forth in the Participation Plan without the written approval of the School District. If the requested change is approved, the Contractor shall promptly submit a revised Participation Plan for School District approval. The Parties shall incorporate the revised Participation Plan in this Contract by amendment.

f. In addition to and not in derogation of the available rights and remedies under subsection 20.c., the School District may, if the Contractor breaches this Section 10, pursue suspension or debarment in conformity with the procedures set forth in the Diversity Policy.

g. In addition to and not in derogation of any reporting requirements set forth in subsection 1.h., when required by the Diversity Policy or the Participation Plan, as applicable, the Contractor shall keep appropriate records and periodically report to the School District regarding the use of Certified M/WBEs and other Certified diverse, small, or disadvantaged businesses.

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.

b. 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.

c. *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 or obligation 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 or obligation 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, 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 canceled 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, 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, Materials, and sites, locations and facilities 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 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 from and against any and all losses and expenses, including but not limited to, litigation and settlement costs, 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 from and against any and all losses and expenses, including, but not limited to, litigation and settlement costs, 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 Workers' 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, agents, and the members of the Board of Education, 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*., as amended. The Contractor acknowledges and agrees that the School District (a) is a Local Agency, as defined in 42 Pa. Const. State. Ann. §§ 8501 and 8541; and (b) does not waive, nor have the power to waive, for itself or for its officers, employees, and for the members of the Board of Education and the Commission, by way of indemnity or otherwise, the defenses of governmental, official or any other immunity derived from said statutes or provided by law .

15. ***Insurance***. Prior to the commencement of any of the Work, the Contractor shall provide and maintain the following minimum levels of insurance at the Contractor's own expense until the latest of completion of the Work, final payment by the School District or final acceptance of the Work. 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. In the description of operations section of the required certificate, it must be written that the School District, its Board of Education and its members, officers, employees, and agents shall be named as additional insured. 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.:Director of Risk Management
E-mail: riskmanagement@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:

A. Minimum Limits of Liability:

(1)	Per Claim	$2,000,000
(2)	Aggregate:	$2,000,000

B. The Definition of "Covered Works" shall include the Works required in the scope of this Contract which shall include but not be limited to software development.

C. Coverage includes but is not limited to loss or disclosure of electronic data, media and contents rights software copyright infringement and network security failure.

D. The professional liability insurance shall cover errors and omissions, including liability assumed under this Contract. If the Contractor provides educational services, the professional liability insurance coverage shall also include educational wrongful acts, employment practices wrongful acts, and directors and executive officers' wrongful acts.

v. Privacy/Cyber Liability, Including Cyber Extortion & Cyber Crime:

A. The Contractor shall maintain coverage for third party liability arising out of breach of privacy, inclusive of confidential and proprietary business information, HIPAA violations and other breaches of personally identifiable information, or protected health information, or both, that may arise from their Work with this Contract.

B. Minimum Limits of Liability:

(1)	Per Claim	$1,000,000
(2)	Aggregate:	$1,000,000

C. Privacy Breach Notification and Credit Monitoring: $5,000,000 per Occurrence.

16. ***Confidentiality; Student Records; Publication Rights; Data Ownership***.

a. *Confidential Information*. The Contractor shall keep in strict confidence all information acquired in connection with or as a result of this Contract that is not generally known to others ("Confidential Information"). During the Term and at any time thereafter, without the prior written consent of the School District, the Contractor shall not disclose or use to its own or any other Person's advantage, profit or gain any Confidential Information or any other information subject to a third party's proprietary right, such as a copyrighted or trademarked work, that the School District makes available to Contractor in connection with this Contract.

b. *Student Records*. The Contractor shall keep any and all records and information, in whatever form or format received, pertaining to the School District's individual students and children, including but not limited to any academic or grade information, attendance, truancy, discipline, receipt of special education services or supplementary educational services, receipt of social security or public benefits, or information as to race, ethnicity or disability in strict confidence as required and to the fullest extent required by any Applicable Law, including but not limited to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.. The Contractor acknowledges and agrees that FERPA limits the transfer and re-transfer of education records and personally identifiable information in education records. Unless and until agreed otherwise by the Parties, the School District shall transmit information or records, or both, protected by FERPA solely to the individual named in Section 7 of the Agreement for Services, and such other duly authorized individuals as the Contractor may specify by notice to the

School District (*see,* Section 7 of the Agreement for Services and Section 21 of these Standard Terms and Conditions).

c. *Publication Rights*. With regard to any reports, studies or other works developed in the course of this Contract, or as a result thereof, the Contractor shall not publish Confidential Information or any other information which identifies students, employees or officers of the School District by name without first obtaining written consent from such individuals, or in the case of a student, his or her parent or legal guardian. Except upon the prior consent of the School District, the Contractor shall have no right to use the name of the School District or its seal, logos, or marks. The Contractor shall provide to the School District, for its review, any proposed report, study, publication, brochure, or advertisement that names the School District or uses its seal, logos, or marks not less than thirty (30) calendar days prior to submission for publication. The Contractor shall remove the School District's name, seal, logos, or marks and any other information identifying the School District from the publication if the School District does not expressly consent to the Contractor's requested use. The Contractor shall not issue, publish, or divulge any Materials developed or used in the performance of this Contract or make any statement to the media relating to the Contract without the prior consent of the School District.

d. *Data Ownership*. The School District retains and reserves its ownership of, and all right, title and interest in, any and all data provided by the School District to the Contractor under or in connection with this Contract. The Contractor acknowledges and agrees that the School District grants to the Contractor a limited, revocable, nonexclusive right and license to use any such School District data, which may include personally identifiable information subject to FERPA, solely for the Contractor's use in carrying out the Work set forth in this Contract and solely in conformity with FERPA and other Applicable Law. At any time during and after the expiration or earlier termination of the Term, the School District may request that the Contractor deliver to the School District all or any portion of any data provided by the School District; promptly upon receipt of any such request the Contractor shall, without any charge to the School District, deliver to the School District the requested data in a usable format reasonably specified by the School District. School District data includes any information and data developed by the Contractor, *e.g.*, by populating a database, as part of or associated with the Work set forth in this Contract. The Contractor shall not destroy nor permit the destruction of any School District data during the Term, except upon the prior express written consent of the School District. Upon the expiration or earlier termination of the Term, the Contractor shall promptly and in any event not later than ten (10) business days after request by the School District, return to the School District all School District data then in the possession or control of the Contractor. Once the Contractor has returned all School District data, it shall promptly destroy and dispose of any remaining copies of the data in its possession or in the possession of any Subcontractor.

e. *Security*. The Contractor will establish and maintain physical, administrative, technical, electronic and operational security measures to protect the confidentiality, integrity and availability of Confidential Information or any other information which identifies students, employees or officers of the School District and systems consistent with best practices and industry standards and with Applicable Law applicable to the Contractor and the Work ("Security Programs"). The School District may conduct, at the School District's expense, vulnerability scanning against networks, systems, and Internet Protocol addresses where the School District data reside.

f. *Data Breach.* The Contractor shall disclose to the School District any suspected or known occurrence of any misuse or wrongful disclosure of Confidential Information or any other information which identifies students, employees or officers of the School District, including but not limited to system breaches that may adversely affect the School District or the School District's students, employees or officers (a "Data Breach") promptly and timely, in any case within no more than twenty-four (24) hours of becoming aware of the Data Breach. To the extent that the Data Breach resulted from acts or omissions of the Contractor or its Subcontractors, Contractor shall be responsible for all actual, necessary, and appropriate costs incurred by the School District or the Contractor arising from, relating to or in connection with the Data Breach.

17. ***Materials; Intellectual Property***.

a. *Computer Applications, Software, Programs, etc*. The Contractor shall ensure that all of its computer applications, programs, tapes and software developed under this Contract comply with any pertinent specifications or requirements set by the School District and with all Applicable Law, including but not limited to FERPA and the Americans with Disabilities Act.

b. *License; Preexisting and Independently Developed Materials*. For the duration of the Term, as the Parties may agree to extend it, the Contractor hereby grants and shall require its Subcontractors, if any, to grant to the School District the irrevocable, royalty-free right to reproduce, distribute copies of, adapt, display, perform, translate, and publish throughout the universe, in any medium now known or hereafter invented, all Materials and works of authorship, including without limitation studies, media, curricula, and other things of any nature developed or delivered to the School District pursuant to this Contract. For avoidance of doubt, subject to the license granted in this subsection 17.b., each Party otherwise retains ownership of all of its pre-existing and independently developed intellectual property.

18. ***Conflict of Interest***.

a. *Disclosure of Conflict of Interest*. The Contractor represents, warrants and covenants that it has no public or private interest, which does or may conflict in any manner with the performance of the Work and that neither it, nor any of its directors, officers, members, partners, employees, or Subcontractors has or shall, during the Term acquire, directly or indirectly, any such interest. The Contractor shall disclose promptly and fully to the School District's Responsible Official all interests which constitute or may constitute such a conflict.

b. *Improper Gift; Improper Relationship*. The Contractor represents, warrants and covenants that it has not directly or indirectly offered or given and shall not directly or indirectly offer or give any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value to any School District employee who participated in the decision to authorize or enter into this Contract. The Contractor warrants that, to its knowledge, neither a School District employee or officer who participated in the decision to enter into this Contract, nor any member of the employee's immediate family, receives more than $1,000 per year from the Contractor, has a direct or indirect investment worth $1,000 or more in the Contractor or is a director, officer, partner, trustee or employee of the Contractor.

c. *School District Employees Not to Benefit*. The Contractor shall not make any payment or give anything of more than nominal value to any School District official or employee except in accordance with Applicable Law and School District policy. The Contractor shall comply with the School District's Vendor Code of Ethics, and also, to the extent applicable, with the School District's Code of Ethics for School District officers and employees. The Contractor shall disclose to the School District the name of each School District official or employee who receives payment from the Contractor, the amount such official or employee receives and the services rendered by the official or employee in consideration of the payment.

19. ***Default; Notice and Cure; Remedies***.

a. *Event of Default*. Each of the following constitutes an Event of Default by the Contractor under this Contract:

i. Failure by the Contractor or any Subcontractor to comply with any term, covenant or condition set forth in this Contract.

ii. The Contractor's (a) filing for bankruptcy, (b) making any assignment for the benefit of creditors, (c) consent to the appointment of a trustee or receiver, (d) insolvency, as defined by Applicable Law, or (e) the filing of an involuntary petition against the Contractor under the Federal Bankruptcy Code or any similar state or federal law which remains undismissed for a period of forty-five (45) days.

iii. Default by the Contractor under any other agreement the Contractor may have with the School District.

iv. Any material misrepresentation by the Contractor in (a) this Contract, (b) any other document submitted to the School District by the Contractor, or (c) otherwise by the Contractor directly or indirectly to the School District in connection with the School District's decision to execute, deliver and perform this Contract.

v. Failure of the Contractor to provide, within five (5) business days, assurance reasonably

acceptable to the School District that it can perform the Work in conformity with the terms of the Contract if (a) the School District has a reasonable basis to believe at any time during the Term that the Contractor will not be able to perform the Work, and (b) the School District demands in writing assurance of the Contractor's performance.

vi. Misappropriation by the Contractor of any funds provided under this Contract or failure by the Contractor to notify the School District upon discovery of any misappropriation.

vii. Indictment of or other issuance of formal criminal charges against the Contractor, or any of its directors, employees, agents or Subcontractors or any of the directors, employees or agents of a Subcontractor or any criminal offense or any other violation of Applicable Law directly relating to this Contract, the Work or the Materials, or which adversely affects the Contractor's performance of this Contract in accordance with its terms, whether or not a court of law or other tribunal ultimately accepts a verdict or plea of guilty or no contest regarding the charged offense.

viii. Debarment or suspension of the Contractor or any director, agent, employee or Subcontractor of the Contractor, or any Person controlling, under common control with, or controlled by, the Contractor under a federal, state or local law, rule or regulation by any duly authorized federal, state or local governmental entity, including but not limited to the School District.

ix. Failure by the Contractor to comply with any term, covenant or condition set forth in Section 4 above, or the breach of any of the Contractor's representations and warranties set forth in subsection 22.f., below.

b. *Notice and Cure*. If the Contractor commits or permits any Event of Default, the School District shall notify the Contractor of its determination that an Event of Default has occurred. The Contractor shall have ten (10) business days from receipt of that notice, or such additional cure period as the School District may authorize in its sole discretion, to correct the Event of Default; provided, however, that no such notice from the School District or period of cure shall be required before invoking the remedies described in subsection 19.c. below if: (i) the Contractor has temporarily or permanently ceased performing the Work; (ii) an emergency has occurred relating to the Work, and that emergency requires immediate exercise of the School District's rights or remedies, as determined by the School District in its sole discretion; (iii) the School District has previously notified the Contractor more than once in the preceding twelve (12) month period of any Event of Default under this Contract; (iv) an Event of Default occurs as described in subsection 19.a. vi., vii., or viii. above; or (v) the Contractor breaches any of its obligations under Sections 2 or 9 above. Nothing set forth in this subsection 19.b. shall limit the School District's rights under subsection 19.c.

c. *Remedies*. If the Contractor does not cure the Event of Default within the period allowed by the School District, or if the Contractor commits or permits an Event of Default for which subsection 19.b. above provides no notice or period of cure, then the School District may, without further notice or demand to the Contractor, and without waiving or releasing the Contractor from any of its obligations under this Contract, invoke and pursue any or all of the following remedies:

i. terminate this Contract by giving the Contractor a Termination Notice.

ii. perform, or cause a third party to perform, this Contract, in whole or in part. The Contractor shall be liable to the School District, as damages, for all expenses incurred by the School District or a third party pursuant to this subsection 19.c.ii., together with interest at the prime rate of interest as published from time to time by the *Wall Street Journal*, plus five percentage points (5.0%). The School District shall not in any event be liable for inconvenience, expense, loss of profits or other damage incurred by the Contractor due to the School District's performance or paying such costs or expenses.

iii. withhold payment of, or offset against, any funds payable to or for the benefit of the Contractor.

iv. collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of the Contractor.

v. any other legal or equitable remedy available to the School District, including but not limited to a legal action for breach and damages against the Contractor.

d. *Specific Performance*. The Contractor's Work and Materials represent unique services and things, not otherwise readily available to the School District. Accordingly, the Contractor acknowledges that, in addition to all other remedies, the School District shall have the right to enforce the terms of this Contract by a decree of specific performance or an injunction, or both, restraining a violation, or attempted or threatened violation, of any term, covenant or condition set forth in of this Contract.

e. *Concurrent Pursuit of Remedies*. The School District may exercise any or all of the remedies set forth in this Section 19, each of which the School District may pursue separately or in conjunction with any other remedy or remedies, as the School District shall determine. The School District may in its sole discretion elect not to exercise any of the above remedies and may permit the Contractor to continue to perform the Work. No extension or indulgence granted by the School District to the Contractor shall operate as a waiver of any of the School District's rights in connection with this Contract.

20. ***Termination for Convenience***. The School District may terminate this Contract for its convenience, that is, for any reason or for no reason at all, at any time, in its sole discretion, by providing a Termination Notice upon fourteen (14) days prior written notice to the Contractor of the School District's termination of this Contract, without penalty, cost or liability to the School District. If the School District terminates this Contract, the School District shall pay the Contractor for any Work satisfactorily completed before the effective date of termination, but in no event shall the Contractor have any right to receive costs caused by or related to loss of profits for Work that the Contractor did not perform because of the early termination, or for loss of profits for services the Contractor could have performed for other Persons absent its engagement under this Contract.

a. *Contractor Actions upon Termination*. Upon receipt of a Termination Notice from the School District under Sections 6, 19, or 20 above, the Contractor shall take immediate action to effect the orderly discontinuance of the Work. The Contractor shall collect, assemble and transmit to the School District, at the Contractor's sole expense, all Materials developed under this Contract. The Contractor shall clearly label and index to the satisfaction of the School District all such Materials, and shall deliver all such Materials to the School District within thirty (30) days after receipt of a Termination Notice, or in such shorter period as the School District may specify in its Termination Notice.

21. ***Notices.*** Except as expressly provided to the contrary in any other Section of this Contract, the Parties shall give all notices, waivers, consents and approvals required under this Contract in writing. The Parties shall deem any notices, waivers, consents and approvals duly given (a) when received or refused if delivered by hand with receipt given or refused; (b) on the next business day if delivered by a nationally recognized overnight courier service (*e.g.*, Federal Express, United Parcel Service), or refused upon courier's attempt to deliver; (c) upon receipt or refusal of delivery if sent by certified or registered United States mail, return receipt requested; or (d) upon proper transmission of an electronic mail. Any notice sent by electronic mail must be clearly labeled in the subject line identifying the electronic mail communication as a legal notice under the Contract and shall be in all capital letters. In each case the Parties shall send notices to the other Party's representative as set forth in and at the address set forth in Section 6 of the Agreement for Services. Each Party may change its designee for receipt of notice in Section 6 of the Agreement for Services by giving notice thereof to the other Party in conformity with this Section 21. Further, each Party must report any changes in the contact information for its designee to the other Party in a timely manner.

22. ***Representations and Warranties***. Effective as of the execution and delivery of this Contract and throughout the Term, the Contractor makes the following representations, warranties and covenants to the School District:

a. The Contractor has all necessary power and authority to execute, deliver and perform this Contract and has completed all actions necessary in order duly to authorize the execution, delivery and performance of this Contract, including duly authorizing the Person who signs this Contract to do so on its behalf.

b. This Contract, when executed and delivered, shall constitute a legal, valid, and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms.

c. The Contractor is financially solvent, can and shall pay all its debts as they mature, and possesses sufficient working capital to carry out the Work.

d. The Contractor owns or has duly and validly licensed from a third party the Materials and any other materials used by the Contractor in carrying out the Work and the Contractor's use or delivery thereof to the School District in connection with this Contract, and any use thereof by the School District as contemplated by this Contract, does not and shall not violate any third party's copyright, patent, trade secret or other proprietary right.

e. The Contractor is and shall be, at all times during the Term, duly qualified to transact business in the Commonwealth and professionally competent and duly licensed to carry out the Work, if the performance of the Work requires any license or licenses.

f. The Contractor and any other Person controlling, controlled by, or under common control with the Contractor are not currently indebted to the City or the Commonwealth for or on account of any delinquent taxes, or other indebtedness or obligations, including but not limited to any taxes imposed, levied, authorized, or assessed by the Commonwealth or the City, including any tax imposed, levied, authorized, or assessed for or on behalf of the School District, for which no written settlement agreement or payment plan with the City or the Commonwealth, as the case may be, has been executed and delivered and the payments are current.

g. Neither the Contractor nor any of its principals or Subcontractors, nor any other Person controlling, controlled by, or under common control with, the Contractor, are under suspension or debarment, have received official notice of commencement of proceedings for debarment or have been declared ineligible for contracts, bids, RFPs or contract awards by the Commonwealth, the City, any Federal agency or any school district.

The Contractor shall provide immediate written notice to the Responsible Official if at any time during the Term the Contractor learns that any of these representations, warranties or covenants was or has become erroneous.

23. ***Definitions***. Except as expressly provided to the contrary elsewhere in these Standard Terms and Conditions or in the Agreement for Services, capitalized terms shall have the meanings specified in this Section 23. In the event of a conflict between a definition in these Standard Terms and Conditions and the Agreement for Services, the definition in the Agreement for Services shall apply. In the event of a conflict between a definition in any exhibit, addendum or attachment to the Agreement for Services and a definition in these Standard Terms and Conditions, the definition in these Standard Terms and Conditions shall apply.

a. *Agreement for Services*. "Agreement for Services" means the instrument headed "Agreement for Services," which forms a part of this Contract and which contains the signatures of the School District and the Contractor, and sets forth certain of the terms, covenants and conditions specific to the Contractor's engagement.

b. *Applicable Law*. "Applicable Law" means and includes all federal, state, and local statutes, ordinances, resolutions and regulations, including the rules and regulations of any government authority, School District rules, regulations and policies applicable to the School District, the Contractor and the Work, and includes all applicable case law, court orders, injunctions and consent decrees.

c. *Board of Education*. "Board of Education" means the Board of Education as established in Article XII of the Home Rule Charter.

d. *Certified.* "Certified" means a contractor certified by a certifying agency approved by the School District at the discretion of Procurement Services.

e. *City*. "City" has the definition set forth above in subsection 4.a.

f. *Commission*. "Commission" has the definition set forth above in subsection 4.a.

g. *Commonwealth*. "Commonwealth" has the definition set forth above in subsection 1.l.

h. *Compensation*. "Compensation" has the definition set forth in Section 4 of the Agreement for Services.

i. *Contract*. "Contract" has the definition set forth in the preamble of the Agreement for Services, which includes the instruments integrated into and forming a part of this Contract, *i.e*., the Agreement for Services, Exhibit "A", Exhibit "B", if any, these Standard Terms and Conditions and any other Exhibit incorporated into this Contract as set forth in the Agreement for Services.

j. *Control.* "Control" means, for purposes of determining whether a business is a Minority-owned Business Enterprise or Women-owned Business Enterprise, that the minority group member owners or women owners: (1) possess and exercise the legal authority and power to manage business assets, goodwill and daily operations of the business; and (2) actively and continuously exercise this managerial authority and power in determining the policies and directing the operations of the business.

k. *Diversity Policy.* "Diversity Policy" means Policy 612: Business Diversity in the Procurement of Materials and Contracted Services and 612 Administrative Procedure as adopted by the Board of Education on January 30, 2020, by its Board Action Item Number 1 and any subsequent revision adopted by the Board of Education. .

l. *Event of Default*. "Event of Default" means those events defined and identified above in subsection 19.a.

m. *FERPA*. "FERPA" has the definition set forth above in subsection 16.b.

n. *Materials*. "Materials" means any and all reports, records, documents, documentation, information, supplies, plans, original drawings, specifications, computations, sketches, renderings, arrangements, videos, pamphlets, advertisements, statistics and other data, computer tapes, computer programs, software, and other tangible work product, materials or goods prepared, supplied or developed by the Contractor as part of or in connection with the Work, or for the Contractor by a Subcontractor in connection with the Work, and deliverable or delivered to the School District by the Contractor or its Subcontractor pursuant to this Contract.

o. *Meaningful and Substantial Participation.* "Meaningful and Substantial Participation" means a participation level for the Contractor that meets or exceeds the targeted ranges of participation established for a bid or proposal, which reflects the availability of bona fide M/WBEs in the Philadelphia Metropolitan Statistical Area for work of the nature of the Work set forth in this Contract.

p. *Minority-owned Business Enterprise (MBE) or Women-owned Business Enterprise (WBE).* An entity certified as a Minority-owned Business Enterprise (MBE) or Women-owned Business Enterprise (WBE) by a third-party certification agency recognized by the School District.

q. *M/WBEs*. A Minority -owned Business Enterprise or Women-owned Business Enterprise.

r. *Party; Parties*. A "Party" means either the School District or the Contractor; the "Parties" means the School District and the Contractor.

s. *Person*. "Person" means any individual, association, partnership, limited partnership, joint venture, corporation, limited liability company or other form of entity or association recognized at law.

t. *Responsible Official*. "Responsible Official" means the School District official named in Section 7 of the Agreement for Services.

u. *Subcontract; Subcontractor*. "Subcontract" means a contract made between the Contractor and a Subcontractor providing for the completion of some part or parts of the Work or Materials by a Subcontractor. "Subcontractor" means a Person performing under a contract with the Contractor a part of the Work or Materials that

the Contractor has agreed to carry out pursuant to this Contract.

v. *Tax Policy*. "Tax Policy" has the definition set forth above in subsection 4.a.

w. *Term*. "Term" has the definition set forth in Section 3 of the Agreement for Services.

x. *Termination Notice*. "Termination Notice" means a notice given to the Contractor by the School District of its intent to terminate the Contract under the terms of Sections 6, 19 or 20 and the effective date of the termination of the Contract.

y. *Work*. "Work" has the definition set forth in Section 1 of the Agreement for Services and includes any relevant exhibits or addenda forming part of this Contract.

Unless otherwise expressly defined in this Contract, words that have well-established technical meanings or definitions in the field of public primary and secondary education have the same well-established meanings or definitions when used in this Contract.

24. ***Miscellaneous***.

a. *Applicable Law; Venue*. The Parties, and any court or other tribunal, shall construe and enforce this Contract under the laws of the Commonwealth, regardless of its conflict of laws provisions, and without the aid of any canon, custom or rule of law requiring construction against the draftsperson. In the event that the Parties cannot amicably resolve any dispute and a Party resorts to legal action, that Party shall file suit only in the state or federal courts sitting in Philadelphia, Pennsylvania.

b. *Headings*. Section headings in this Contract serve for reference only and shall not in any way affect the meaning or interpretation of this Contract.

c. *Order of Precedence*. In the event of conflict or variation between the Standard Terms and Conditions or the Agreement for Services and any other exhibit, addendum or attachment, the Standard Terms and Conditions or the Agreement for Services, as the case may be, shall govern. In the case of conflict or variation between the Standard Terms and Conditions and the Agreement for Services, the Agreement for Services shall govern.

d. *Severability*. If a court holds any term, covenant or condition of this Contract invalid, such holding shall not affect or impair the validity of any other terms, covenants or conditions of this Contract, which the Parties hereby deem severable and which shall remain in full force and effect.

e. *Survival*. Any and all provisions of this Contract which contemplate performance by a Party after the expiration or earlier termination of this Contract shall survive and be enforceable after such expiration or termination, including without limitation provisions relating to ownership of Materials and indemnification.

f. *Waiver*. No one shall or may find, hold or determine that a Party has waived any term, covenant or condition set forth in this Contract, any Event of Default, or any remedy set forth in this Contract, unless that Party has set forth its waiver in a writing signed by that Party.

g. *Further Assurances*. The Contractor shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the Work as set forth in this Contract.

h. *No Third Party Beneficiaries*. This Contract is intended for the benefit of the Parties hereto and the Parties do not intend to create, and no Party, court, tribunal or Person shall construe anything set forth in this Contract to create, any contractual relationship with, or to give a claim, right, cause of action or remedy in favor of, any third party against either Party. The Parties do not intend that anything in this Contract benefits any third party, including but not limited to any Certified M/WBEs and other Certified diverse, small, or disadvantaged businesses.

i. *Entire Agreement; Amendment*. This Contract includes all exhibits, schedules and addenda, if any, referred to herein, all of which the Parties hereby incorporate by reference, unless otherwise specified herein. This Contract constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous oral and written agreements and statements concerning the subject matter of this Contract, all of which the Parties have fully integrated herein. This Contract supersedes any prior or contemporaneous course of conduct, performance or dealing between the Parties. The Contractor has not, does not and shall not rely on any statement or representation of the School District other than those expressly set forth in this Contract. No amendment or modification changing this Contract's scope or terms shall have any force or effect unless executed and delivered in writing and signed by both Parties.

j. *Counterparts; Electronic Signatures*. The Parties may execute and deliver this Contract in any number of counterparts, each of which the Parties shall deem an original, and all of which shall constitute, together, one and the same agreement. A signed copy of this Contract delivered by facsimile, e-mail or other means of electronic transmission shall have the same legal effect as delivery of an original signed copy of this Contract. This Contract and any true, correct, and complete counterpart thereof may be executed either (a) on paper with an ink signature or (b) by due, secure electronic method, and any true, correct, and complete counterpart may be transmitted by e-mail or other electronic means. For avoidance of doubt, any true, correct, and complete counterpart may be converted from paper to electronic form, or from electronic form to paper, and such converted true, correct, and complete counterpart shall be deemed an original for transmission, execution, delivery and retention pursuant to the Electronic Signatures in Global and National Commerce Act, Title 15, United States Code, Sections 7001 *et seq*.

k. *Interpretation; Number, Gender*. The words "herein" "hereof" and "hereunder" and other words of similar import refer to this Contract as a whole, and not to any particular Section, subsection or clause in this Contract. Whenever the context requires, the Parties shall construe words used in the singular to include the plural and vice versa, and pronouns of any gender to include the masculine, feminine and neuter genders.