HARMONY PUBLIC SCHOOLS

Open Enrollment Charter School

REQUEST FOR PROPOSALS # HPS2728_CAT1

FOR

CATEGORY 1 INTERNET AND WAN SERVICES

Form 470 #270002546

Questions about this RFP must be submitted via the eBid Portal no later than December 1, 2026, by 11:00 a.m. CST. All questions and answers will be posted on the eBid Portal and USAC website on December 4, 2026.

Issued by:
Norah Yavuz
HPS Purchasing Department
Phone: (713) 343-3333
URL: www.harmonytx.org
Email: purchasing@harmonytx.org

Online Submittal Deadline

January 6, 2027, 11:00 a.m. CST

Table of Contents

Items below comprise the components of this Request for Proposals packet. Proposers are requested to review the packet to ensure that all applicable parts are included. If any portion of the package is missing, please notify Mrs. Norah Yavuz immediately.

1. Legal Notice
2. Instructions to Proposers
3. Scope and Specifications
4. Evaluation and Award of Proposals
5. Agreement Terms and Conditions

1. LEGAL NOTICE

Notice is hereby given that Harmony Public Schools, an open enrollment charter school with more than 60 campuses, intends to procure Internet and Wide Area Network services for the 2027-2028 E-Rate Year. The initial terms of the prospective contracts can be 12-month, 24-month, or 36-month. HPS is requesting bids for all terms. HPS may elect to extend any contracts awarded pursuant to this procurement solicitation for up to three (3) additional one-year terms.

All interested parties may request a copy of the Request for Proposals packet by contacting Mrs. Norah Yavuz at purchasing@harmonytx.org or access it online on the HPS eBid system at the following address: https://www.harmonytx.org/about/purchasing. Additionally, all updated project information, forms, including addenda, will be distributed through the USAC website, located at https://portal.usac.org/suite/.

No offer of intent to enter into a contract with any party should be construed from this legal notice. Harmony Public Schools may enter into a contract only if, in the sole opinion of Harmony Public Schools, it is in Harmony Public Schools' best interest to do so.

Harmony Public Schools reserves the right to reject any and/or all proposals, to award contracts for individual products or services as may appear advantageous, and to negotiate separately in any manner necessary to serve the best interests of Harmony Public Schools. Harmony Public Schools further reserves the right to accept, reject, or negotiate modifications in any terms of a proposed vendor's proposal or any parts thereof. Harmony Public Schools further reserves the right to waive any formalities or technicalities if deemed in the best interest of Harmony Public Schools. Harmony Public Schools also reserves the right as sole judge of quality and equality.

Harmony Public Schools

By: **Norah Yavuz**

Title: **Director of Purchasing**

PROPOSALS DUE/PROPOSAL OPENING: January 6, 2027 at 11:00 a.m. CST

2. INSTRUCTIONS TO PROPOSERS

1. Definitions: "HPS" and "Harmony" shall mean "Harmony Public Schools." "RFP" shall mean this "Request for Proposals" packet. The term vendor, contractor, and/or service provider may be used interchangeably.

2. Proposal Response Format: To qualify for evaluation, a proposal must be submitted on time and must materially satisfy all mandatory requirements identified in this RFP. Vendors must follow the format instructions detailed below in preparing and submitting their proposals.

   2.1 Required Format: Vendors can submit proposals as described below:

   Vendors shall submit proposals online in the HPS eBid system at the following address: https://www.harmonytx.org/about/purchasing. The Vendor is responsible for ensuring that HPS has the appropriate company name, authorized representatives, and contact information on file for the purpose of receiving notices, changes, addenda or other critical information.

   2.2 The following items must be included in the Response Attachment section of the eBid System or in the submission package. In order for proposals to be considered, the proposal must be clear, concise, complete, well organized, and demonstrate both the respondent's qualifications and its ability to follow instructions. The quality of answers, not the length of responses or visual exhibits, is important. Failure to include these items may result in non-award and/or disqualification.

   1. Completed Attachment Package
   All required forms must be completed using either black ink or blue ink or a certified electronic signature.

   2. Proposal Package
   The proposal package must include:
   - Letter of interest
   - A brief overview of agency history, philosophy, and capacities
   - A minimum of three references from public or private schools similar in size to HPS, including a brief summary of the services provided, contract duration, and estimated budget
   - Insurance forms

   3. Pricing Sheet - "**27_HPS_C1 Pricing Sheet**"
   4. Form A - Deviations and Exceptions

   Additional documents can be uploaded to the Response Attachment section.

   2.3 Submission of Proposals: Respondents must submit proposals electronically using the HPS eBid System by the established deadline. The HPS eBid System does not accept responses after the due date and time. Please note that if you begin responding to the procurement solicitation request and do not click "submit" by the time the RFP is scheduled to close, your proposal will not have been submitted. HPS will only accept bids and proposals submitted online. Faxed or electronically transmitted proposals will not be accepted. Deviations from any terms, conditions and/or specifications shall be conspicuously noted in writing by the Vendor and shall be included with the proposal in Form A – Deviations and Exceptions under Attachments.

3. Withdrawal of Submitted Proposal: At any time prior to the specified time and date set for proposal opening as set forth above, a proposer (or a designated representative) may withdraw a submitted proposal by submitting a request to withdraw in writing to Norah Yavuz at purchasing@harmonytx.org.

4. RFP and Proposal Constitute Contract: This RFP, including any attachments, exhibits, and forms, set forth the terms, conditions, specifications and other requirements for the procurement of goods and/or services. A proposal submitted in response to the RFP is an offer to contract with Harmony Public Schools, based upon the terms, conditions, specifications and other requirements of this RFP. A proposal does not become a contract unless and until it is approved by the Harmony Public Schools Board of Directors. Once approved by the Board, this RFP, the selected proposal and all attachments, exhibits and forms required and submitted shall constitute the contract (collectively, the "Agreement" or "Contract"). Accordingly, Harmony Public Schools shall not consider any agreement, contract or other document setting forth terms and conditions for this procurement submitted by a proposer as part of its proposal, or separately. Upon the Board's approval, Harmony Public Schools may issue a notice of contract award to the selected proposer(s).

   Proposers are required to respond to all requests identified in this RFP and must indicate in their proposal their acceptance or objection to the terms, conditions, specifications and other requirements of this RFP in Form A – Deviations and Exceptions under Attachments. In this latter regard, the proposer must clearly identify in the proposal any deviations or exceptions to the terms, conditions, specifications and other requirements of this RFP. Importantly, the proposer must quote the RFP content for which it requests that a deviation or exception be granted and state the term, condition, specification, or other requirement that the proposer seeks to have included in the Contract. Harmony Public Schools may accept, reject or modify the requested deviation or exception.

   Each proposer, by submitting a proposal, represents that the proposer has read and understands the RFP and the Agreement. By submitting a proposal, each proposer guarantees that the proposal submitted, including the price(s) detailed therein, shall remain firm for a period of not less than sixty (60) days from the deadline for proposals to be submitted. No proposal may be withdrawn during the 60-day period of firm offering.

   Proposer's representative must complete and sign all required documents and exhibits, including the Request for Proposals Signature Page, and return them in the proposal package. It is permissible to copy the forms if required. Failure to provide complete and accurate information may disqualify proposer from consideration.

5. Open Records: As an open-enrollment charter school, Harmony Public Schools is subject to the Texas Public Information Act. Proposals submitted to Harmony Public Schools as a result of this RFP may be subject to release as public information after contracts are executed or the procurement is terminated. If a proposer believes that its response, or parts of its response, may be exempted from disclosure under Texas law, the proposer must specify page-by-page and line-by-line the parts of the response which it believes are exempt. In addition, the proposer must specify which exception(s) to the Texas Public Information Act are applicable and provide detailed reasons to substantiate the exception(s). Vague or general claims to confidentiality will not be accepted. Harmony Public Schools assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by proposers.

6. Conflict of Interest: HPS is required to comply with Texas Local Government Code Chapter 176, Disclosure of Certain Relationships with Local Government Officers. Any vendor that does business or seeks to do business with HPS must fill out a Conflict-of-Interest Questionnaire (CIQ) whether or not a conflict of interest exists. A conflict of interest exists in the following situations:
    (1) If the vendor has an employment or other business relationship with a local government officer of HPS or a family member of the officer, as described by section 176.003(a)(2)(A) of the Texas Local Government Code; or
    (2) If the vendor has given a local government officer of HPS, or a family member of the officer, one or more gifts with the aggregate value of $100, excluding any gift accepted by the officer or family member of the officer if the gift is: (a) a political contribution as defined by Title 15 of the Election Code; or (b) a gift of food accepted as a guest; or
    (3) If the vendor has a family relationship with a local government officer of HPS.

"Vendor" means a person who enters or seeks to enter into a contract with a local governmental entity. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries. *Texas Local Government Code 176.001(7).*

"Business relationship" means a connection between two or more parties based on the commercial activity of one of the parties. The term does not include a connection based on: (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity; (B) a transaction conducted at a price and subject to terms available to the public; or (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency. *Texas Local Government Code 176.001(3).*

"Family relationship" means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code. *Texas Local Government Code 176.001(2-a).*

"Local government officer" means: (A) a member of the governing body of a local governmental entity; (B) a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or (C) an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. *Texas Local Government Code 176.001(4).*

<u>If no conflict of interest exists, you must fill out Box 1 and type N/A on Box 3 of the CIQ form, sign and date it.</u>

In the event of changed circumstances, an updated CIQ must be filed within seven (7) business days after the vendor becomes aware of a conflict of interest exists.

- HPS' Board of Directors include:
    - Dr. Oner Ulvi Celepcikay
    - Mrs. Helen Sherwood
    - Dr. Hakduran Koc
    - Ms. Laura Gonzalez
    - Dr. Mehmet Argin
    - Ms. Kimberly House
    - Dr. Simon Koch

- Current local government officers include, but not necessarily limited to:
  - Fatih Ay – Chief Executive Officer
  - Umit Alpaslan – Senior Deputy Superintendent
  - Dr. Nihat Bayhan – Deputy Superintendent of Operation & Business
  - Emin Cavusoglu - Deputy Superintendent of Programs
  - Minh Baca – Chief of Compliance
  - Ebru Akyildiz - Chief Financial Officer
  - Bulent Coban – Chief Operations Officer
  - Norah Yavuz – Director of Purchasing

EDGAR Conflict of Interest Requirements

In accordance with federal EDGAR requirements, 2 CFR § 200.318(c)(1), no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of HPS may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Violations of this standard by an employee will be reported to the Superintendent's Office and addressed through HPS' personnel policies. Violations of this standard by an officer or the Superintendent shall be addressed to the Board President and addressed through HPS Board policies.

7. Tax exemption: Harmony Public Schools is tax-exempt. Proposal prices should not include taxes.

8. Undue Influence: In order to ensure the integrity of the selection process, proposer's officers, employees, agents, or other representatives shall not lobby or attempt to influence a vote or recommendation related to the proposer, directly or indirectly, through any contact with Harmony Public School board members or HPS officials from the date this RFP is released until the award of a contract by the HPS Board of Directors.

9. Rights Reserved by Harmony Public Schools and Restrictions on the RFP Process:

   a. HPS reserves the right to cancel this solicitation in whole or in part by issuance of a revised or amended Request for Proposals or a cancellation of the RFP.

   b. HPS further reserves the right to award one or more contracts, in part or in whole, to a single or to multiple prospective vendors or proposers. The decision to award multiple contracts, award only one contract, or to make no awards rests solely with HPS. HPS may make multiple awards, and this fact should be taken into consideration by each proposer.

   c. HPS further reserves the right to award a contract or make purchases on an item-by-item basis or on the basis of a group of items, as determined by HPS in its sole

discretion. HPS further reserves the right to purchase in total from one proposer or divide the purchase by selection of various items from multiple proposers. Some items may be combined at HPS's discretion for the purpose of awarding contracts. In these cases, HPS requests totals for the items combined. HPS will not accept or consider "all-or-none" combinations which are not solicited.

d. HPS assumes no financial responsibility for any costs incurred by prospective vendors in developing and submitting a proposal or any amendments or addenda, participating in bid conferences, participating in any negotiation sessions or discussions, or any other costs incurred by proposers prior to award of a contract pursuant to this RFP.

e. HPS reserves the right to reject any and/or all proposals, to award contracts for individual products or services as may appear advantageous, and to negotiate separately in any manner necessary to serve the best interests of HPS. HPS further reserves the right to accept, reject, or negotiate modifications in any terms of a proposed vendor's proposal or any parts thereof.

f. HPS further reserves the right to waive any formalities or technicalities if deemed in the best interest of HPS. HPS also reserves the right as sole judge of quality and equality.

10. Questions and Clarification: Questions regarding the requirements specified in this RFP may be directed through the Questions section of the eBid system. All questions must be submitted via the eBid Portal no later than December 1, 2026, by 11:00 a.m. CST. Harmony Public Schools will not answer questions verbally. Any responses to a proposer's questions will be communicated to proposers through the eBid system and the USAC website.

11. Addendum: Any interpretations, corrections, additions, or changes to this RFP will be communicated to proposers by the issuance of an addendum. It is the responsibility of the proposer, prior to submitting the proposal, to determine whether an addendum was issued. All proposers shall comply with the requirements specified in any addendum issued by Harmony Public Schools.

    Proposers who have not obtained this RFP directly from HPS, or who may have downloaded the document from the HPS website, shall be responsible for immediately notifying HPS of their interest in order to receive all written addenda on a timely basis. Proposers who do not so notify HPS and submit proposals without receipt of all addenda issued may be deemed to have submitted proposals not responsive to this RFP.

12. Tentative Procurement Schedule: HPS anticipates following the following timetable for this RFP:
    a. Newspaper Ads: November 9, 2026 and November 16, 2026
    b. Questions Period: November 9, 2026 through December 1, 2026 at 11:00 a.m. CST
    c. Answers Posted: December 4, 2026
    d. Deadline for submission of proposals: January 6, 2027 at 11:00 a.m. (CST)
    e. Proposal evaluation dates: January 7, 2027 through January 20, 2027
    f. Board approval date (Tentative): February 27, 2027.

3. SCOPE AND SPECIFICATIONS

3.1 Request for Proposals Defined

The intention of this Request for Proposals (RFP) is to solicit proposals for Dedicated Internet Access (DIA) and/or Wide Area Network (WAN) Data Transport service for Harmony Public Schools and the schools to which Harmony Public Schools provides services. Offerors may submit proposals for DIA, WAN Transport, or both services. The applicant will evaluate DIA and WAN Transport independently and will award each service to the most cost-effective response.

3.2 Scope of Services

HPS seeks proposals for Dedicated Internet Access (DIA) and Wide Area Network (WAN) Data Transport services for HPS and the schools it serves. Offerors may submit proposals for either or both service categories.

Bundled DIA/WAN Pricing. Offerors may submit bundled pricing contingent upon being awarded both DIA and WAN services. Any such condition must be clearly identified in the proposal. HPS will award services under a bundled pricing proposal only if that proposal receives the highest evaluation score in each of the two service categories.

Offerors submitting bundled pricing are encouraged to also submit separate, independent pricing for each service category. Independent pricing must be clearly identified and remain valid if HPS awards only one service category to the Offeror. This allows the Offeror to be considered for an individual service award if its bundled proposal does not receive the highest evaluation score in both categories.

HPS reserves the right to evaluate and award contracts in whole or in part, to one or multiple vendors, based on what is determined to be in the best interest of HPS. **Except for the bundled DIA/WAN pricing expressly permitted above, pricing must not be contingent upon receiving an award for all services, locations, or items, or any specified combination thereof.**

Specifications

Dedicated Internet Access (DIA): HPS is seeking dedicated Internet connections for eight (8) locations, with bandwidth options of 2 Gbps, 5 Gbps, and 10 Gbps. Each connection must include a minimum of five (5) static IP addresses. For specific location, bandwidth, and pricing requirements, please refer to the attached pricing sheet, “27_HPS_C1 Pricing Sheet.”

Wide Area Network (WAN) Data Transport: HPS is seeking Wide Area Network (WAN) connections for eighteen locations for 1 Gbps, 2 Gbps, and 5 Gbps. HPS is looking for mesh connectivity for these locations. For location and bandwidth details, please see the attached pricing sheet, "27_HPS_C1 Pricing Sheet."

The new services are being planned to begin on July 1, 2027, which represents the start of the 2027-2028 E-Rate Funding Year. All respondents must be eligible to participate in the federal E-Rate Program, be registered with the Universal Service Administrative Company (USAC), and possess a valid USAC-issued FCC Form 498 ID (formerly known as a Service Provider Identification Number, or SPIN).

Respondents must maintain all applicable registrations and authorizations necessary to provide the proposed services.

Service Requirements

Dedicated Internet Access (DIA): HPS requires a minimum of 2 Gbps download x 2 Gbps upload fully managed Dedicated Internet Access with Transport service to the locations specified in the pricing attachment. Service providers are requested to submit offers for incremental bandwidths from 2 Gbps up to 10 Gbps. Each connection must include a minimum of five (5) static public IP addresses. Offerors for Dedicated Internet Access with Transport service must include all listed locations. If a service level or location is not available or is not included in the Offeror's proposal, Offerors must enter “N/A” on the attached pricing sheet, "27_HPS_C1 Pricing Sheet”.

Wide Area Network (WAN) Data Transport: HPS requires a minimum of 1 Gbps download x 1 Gbps upload fully managed transport connections to terminate at the locations listed in the pricing attachment. Service providers are requested to submit offers for incremental bandwidths from 1 Gbps up to 5 Gbps. Offerors for Transport service must include all listed locations. If a service level or location is not available or is not included in the Offeror's proposal, Offerors must enter “N/A”. If no charge applies, vendors must enter $0.00 on the attached pricing sheet, "27_HPS_C1 Pricing Sheet". These connections will be any-to-any (mesh); latency (one-way) must not exceed 30 ms.

All proposed solutions must be within the specified bandwidth range to be eligible for consideration. In addition to the specified minimum and maximum bandwidths, service providers are encouraged to offer a variety of bandwidth options within this range. Refer to the Pricing Attachment for the requested service levels. If the exact bandwidths listed are not available, vendors should include their closest comparable service level for consideration.

Submissions meeting any of the following three (3) criteria WILL be disqualified:
1. Solution does NOT offer at least the minimum bandwidth.
2. Solution does NOT offer bandwidth dedicated to the applicant; instead, the bandwidth is dependent on the number of other customers on the network or another factor that does not generally guarantee the minimum bandwidth as a committed information rate (CIR).
3. Solution includes caps on data usage or slows speeds based on data usage or other factors.

All solutions must terminate service or infrastructure at the demarcation point within the building, generally the MDF. Solutions that only bring service to the property line, but not to the demarcation point, will be disqualified. The agreement must terminate service at an MDF designated by the HPS. The Offeror should specify the exact demarcation setup included in the base fees, such as wall-mounted CPE and CAT6a handoff, rack-mount patch panel, etc.

E-Rate Specific Considerations and Information

FCC rules require vendors to offer discounted SPI billing. The applicant requires the SPI discount method for these services. Vendors that do not offer SPI billing will be disqualified.

HPS reserves the right to request Best and Final Offers (BAFOs). BAFOs must be received by the date and time provided during discussions or negotiations, or the originally submitted proposal will be used for further evaluation and award recommendation.

Per USAC E-Rate rules, the cost of eligible services will be the highest-valued criterion in the evaluation process; however, other criteria with a lesser value may also be considered.

Service providers proposing to temporarily loan equipment for product demonstration and/or evaluation purposes are required to clearly state that such loans are of limited duration. Product demonstrations extending beyond thirty (30) days must be explicitly authorized by both parties and provided at a fair market rate.

By submitting a proposal for the requested services, the vendor certifies that its proposed services and/or products comply with Sections 54.9 and 54.10 of Part 47 of the FCC rules, which prohibit the sale, provision, maintenance, modification, or other support of equipment or services provided or manufactured by Huawei, ZTE, or any other covered company posing a national security threat to the integrity of communications networks or the communications supply chain. See https://www.usac.org/about/reports-orders/supply-chain/ for more details.

As required by Section 54.500(f) of Part 47 of the Code of Federal Regulations, all bids in response to this RFP must offer the lowest corresponding price (LCP), which is defined as the lowest price that a service provider charges to nonresidential customers who are similarly situated to a particular E-Rate applicant (school, library, or consortium) for similar services. See https://www.usac.org/e-rate/service-providers/step-2-responding-to-bids/lowest-corresponding-price/ for more details.

Deviations from Specifications
All deviations from the specifications must be noted in detail by the proposer, in writing, and included with the proposer's proposal submission. The absence of a written list of specification deviations at the time of proposal submission will hold the proposer strictly accountable to HPS for the specifications as written. Any deviations from the specifications as written that were not previously submitted, as required above, will be grounds for rejection.

4. EVALUATION AND AWARD OF PROPOSALS

In accordance with Harmony Public Schools' policy, award(s) of a contract(s) resulting from this RFP will be made to the responsible proposer(s) whose proposal(s) is/are determined, after evaluation by Harmony Public Schools, to be the best value to Harmony Public Schools. To qualify for evaluation, a proposal must have been submitted on time and must materially satisfy all mandatory requirements of the RFP.

4.1 Evaluation Criteria

An evaluation committee will review and evaluate all proposals based on the factors detailed herein. HPS has engaged the Texas Association of School Business Officials (TASBO) to provide procurement consulting services to HPS. TASBO consultant/s will oversee the procurement process, including the evaluation, and will make a recommendation to Harmony Public Schools' Board based on the HPS evaluation committee's recommendation. HPS' Board of Directors will make the final decision on whether and to whom a contract is to be awarded.

Evaluation Factors	Weighted Value
1. Price of the E-Rate ELIGIBLE services/products	40%
2. Technical Compliance & Service Reliability	15%
3. Extent to Which Services Meet HPS Needs and Requirements	10%
4. Vendor Reputation and References	10%
5. Vendor's Past Performance with HPS	10%
6. Additional Costs and Long-Term Expenses	10%
7. Vendor Resources and Ability to Deliver	5%
Total	100%

In case of ambiguity or lack of clarity in a proposal, HPS reserves the right to consider the most advantageous construction thereof, or to reject the proposal, in HPS' sole discretion.

4.2 Award of Contract

A proposal submitted in response to this RFP is an offer to contract with Harmony Public Schools, based upon the terms, conditions, and specifications of this RFP. A proposal does not become a contract unless and until it is accepted by Harmony Public Schools.

Any contract resulting from this RFP is non-exclusive and shall be awarded with the understanding and agreement that it is for the sole convenience of Harmony Public Schools. Harmony Public Schools is free to have multiple contracts for the awarded goods and services and may initiate other procurement solicitations or purchasing activity with other vendors at any time, in Harmony Public Schools' sole discretion.

Harmony Public Schools makes no guarantee or commitment of any kind concerning quantities that will actually be purchased. Harmony Public Schools makes no guarantee or commitment of any kind regarding usage of any contracts resulting from this solicitation.

5. AGREEMENT TERMS AND CONDITIONS

The words "bids," "requests for proposals," "quotes," "RFPs," "solicitation," "procurement," and their derivatives may be used interchangeably in these terms and conditions. These terms and conditions apply to all bids, requests for proposals, quotes, competitive sealed proposals, and other procurement solicitations to which they are attached. The term "Vendor" means each awarded vendor chosen by Harmony Public Schools.

These General Terms and Conditions shall be part of the final contract in each commodity and/or service contract and shall be part of the terms and conditions of each purchase order or other bid/proposal forms issued in connection with this solicitation.

Proposers are responsible for identifying any exceptions to these terms and conditions. **ANY EXCEPTIONS MUST BE NOTED IN PROPOSER'S SUBMITTED PROPOSAL IN FORM A, DEVIATIONS AND EXCEPTIONS.** Proposals that are qualified with conditional clauses, items not called for, or other irregularities may be considered non-responsive by HPS and eliminated from further consideration by HPS.

This Agreement is entered into between Harmony Public Schools ("HPS") and Vendor, having submitted a proposal in response to a procurement solicitation issued by HPS and whose proposal has been accepted and awarded by HPS. In consideration of the mutual covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, HPS and Vendor, intending to be legally bound, and subject to the terms, conditions, and provisions of this Agreement, agree as follows:

5.1 Advertising

Vendor shall not advertise or publish, without the prior written consent of HPS, the fact that HPS has entered into this Agreement with Vendor, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state, or local government.

5.2 Agreement Terms; Amendment

The terms of this Agreement, as defined in paragraph 4 under Instructions to Proposers, shall govern all procurements conducted hereunder. No pre-published terms on the Vendor's order acknowledgments, invoices, or other forms shall have any force or effect. Further, no amendment of this Agreement shall be permitted unless first approved in writing by HPS, and no such amendments shall have any effect unless and until a written amendment to this Agreement is executed by HPS's CEO, Deputy Superintendent or Chief Financial Officer (or their designees) after any necessary approvals have been obtained from the HPS Board of Directors.

5.3 Assignment of Agreement

Vendor may not assign this Agreement or any of its rights, duties, or obligations hereunder without the prior written approval of HPS. Any attempted assignment of this Agreement by Vendor shall be null and void. Any purchase or work order made as a result of this Agreement may not be transferred, assigned, subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way by Vendor without the prior written approval of HPS. Vendor is required to notify HPS when any material change in operations occurs, including but not limited to, changes in distribution rights for awarded products, bankruptcy, material changes in financial condition, change of ownership, and the like, within three (3) business days of such change.

5.4 Buy America Act

HPS has a preference for domestic end products for supplies acquired for use in the United States when spending federal funds. Purchases that are made with non-federal funds or grants are excluded from the Buy America Act.

5.5 Captions

The captions herein are for convenience and identification purposes only, are not an integral part hereof, and are not to be considered in the interpretation of any part hereof.

5.6 Catalog Discounts

In the event of a catalog discount type proposal, Vendor may be allowed to make additions and/or deletions from Vendor's offerings on an annual basis during the Agreement renewal period, in HPS's sole discretion, provided the item(s) substituted are of a-like quality and category. These changes will be compliant with the format of Vendor's original proposal (i.e. manufacturer name, product category, or entire catalog discount). HPS will send notification to Vendor(s) seeking any additions and/or deletions, and Vendor will return these proposed changes on company letterhead within the given timeframe. If HPS, in its sole discretion, accepts Vendor's proposed changes, such changes will remain in effect for the entire year until the next renewal period.

5.7 Compliance with Laws

Vendor shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules, and regulations, including applicable workers' compensation, wage and hour, prompt payment, and licensing requirements. To the extent applicable to Vendor's performance under this Agreement, Vendor shall also comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701–3708), as supplemented by 29 C.F.R. Part 5; the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200), as adopted and supplemented by the U.S. Department of Education in 2 C.F.R. Part 3474; and applicable provisions of the Education Department General Administrative Regulations ("EDGAR"), 34 C.F.R. Parts 75–79, 81–86, and 97–99. Federal award requirements shall apply in the version governing the applicable award.

Throughout the term of this Agreement, Vendor shall maintain all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement. When required by law or requested by HPS, Vendor shall provide documentation satisfactory to HPS demonstrating compliance with this provision.

5.8 Confidentiality

Vendor and HPS agree to secure the confidentiality of all information and records in accordance with applicable federal and state laws, rules, and regulations. Vendor and HPS understand that the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, governs the privacy and security of educational records and information and agree to abide by FERPA rules and regulations, as applicable. Vendor also acknowledges that HPS is subject to the Texas Public Information Act, and Vendor waives any claim against and releases from liability HPS, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Agreement or otherwise created, assembled, maintained, or held by Vendor and determined by HPS, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act.

5.9 Contract Term

The initial terms of the prospective contracts can be 12-month, 24-month, or 36-month. HPS is requesting bids for all terms. HPS may elect to extend any contract awarded pursuant to this procurement solicitation for up to three (3) one-year terms upon mutual written agreement between Harmony Public Schools and the service provider. The phrase "Term" in this Agreement shall mean the then-current Term of the Agreement, whether the initial term or a renewal term.

5.10 Criminal History Review (SB 9 Contractor Certification: Contractor Employees Form must be filled out and attached to proposal, if applicable)

Vendor must coordinate and cooperate with the School to ensure that an appropriate criminal history record information review as required by Texas Education Code § 22.0834 is conducted for Vendor and any of Vendor's personnel who will have continuing duties related to this Agreement and will have direct contact with students. Contractor shall reimburse HPS for its direct costs associated with conducting the appropriate criminal history background checks of Vendor's personnel on behalf of Vendor. Vendor and any subcontracting entity may not permit a covered employee to provide services at a school if the employee has been convicted of a felony or misdemeanor offense that would prevent a person from being employed under Tex. Educ. Code § 22.085(a) (i.e., Title 5 felony or an offense requiring registration as a sex offender and victim was under 18 years of age or was enrolled in a public school at the time the offense occurred). The criminal history record information review obligation applies if Vendor contracts with HPS to provide services; it does not apply to a contract for the purchase of goods or real estate.

5.11 Customer Reference List

Vendor agrees to submit a customer reference list upon request by HPS.

5.12 Customer support

Vendor shall provide timely and accurate technical advice and sales support to HPS and HPS staff. Vendor shall respond to requests for customer support within one (1) business day after receipt of the request. HPS shall have the right to terminate this Agreement, effective immediately, due to unsatisfactory service rendered by Vendor. Vendor shall provide training to HPS staff regarding products and/or services supplied by Vendor, the product manufacturer, or a third party at no additional charge, if requested by HPS.

5.13 Delivery and Inspection

All deliveries under this Agreement shall be delivered: Freight Prepaid, F.O.B. Destination, Full Freight Allowed, Inside Delivery and shall be included in all pricing in Vendor's proposal unless otherwise clearly stated in writing in Vendor's proposal.

All deliveries, unless specified otherwise in the purchase order, will be made to the HPS campus or department specified, between the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday, except on school holidays. The delivery shall be made and articles shall be placed inside the building or facility in the room or rooms designated, at no additional charge.

HPS shall have the right to inspect the goods before accepting them. Final inspection shall be made at the delivery site after delivery. In the event HPS rejects good(s) because the good(s) fail to meet requirements of this Agreement or the RFP, are damaged, or are inferior, Vendor shall, without charge, promptly remove such rejected or damaged good(s) and replace them by delivering to the same inspection point, good(s) that meet the requirements of this Agreement and the RFP without

any additional expense to HPS, including, without limitation, freight or other charges. Vendor must correct or replace any good(s) rejected by HPS with suitable, conforming good(s) within two weeks, or HPS shall have the right to purchase a replacement in the open market and any costs incurred, including additional costs over and above Vendor's price, will be the responsibility of Vendor.
In the event Vendor fails on three (3) occasions to timely deliver good(s) or to deliver good(s) in accordance with all requirements of the solicitation, HPS may immediately terminate this Agreement and any purchase order(s) issued hereunder and take any remedy detailed in this Agreement or otherwise available at law or in equity to HPS.

LIQUIDATED DAMAGES: If Vendor fails to complete the delivery of purchased good(s) within the time specified in the purchase order, or within any extension of time granted by HPS, Vendor will pay to HPS, as liquidated damages, Two Hundred Fifty Dollars ($250.00) for each calendar day that Vendor shall be in default after the time stipulated in purchase order. Such liquidated damages shall not operate as a limitation on HPS' recovery, or any other remedy, permitted by law.

5.14 Entire Agreement

This Agreement, the procurement solicitation issued by HPS, and Vendor's proposal submitted in response to HPS's procurement solicitation, and the attached and incorporated addendum or exhibits, if any, contain the entire agreement of the parties relative to the purpose(s) of the Agreement and supersede any other representations, agreements, arrangements, negotiations, or understanding, oral or written, between the parties to this Agreement. In the event of a conflict between this Agreement and the procurement solicitation issued by HPS or Vendor's proposal submitted in response to HPS's procurement solicitation, this Agreement shall control. In the event of a conflict between the procurement solicitation issued by HPS and Vendor's proposal submitted in response to HPS's procurement solicitation, HPS's procurement solicitation shall control. This Agreement supersedes any conflicting terms and conditions on any purchase or work orders, invoices, checks, order acknowledgements, forms, purchase orders, or similar commercial documents relating hereto and which may be issued by Vendor after the Effective Date of this Agreement.

5.15 Equal Opportunity

It is the policy of HPS not to discriminate on the basis of race, color, National origin, gender, limited English proficiency or handicapping conditions in its programs. Vendor agrees not to discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Vendor further agrees that every subcontract entered into for the performance of this Agreement shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Agreement.

5.16 Force Majeure

In the event the Vendor's performance of its obligations under this Agreement is delayed or stopped by any act of God, network failure, act of civil or military authorities, civil disturbance, war, pandemic, epidemic, energy crisis, fire, transportation contingency, interruption in third-party telecommunications or Internet equipment or service, other catastrophe, or any other occurrence which is reasonably beyond Vendor's control, HPS shall have the option to terminate this Agreement.

This section shall not be interpreted as to limit or otherwise modify any of HPS's contractual, legal, or equitable rights.

5.17 Governing Law and Venue

The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern this Agreement. This Agreement is also governed by HPS policies, as adopted by HPS' Board of Directors. Any dispute under this Agreement must be brought in the state and federal courts located in Houston, Harris County, Texas.

5.18 Gratuities

Vendor shall not offer gifts or anything of value to any officer or employee of HPS for any reason related to this Agreement or the RFP. HPS may, by written notice to Vendor, terminate this Agreement without liability to Vendor if it is determined by HPS, in HPS' sole discretion, that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by Vendor or any agent or representative of Vendor, to any officer or employee of HPS with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such a contract. In the event this Agreement is terminated by HPS pursuant to this provision, HPS shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Vendor in providing such gratuities.

5.19 HPS Property

In the event of loss, damage, or destruction of any property owned by or loaned by HPS that is caused by Vendor or Vendor's representative, agent, employee, or contractor, Vendor shall indemnify HPS and pay to HPS the full value of or the full cost of repair or replacement of such property, whichever is greater, within thirty (30) days of Vendor's receipt of written notice of HPS's determination of the amount due. If Vendor fails to make timely payment, HPS may obtain such money from Vendor by any means permitted by law, including, without limitation, offset or counterclaim against any money otherwise due to Vendor by HPS.

5.20 Indemnification

VENDOR WILL INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS HPS AND ITS BOARD OF DIRECTORS, OFFICERS, AND REPRESENTATIVES (COLLECTIVELY THE "SCHOOL INDEMNITEES") IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING, OR SETTLING ANY OF THE FOREGOING BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM VENDOR'S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT, INCLUDING THOSE THAT ARE CAUSED IN WHOLE OR IN PART BY ANY ACT OR OMISSION, INCLUDING ANY NEGLIGENT ACT, NEGLIGENT OMISSION, OR WILLFUL MISCONDUCT OF VENDOR, ANYONE DIRECTLY EMPLOYED BY VENDOR, OR ANYONE FOR WHOSE ACTS VENDOR MAY BE LIABLE, AND INCLUDING THOSE ARISING FROM CLAIMED INFRINGEMENT OF ANY PATENTS, TRADEMARKS, COPYRIGHT OR OTHER RIGHTS RELATED TO ANY ITEM VENDOR IS REQUIRED TO DELIVER. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY SCHOOL INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE. VENDOR'S OBLIGATIONS CONTAINED IN THIS SECTION SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT AND CONTINUE ON INDEFINITELY, AND CANNOT BE WAIVED OR VARIED.

5.21 Insurance

Vendor is required to provide HPS with copies of certificates of insurance, naming HPS as an

additional insured, for the insurance policies set forth in this section. Certificates of Insurance, name and address of Vendor, the limits of liability, the effective dates of each policy, and policy number shall be delivered to HPS prior to commencement of any work under this Agreement. The insurance company insuring Vendor shall be licensed in the State of Texas and shall be acceptable to HPS. Vendor shall give HPS a minimum of ten (10) days' notice prior to any modifications or cancellation of said policies of insurance. Vendor shall require all subcontractors performing any work under or relating to this Agreement to maintain coverage as specified below.

Minimum Insurance Requirements:

- Vendor shall, at all times during the Term of this Agreement, maintain insurance coverage with not less than the type and requirements shown below. Such insurance is to be provided at the sole cost of Vendor. These requirements do not establish limits of Vendor's liability.
- All policies of insurance shall waive all rights of subrogation against HPS, its officers, employees, and agents.
- Upon request, certified copies of original insurance policies shall be furnished to HPS.
- HPS shall be named as an "additional insured" on all insurance policies.
- HPS reserves the right to require additional insurance should HPS deem additional insurance necessary, in HPS's sole discretion.

A. Workers' Compensation (with Waiver of subrogation to HPS) Employer's Liability, including all states, U.S. Longshoremen, Harbor Workers and other endorsements.

B. Commercial General Liability Occurrence in an amount no less than $1,000,000, including, but not limited to, Premises and Operations, Products Liability Broad Form Property Damage, Contractual Liability, Personal and Advertising Injury Liability and where the exposure exists, coverage for watercraft, blasting collapse, and explosions, blowout, catering and underground damage.
    - $300,000 each occurrence Limit Bodily Injury and Property Damage combined
    - $300,000 Products-Completed Operations Aggregate Limit $500,000 per Job Aggregate
    - $300,000 Personal and Advertising Injury Limit

C. Automobile Liability Coverage (if applicable)
    - $300,000 Combined Liability Limits Bodily Injury and Property Damage Combined

5.22 Interpretation

Vendor agrees that the normal rules of construction that require that any ambiguities in this Agreement are to be construed against the drafter shall not be employed in the interpretation of this Agreement. No course of prior dealings between HPS and Vendor and no usage of trade shall be relevant to, supplement, or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection.

5.23 Invoices; Payments

Invoices shall be directed to HPS's Accounts Payable Department. All invoices shall be itemized to include the type of good(s) and/or service(s) rendered. Vendor shall submit invoices within a timely manner during HPS's fiscal year in which the good(s) and/or services are purchased. Payments are due to Vendor within thirty (30) days after the later of the following: (1) the date HPS receives the goods under the Agreement; (2) the date the performance of the service under the Agreement is

completed; or (3) the date HPS receives an invoice for the goods or service. Vendor agrees to pay any subcontractors, if any, the appropriate share of the payment received from HPS not later than the tenth (10th) day after the date Vendor receives the payment from HPS.

5.24 IRS W-9

In order to receive payment under this Agreement, Vendor shall have a current I.R.S. W-9 Form on file with HPS and will be required to file individual tax returns and to pay taxes in accordance with all provisions of applicable Federal and State law. Vendor hereby promises and agrees to indemnify HPS for any damages or expenses, including attorney's fees, and legal expenses, if any, incurred by HPS as a result of Vendor's failure to make such required payments. Vendor's obligations contained in this Section survive termination or expiration of this Agreement and continue on indefinitely, and cannot be waived or varied.

5.25 Multiple Contract Awards; Non-Exclusivity

HPS reserves the right to award multiple contracts for each commodity category. Commodity categories are established at the sole discretion of HPS. Nothing in this Agreement may be construed to imply that Vendor has the exclusive right to provide products and/or services to HPS. During the Term of this Agreement, HPS reserves the right to use all available resources to procure other products and/or services as needed and doing so will not violate any rights of Vendor.

5.26 New Products

New products that meet the specifications detailed in the solicitation may be added to this Agreement, with prior written approval from HPS. Pricing of any new products shall be equivalent to the percentage discount or proposed prices for other similar products. Vendor may replace or add products to an existing contract if: the replacing products are equal to or superior to the original products offered; are discounted in a similar or to a greater degree; and the products meet the requirements of the original solicitation. No products may be added to avoid competitive procurement procedures. HPS may reject any proposed additions, without cause, in its sole discretion.

5.27 No Substitution

Any purchase order issued pursuant to this Agreement shall conform to the specifications and descriptions identified in this Agreement and in the solicitation. Good(s) delivered must be new, in first-class condition, including shipment and storage containers, unless otherwise indicated on Vendor's proposal or in a purchase order. Unless otherwise agreed to in advance by HPS, Vendor will not deliver substitutes without prior authorization from HPS.

5.28 No Agency or Endorsements

HPS and Vendor are independent contractors and have no power or authority to assume or create any obligation or responsibility on behalf of the other party. This Agreement shall not be construed or deemed an endorsement of a specific company or product. It is the intention of the parties that Vendor is independent of HPS and is not an employee, agent, joint venturer, or partner of HPS, and nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venturer or partner, between HPS and Vendor or HPS and any of Vendor's agents. Vendor agrees that HPS has no responsibility for any conduct of any of Vendor's employees, agents, representatives, contractors, or subcontractors.

5.29 Non-Appropriation Clause

Notwithstanding any other provision of this Agreement or obligation imposed on HPS by this Agreement, HPS shall have the right to terminate this Agreement and/or any purchase order issued pursuant to this Agreement, without default or liability to Vendor resulting from such termination, if it is determined by HPS, in HPS's sole discretion, that there are insufficient funds to make payments under this Agreement. The parties agree that this Agreement is a commitment of HPS's current revenue only. Vendor further understands and agrees that this Agreement is conditioned upon continued funding and appropriation and allotment of funds by the Texas State Legislature and/or the Texas Education Agency pursuant to the School's open-enrollment charter. Renewal of this Agreement, if any, is expressly contingent upon appropriation of funds and satisfactory performance by Vendor under this Agreement.

5.30 Notice

Any notice provided under the terms of this Agreement by either party to the other shall be in writing and shall be given by hand-delivery or by certified or registered mail, return receipt requested. Notice shall be sufficient if made or addressed to the address listed in the signature line of this Agreement. Notice shall be deemed effective upon receipt. Each party may change the address at which notice may be sent to that party by giving notice of such change to the other party by certified or registered mail, return receipt requested.

5.31 Penalties

If Vendor fails or is unable to provide the goods or services at the prices quoted in Vendor's proposal, if Vendor fails to deliver the goods or services in accordance with the timeline detailed in a purchase order, or if Vendor fails to fulfill or abide by the terms and conditions of the Agreement, HPS may take the following action(s), in HPS's sole discretion, and Vendor agrees to comply with HPS's action(s):

(a) insist that Vendor honor the quoted price(s) specified in Vendor's proposal;
(b) have Vendor pay the difference between Vendor's price and the price of the next acceptable proposal (as determined by HPS);
(c) have Vendor pay the difference between Vendor's price and the actual purchase price of the good or service on the open market; and/or
(d) recommend to HPS's Board of Trustees that Vendor no longer be given the opportunity to submit a proposal to HPS and/or that this Agreement be immediately terminated.

5.32 Performance

Vendor agrees to use commercially reasonable best efforts to provide the good(s) and/or service(s) subject to this Agreement.

5.33 Performance and Payment Bonds

Vendor agrees to provide performance bonds and/or payment bonds as required by Texas law on specified contracts and/or projects, as applicable. HPS will include the performance and payment bonds requirement in the specifications section of any solicitation or in a purchase order if performance bonds and/or payment bonds are required.

5.34 Prevailing Wage Rates

Vendor and all subcontractors of Vendor shall comply with all state and federal laws regarding prevailing wage rates to the extent applicable to this Agreement and to this solicitation by HPS.

5.35 Prices

All prices in Vendor's proposal shall be firm for the Term of the Agreement. Unit prices shall include shipping/freight/inside delivery and installation charges to all HPS locations.

All price changes shall be presented to HPS for acceptance or rejection by HPS, in its sole discretion, using the same format as was accepted in Vendor's original proposal; all price changes for goods and/or services provided under this Agreement must be approved, in writing, by HPS prior to taking effect. The following documentation shall be provided to support a request for a price change: justification for change/increase; terms and conditions; market conditions; manufacturers/ distributors' impact (if any).

5.36 Quantities

Because all commodities will be provided on an "as needed" basis, HPS makes no representation either orally or in writing to the amount of commodities, services, or related items HPS will use during the Term of the Agreement. Any quantities shown on the RFP are estimates only, based on projected use and need; it is specifically understood and agreed that these quantities are approximate. HPS reserves the right to increase or decrease quantities. In the event quantities are increased or decreased, the amount added or deducted shall be based upon the unit price included in Vendor's proposal.

5.37 Records Retention

Vendor shall maintain its records and accounts in a manner that shall assure a full accounting for all goods and/or services provided by Vendor to HPS under this Agreement. Such records shall include, but not be limited to, accounting records, written policies and procedures, subcontract files, all paid vouchers (including those for out-of-pocket expenses), ledgers, cancelled checks, deposit slips, bank statements, journals, original estimates, estimating work sheets, contract amendments, change orders, purchase orders, insurance documents, memoranda, and correspondence relating to this Agreement. These records and accounts shall be retained by Vendor and made available for audit by HPS and/or HPS' representatives for a period of not less than five (5) years from the date of completion of the services, receipt of the goods, or the date of the receipt by HPS of Vendor's final invoice or claim for payment in connection with this Agreement, whichever is later. If an audit has been announced, Vendor shall retain its records and accounts until such audit has been completed.

When federal funds are expended by HPS pursuant to this Agreement, Vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.334. Vendor further certifies that Vendor will retain all records as required by 2 CFR § 200.334 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

For projects funded in whole or in part through the **federal E-Rate program**, Vendor shall comply with the record retention requirements of 47 C.F.R. § 54.516(a)(2). Vendor shall retain all records relating to the delivery of E-Rate-supported equipment and services, and all other documentation demonstrating compliance with applicable E-Rate statutory and regulatory requirements, for at least ten (10) years after the last day of the applicable funding year or the service delivery deadline for the applicable funding request, including any approved extensions, whichever is later. Vendor shall make such records available to HPS and its authorized representatives and shall produce them upon

request by the Federal Communications Commission (FCC), the Universal Service Administrative Company (USAC), or other authorized governmental representatives in accordance with 47 C.F.R. § 54.516(b). If any audit, investigation, litigation, claim, or other proceeding involving these records remains pending when the applicable retention period expires, Vendor shall retain the records until the matter is fully resolved and all resulting findings are addressed. Where multiple retention requirements apply, Vendor shall retain the records for the longest applicable period. These obligations shall survive expiration or termination of this Agreement.

5.38 Right to Audit

HPS, upon written notice, shall have the right to audit all of Vendor's records and accounts relating to this Agreement. Records subject to audit shall include, but are not limited to, records which may have a bearing on matters of interest to HPS in connection with Vendor's work for HPS and shall be open to inspection and subject to audit and/or reproduction by HPS or its authorized representative(s) to the extent necessary to adequately permit evaluation and verification of:

(a) Vendor's compliance with this Agreement and the requirements of the solicitation,
(b) compliance with HPS procurement policies and procedures,
(c) compliance with provisions for computing billings to HPS, and/or
(d) any other matters related to this Agreement.

5.39 Severability

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

5.40 Shipments

Vendor shall ship ordered products within seven (7) working days for available goods and within four (4) to six (6) weeks for special-order items after the receipt of the purchase order unless otherwise previously agreed to, in writing, by HPS. If a product cannot be shipped within that timeframe, Vendor shall notify HPS of the reasons why the product has not shipped and shall provide an estimated shipping date, if applicable. HPS may cancel the order if the estimated shipping time is not acceptable to HPS, in its sole discretion.

5.41 Subcontractors

If Vendor uses subcontractors in the performance of any part of this Agreement, Vendor shall be fully responsible to HPS for all acts and omissions of the subcontractors just as Vendor is responsible for Vendor's own acts and omissions. Nothing in this Agreement shall create for the benefit of any such subcontractor any contractual relationship between HPS and any such subcontractor, nor shall it create any obligation on the part of HPS to pay or to see to the payment of any moneys due any such subcontractor except as may otherwise be required by law.

5.42 Taxes

HPS is tax-exempt, and HPS shall not pay taxes for goods and/or services provided under this Agreement. Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from this Agreement, including, without limitation, any federal, state, or local income, sales or excise taxes of Vendor or its employees. HPS shall not be liable for any taxes resulting from this Agreement.

5.43 Tax Responsibilities of Vendor and Indemnification for Taxes

Vendor and all subcontractor(s) of Vendor shall pay all federal, state, and local taxes applicable to their operation and any persons employed by Vendor and all subcontractors of Vendor. Vendor shall require all subcontractors to hold HPS harmless from any responsibility for taxes, damages, and interest. If applicable, contributions required under federal, state, and/or local laws and regulations and any other costs including, but not limited to, transaction privilege taxes, unemployment compensation insurance, Social Security, and Worker's Compensation, shall be the sole responsibility of Vendor.

5.44 Termination of Contract

This Agreement shall remain in effect until (1) the Agreement expires by its terms or (2) the Agreement is terminated by mutual agreement of HPS and Vendor. In the event of a breach or default of the Agreement and/or the procurement solicitation by Vendor, HPS reserves the right to enforce the performance of the Agreement and/or the procurement solicitation in any manner prescribed by law or deemed to be in the best interest of HPS. HPS further reserves the right to terminate the Agreement immediately in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in this Agreement, the procurement solicitation, and/or a purchase or work order; (2) make any payments owed; or (3) otherwise perform in accordance with this Agreement and/or the procurement solicitation. HPS also reserves the right to terminate the Agreement immediately, with written notice to Vendor, for convenience and without cause if HPS believes, in its sole discretion, that it is in the best interest of HPS to do so. Vendor agrees that HPS shall not be liable for damages in the event that HPS declares Vendor to be in default or breach of this Agreement and/or the procurement solicitation. Vendor further agrees that upon termination of the Agreement for any reason, Vendor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and/or vendor.

5.45 Title and Risk of Loss

Whenever HPS is purchasing (and not leasing) an item under this Agreement, title and risk of loss shall not pass to HPS until HPS actually receives, accepts, and takes possession of the goods at the point(s) of delivery. The place of delivery shall be as set forth in any duly authorized purchase orders.

5.46 Waiver

No failure on the part of either party at any time to require the performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such party's right to enforce such term, and no waiver on the part of either party of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by duly authorized representatives of the parties hereto.

5.47 Warranty – Price

The price to be paid by HPS for goods and/or services shall be that contained in Vendor's proposal, which Vendor warrants to be no higher than Vendor's current prices on orders by others for products of the kind and specifications covered by this Agreement for similar quantities under similar or like conditions and methods of purchase. In the event Vendor breaches this warranty, the prices of the items shall be reduced to the Vendor's current prices on orders by others, or in the alternative, HPS may immediately terminate this Agreement, without liability to HPS. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Vendor for the

purpose of securing business. For breach or violation of this warranty, HPS shall have the right in addition to any other right or rights to terminate this Agreement without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

5.48 Warranty – Goods and/or Services

All goods and/or services provided by Vendor under this Agreement must be warranted to be free from defects in material, workmanship, and free from such defects in design for a period of one (1) year upon the later of HPS's acceptance of the product and/or service or payment of the applicable invoice. Vendor warrants that all goods and/or services furnished under this Agreement shall conform in all respects to the terms of this Agreement, including any drawings, specifications, and/or standards incorporated herein, including, without limitation, those detailed in the procurement solicitation issued by HPS. In addition, Vendor warrants that goods and/or services are suitable for and will perform in accordance with the purposes for which they are intended. Vendor shall assume all liabilities incurred within the scope of consequential damages and incidental expenses, as set forth in the vendor or manufacturer's warranty, which result from either delivery or use of product, which does not meet the specifications within this Agreement or the solicitation procurement. Vendor shall not limit or exclude any implied warranties and any attempt by Vendor to do so shall render this Agreement terminable by HPS, in HPS' sole discretion.

5.49 Warranty – Safety

Vendor, its subcontractors, and their respective employees shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules, and regulations in the performance of services under this Agreement, including, without limitation, those promulgated by HPS and by the Occupational Safety and Health Administration ("OSHA"). In case of conflict, the most stringent safety requirements shall govern. Vendor shall indemnify and hold HPS harmless from and against all claims, demands, suits, actions, judgments, fines, penalties, and liability of every kind arising from the breach of Vendor's obligations under this provision.

Vendor warrants that the goods and/or services sold to HPS shall conform to the standards promulgated by applicable law and governing bodies, including, without limitation, OSHA and the Consumer Product Safety Commission. In the event the good or service does not conform to applicable standards, HPS may return the product for correction or replacement at Vendor's expense. In the event Vendor fails to make the appropriate correction within reasonable time, correction made by HPS will be at Vendor's expense. Additionally, no asbestos in any form may be used in the manufacture or processing of any product purchased by HPS. If any product called for by name in the RFP should contain any asbestos material, Vendor must notify the HPS Purchasing Office immediately for the name of a suitable substitute asbestos-free product.

5.50 Warranty – Infringement

Vendor warrants that the goods and/or services delivered pursuant to this Agreement will not give rise to a claim of intellectual property infringement by a third party.

5.51 Website Support

Vendor agrees to cooperate with HPS in publicizing contract particulars on HPS's website. Vendor agrees to work with HPS in updating and maintaining current information on Vendor's activities related to the Agreement on the website. Vendor agrees to provide an electronic version of its logo for use on HPS's website upon request and provide other information as reasonably requested by

HPS to help ensure that HPS's website is current and consistently updated.

5.52 Workforce

Vendor shall employ only orderly and competent workers, skilled in the performance of the services, if any, which shall be performed under this Agreement. Vendor, its employees, subcontractors, and subcontractor's employees may not use or possess any firearms, alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on HPS's property, nor may such workers be intoxicated or under the influence of alcohol or drugs on HPS's property.