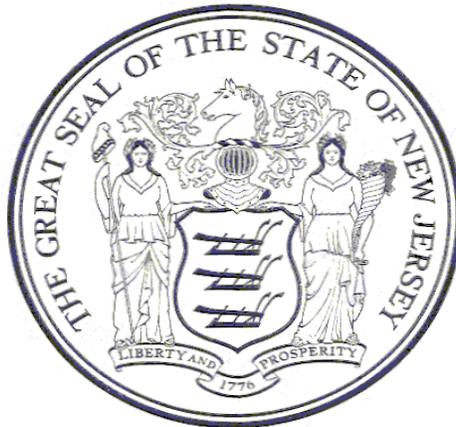

REQUESTS FOR PROPOSALS
for
NETWORK, HARDWARE & SOFTWARE SUPPORT SERVICES

Contract No.: GP-0236-R02

Issue Date: June 28, 2016

Mandatory Electronic Notice of Intent to Participate Due Date:
July 15, 2016 by 2:00 PM Eastern Time
{See the Introduction, within, for details}

Proposal Due Date:
July 29, 2016 by 2:00 PM Eastern Time
{See Section 1.0, within, for delivery addresses}



N.J. SCHOOLS DEVELOPMENT AUTHORITY

32 East Front Street, PO Box 991, Trenton, NJ 08625

**REQUEST FOR PROPOSALS
FOR
NETWORK, HARDWARE & SOFTWARE SUPPORT SERVICES**

INTRODUCTION

Through this Request for Proposals (“RFP”), the New Jersey Schools Development Authority (“NJSDA” or “Authority”) is seeking to engage the services of one (1) firm (“firm” or “consultant”) to provide network, hardware and software support services at NJSDA’s headquarters located at 32 East Front Street, Trenton, NJ 08625, at NJSDA’s satellite office located at 375 McCarter Highway, Newark, NJ 07114, and at any NJSDA school development site.

The term of the engagement will be three (3) years, or until all obligations of the consultant to deliver services pursuant to the Agreement have been performed to the satisfaction of the Authority, whichever is later. The term may be extended for one (1) additional year at the sole discretion of the NJSDA.

There is no standard NJSDA pre-qualification requirement applicable to this engagement. Firms must demonstrate experience and qualifications as more fully described below.

This REQUEST FOR PROPOSALS PACKAGE consists of the following items:

1. Request for Proposals
2. Attachment A Consultant Agreement
3. Attachment B: NJSDA Form 202 - Key Team Member Resume
4. Attachment C: NJSDA Fee Proposal
5. Attachment D Moral Integrity Questionnaire
6. Attachment E: Ownership Disclosure Form
7. Attachment F: Disclosure of Investment Activities in Iran Form
8. Attachment G: Source Disclosure Certification Form
9. Attachment H: Responses to Selected Bidders’ Questions Submitted in Connection with Cancelled Procurement GP-0236-R01

The services required of the firms pursuant to this RFP are set forth in the Scope of Services attached as Appendix B to the Agreement (Attachment A to this RFP). The RFP documents must be read in their entirety as they define the responsibilities of the firm and the NJSDA. A firm wishing to submit a Proposal must review and be thoroughly familiar with all terms and conditions of these documents.

Upon award, the NJSDA shall forward the Agreement for Network, Hardware & Software Support Services (the “Agreement”) to the selected firm for immediate execution, **without modification**.

Notice of Intent to Participate. The NJSDA will not hold a traditional pre-proposal conference for this procurement. Any firm wishing to submit a proposal **must** sign in electronically by sending a mandatory e-mail Notice of Intent to Participate to Alison Perry at aperry@njsda.gov **no later than 2:00 PM Eastern Time on July 15, 2016.**

Questions from Interested Firms. Firms may submit written questions regarding this procurement to the NJSDA by sending them by e-mail to Alison Perry at aperry@njsda.gov **no later than 2:00 PM Eastern Time on July 15, 2016.** The questions and NJSDA answers will be provided via an addendum to the RFP to each firm that submitted a timely e-mail Notice of Intent to Participate.

1.0 INSTRUCTIONS FOR SUBMITTING A TECHNICAL PROPOSAL

A firm responding to this RFP shall thoroughly familiarize itself with the RFP to ensure responsiveness in its submission. The submission is to consist of the following:

- 1.1 Cover Letter
- 1.2 Firm Experience - Case Studies
- 1.3 Team Structure
- 1.4 Key Team Member Experience and Qualifications
- 1.5 Approach to Providing the Scope of Services
- 1.6 Approach to Service Level Agreement Performance

The firm's Technical Proposal must be organized and presented in the foregoing order on 8.5" X 11" pages. Organizational charts, staffing structure, and schedules may be on larger paper. Each Technical Proposal will be ranked using the Evaluation Criteria listed in this RFP, with information contained in a Technical Proposal verified as may be necessary.

Proposal Package Mailing Instructions. The firm must submit one (1) unbound original, four (4) bound copies, and one (1) full cover-to-cover copy in PDF format on electronic media (CD or comparable) of a Technical Proposal; one (1) original, completed NJSDA Fee Proposal (in a separate envelope, which is sealed and then placed in the same package with the Technical Proposal); and one (1) original, completed Moral Integrity Questionnaire (in a separate envelope, which is sealed and then placed in the same package with the Technical and Fee Proposals). Proposal Packages must be received by the NJSDA **no later than 2:00 PM Eastern Time on July 29, 2016**, as follows:

If submitting by hand or overnight delivery, at the:

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
32 East Front Street
Trenton, New Jersey 08625-0991
Attention: Alison Perry, Procurement
Subject: Network, Hardware & Software Support Services Proposal - GP-0236-R02**

If submitting by U.S. Mail, address packages to:

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
P.O. Box 991
Trenton, New Jersey 08625-0991
Attention: Alison Perry, Procurement
Subject: Network, Hardware & Software Support Services Proposal - GP-0236-R02**

Submissions received after the above date and time will not be considered. Faxed and e-mailed Proposals will not be accepted.

Any firm wishing to submit a Proposal must submit a timely electronic Notice of Intent to Participate, as provided in the Introduction, above.

The items that must be addressed in the Technical Proposal that must be submitted are further described below.

1.1 Cover Letter

Present a brief **understanding of the NJSDA's needs** as described in the Scope of Services set forth in Appendix B of the Agreement (Attachment A to this RFP). Include in the cover letter a summary description of the **firm's size and available resources**, and any other information relevant to the firm's qualifications not set forth elsewhere in its Technical Proposal. **The firm shall not include any fee information whatsoever in the Cover Letter or elsewhere in the Technical Proposal.**

1.2 Firm Experience – Case Studies

Firm experience shall be assessed through a brief summary of the firm's general relevant experience, including experience with Information Technology Support and Consulting Services, through **(a) a brief summary of technical knowledge and experience, and (b) two specific required case studies.** The case studies must address recent examples of the proposing firm's past provision of services of the type outlined in the Scope of Services. **Case studies may be based on contracts with public or private sector clients.** The case studies must concisely set forth the basic background information (e.g., dates and location), the scope of services provided, and results of said engagement. The case studies must describe the effectiveness of the engagement, and the methodology used to measure such effectiveness. The firm must identify the name and address of the client entity and the name, title and telephone number of a contact person associated with the client entity who is familiar with and able to comment on the firm's performance on each project.

1.3 Team Structure

Present a narrative, and a corresponding Organizational Chart, detailing the structure of the Key Team or Teams that will support NJSDA in each of the services specifically required in the Scope of Services, as well as the Key Team Member or Members who will be responsible for this engagement. The narrative should also describe the contemplated role and level of responsibility of each Key Team Member. For the purpose of this engagement, a "Key Team Member" is a principal, partner or officer of the Firm, senior associate, mid-level associate or associate, represented in the Proposal as having a responsible role in the successful completion of the required Services. At a minimum, the following Key Team Members must be addressed: Help Desk Analyst, Field Technician, Desktop Deployment Technician, Systems/Network Administrator, IT Infrastructure Consultant and IT Project Manager.

1.4 Key Team Member Experience and Qualifications

Utilizing *NJSDA Form 202 – Key Team Member Resume*, the firm should provide a summary of each Key Team Member’s experience, which must include, but is not limited to a description of at least three (3) projects completed within the last three (3) years for which the Key Team Member in question fulfilled a role similar to that proposed for this engagement. At a minimum the following Key Team Members must be addressed: Help Desk Analyst, Field Technician, Desktop Deployment Technician, Systems/Network Administrator, IT Infrastructure Consultant and IT Project Manager. For each Key Team Member, the resumes should also include, but not be limited to, any applicable certifications and/or affiliations. *NJSDA Form 202 – Key Team Member Resume* is included in Attachment B to this RFP.

1.5 Approach to Providing the Scope of Services

The firm must explain in detail its specific approach, including relevant internal processes, to providing **each** of the services specifically required in the Scope of Services at all NJSDA locations across the state. These services fall into two main categories: (a) Network, Hardware and Software Support, and (b) services provided under a Universal Labor Plan. This section of a Technical Proposal must also address how the firm will support system functions, its business and off-hours of operation, and key locations of support personnel.

1.6 Approach to Service Level Agreement Performance

In this section of its Technical Proposal, a firm must describe its approach to performing the services that will be subject to a Service Level Agreement (“SLA”) within the levels established in the SLA, as provided in the Scope of Services, established in the Agreement.

2.0 INSTRUCTIONS FOR SUBMITTING A FEE PROPOSAL, MORAL INTEGRITY QUESTIONNAIRE, OWNERSHIP DISCLOSURE FORM, DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM, AND SOURCE DISCLOSURE CERTIFICATION FORM

2.1 Fee Proposal

The firm must complete and return a NJSDA Fee Proposal in the form set forth in Attachment C to this RFP for all services contained in the Scope of Services. As indicated on the *NJSDA Fee Proposal* form, Price Per Unit Fees are required for network hardware and software services, and Loaded Hourly Labor Rates are required for onsite technical resources to assist with problem resolution for unanticipated Information System services which are time sensitive in nature related to: network infrastructure, network devices, file servers, desktops, laptops, software applications, help desk support or system administration. Prices must be proposed for all three years of the initial engagement, as well as for the optional one year extension. Prices must also be proposed in conformity with the information, including the applicable service level (i.e. 24-7 or 9-5), provided in Exhibits 1-4 of the Scope of Services, attached as Appendix B to the Agreement (Attachment A to this RFP).

Failure to submit such Fee Proposal will result in the disqualification of the bid and rejection of the firm’s Technical Proposal.

2.2 Moral Integrity Questionnaire

At the same time as a Technical Proposal is submitted, the firm must submit to NJSDA one (1) completed Moral Integrity Questionnaire for submission to the New Jersey State Police, in the form attached as Attachment D to this RFP. NJSDA will hold all submitted Questionnaires, unopened, until after all firms have been ranked, unless special circumstances warrant otherwise. Thereafter, NJSDA staff will forward the Questionnaire of the selected firm to the New Jersey State Police for review.

Moral Integrity approval is a prerequisite to engagement of the firm.

2.3 Ownership Disclosure Form

At the same time as a Technical Proposal is submitted, the firm must submit an Ownership Disclosure Form, pursuant to N.J.S.A. 52:25-24.2, using the form created by the Department of Treasury, Division of Purchase and Property, which form is available as an interactive form on the Treasury website at:

<http://www.state.nj.us/treasury/purchase/forms/OwnershipFinal12-14.pdf>

If the firm is a corporation, the Ownership Disclosure Form requires the firm to set forth the names and addresses of all stockholders in the corporation or partnership who own 10% or more of any class of its stock. If the firm is a type of partnership, the Ownership Disclosure Form requires the names and addresses of all individual partners in the partnership who own a 10% or greater interest therein. If one or more such stockholder or partner in the firm is itself a corporation or partnership, then the stockholders holding 10% or more of that corporation's stock, or the individual partners owning 10% or greater interest in that partnership, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every non-corporate stockholder, and individual partner, exceeding the 10% ownership criteria threshold established by N.J.S.A. 52:25-24.2, have been listed. The completed Ownership Disclosure Form must be submitted and included with the completed Technical Proposal.

Failure to submit such Ownership Disclosure Form will result in the disqualification of the bid and rejection of the firm's Technical and Fee Proposals.

2.4 Disclosure of Investment Activities in Iran Form

At the same time as a Technical Proposal is submitted, the firm must submit a Disclosure of Investment Activities in Iran Form, attached as Attachment F to this RFP, pursuant to Public Law 2012, c. 23 (codified at N.J.S.A. 52:32-55 et seq.) (the "Act"). Pursuant to the Act, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract with the New Jersey Schools Development Authority ("NJSDA") must complete a Certification which states that the person or entity, or one of the persons or entity's parents, subsidiaries, or affiliates, is not identified on a list created and maintained by the New Jersey Department of the Treasury ("Treasury") as a person or entity engaging in investment activities in Iran.

Failure to submit such Certification will result in the disqualification of the bid and rejection of the firm's Technical and Fee Proposals.

2.5 Outsourced Services Special Provisions

Under P.L. 2005, c. 92 (formerly Executive Order No. 129 (2004)), the NJSDA shall not award a contract to a bidder that submits a bid proposal to perform services, or to subcontract with a firm to perform services, outside the United States, unless one of the following conditions is met:

- (a) The bidder or its subcontractor provide a unique service, and no comparable, domestically-provided service can adequately duplicate the unique features of the service provided by the bidder and/or its subcontractor; or
- (b) A significant and substantial economic cost factor exists such that a failure to use the bidder's and/or subcontractor's services would result in economic hardship to the NJSDA; or
- (c) The Treasurer determines that a failure to use the bidder's and/or subcontractor's services would be inconsistent with the public interest.

Source Disclosure Requirements

All bidders seeking a contract with the NJSDA shall be required to disclose:

- (a) The location by country where services under the contract will be performed; and
- (b) The location by country where any subcontracted services will be performed.

Accordingly, at the same time as a Technical Proposal is submitted, the firm must submit a Source Disclosure Certification Form, attached as Attachment G to this RFP, filled out with the sourcing information required for itself and any proposed subcontractor.

Failure to submit sourcing information shall preclude award of a contract to the proposing firm.

Shift to Outsourced Services During Contract Term Shall Be a Breach of Contract

If, during the term of the contract, the Consultant or subcontracted firm, who had on contract award declared that services would be performed in the United States, proceeds to shift the performance of the services outside of the United States, the Consultant shall be deemed in breach of the Agreement, which shall be subject to termination for cause under the terms of the Agreement, unless the NJSDA shall have first determined in writing that extraordinary circumstances require a shift of services or that a failure to shift the services would result in economic hardship to the NJSDA or the State.

3.0 SELECTION PROCEDURES

Each Proposal will be reviewed to determine responsiveness. Non-responsive Proposals will be rejected without evaluation. Responsive Technical Proposals will be evaluated by a Selection Committee ("Committee") established for the purpose of evaluating responsive Technical Proposals. The Selection Committee shall consist of no fewer than three (3) NJSDA Staff members. The evaluation will be based upon the information provided by a firm in response to this RFP, and any necessary verification thereof.

The members of the Selection Committee will evaluate each responsive Technical Proposal, and may confer with each other regarding the content of the submissions before scoring, but each Selection Committee member will independently score each responsive Technical Proposal in accordance with the following Evaluation Criteria:

- Firm Experience – Case Studies
- Team Structure
- Key Team Member Experience and Qualifications
- Approach to Providing the Scope of Services
- Approach to Service Level Agreement Performance

Each Selection Committee member will evaluate each Technical Proposal, assigning a raw score for each criterion on a scale of 0 to 10 as follows:

- Outstanding (9-10): depth and quality of response offers significant advantages.
- Superior (7-8): exceeds RFP requirements with no deficiencies.
- Sufficient (5-6): meets RFP requirements with no significant deficiencies.
- Minimal (3-4): meets RFP requirements but contains some significant deficiencies.
- Marginal (1-2): comprehends intent of RFP but contains many significant deficiencies.
- Unsatisfactory (0): requirements not addressed and lack of detail precludes adequate evaluation.

Weighting factors will then be applied to each of the Selection Committee member’s raw scores for each criterion to arrive at a total weighted score as follows:

Evaluation Criteria	Weighting Factor (Applied to Raw Score)	Maximum Weighted Points
Firm Experience – Case Studies	3.0	30
Team Structure	1.0	10
Key Team Member Experience and Qualifications	2.0	20
Approach to Providing the Scope of Services	3.0	30
Approach to Service Level Agreement Performance	1.0	10
TOTAL POSSIBLE POINTS		100

Respondents will receive a Technical Proposal Score based on the above-described evaluation criteria. The scores of the Selection Committee members will be aggregated to obtain a Technical Proposal Score for each firm. The responding firms will be ranked based on their Technical Proposal Score and a shortlist of the three (3) highest-ranked firms shall be determined and notified to participate in interviews with the Selection Committee. In the event of a tie in Technical Proposal Scores for the third firm, those firms with the tied Technical Proposal Scores will be interviewed. If fewer than three (3) firms submit valid, responsive Proposals, then all such responding firms will be invited to participate in interviews with the Selection Committee. During the interviews, the Selection Committee will evaluate each firm based upon the same evaluation criteria and weighting factors set forth above. The Selection Committee members will independently score each firm based upon its interview. The scores of the Selection Committee members will be aggregated to obtain an Interview Score.

The Technical Proposal Score and the Interview Score assigned to each firm will be added together to obtain the firm's Final Combined Score. Firms will be ranked in accordance with their Final Combined Score.

Following the final technical ranking, the Fee Proposals will be opened and reviewed by the NJSDA. Using the Fee Proposals as a guideline, the NJSDA shall negotiate a contract with the highest-ranked firm at compensation that the NJSDA determines to be fair and reasonable. Should the NJSDA be unable to negotiate a satisfactory contract with the highest-ranked firm, the NJSDA shall terminate negotiations with the highest-ranked firm and shall then undertake negotiations with the second highest-ranked firm. Failing accord with the second highest-ranked firm, the NJSDA shall terminate negotiations with the second highest-ranked firm and shall then negotiate with the third highest-ranked firm. In the event that the NJSDA is unable to reach a satisfactory contract with any of the three highest-ranked firms, the NJSDA may select additional firms in order of their ranking and continue negotiations until an agreement is reached or, at its option, the NJSDA may reject all Proposals.

The successful firm will be required to comply with all pre-award documentation requirements. Upon satisfaction of all pre-award requirements, the successful firm will be awarded the engagement. Unsuccessful firms will be notified by letter after award.

After the award, any firm wishing to review any of the Proposals submitted and/or the Selection Committee's evaluations shall complete an Open Public Records Act (OPRA) request form. The form can be downloaded from the NJSDA website at <https://www.njsda.gov/njsda/opra/index.html>. Please submit completed OPRA forms to: Custodian of Public Records, New Jersey Schools Development Authority, 32 East Front Street, P.O. Box 991, Trenton, New Jersey 08625-0991.

Notwithstanding anything above to the contrary, the NJSDA, in accordance with all applicable laws, has no obligation to make an award and reserves the right to waive any non-material defects in any Technical or Fee Proposal submitted, reject all Proposals and/or terminate the selection process at any time.

Any firm attempting to contact government officials (elected or appointed), including NJSDA Board members, NJSDA Staff, and Selection Committee members in an effort to influence the selection process may be immediately disqualified.

4.0 PRE-AWARD REQUIREMENTS (INFORMATIONAL ONLY – DO NOT INCLUDE WITH RFP SUBMISSION)

After completion of the RFP process and determination of the successful firm, the NJSDA will require the following additional information prior to the award of the contract:

4.1 Proof of Business Registration Certification

Pursuant to N.J.S.A. 52:32-44, each firm shall provide proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury (the "Division of Revenue"). Each firm may obtain New Jersey Business Registration assistance by visiting:

<http://www.state.nj.us/treasury/revenue/gettingregistered.shtml>

Please be advised, however, that business registrations are mailed generally within seven to ten

days, so each firm should plan accordingly.

4.2 Campaign Contributions Disclosure and Contracting Ineligibility

The NJSDA and participants in this procurement are subject to the provisions of P.L. 2005, c. 51 (enacting N.J.S.A. 19:44-20.13 to -20.25, and amending and supplementing N.J.S.A. 19:44A-20.1 et seq.) which impose restrictions on State agencies and independent authorities to insulate the procurement, negotiation and award of state contracts from the risk or appearance of improper influence in connection with political contributions. Additionally, this procurement is subject to the terms of Executive Order No. 117 (2008), which is designed to enhance New Jersey's efforts to protect the integrity of government contractual decisions and increase the public's confidence in government. The Executive Order builds on the provisions of P.L. 2005, c. 51 ("Chapter 51"), and limits contributions to certain political candidates and committees by for-profit business entities that are, or seek to become, State government vendors.

The provisions of Chapter 51 and Executive Order No. 117 (2008) make political contributors ineligible for award of state contracts for specific periods of time depending on the nature of the contribution. Accordingly, a selected firm will be required to respond in a timely fashion to certification and disclosure requirements that will be stated in the Notice of Award issued by the NJSDA.

- a. Certification and Disclosure Forms.** Each firm shall receive a Notice of Award that will, among other things, notify the firm that it must submit a Certification and Disclosure of Political Contributions form and Business Entity Disclosure form as provided by NJSDA. Failure to submit these forms in a timely fashion shall be cause for rejection of the firm.
- b. Firm's Continuing Obligation to Comply with P.L. 2005, c. 51.** The firm shall be required on a continuing basis to disclose and report to NJSDA any contributions made during the contract term by the Business Entity on forms provided by NJSDA, at the time it makes the contribution.

4.3 Annual Political Contributions Disclosure Statement

Firms are advised of their responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission ("ELEC"), pursuant to N.J.S.A. 19:44A-20.18 and 20.19 (P.L. 2005, c. 271, section 3), in the event they receive contracts in excess of \$50,000 from a public entity in a calendar year. It is a firm's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at <http://www.elec.state.nj.us/>.

4.4 Anti-Discrimination Requirements

The Consultant and its subconsultants shall not discriminate in employment and shall abide by all anti-discrimination laws including those contained within N.J.S.A. 10:5-1 et seq. and all rules and regulations issued thereunder, including N.J.A.C. 17:27-1.1 et seq. **Accordingly, in a Notice of Award, a firm and its subconsultants shall be required to submit to the NJSDA, with its executed Agreement, one of the following three documents:**

- (1) appropriate evidence that the consultant is operating under an existing

Federally approved or sanctioned affirmative action program;

- (2) a certificate of employee information report approval issued in accordance with N.J.A.C. 17:27-4.2; or
- (3) an initial *Form AA302 - Employee Information Report* completed by the firm in accordance with N.J.A.C. 17:27-4.2. Please note the Authority only seeks a copy of the Form AA302. The original should be forwarded to the NJ Department of the Treasury, Division of Purchase & Property, Contract Compliance Audit Unit, EEO Monitoring Program as directed on the form. Forms may be downloaded at http://www.state.nj.us/treasury/contract_compliance/forms.shtml.

4.5 Insurance and Indemnification

A successful firm shall be required to provide evidence of the insurance coverages required in Section 5.1 of the Agreement, Attachment A to this RFP, at the time of execution of the Agreement.

4.6 Other Information As Required

The NJSDA may request additional information from selected firms as required under the Agreement, or pursuant to applicable policies, procedures or law.

ATTACHMENT A
CONSULTANT AGREEMENT

AGREEMENT

Between the

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

And the

CONSULTANT

For

NETWORK, HARDWARE & SOFTWARE SUPPORT SERVICES

CONTRACT NO.: GP-0236-R02

THIS AGREEMENT is made and entered into this ___ day of _____, 2016, (the “Effective Date”) between the New Jersey Schools Development Authority (the “Authority”) and _____ (“Consultant”), with a principal office location at _____.

WITNESSETH that Consultant, for and in consideration of the payments hereinafter specified and agreed to be made by the Authority, hereby covenants and agrees to do and perform all of the Services and provide all of the Goods in accomplishing this Agreement for the Project identified as

Contract Number: GP-0236-R02

Project Name: Network, Hardware and Software Support Services

in strict and entire conformity with the Terms and Conditions of this Agreement and all Appendices and Attachments hereto and all other documents comprising this Agreement, all of which are hereby made part of this Agreement as fully and with the same effect as if the same had been set forth at length in the body of this Agreement.

Provided that Consultant strictly and completely performs all of the Services specified and all other obligations set forth in this Agreement, and subject only to such increases or decreases as are effectuated by Amendments to the Agreement as provided by the Agreement the Consultant shall receive compensation as set forth in Appendix C of this Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement:

CONSULTANT

**NEW JERSEY SCHOOLS
DEVELOPMENT AUTHORITY**

By:
Title:

By:
Title:

Sworn and subscribed to before me
This ____ day of _____, 20__.

Notary Public of

My commission expires: _____, 20__.

Reviewed and Approved as to form only

By:
Division of Chief Counsel, NJSDA

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1.0 DEFINITIONS

The terms set forth in this Agreement shall have the meanings ascribed to them for all purposes of this Agreement, unless the context clearly indicates some other meaning. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires.

- 1.1 “Additional Services”** means Services to be performed by the Consultant which are in addition to the Scope of Services, which Additional Services shall be described and compensated as set forth in an Amendment.
- 1.2 “Agreement”** means this agreement (and all appendices) between the Authority and the Consultant for the provision of Services, as such agreement may be amended from time to time in accordance with the provisions hereof.
- 1.3 “Amendment”** means an amendment to this Agreement executed by the Authority and the Consultant.
- 1.4 “Authority”**, “New Jersey Schools Development Authority”, or “NJSDA” means the public body corporate and politic established in, but not of, the Department of Treasury pursuant to P.L. 2007, c. 137, for the purpose of implementing provisions of the Educational Facilities Financing and Construction Act, N.J.S.A. 18A:17G-1 et seq. The Authority is the Party that has engaged the Consultant pursuant to the Contract.
- 1.5 “Claim”** means a claim, demand or assertion by one of the Parties to this Agreement, seeking, as a matter of right, adjustment or interpretation of Contractual Documents, payment of money, extension of time or other relief with respect to the terms of the Contractual Documents and shall also mean other disputes and matters in question between the Parties arising out of or relating to the Contractual Documents. This definition shall not apply to the term “Claim” as used in the Scope of Services.
- 1.6 “Consultant”** means the firm engaged by the Authority under this Agreement to provide Services to the Authority.
- 1.7 “Consultant Client Manager”** means that person designated by the Consultant to serve as its representative during the Term.
- 1.8 “Consultant Performance Evaluation Policy and Procedure”** means the Authority’s policies and procedures for evaluating the performance of a Consultant.
- 1.9 “Contractual Documents”** means all documents setting forth the obligations and responsibilities of the Consultant and the Authority that includes, but is not limited to, the Request for Proposals, the Technical Proposal, this Agreement, the Scope of Services, any Amendments and addenda.
- 1.10 “Day”** means calendar Day.
- 1.11 “Deliverables”** means resources and services or any other thing the delivery of which, however accomplished, that is required of the Consultant, explicitly or implicitly, by the Contractual Documents.
- 1.12 “EDA”** means the New Jersey Economic Development Authority, created pursuant to P.L. 1974, c. 80, as amended (N.J.S.A. 34:1B-1 et seq.) or any successor thereto.

- 1.13 “Effective Date”** means the date upon which this Agreement has been fully executed by all Parties, as indicated above.
- 1.14 “Fee Proposal”** means the fee proposal submitted by the Consultant in response to the RFP.
- 1.15 “Fiscal Year”** means the fiscal year of the Authority, which commences on January 1 of each year and ends on December 31 of the same year.
- 1.16 “Notice to Proceed”** means a form of notice issued by the Authority to the Consultant directing the Consultant to commence performing its responsibilities pursuant to this Agreement.
- 1.17 “Office of Fiscal Integrity”** means any designee of the Attorney General performing the functions and duties of the Office of Fiscal Integrity in School Construction within the Office of the Attorney General pursuant to N.J.S.A. 18A:7G-43, as amended.
- 1.18 “Parties”** means the Authority and the Consultant, which are the parties to this Agreement.
- 1.19 “Request for Proposals” or “RFP”** means the request issued by the Authority for proposals for the provision of Services, including a request for a Technical Proposal and a request for a Fee Proposal.
- 1.20 “School Construction Program”** means the program operated by the Authority in order to finance and construct School Facilities Projects pursuant to the Educational Facilities Financing and Construction Act, N.J.S.A. 18A:7G-1, et seq., as amended.
- 1.21 “School Facilities Project”** means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or maintenance of all or any part of a School Facility or of any other personal property necessary for or ancillary to any School Facility.
- 1.22 “School Facility”** means and includes any structure, building or facility used wholly or in part for academic purposes.
- 1.23 “Scope of Services”** means the Scope of Services required to be performed by the Consultant in accordance with the Contractual Documents, as more fully set forth in Appendix B to this Agreement. The Scope of Services may be amended, from time to time, in accordance with the provisions of this Agreement.
- 1.24 “Services”** means the services performed by the Consultant pursuant to the Contractual Documents, and includes all other labor, materials and equipment provided or to be provided to fulfill such obligations.
- 1.25 “Special Conditions”** means that document attached as Appendix A to this Agreement, and made a part hereof, as such document may be amended from time to time.
- 1.26 “State”** means the State of New Jersey.
- 1.27 “Subconsultant”** means the entity with which a Consultant or other subconsultant subcontracts to perform Services for which the Consultant is ultimately responsible.
- 1.28 “Technical Proposal”** means the Technical Proposal submitted by the Consultant in response to the RFP.

1.29 “**Term**” means the term of this Agreement, as set forth in Section 4.0.

2.0 RESPONSIBILITIES OF THE CONSULTANT

2.1 General

- 2.1.1 In order to provide the Services and Deliverables required, the Consultant shall be responsible for being thoroughly familiar with all Authority formation and governing documents, internal controls, and operations.
- 2.1.2 The Contractual Documents establish the obligations of the Consultant. The Services and Deliverables described in this Agreement establish the minimum obligations of the Consultant.
- 2.1.3 The Services and Deliverables to be provided by the Consultant pursuant to this Agreement shall be performed by the Consultant, its employees, and Subconsultants, if any.
- 2.1.4 The Consultant understands and agrees that any change to this Agreement must be made in writing in the form of an Amendment.
- 2.1.5 Any Services performed by the Consultant, without an Amendment, beyond the Scope of Services shall be done at the Consultant’s own financial risk. Additional Services, if any, shall be the subject of an Amendment, and shall be compensated in accordance with terms negotiated at the time of Amendment. Such Amendment shall be executed prior to the performance of any Additional Services.
- 2.1.6 Changes to the Scope of Services require the prior written consent of Authority and an Amendment. When requesting consent for any such changes, the Consultant must simultaneously notify the Authority of any increase or decrease in compensation associated with such changes; provide a detailed cost break-down of, and justification for, the changes sought; and detail the impact of each change upon its provision of Services and Deliverables. The requirements of this provision are in addition to any other requirements of the Contractual Documents regarding additional compensation.
- 2.1.7 The Consultant shall perform all Services in a good, skillful, and prompt manner. The Consultant shall perform the Services and provide all Deliverables consistent with the level of skill and care ordinarily exercised by members of the Consultant’s profession, currently practicing under similar circumstances.
- 2.1.8 Services shall be performed within any applicable Schedule.
- 2.1.9 The Consultant is responsible for the quality, technical accuracy, and timely completion and delivery of all Deliverables. If circumstances will result or may result in a late delivery, it shall be the responsibility and obligation of the Consultant to make the details known immediately to the Authority.
- 2.1.10 The Consultant shall, without additional compensation, cure any errors, omissions, or other deficiencies in the Deliverables. The approval of interim Deliverables shall not relieve the

Consultant of fulfilling its obligations under the Contractual Documents. Acceptance or payment for any of the Deliverables shall not be construed as a waiver by the Authority of any of its rights under the Contractual Documents or of any cause of action arising out of the Consultant's performance or non-performance under the Contractual Documents.

- 2.1.11 In the event the Consultant hires, employs or otherwise engages Subconsultants, the Consultant shall be considered the sole Consultant and the sole point of contact with regard to contractual matters under this Agreement. The Consultant assumes sole and full responsibility for the complete performance contemplated by the Contractual Documents, including the performance of all Subconsultants. The Consultant must: (i) where applicable, select only Subconsultants that have been pre-qualified by the Authority, and (ii) obtain the consent of the Authority prior to the engagement of any such Subconsultant.
- 2.1.12 It is expressly understood by the Consultant that approval by the Authority for the subcontracting of any Services under the Contractual Documents shall in no way relieve the Consultant from performing its obligations under the Contractual Documents. The Consultant shall at all times give due attention to the fulfillment of its obligations under the Contractual Documents and shall keep the Services under its control. Consent by the Authority to any subcontracting of any part of the Services shall not be construed to be an approval of said subcontract or of any of its terms, but shall operate only as an approval of the engagement by the Consultant of the Subconsultant. The Consultant shall be responsible for all Services performed by its Subconsultants, which Services shall conform to the provisions of the Contractual Documents and the requirements of applicable law.
- 2.1.13 For all Services rendered, the Consultant shall, in accordance with generally accepted accounting principles and practices, maintain overhead, cost and accounting records, as well as all other records the Consultant may customarily maintain in its business. Such records shall be maintained and made available for inspection by the Authority and the NJ State Police (or their agents) as to all aspects of the Services provided under the Contractual Documents, whether the Services are performed by the Consultant, its Subconsultant or any other firm. The Consultant shall retain all electronic records for a period of six (6) Fiscal Years following final payment by the Authority or the end of the Fiscal Year in which this Agreement expires, whichever occurs later. After this period, the Consultant may dispose of these records after first offering them (at no cost) to the Authority in writing; the Authority shall have thirty (30) Days within which to accept them.
- 2.1.14 The Consultant agrees that it shall assist and cooperate with the Authority in any legal action or proceeding that is related to or that arises out of or in connection with its performance under the Contractual Documents and in which action or proceeding the Authority and the Consultant are not named as adverse parties. Such assistance shall include, but not be limited to, testifying as an expert witness or preparing exhibits, reports or models. Any Services provided by the Consultant pursuant to this paragraph shall be deemed Additional Services and shall be compensated as such in accordance with terms negotiated at the time of an appropriate Amendment.
- 2.1.15 Absent the Authority's written consent, Consultant shall utilize the Key Team Members identified in its response to the Authority's RFP and/or RFQ for this Project. The Authority has the right to reject any such Key Team Member if, in its reasonable opinion, such Key Member is failing to properly perform or, in the reasonable opinion of the Authority, lacks the

necessary background and experience. All substitutions proposed by Consultant must be approved in advance by the Authority in writing and such approval shall not be unreasonably withheld. Consultant shall provide written notice to the Authority in the event Consultant proposes to replace, add or remove any Key Team Member. Any replacement Key Team Member must have equal or superior qualifications to the Key Team Member Consultant proposes to replace. Consultant shall submit to the Authority, for approval, the name and qualifications of all proposed Key Team Member substitutions. Any approval by the Authority of any Key Team Member shall not be construed as an admission by the Authority of such Key Member's competence and Consultant shall not argue to the contrary in connection with any dispute between the Parties. There will be no increase in fee or compensation to Consultant as a result of any Key Team Member substitution.

- 2.1.16 The Consultant shall designate a Key Team Member at the Consultant's firm, satisfactory to the Authority, as the Consultant Client Manager. So long as the Consultant Client Manager's performance is acceptable, he or she shall remain in charge of the firm's Services, shall represent the Consultant, and be available for general consultation throughout the Term.
- 2.1.17 The Consultant, to the best of its knowledge, information, and belief, shall abide by all applicable local, state, and national regulatory requirements, as well as all regulations imposed by funding sources (auditing requirements, payroll affidavits, etc.), such as may be identified at the time of execution of this Agreement.
- 2.1.18 The Consultant and any Subconsultant provided to the Authority proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury, pursuant to N.J.S.A. 52:32-44(b), as set forth in Appendix F hereto. The Consultant shall provide written notice to any firm that may become its Subconsultant that it shall not enter into any subcontract with a Subconsultant that has not provided it with proof of such business registration, a copy of which the Consultant shall forward to the Authority, in accordance with N.J.S.A. 52:32-44(c). The Consultant shall maintain and submit to the Authority a list of Subconsultants and their addresses, which list must be updated as necessary during the Term. A complete and final version of such list must be submitted to the Authority before final payment for Services shall be made.
- 2.1.19 Pursuant to N.J.S.A. 52:32-44(g), the Consultant and any Subconsultant of the Consultant, and any affiliate of the Consultant shall collect and submit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., on all their sales of tangible personal property delivered into this State. The Consultant shall provide in each contract with a Subconsultant that each such Subconsultant shall collect and submit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., on all their sales of tangible personal property delivered into this State. For purposes of this section, "affiliate" shall mean any entity that: (i) directly, indirectly, or constructively controls another entity, (ii) is directly, indirectly, or constructively controlled by another entity, or (iii) is subject to the control of a common entity if it owns, directly or individually, more than 50% of the ownership interest in that entity.
- 2.1.20 Consistent with the requirements of P.L. 2005, c. 51, N.J.S.A. 19:44A-20.1 et seq., as amended ("Chapter 51")(formerly Executive Order No. 134 (2004)), the Consultant shall, on a continuing basis, have the obligation to disclose and report to the Authority any

“contributions” made during the Term of the Agreement by the Consultant or any “Business Entity” associated with the Consultant on the “Disclosure of Political Contribution” form provided by the Authority, at the time such contribution is made. As part of this obligation, the selected firm shall be required to comply with Executive Order No. 117, which was issued to enhance New Jersey’s efforts to protect the integrity of government contractual decisions and increase the public’s confidence in government. Executive Order No. 117 builds on the provisions of Chapter 51, which limits contributions to certain political candidates and committees by for-profit business entities that are, or seek to become, State government contractors.

- 2.1.21 Consultant shall comply with its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (“ELEC”), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, section 3), as amended, in the event it receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the Consultant’s responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.
- 2.1.22 In accordance with N.J.S.A. 52:34-13.2 (P.L. 2005, c. 92 (formerly Executive Order No. 129 (2004))), the Consultant shall have a continuing duty to comply with the provisions of P.L. 2005, c. 92, as applicable. By executing this Agreement, the Consultant agrees that all Services performed by the Consultant and/or its Subconsultants pursuant to this Agreement shall be performed within the United States. If, during the Term, the Consultant or a Subconsultant, who had on contract award declared that Services would be performed in the United States, proceeds to shift the performance of the Services outside of the United States, the Consultant shall be deemed in breach of the Agreement, which shall be subject to termination for cause, unless the Senior Director of the Authority’s Division of Procurement & Contract Services shall determine in writing that extraordinary circumstances require a shift of services or that a failure to shift the services would result in economic hardship to the Authority or the State.

2.2 Final Release

The Consultant’s acceptance of final payment shall constitute a final release from and waiver of all the Consultant’s Claims except for: (i) those Claims the Consultant expressly reserves at the time of application for final payment; (ii) those Claims arising after final payment as a result of actions brought against the Consultant by third parties; and (iii) those Claims arising after final payment due to an alleged breach by the Authority of any Agreement provision that survives after the Term.

3.0 COMPENSATION

3.1 General Provisions

- 3.1.1 The Consultant shall be compensated over the Term of the Agreement in accordance with the Price Per Unit Fees and Loaded Hourly Labor Rates set forth in Appendix C provided that such compensation shall not exceed **\$000,000** over the Term of this Agreement.
- 3.1.2 The compensation specified in Appendix C shall compensate the Consultant in full for all Services rendered pursuant to the Contractual Documents.

- 3.1.3 The Consultant shall be paid as invoices are submitted, subject to the provisions of Section 3.2.
- 3.1.4 In the event Additional Services are required pursuant to an Amendment, the Consultant shall be paid on a monthly basis in accordance with the agreed upon reasonable compensation for such Additional Services.
- 3.1.5 The Consultant shall be paid after invoices are submitted and approved. Acceptance or approval of, or payment for, any of the Services performed by the Consultant under the Contractual Documents shall not constitute a release or waiver of any Claim the Authority has or may have for latent defects, errors, breaches, or negligence.
- 3.1.6 All payments for Services under the Contractual Documents will be made only to the Consultant, and Consultant assumes sole responsibility for payments due any Subconsultant.
- 3.1.7 Unless otherwise set forth in writing by the Authority, the compensation specified in Appendix C shall be firm and not subject to increase during the Term.
- 3.1.8 The Authority assumes no responsibility or liability for costs the Consultant incurred prior to the Effective Date, and thereafter only as explicitly set forth in the Contractual Documents.

3.2 Invoices

- 3.2.1 Invoices for Services shall be submitted on a form approved by the Authority or, if directed by the Authority, shall be submitted electronically via a dedicated website or web page. Invoices shall be accompanied by such supporting documentation as may be required by the Authority.
- 3.2.2 Invoices submitted to the Authority must identify this Agreement's contract number.
- 3.2.3 Invoices submitted to the Authority shall be processed and paid only after the Authority reviews and determines that the Services for which payment is sought have been completed at the times and in the manner specified in the Contractual Documents. The Authority shall not pay invoices if the Authority determines that the Services for which payment is sought are incomplete or non-compliant with the Contractual Documents or the Invoice is materially non-compliant.
- 3.2.4 Each invoice signed by the Consultant and submitted to the Authority shall be a representation by the Consultant that all payments due to its Subconsultants have been made and that all relevant laws and regulations have been complied with.
- 3.2.5 All invoices shall be accompanied by appropriate detailed backup to ensure billing accurately represents work incurred.
- 3.2.6 If Consultant submits any false or fraudulent Invoice to the Authority for payment, Consultant shall be held liable and subject to all penalties and damages under New Jersey's False Claims Act, N.J.S.A. 2A:32C-1, et seq.

- 3.2.7 In the event of a dispute between the Authority and the Consultant as to whether an amount is owed for certain Services, or as to whether an amount has been reasonably withheld by the Authority, the Authority shall pay all amounts that are not in dispute but shall not be required to pay the amount that is in dispute until the parties settle or otherwise resolve such dispute. The Consultant shall continue to perform all of its obligations under this Agreement notwithstanding such dispute.
- 3.2.8 In the event the Consultant fails to pay its Subconsultants in a timely manner and the Authority is in full compliance with its obligations regarding timely payment of sums due the Consultant, the Authority may, but is not obligated to, make payments directly to each Subconsultant or by two-party checks. Neither the Authority's discretion in the preceding sentence nor the Authority's making of such payments to the Consultant's Subconsultants will give rise to any liability of the Authority for making such payments and will not create any contractual relationship between the Authority and any Subconsultant. Payments to Subconsultants will not constitute acceptance of the adequacy of any services performed by the Consultant or its Subconsultants.
- 3.2.9 The Consultant shall receive payment from the Authority by one of the following electronic payment methods: (1) the Automated Clearing House ("ACH") payment system, or (2) wire transfer. Any fees or costs associated with the use of either of the listed electronic payment methods shall be solely the Consultant's responsibility. The Consultant may obtain the documents required to use either electronic payment method from the Authority's website. The Consultant shall provide to the Authority all documents necessary to use the electronic payment method selected before any payment will be made to the Consultant by the Authority.

3.3 Withholding Payment for Unsatisfactory Services or Non-delivery of Deliverables

- 3.3.1 If the Authority that any Services are incomplete or unsatisfactory, or if the Authority determines that Deliverables have not been delivered at the times and in the manner and form specified in the Contractual Documents, the Authority will return the relevant invoice to the Consultant, who shall resubmit the invoice once all of the Services have been completed or corrected or the Deliverables have been delivered.
- 3.3.2 The withholding of any sums pursuant to this Section 3.3 shall not be construed as, or constitute in any manner, a waiver by the Authority of the Consultant's obligation to timely furnish fully compliant Services, inclusive of Deliverables, as required under the Contractual Documents. In the event the Consultant fails to timely furnish fully compliant Services, inclusive of Deliverables, as required under the Contractual Documents, the Authority shall in addition to, and not in lieu of, the sums withheld in accordance with this Section 3.3, have those rights and remedies provided by law, equity or elsewhere.
- 3.3.3 In addition to any other right to withhold payments under this Agreement, after timely notice thereof, the Authority shall have the right to withhold from payments due the Consultant such sums as necessary to protect the Authority against any loss or damage which may result by reason of: (a) any willful misconduct or wanton or negligent act, error or omission by the Consultant, any Subconsultant, or any of their employees, representatives or agents which gives, or may give, rise to a claim by the Authority or by some other person or entity against the Authority; (b) the Consultant's breach of any of its material obligations under the

Contractual Documents; (c) reasonable evidence that the Consultant will not complete the Services required by the Contractual Documents within the Term of this Agreement, and that the unpaid balance will not cover the actual damages suffered for the delay; and (d) the Consultant's inability or failure to complete any of the Services required by the Contractual Documents.

4.0 TERM

Unless terminated sooner under Section 6 of this Agreement, the Term of this Agreement shall extend from the Effective Date for a period of three (3) years or until all obligations of the Consultant to deliver Services pursuant to this Agreement have been performed to the satisfaction of the Authority, whichever occurs later. The Contract term may be extended for one (1) additional year, if such extension is permissible by existing regulations at the time of extension, in which case the Term shall extend from the Effective Date through such additional period or until all obligations of the Consultant to deliver Services pursuant to this Agreement have been performed to the satisfaction of the Authority, whichever occurs later.

5.0 GENERAL COVENANTS

5.1 Insurance

5.1.1 Prior to undertaking any work under this Agreement, the Consultant, at no expense to the Authority, shall obtain and provide to the Authority evidence of a policy or policies of insurance as enumerated below.

5.1.2 The Consultant shall maintain, and/or cause their subconsultants to maintain, at their own cost and expense, the following insurance coverages/policies insuring the Consultant, its employees, subconsultants and agents. The Consultant shall obtain this insurance from insurance companies that are authorized to transact the business of insurance in the State of New Jersey and that are "A- VIII" (or better) rated, as determined by A. M. Best Company. In each policy, the Consultant shall have incorporated a provision, in accordance with the laws of the State of New Jersey, requiring written notice to the Authority at least thirty (30) Days prior to cancellation or non-renewal of any insurance coverage required under this Section. The Consultant warrants that if the insurer or coverage is not subject to the provisions requiring (30) day prior notification, that it will notify the Authority in writing of any cancellation or non-renewal of any insurance coverage required under this Section. Any and all deductibles shall be paid by the Consultant. The Consultant warrants that its insurance carriers are accurately informed regarding the business activities of the Consultant and intend to cover those business exposures. All insurance policies, exclusive of Professional Liability and Workers' Compensation, shall name the Authority as Additional Insured and will include a Waiver of Subrogation. All policies of insurance provided by the Consultant shall be written on a primary and non-contributory basis. In addition, the Consultant may also be required to name other parties as Additional Insureds prior to the initiation of such work, and shall comply with all laws, ordinances, rules and regulations of Federal, State, county and municipal authorities in the performance of said work. The types and minimum amounts of insurance required are as follows:

5.1.2.1 Professional Liability Insurance (Errors & Omissions) At a minimum, the Consultant shall maintain Professional Liability Insurance with coverage retroactive to the Effective

Date, sufficient to protect the Consultant from any liability arising from the Services and professional obligations performed pursuant to this Agreement in an amount not less than \$1,000,000 per claim and \$1,000,000 in the aggregate for all operations conducted. The Consultant warrants they will notify the Authority in writing of any reduction in the aggregate coverage within thirty (30) days. The Consultant warrants that coverage shall not be circumscribed by any endorsements excluding coverage arising out of services performed pursuant to this Agreement.

If coverage is written on a claims-made basis; the Consultant shall maintain continuous claims-made coverage for the life of the contract and any extensions thereto and for a period of two (2) years beyond the expiration of the contract and any extensions thereto and for a period of two (2) years beyond the expiration of the contract. If continuous claims-made coverage is not maintained, Tail Coverage shall be purchased to cover claims received up to two (2) years beyond the expiration of the contract.

5.1.2.2 Network Security/Cyber/Privacy Breach Insurance The Consultant shall maintain Network Security/Cyber/Privacy Breach Insurance with coverage retroactive to the Effective Date pursuant to the Agreement in an amount not less than \$1,000,000 per claim and \$1,000,000 in the aggregate. This insurance, at minimum, shall cover the following risks:

- Liability arising from theft, dissemination, and/or use of confidential information (including, but not limited to, information protected under HIPAA, bank account information, any and all personal information, such as name, address, and social security numbers) stored or transmitted in electronic form.
- Network security liability arising from the unauthorized access, use of, or tampering with computer systems, including hacker attacks or inability of an authorized third party to gain access to services, including denial of service, unless caused by a mechanical or electrical failure.
- Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a vendor's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

5.1.2.3 Crime Insurance: The Consultant shall carry Crime Coverage with minimum limits of \$500,000 per claim and \$500,000 in the aggregate to include employee dishonesty, forgery, or alteration and computer fraud. If Consultant is physical located on the SDA premises, third-party fidelity coverage extension shall apply. The policy shall include coverage for all directors, officers, agents and employees of the Consultant. The bond or policy shall include coverage for extended theft and mysterious disappearance.

If Consultant contends that any of the insurance it maintains pursuant to other sections of this clause satisfies this requirement (or otherwise insures the risks described in this section), then Consultant shall provide proof of the same that is acceptable to the SDA.

- 5.1.2.4 Commercial General Liability Insurance. The Consultant shall maintain Commercial General Liability Insurance (CGL), and, if necessary, Commercial Umbrella Insurance with a limit of not less than \$5,000,000 for each occurrence, \$5,000,000 aggregate limit for products/completed operations and \$5,000,000 general aggregate limit. CGL insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include liability arising out of, occasioned by or resulting from premises, operations, independent contractors, products, completed operations, personal injury and advertising injury, and liability assumed under an insured contract in connection with Services performed under this Agreement. The EDA, the Authority, the State of New Jersey and their respective directors, officers, members, employees and agents shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 (or a substitute form providing equivalent coverage), and under the Commercial Umbrella, if any. In addition, the Consultant may also be required to name other parties as additional insureds prior to the initiation of Services. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Authority.
- 5.1.2.5 Worker's Compensation Insurance. The Consultant shall, at its own cost and expense, maintain Workers' Compensation and Employers' Liability insurance prescribed by the laws of the State of New Jersey and any other jurisdiction required to protect employees of the Consultant while engaged in the performance of the Services under this Agreement. Workers' Compensation coverage shall be statutory and the Employers' liability limits (including Umbrella coverage) shall not be less than \$1,000,000 per accident for bodily injury by accident and \$1,000,000 for each employee for bodily injury by disease and \$1,000,000 policy limit for bodily injury by disease. The Consultant shall also add the Alternate Employer Endorsement WC 00 03 01A.
- 5.1.2.6 Business Automobile Liability Insurance. The Consultant shall, at its sole cost and expense, maintain Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$1,000,000 for each accident. Such insurance shall cover liability arising out of any automobile, including coverage for all owned, non-owned and hired vehicles. The Business Automobile coverage shall be written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage).
- 5.1.3 Certificates of Insurance. Attached to this Agreement as Appendix E shall be valid insurance certificates, executed by a duly authorized representative of each insurer, in form and substance satisfactory to the Authority, evidencing compliance with the insurance requirements. An insurance certificate must be submitted to evidence each insurance renewal required by this Section. Failure of the Authority to demand such certificates or other evidence of full compliance with the insurance requirements set forth herein or failure of the Authority to identify a deficiency in the insurance provided shall not be construed as a waiver of the Consultant's obligation to maintain such insurance. Failure to maintain the required insurance may result in termination of this Agreement at the Authority's sole option. The Consultant shall provide certified copies of all insurance policies, including any and all amendatory endorsements, within ten (10) Days of the Authority's written request for such policies.

- 5.1.4 Liability in Excess of Coverage. By executing this Agreement, the Consultant expressly agrees that any insurance protection required herein or by the Consultant's Documents shall in no way limit the Consultant's obligations under this Agreement or the Consultant's Documents and shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it preclude the Authority from taking such other actions as are available to it under other provisions of this Agreement or the Consultant's Documents or otherwise in law or equity. By requiring insurance herein, the Authority does not represent that coverage and limits will necessarily be adequate to protect the Consultant, and such coverage and limits shall not be deemed as a limitation on the Consultant's liability under this Agreement.
- 5.1.5 Right to Remedy. If the Consultant fails to obtain and/or maintain the insurance as required in this Section, fails to renew any of its insurance policies as necessary, or in the event any policy is canceled, terminated or modified so that the insurance does not meet the requirements of this Agreement, the Authority may: (i) purchase insurance at the Consultant's sole expense; (ii) refuse to make payment of any further amounts due under this Agreement; (iii) refuse to make payments due or coming due under other agreements between the Consultant and the Authority; (iv) suspend performance by the Consultant under this Agreement; or (v) terminate this Agreement. Any funds retained pursuant to this Section may be used, at the Authority's discretion, to renew or purchase the Consultant's insurance for the periods and amounts as set forth in this Agreement. In the event the Authority purchases said insurance the Authority may, at its discretion, reduce the Consultant's Compensation under this Agreement by the amount paid for such insurance plus reasonable attorney's fees.
- 5.1.6 Additional Insurance. The Consultant shall also provide such additional types of insurance in such amounts as the Authority shall reasonably require. In the event that any such additional insurance is required, the Consultant shall deliver certified copies of each policy to the Authority within ten (10) days of the Authority's written request for such insurance.
- 5.1.7 Waiver of Subrogation. The Consultant waives all rights of subrogation and recovery against the Authority, agents or employees of the Authority to the extent these damages are covered by the CGL, Business Automobile Liability or Commercial Umbrella Liability Insurance obtained by the Consultant. If the policies of insurance purchased by the Consultant as required above do not expressly allow the insured to waive rights of subrogation prior to loss, the Consultant shall cause them to be endorsed with a waiver of subrogation as required herein.
- 5.1.8 Any deductible or self-insured retention (SIR) applicable to the aforementioned insurance shall be declared to and approved by the Authority and written using ISO endorsement CG 03 00 (or a substitute providing equivalent terms and conditions). The Consultant shall not be permitted to have a SIR larger than \$100,000 unless it obtains the express, written consent of the Authority to the larger SIR. **FAILURE TO COMPLY WITH SECTION 5.1.8 IS A MATERIAL BREACH OF CONTRACT.**
- 5.1.9 If any of the aforementioned insurance is written on a "claims made basis," the Consultant warrants that continuous coverage will be maintained or an extended discovery period will be exercised for a period of five (5) years after the date of Final Payment by the Authority and the Consultant will provide Certificates of Insurance evidencing continuance of coverage

with the original claims made retroactive date. Within the Certificate of Insurance, in the blocks designated "Policy Number," in addition to the policy number, the Consultant shall insert a note "claims made retroactive date ___/___/___" (with the date inserted).

5.2 Ownership of Documents

- 5.2.1 In consideration of the Authority's execution of this Agreement and for other good and valuable consideration, all Deliverables, including, but not limited to plans, methods, drawings, specifications, flow charts, reports, all data, diagrams, samples, tests, surveys, models, material, computer discs, evidence, documentation, and all copyrightable materials, gathered, originated or prepared by the Consultant and its Subconsultants during and in connection with the performance of Services; and all copyrights resulting from Deliverables, and in all renewals and extensions of the copyrights that may be secured now or be hereafter in force and effect are instruments of the Consultant's Services performed under the Contractual Documents and, unless otherwise provided, shall be the sole property of the Authority.
- 5.2.2 The Consultant's promotional and professional (or other) materials shall not include Authority confidential or proprietary information, except with the written consent of the Authority.

5.3 Copyrights and Patents

- 5.3.1 If the Consultant employs any design, device, material, or process covered by letters of patent or copyright, it shall provide for such use by suitable legal agreement with the patent holder. The Consultant shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the Deliverables.
- 5.3.2 The Consultant shall defend, indemnify and save harmless the Authority and the State from any and all Claims for infringement by reason of the use of any patented design, device, material or process, or any trademark, copyright, trade secret or any other material protected in any manner from use or disclosure, and shall indemnify the Authority and the State for any costs, expenses and damages that it may incur by reason of an infringement at any time during the prosecution, or after the acceptance, of the Services.

5.4 Confidentiality

- 5.4.1 All data and information supplied by the Authority or by any other party under an Authority contract or otherwise involved in a School Construction Program and data gathered by the Consultant in fulfillment of the Contractual Documents and any analyses thereof (whether in fulfillment of the Contractual Documents or not), are strictly confidential and shall be solely for use in connection with the provision of Consultant's Services to the Authority. The foregoing notwithstanding, the Authority will comply with all applicable laws with regard to releasing disclosable government records within the meaning of N.J.S.A. 47:1A-1 et seq.
- 5.4.2 The Consultant shall not disclose to any third party the contents of the information, reports, findings, analyses, surveys, data or any other materials generated or produced in performance of this Agreement, or provide copies of same, without the prior, written consent of the Authority, except where disclosure of such materials are legally required by order of court or

administrative agency, whether State or Federal, in which case the Consultant shall provide immediate notice to the Authority of such order.

- 5.4.3 The Consultant is required to use reasonable care to protect the confidentiality of all data and information supplied by the Authority to the Consultant by, among other things, requiring incorporation of this Section into its contract(s) with its Subconsultants, if any. Any use, sale or offering of this data in any form by the Consultant, its employees, Subconsultants or assignees will be considered a material breach of this Agreement. The Consultant shall be liable for any and all damages arising from its breach of this confidentiality provision, including damages, costs and/or attorneys' fees. The Authority shall also have the right to terminate this Agreement for cause in the event of a breach of this confidentiality provision without the Authority being liable for damages, costs and/or attorney's fees.
- 5.4.4 The Consultant's promotional and professional (or other) materials shall never include the Authority's confidential or proprietary information.

5.5 Contractual Relationship

- 5.5.1 Nothing in the Contractual Documents shall be construed as creating a contractual relationship between any Subconsultant of the Consultant and the Authority. However, the Authority is to be deemed a Third-Party Beneficiary of all Project agreements between Consultant and any Subconsultant.
- 5.5.2 The Consultant's status shall, at all times, be that of an independent contractor, not an employee of the Authority. The Consultant agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Authority by reason hereof. The Consultant shall not, by reason hereof, make any Claim, demand or application to any Authority officer or employee for any right or privilege afforded to an Authority officer or employee, including, but not limited to, workers' compensation, unemployment or other insurance benefits, social security coverage, or retirement membership or credit.
- 5.5.3 The Consultant and any Subconsultants engaged by the Consultant under this Agreement are bound by the terms and conditions of the Contractual Documents.
- 5.5.4 Nothing contained in this Agreement or the Contractual Documents shall create a contractual relationship with a third party or create a cause of action in favor of a third party against either Consultant or the Authority. It is further intended that no individual, firm, corporation, or any combination thereof, which supplies materials, labor, services or equipment to the Consultant for the performance of Services shall become thereby a third party beneficiary of the Contractual Documents.
- 5.5.5 The Parties hereby bind themselves, their partners, successors, assigns and legal representatives each to the other Party and the other Contractual Documents.

5.6 Assignment

- 5.6.1 The Consultant shall not assign or transfer its obligations, privileges or rights under the Contractual Documents without the prior written consent of the Authority. Any assignment or

transfer of the Consultant's rights under the Contractual Documents without the prior written consent of the Authority shall not relieve the Consultant of any duty, obligation or liability assumed by it under the Contractual Documents.

- 5.6.2 In the event the Authority approves an assignment, the Consultant shall submit to the Authority: (i) corporate resolutions prepared by the Consultant and the new entity ratifying this Agreement; (ii) information necessary to ensure that the new entity satisfies the Authority's pre-qualification policies and procedures; (iii) the names and addresses of all owners and potential owners which hold or may acquire five percent (5%) or more of its stock or interest; (iv) any new or changed Federal Employer Identification Number(s); (v) acknowledgment and acceptance of all rights, duties and obligations of this Agreement without limitation by the new entity; and (vi) any other information which the Authority may require.
- 5.6.3 Notwithstanding anything to the contrary, under no circumstance shall the Consultant assign its right to receive money under the Contractual Documents for any purpose or to any person whatsoever without the prior written approval of the Authority or order of court.
- 5.6.3 The Authority may elect, in its sole discretion, to assign this Agreement to any other State agency, authority or other State instrumentality, or any local or municipal instrumentality, at any time during the Term of this Agreement. In such case, the Consultant agrees to continue to perform all of its obligations as set forth in this Agreement. The Consultant shall make no Claim against the Authority in the event of such assignment and shall execute such certificates, documents and instruments as may be reasonably requested by the Authority to effect such assignment.

5.7 Mergers, Acquisitions, and Dissolutions

- 5.7.1 If, subsequent to the execution of this Agreement, the Consultant proposes to merge with or be acquired by another firm or in the event of a proposed dissolution by the Consultant, the Consultant shall immediately notify the Authority and shall submit documentation to the Authority describing the proposed transaction.
- 5.7.2 The Authority, in its sole discretion, may approve the continuation of this Agreement following the proposed merger, acquisition or dissolution or terminate this Agreement for cause. The Authority will notify the Consultant of its decision within thirty (30) Days of receipt by the Authority of documentation from the Consultant describing the proposed transaction.
- 5.7.3 If the Authority approves a merger or acquisition, the Consultant shall submit to the Authority: (i) corporate resolutions prepared by the Consultant and the new entity ratifying acceptance of the Contractual Documents; (ii) information necessary to ensure that the new entity satisfies the Authority's pre-qualification policies and procedures, where applicable; (iii) the names and addresses of all owners and potential owners which hold or may acquire five percent (5%) or more of its stock or interest; (iv) any new or changed Federal Employer Identification Number(s); (v) acknowledgment of the assumption of the Contractual Documents by the new entity; and (vi) any other information the Authority may require in writing.

- 5.7.4 If the Authority approves a dissolution, the Consultant shall submit to the Authority: (i) a copy of the corporate resolution, or the written statement of the partnership, general partner, receiver or custodian thereof, or the written agreement of the principal parties of a joint venture to dissolve the corporation, partnership or joint venture, respectively; (ii) information necessary to ensure that the new entity satisfies the Authority's pre-qualification policies and procedures, where applicable; (iii) any new or changed Federal Employer Identification Number(s); (iv) acknowledgment of the assumption of the rights, obligations and duties under the Contractual Documents without limitation by the new parties; and (v) any other information the Authority may require in writing.

5.8 Mandatory Compliance With Law

- 5.8.1 The Consultant must comply during the Term with any and all Federal, State and local laws in effect or hereinafter promulgated that apply to performance by the Consultant under the Contractual Documents. To the extent variances from such applicable laws are required, Consultant and the Authority shall cooperation to pursue such variances in the interests of the Project.
- 5.8.2 Each and every provision required by law to be inserted in the Contractual Documents shall be deemed to have been inserted therein. If any such provision has been omitted or has not been correctly inserted, the Contractual Documents shall be amended, upon application of either Party, to provide for such insertion or correction.
- 5.8.3 If the Authority determines that the Consultant has violated or failed to comply with applicable Federal, State or local laws with respect to its performance under the Contractual Documents, the Authority may withhold payments for such performance and take such action that it deems appropriate until the Consultant has complied with such laws or has remedied such violation or non-compliance to the satisfaction of the Authority.
- 5.8.4 The Consultant's compliance with the legal requirements of this Section 5.8 and any other applicable laws, regulations or codes is mandatory and cannot be waived by the Authority.
- 5.8.5 The Consultant shall ensure that its payments to vendors and Subconsultants are made in compliance with the New Jersey Prompt Payment Act, N.J.S.A. 2A:30A-1 and -2, and the provisions of N.J.S.A. 52:32-40 and N.J.S.A. 52:32-41, and all other applicable laws concerning the prompt payment of Subconsultants.

5.9 Affirmative Action and Non-discrimination

- 5.9.1 The Consultant and its Subconsultants shall abide by affirmative action rules established by the Authority pursuant to Sections 6 and 36 of the legislation creating the Authority, P.L. 2007, c. 137, and any rules and regulations associated therewith.
- 5.9.2 The Consultant shall not discriminate in employment and shall abide by all anti-discrimination laws, including those set forth in New Jersey's Law Against Discrimination, N.J.S.A. 10-5.1, et seq., and all rules and regulations promulgated thereunder. During the performance of this Term Contract, the Consultant agrees as follows:
- 5.9.2.1 The Consultant and its Subconsultants, where applicable, will not discriminate

against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Consultant and its Subconsultants will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant and its Subconsultants agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause;

- 5.9.2.2 The Consultant and its Subconsultants, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant or its Subconsultants, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- 5.9.2.3 The Consultant and its Subconsultants, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the Consultant's (and the Subconsultant's) commitments under this Agreement and referenced statutes and shall post copies of the notice in conspicuous places available to employees and applicants for employment;
- 5.9.2.4 The Consultant and its Subconsultants, when applicable, shall comply with the regulations promulgated by the State Treasurer pursuant to P.L. 1975, c. 127 (N.J.S.A. 10:5-31 et seq.) as amended and supplemented from time to time, and with the Americans With Disabilities Act, 42 U.S.C. § 12101 et seq., with respect to its employment practices;
- 5.9.2.5 The Consultant and its Subconsultants agree to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 70 (N.J.S.A. 10:5-31 et seq.), as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Division of Contract Compliance & EEO pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127 (N.J.S.A. 10:5-31 et seq.);
- 5.9.2.6 The Consultant and its Subconsultants agree to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities and labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, gender identity or expression, disability, nationality and that it will

discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;

5.9.2.7 The Consultant and its Subconsultants agree to revise any of its testing procedures, if necessary, to ensure that all personnel testing conforms to the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions;

5.9.2.8 The Consultant and its Subconsultants agree to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, gender identity or expression, disability, or nationality, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions; and

5.9.2.9 The Consultant and its Subconsultants shall furnish such reports or other documents to the Division of Contract Compliance & EEO as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

5.9.3 The Consultant shall abide by the provisions of the Americans With Disabilities Act, 42 U.S.C. § 12101 *et seq.*, with respect to its employment practices.

5.9.4 The Consultant shall comply with the *MacBride* principles of nondiscrimination in employment, or have no business operations in Northern Ireland, under N.J.S.A. 52:34-12.2.

5.10 Anti-collusion

5.10.1 The Consultant, by executing this Agreement, does hereby warrant and represent that this Agreement has not been solicited, secured or prepared, directly or indirectly, in a manner contrary to the laws of the State; and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the Services by any conduct, including the paying or giving of any fee, commission, compensation, gift, gratuity, or consideration of any kind, direct or indirect, to any employee, officer, or board member of the Authority.

5.10.2 In the event of a breach or violation of this Section 5.10, the Authority may, at its sole option: (i) terminate this Agreement without the Authority being liable for damages, costs and/or attorney fees; and/or (ii) deduct from amounts otherwise payable by the Authority pursuant to this Agreement.

5.11 Conflict of Interest

5.11.1 The Consultant shall not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of value of any kind to: (i) an

Authority officer or employee with which the Consultant transacts, or offers or proposes to transact, business; or (ii) any member of the immediate family (defined by N.J.S.A. 52:13D-13(i)) of any such Authority officer or employee; or (iii) any partnership, firm or corporation with which such Authority officer or employee is employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

- 5.11.2 The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any Authority officer or employee from the Consultant shall be reported in writing forthwith by the Consultant to the State Attorney General and the State Ethics Commission.
- 5.11.3 The Consultant shall not directly or indirectly undertake any private business, commercial or entrepreneurial relationship (whether or not pursuant to employment, contract or other agreement, express or implied) with, or sell any interest in the Consultant to, any Authority officer or employee having any duties in connection with the purchase, acquisition or sale of any property or services by or to the Authority; and shall not undertake any such relationship with, or sell any such interest to, any person, firm or entity with which such Authority officer or employee is employed or associated, or in which such Authority officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13(g). Any relationship subject to this provision shall be reported in writing forthwith to the State Ethics Commission, which may grant a waiver of this restriction upon application of the officer or employee and upon a finding that the present or proposed relationship presents neither an actual conflict of interest, nor the potential for, or appearance of, such a conflict of interest.
- 5.11.4 The Consultant shall not influence, attempt to influence, or cause to be influenced any Authority officer or employee in such officer's or employee's official capacity in any manner that might tend to impair the objectivity or independence of judgment of said officer or employee.
- 5.11.5 The Consultant shall not cause or influence or attempt to cause or influence, any Authority officer or employee to use or attempt to use such officer's or employee's official position to secure unwarranted privileges or advantages for the Consultant or any other person.
- 5.11.6 Under N.J.S.A. 52:34-19, it is a misdemeanor to offer, pay or give any fee, commission, compensation, gift or gratuity to any person employed by the Authority. It is the policy of the Authority to treat the offer of any gift or gratuity by the Consultant, its officers or employees, to any person employed by the Authority as grounds for debarment or suspension from submitting proposals and providing Services or materials to the Authority.
- 5.11.7 The provisions cited in this Section 5.11 shall not be construed to prohibit an Authority officer or employee from receiving gifts from or contracting with the Consultant under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines or Code of Ethics that the State Ethics Commission and the NJSDA have promulgated or may promulgate.
- 5.11.8 For the purposes of this Section, an "Authority officer or employee" shall include a "Special Authority officer or employee," as defined by N.J.S.A. 52:13D-13(b) and 13(e).

5.12 Indemnification

- 5.12.1 To the fullest extent permitted by law, the Consultant shall indemnify, protect, defend and save harmless the EDA, the Authority, the State of New Jersey and their respective directors, officers, members, employees and agents, from and against any loss, damage, injury, cost or expense; and from and against any Claim, demand, liability, lawsuit, judgment, action or other proceeding arising, to arise from, in connection with, or as a result of any of the following:
- 5.12.1.1 the negligent acts or omissions of the Consultant, its agents, servants, officers, employees, Subconsultants or any other person acting at the Consultant's request, subject to its direction, or on its behalf;
 - 5.12.1.2 the loss of life or property, or injury or damage to the person, body or property of any person or persons whatsoever, that arises or results directly or indirectly from the negligent performance of the Services or delivery of Deliverables by the Consultant, its agents, servants, officers, employees, Subconsultants or any other person acting at the Consultant's request, subject to its direction, or on its behalf;
 - 5.12.1.3 any gross negligence, default, or breach, of the Consultant, its agents, servants, officers, employees, Subconsultants or any other person acting at the Consultant's request, subject to its direction, or on its behalf;
 - 5.12.1.4 violation of or non-compliance with federal, State, local and municipal laws and regulations, ordinances, building codes (including without limitation the Americans with Disabilities Act, the Occupational Safety and Health Act ("OSHA") and the Environmental Protection Act) in connection with the performance or non-performance of, or arising out of conditions created or caused to be created by, the Consultant, its agents, servants, officers, employees, Subconsultants or any other person acting at the Consultant's request, subject to its direction, or on its behalf; and
 - 5.12.1.5 use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in performing Services.
- 5.12.2 The Consultant's indemnification obligation is not limited by, but is in addition to, the Consultant's insurance obligations contained in this Agreement.
- 5.12.3 The Consultant agrees that any approval by the Authority of the Services performed, or Deliverables provided by the Consultant shall not operate to limit the obligations of the Consultant under the Contractual Documents; and that the Authority assumes no obligations to indemnify or save harmless the Consultant, its agents, servants, employees, or Subconsultants against any Claims that may arise out of its performance or nonperformance under the Contractual Documents; and that the provisions of this indemnification clause shall in no way limit the Consultant's obligations under the Contractual Documents, nor shall they be construed to relieve the Consultant from any liability, nor preclude the Authority from taking any other actions available to it under any other provisions of the Contractual Documents or otherwise at law or equity.
- 5.12.4 This Section 5.12 shall survive the termination of the Contract.

6.0 TERMINATION AND SUSPENSION

Nothing contained in this entire Section 6.0 shall limit the Authority's right to recover any and all costs and damages resulting from Consultant failure to perform the Services in a manner consistent with all requirements of the Contractual Documents.

6.1 Termination for Convenience of the Authority

- 6.1.1 Performance by the Consultant of its obligations under the Contractual Documents may be terminated by the Authority in accordance with this Section 6.1 in whole or in part, whenever the Authority, in its sole discretion, determines that such termination is in its best interest. Such a termination shall be called a "Termination for Convenience."
- 6.1.2 Any such Termination for Convenience shall be effected by delivery of a "Notice of Termination of Convenience" specifying the extent to which the Services under the Contractual Documents are terminated and the date upon which such termination becomes effective.
- 6.1.3 Upon such Termination for Convenience, the Consultant shall be entitled only to compensation for fully compliant Services actually performed by the Consultant, less payments previously made.
- 6.1.4 Upon a Termination for Convenience, the Consultant shall furnish to the Authority, free of charge, such close-out reports, documents, and materials as the Authority may be reasonably required by the Authority.

6.2 Termination for Cause

- 6.2.1 Without prejudice to any other remedy, the Authority may terminate this Agreement if the Consultant: (i) disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction; (ii) refuses or fails to supply enough properly skilled workers or proper materials; (iii) fails to make payments to Subconsultants for materials or labor in accordance with the respective agreements between the Consultant and the Subconsultants; (iv) fails to maintain or produce any Deliverables, Work Product or other records required by the Contractual Documents to be so maintained or produced; (v) fails to cooperate with the Authority where such cooperation is deemed necessary by the Authority for the implementation of the Contractual Documents; (vi) fails to obtain and properly maintain the level of insurance coverages outlined in Section 5.1; (vii) assigns or transfers its obligations, privileges or rights under the Contractual Documents without the prior written consent of the Authority; (viii) makes any misrepresentation or conceals any material fact; (ix) commences or has commenced against it any action under the United States Bankruptcy Code or any state or federal insolvency law, the commencement of which, in the Authority's judgment, may impair the ability of the Consultant to perform its obligations under the Contractual Documents; (x) fails to timely provide any Services required under this Agreement; or (xi) materially violates or breaches the Contractual Documents or any provision or material term thereof. Such a termination shall be called a "Termination for Cause."
- 6.2.2 Any such Termination for Cause shall be effected by delivery of a "Notice of Termination of

Cause” specifying the extent to which the Services under the Contractual Documents are terminated and the date upon which such termination becomes effective.

- 6.2.3 For all such causes of Termination for Cause, except those contained in subsections 6.2.1(viii) and (ix) and those as to which a cure is not feasible, the Consultant may avoid termination if, within seven (7) Days of Notice of Termination for Cause, it commences an effective means of correction of such default, neglect or violation, with diligence and promptness, fully curing same within the time prescribed by the Authority within the Notice of Termination for Cause. Failure of the Consultant to commence an effective means of correction of its default, neglect or violation within seven (7) Days of receipt of the Notice of Termination for Cause, or to cure the same within the time prescribed by the Authority, shall result in a warranted and justified termination of this Agreement for cause. Assuming that no effective cure is timely commenced by the Consultant, the Authority shall confirm in writing to Consultant the fact of its termination.
- 6.2.4 Upon Termination for Cause by the Authority pursuant to this Section 6.2, the Authority may, without prejudice to any other rights or remedies of the Authority, complete the Services by whatever methods the Authority may reasonably deem appropriate.
- 6.2.5 In the event this Agreement is terminated for cause pursuant to this Section 6.2, the Authority reserves the right not to make any further payments to the Consultant and may require the Consultant to repay all or a portion of the monies already paid. Consultant, at its own expense, shall be obligated to take any steps necessary to enable the Authority to complete the Services itself, or for the Authority to engage another Consultant to complete the Services. Such steps may include, but are not limited to, the prompt delivery to the Authority of all Deliverables, documents and Work Product identified herein and/or related to the Project. If the payments then or thereafter due to Consultant are not sufficient to cover the Authority’s cost to complete the Services itself or by means of another Consultant, Consultant shall pay, within ten (10) days, to the Authority the difference between what the Authority would have paid Consultant and the Authority’s actual expense to complete, in addition to any other re-procurement expense, inclusive of professional fees incurred, inclusive of monies paid to the Consultant and the Authority’s legal counsel and the Authority’s own administrative or in-house expenses. If the Authority is required to file a legal action against Consultant in order to recover monies owed by Consultant on account of its Termination for Cause, Consultant shall be liable to the Authority for all legal fees so incurred, as well as all other litigation costs incurred. Further, Consultant shall be liable to the Authority for interest on all monies due and owing from Consultant to the Authority under this Section or any other Section of this Agreement.
- 6.2.6 No action by the Authority pursuant to this Section 6.2 shall operate to waive or release any Claim the Authority may have against the Consultant under the Contractual Documents.

6.3 Suspension for Convenience of the Authority

- 6.3.1 The Authority shall have the right to defer the commencement of the Services or to suspend the whole or any part of the Services, whenever, in the sole discretion of the Authority, it is necessary or expedient for the Authority to do so. The Authority shall give written notice to the Consultant to suspend performance of the Services and upon receipt of such notice, unless otherwise directed in writing by the Authority; the Consultant shall immediately discontinue

all Services, except as may be deemed necessary by the Authority.

6.3.2 In the event of a suspension by the Authority pursuant to this Section 6.3, compensation shall be determined as follows:

6.3.2.1 If the Authority determines that the Services have been suspended for a period cumulatively totaling less than forty-five (45) Days, there shall be no additional compensation paid to the Consultant.

6.3.2.2 If the Authority determines that the Services have been suspended for a period cumulatively totaling forty-five (45) Days or more, and if the Authority determines that the suspension has resulted from no fault of the Consultant or any of its Subconsultants, the Parties shall amend this Agreement to cover the remaining Services to be performed. Such Amendment shall provide a compensation adjustment in an amount equal to the reasonable, direct, foreseeable and out-of-pocket cost actually incurred by the Consultant due solely to the suspension period exceeding forty-four (44) Days, taking into account, Consultant's duty to mitigate such costs. No such Amendment will change other terms of the Contractual Documents.

6.3.3 When the Authority has determined that a suspension is, in whole or in part, the fault of the Consultant, the Authority may, at its sole option, suspend all payments to the Consultant. Payment may be reinstated by the Authority upon completion of the Services in accordance with the other provisions of this Agreement and the other Contractual Documents provided, however, that there shall be no upward adjustment in direct or indirect costs or in any other costs. Alternatively, the Authority may terminate this Agreement pursuant to Section 6.2, above, or carry out the Services as provided for in Section 6.4, below.

6.4 Authority's Right to Carry Out the Services

6.4.1 If the Consultant fails to perform any obligation imposed under the Contractual Documents, and fails within seven (7) Days after receipt of written notice from the Authority to commence and continue correction of such failure with diligence and promptness, the Authority may take steps to remedy such failure without prejudice to any other remedy the Authority may have. In such case, an appropriate written notice shall be issued deducting from the payments then or thereafter due the Consultant the cost of correcting such failure, including compensation for other additional services made necessary by such failure. If the payments then or thereafter due the Consultant are not sufficient to cover such amount, the Consultant shall pay the difference to the Authority upon demand. A failure to timely honor such payment demand shall entitle the Authority to interest and, if the Authority files suit to collect, the Authority shall be entitled to recover its litigation costs, inclusive of its counsel fees.

6.4.2 Any action by the Authority under this Section 6.4 shall be without prejudice to the Authority's rights under the Contractual Documents or applicable law and shall not operate to release the Consultant from any of its obligations under the Contractual Documents.

6.5 Unacceptable Services; Duty to Cure Errors and Omissions

6.5.1 The Authority shall give the Consultant written notice as soon as practicable after it becomes

aware of an error or omission by the Consultant. If the Authority determines that any Service delivered is unacceptable, in quality, timeliness, or any other condition, due to error, omission or failure to comply with requirements of the Contractual Documents, the Consultant shall correct and revise the unacceptable Services under the Authority's direction at no cost to the Authority. The corrected and revised Services shall be resubmitted to the Authority for approval.

- 6.5.2 The Consultant shall be liable to Authority for all damages to Authority caused by Consultant errors or omissions. The Consultant shall reimburse Authority for all costs incurred by Authority as a result of such errors and omissions, including interest and other expenses.

7.0 CLAIMS

All Claims by the Consultant against the Authority shall be governed by the following provisions.

- 7.1 **General.** The parties agree that this contract shall be deemed to be governed by and in accordance with the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. and the New Jersey False Claims Act, N.J.S.A. 2A:32C-1, et seq. (collectively "the Acts"), such that a claim against the NJSDA shall be treated in the same manner as a claim against the State of New Jersey under the Acts. All notice, claims and limitations periods set forth in the Acts shall apply to claims by the Consultant against the NJSDA

- 7.2 **Notice of Claim.** The Consultant shall file notice of its Claim on a form provided by the Authority (Form 505 Notice of Claim), which form shall be completed in its entirety and signed by the Consultant. Incomplete forms will be rejected and have no effect. Submission of completed notice forms shall constitute compliance with the notice provisions of the New Jersey Contractual Liability Act if such notices are provided within the time limits established by N.J.S.A. 59:13-5. Consultant must file the necessary forms as required by this Section to comply with the New Jersey Contractual Liability Act and in order to begin the administrative process for the review of Claims by the Consultant.

- 7.3 **Review of Claims.** The administrative process for review of Claims is sequential in nature and mandatory. The Authority's Claims procedure is composed of the following steps:

Step One: Review and Decision by the Authority
Step Two: Non-binding Mediation

A legal action may only be filed by the Consultant after this two-step process has been exhausted or waived in writing by the Authority.

- 7.4 **Compliance with Claim Review Procedure.** Each Claim will begin its review at Step One. A Claim will not proceed to the next step unless the Consultant submits a written objection to the prior step and requests that its Claim proceed to the next step. If at any step in the process a Claim is resolved, the Consultant must sign a full and final release as to any and all matters arising from the Claim.

- 7.5 **Step One: The Authority's Review.**

- 7.5.1 Required Documentation. The Consultant must provide to the Authority the required forms as required by this Section to comply with the New Jersey Contractual Liability Act in order to begin the Authority's administrative process for the review of Claims. The Consultant shall also submit to the Authority all documentation supporting the Consultant's Claim. The documentation provided to the Authority will serve as the basis for evaluation of the Consultant's position regarding the Claim throughout Step One of the administrative process. The Consultant shall submit additional information upon request of the Authority. No formal action will be taken by the Authority unless and until the Authority receives complete Claim documentation from the Consultant.
- 7.5.2 Authority Review and Decision. At the option of the Authority, a meeting may be scheduled with the Consultant and the Authority to discuss the Claim. The Authority shall render its decision regarding the Claim in writing within ninety (90) Days of the receipt of the complete supporting documentation or within ninety (90) Days of any meeting with the Consultant and the Authority, whichever is later. This time limit may be extended by mutual agreement of the Parties or by the Authority, when additional time is required by the Authority to properly review and respond to the Claim. The Consultant, within fifteen (15) Days of the receipt of the decision by the Authority, shall accept or reject the Authority's decision in writing. If the Consultant neither accepts nor rejects in writing the Authority's decision within fifteen (15) Days, the Authority will consider the Step One process administratively closed, and the claim will be eligible for Step Two Non-binding mediation, if a request for mediation is made by the Consultant in the time and manner indicated in the following section.

7.6 Step Two: Non-Binding Mediation.

- 7.6.1 Within sixty (60) Days after issuance of a Certificate of Occupancy or Certificate of Acceptance for the Project, Consultant may request in writing that any or all outstanding Claims regarding this Project, which include any or all Claims that have been processed through Step One of the Claim resolution process, proceed to Step Two, Non-binding Mediation. Such request for mediation must be in writing and must identify with specificity the Design Claims to be mediated. No Claim will proceed automatically to Step Two and the Consultant must make a specific written request that the Claim be elevated to Step Two for review. The cost of non-binding mediation shall be shared equally by Consultant and the Authority. The mediator shall be selected by the Authority, with the written concurrence of the Consultant. The rules for the mediation shall be agreed to by the Authority, the Consultant and the mediator prior to the start of the mediation. If the parties fail to agree on the rules for the non-binding mediation, the mediation will not proceed and Step Two review will be deemed to be completed.

8.0 REPRESENTATIONS

The Consultant hereby represents as follows:

- 8.1** The Consultant is financially solvent, able to pay its debts as they become due and possessed of sufficient working capital to complete the services required and perform its obligations under this Agreement.

- 8.2** The Consultant is able to furnish the workplace, tools, materials, supplies, equipment and labor necessary to complete the Services and perform all of its obligations under the Contractual Documents, and has sufficient experience and competence to do so.
- 8.3** The Consultant is authorized to do business in the State of New Jersey and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Consultant and the Services it will be performing.
- 8.4** The Consultant's execution of and performance under this Agreement are within its duly authorized powers.
- 8.5** Consultant certifies that it has investigated the conditions of the Project and that it fully understands the conditions of the Project and its obligations pursuant thereto. Consultant agrees that it will not make any Claim for, or be entitled to, cancellation or relief from this Agreement without penalty because of its misunderstanding or lack of information related to the conditions of the Project and its obligations pursuant thereto.
- 8.6** The Consultant certifies that all representations made by it in any of the Contractual Documents are true, subject to penalty of law. The Consultant understands and agrees that its knowing or intentional violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact may be cause for termination of this Agreement. The Consultant understands and agrees that the Consultant's violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact shall serve as a legal bar to the Consultant's enforcement of its rights under the Contractual Documents, including any and all Claims at law or equity.
- 8.7** The Consultant and any firm it has subcontracted has provided to the Authority proof of valid business registration with the Division of Revenue of the New Jersey Department of the Treasury, pursuant to N.J.S.A. 52:32-44, as set forth in Appendix F, and the Consultant shall not enter into any subcontract with a firm that has not provided it and the Authority with proof of such valid business registration.
- 8.8** Consultant assumes full responsibility to the Authority for the acts and omissions of its officers, employees, subcontractors, Subconsultants, and others employed or retained by it in connection with the performance of the Services for this Project.
- 8.9** The representations and warranties enumerated in this Section operate in addition to, and shall in no way supersede, limit, or restrict any other duty, responsibility, representation, or warranty, express or implied, created or required of Consultant by this Agreement or by Applicable Laws.

9.0 AUTHORITY'S RIGHTS AND RESPONSIBILITIES

9.1 Authority's Rights

- 9.1.1 The Authority shall have the right to perform Services and to award contracts in connection with same that are not part of the Consultant's responsibilities under this Agreement.
- 9.1.2 The Authority shall have the right, in its sole discretion, to accept or reject personnel provided by the Consultant. The Consultant shall make a timely and prompt resubmittal to provide other personnel to replace any that are rejected by the Authority, both at the initial submittal

or upon any subsequent rejection or substitution of personnel.

- 9.1.3 The Authority shall have the right to establish and maintain a Consultant Performance Evaluation Policy and Procedure. The Consultant's performance under this Agreement shall be evaluated by the Authority and shall be a factor used in the technical scoring of the Consultant with respect to any future submission by the Consultant in response to a Request for Proposals by the Authority. This evaluation shall consider, among other things, the Consultant's ability to provide all required Services.
- 9.1.4 The Authority's approval, acceptance, use of or payment for all or any part of Consultant's Services hereunder shall in no way alter the Consultant's obligations hereunder.
- 9.1.5 The Authority and any other State inspecting or oversight agencies have the right to audit (or have their agents audit) the records of the Consultant and its Subconsultants in connection with all matters related to the Contractual Documents. If, as a result of such audit, the Consultant is discovered for any reason to owe any money or refund to the Authority, the Authority may reduce the Consultant's invoice amount to an amount considered commensurate with the actual services provided.
- 9.1.6 The Authority and their agents have the right to request, and the Consultant agrees to furnish free of charge, all information and copies of all records, documents or books relating to the provision of Service, which the Authority, or their agents may request. The Consultant shall allow representatives of the Authority and their agent(s) to visit the office(s) of the Consultant periodically, upon reasonable notice, in order to review any information, records, documents or books related to the Contractual Documents or to otherwise monitor any Services being performed.

9.2 Authority's Responsibilities

The Authority shall, on a timely basis, provide the Consultant with such information in its possession and/or control as may reasonably be necessary for the performance of the Services within the agreed upon time frame.

10.0 MISCELLANEOUS

- 10.1 Notices.** All notices or other communications required under this Agreement shall be in writing and sent by certified mail, return receipt requested, postage prepaid or by FedEx or similar guaranteed overnight courier and shall be deemed to have been given on the Day after depositing in the mail or with such overnight courier. Notices shall be addressed as directed in Appendix A (Special Conditions). Electronic transmission of information may be required, as may be set forth in the Scope of Services.
- 10.2 Incorporation by Reference.** This Agreement incorporates by reference, as if set forth herein, all of the Contractual Documents in their entirety, including but not limited to this Agreement and its appendices; the Request for Proposals and the responses thereto; and any Amendments and any addenda.
- 10.3 Conflict in Terms.** In the event of a conflict in terms among the Contractual Documents, the following order shall prevail for purposes of interpretation:

- 10.3.1 Appendix A (Special Conditions)
- 10.3.2 Appendix B (Scope of Services)
- 10.3.3 Agreement (excluding Appendices)
- 10.3.4 Proposals

- 10.4 No Waiver of Warranties or Legal/Equitable Remedies.** Nothing in the Contractual Documents or this Agreement shall be construed to be a waiver by the Authority of any warranty, expressed or implied, or any remedies at law or equity, except as specifically and expressly stated in a writing executed by the Authority.
- 10.5 Procedural Requirements.** The Consultant shall comply with all written procedural instructions that may be issued from time to time by the Authority.
- 10.6 Governing Law.** This Agreement and all other Contractual Documents, and any and all litigation arising therefrom or related thereto, shall be governed by the applicable laws, regulations and rules of the State of New Jersey without reference to conflict-of-laws principles.
- 10.7 Forum and Venue.** The parties may only bring a legal action to resolve a dispute or Claim arising from this Agreement in Superior Court of the State of New Jersey.
- 10.8 Time of the Essence.** All time limits as stated in the Contractual Documents are of the essence.
- 10.9 Entire Agreement and Amendments.** This Agreement and the other Contractual Documents represent the entire and integrated agreement between the Consultant and the Authority and supersede all prior negotiations, representations or agreements, either written or oral. This Agreement and all other Contractual Documents may be amended only by written instrument signed by both the Consultant and the Authority. Should the Consultant at any time find existing conditions that would make modification in requirements desirable, it shall promptly report such matters to the Authority for consideration.
- 10.10 Severability.** In the event that any provision of any Contractual Document shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.
- 10.11 Waiver of Breach.** In the event that any provision of any Contractual Document should be breached by any party and such breach is thereafter waived by any party, such waiver shall be limited to the particular breach so waived by any party and shall not be deemed to waive any other breach. Any written consent by the Authority to a delay in Consultant's performance of any obligation shall apply only to the particular transaction to which it relates, and it shall not apply to any other obligation or transaction. Any delay in the Authority's enforcement of any remedy in the event of a breach by the Consultant of any term or condition of the Contractual Documents or any delay in the Authority's exercise of any right under the Contractual Documents shall not be construed as a waiver. A "waiver" of a party's breach of this Agreement shall only occur if there is a specific provision in this Agreement which expressly describes the party's conduct or inaction as constituting a waiver or if there is a writing signed by the waiving party expressly, specifically and unequivocally waiving such breach.
- 10.12 Execution in Counterparts.** This Agreement and any other Contractual Document, where applicable, may be executed simultaneously in one or more counterparts, each of which shall be

deemed an original, and all of which shall constitute but one and the same instrument.

- 10.13 Security Clearance.** The Consultant and its personnel and Subconsultants and their personnel shall be subject to such security clearance at School Facilities Projects and other locations as may be required, if any, in order to fulfill obligations under the Contractual Documents.
- 10.14 Office of the State Comptroller.** The Office of the State Comptroller, the Office of the State Inspector General, or any other State inspecting or oversight agencies may, at their discretion, investigate, examine and inspect the activities of the Consultant and all other parties involved with the Project relating to the design, construction and financing of the Project and to the implementation of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.). The Office of the State Comptroller, the Office of the State Inspector General, or any other State inspecting or oversight agencies may require the Consultant or any other party involved with the Project to submit duly verified reports which shall include such information and be in such form as they may require. In addition to the foregoing, the Office of the State Comptroller, the Office of the State Inspector General, or any other State inspecting or oversight agencies may investigate, examine, inspect, or audit in any manner and at such times as they may deem necessary. The Consultant shall include in any and all contracts with Subconsultants a provision requiring such Subconsultants to permit the Office of the State Comptroller, the Office of the State Inspector General, or any other State inspecting or oversight agencies, in their discretion, to investigate, examine, inspect or audit in any manner and at such times as they may deem necessary.
- 10.15 Limitation of Liability.** Whether as a result of breach of Contract, tort (including negligence), or otherwise, the Authority will not be liable to the Consultant for any special, consequential, incidental, or penal damages, including, but not limited to, loss of profit or revenues, loss of rental value for Consultant-owned equipment, damages to associated equipment, cost of capital, punitive damages or interest of any nature.
- 10.16 Captions & Titles.** Captions and titles of the different Sections of this Agreement are solely for the purpose of aiding and assisting in the location of different material in this Agreement and are not to be considered under any circumstances as parts, provisions or interpretations of this Agreement.
- 10.17 Words of Obligation or Duty.** Whenever in this Agreement any words of obligation or duty regarding any party are used, they shall have the same force and effect as if stated in the form of an express covenant.
- 10.18 Parties are not Joint Venturers or Partners.** Nothing contained in this Agreement shall be construed to mean that Consultant and the Authority are joint venturers or partners.
- 10.19 Notice of State Vendor Set-Off For State Tax**
- 10.19.1 Pursuant to N.J.S.A. 54:49-19, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods and services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership or S corporation. The amount set off shall not allow for the deduction of any expenses or other

deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

10.19.2 The Director of the Division of Taxation shall give notice of the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under N.J.S.A. 54:49-18. No requests for conference, protest or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State to the taxpayer pursuant to N.J.S.A. 52:32-35 shall be stayed.

10.20 All Services to be Performed in the United States. The Consultant shall have a continuing duty to comply with Executive Order No. 129 (2004) (“EO 129”), and with N.J.S.A. 52:34-13.2, as applicable. By executing this Agreement, the Consultant agrees that all Services performed by the Consultant and/or its Subconsultants pursuant to this Agreement shall be performed within the United States. If, during the Term, the Consultant or a subcontracted firm proceeds to shift the performance of the Services outside of the United States, the Consultant shall be deemed in breach of the Agreement and shall be subject to termination for cause, unless the Authority shall determine in writing that extraordinary circumstances require a shift of services or that a failure to shift the services would result in economic hardship to the Authority or the State.

APPENDIX A

SPECIAL CONDITIONS

A.1 Notices shall be addressed as follows:

Authority: New Jersey Schools Development Authority
32 East Front Street
Trenton, NJ 08625
Attention: Anthony Gilfillan

Consultant:

APPENDIX B

SCOPE OF SERVICES

{See Attached Sheets}

New Jersey Schools Development Authority

Information Systems Department

SCOPE OF SERVICES

Network, Hardware and Software Support Services

Network, Hardware and Software Support Services

A. GENERAL ISSUES

This Scope of Services sets forth the Services required of the Consultant. Capitalized terms not otherwise defined in this Appendix B shall have the meaning set forth in Section 1 of the Agreement.

B. GENERAL ROLE AND INFORMATION

Consultant shall provide the Services with the resources and personnel required to perform the tasks at NJSDA's headquarters located at 32 East Front Street, Trenton, NJ 08625, at NJSDA's satellite office located at 375 McCarter Highway, Newark, NJ 07114, and at any NJSDA school development site.

The main headquarters office houses the majority of the IT infrastructure, servers and equipment. The NJSDA network operates a Microsoft Windows 2008/2012 environment utilizing a fiber optic switched backbone. The additional office is connected via Fiber point-to-point circuits or via VPN, with the Trenton headquarters located at 32 East Front Street configured as the centralized hub.

The primary network is comprised of a Cisco backbone utilizing primarily a Microsoft server and desktop environment and Microsoft Exchange email services.

The NJSDA Information Systems staff includes three System/Network Administrators, two Help Desk Analysts, one Call Coordinator, three IT Project Managers/Application Subject Matter experts, and four programmers. The majority of system and user support activity and the interactions with the awardee of this contract revolve around a team of six which consists of three System/Network Administrators, two Help Desk Analysts and one call coordinator.

The nature of this contract is that the awardee will provide repairs of computers, servers, printers, etc. listed on the contract by replacing the field replaceable modules (FRM) and restoring the system to its operational state.

C. NETWORK, HARDWARE AND SOFTWARE SUPPORT SERVICES

Set forth in **Section C** are tasks and objectives, as well as a listing of items that shall be subject to required Services as set forth in the Exhibits incorporated with this Scope of Services.

C.1 **Tasks and Objectives**

The Consultant shall provide support services listed below for NJSDA desktop/network and peripheral environment, which also includes patches, updates and/or upgrades:

- (a) Telephone and onsite support for the following server operating environments/platforms: Microsoft Windows 2003 through 2012, Citrix NetScaler and XENApp Portal, as well as future releases of all products or new server environments/platforms which may be introduced over the period of this contract.
 - o NJSDA maintains an enterprise support agreement with Microsoft as

Network, Hardware and Software Support Services

well and active support agreements with Citrix to ensure the current version is available to the authority.

- (b) Telephone and onsite support for an HP 3PAR Storage Area Network (SAN).
 - NJSDA maintains a 24x7 onsite hardware repair contract directly with HP for these devices but requires onsite assistance by the awardee of this agreement with repair or configuration should a failure arise.

- (c) Telephone and onsite software/configuration support for the following Network Infrastructure devices: Cisco Routers, Cisco Core and Riser Switches.
 - NJSDA Maintains a Cisco SmartNet support agreements. The existing Cisco contracts provide for replacement of defective hardware or software but does not include onsite assistance to isolate network critical failures.

- (d) Telephone and onsite software/configuration support for the following Network Infrastructure: Edgewave iPrism Web Filter and Palo Alto networking devices with VPN.
 - NJSDA Maintains support agreements with both Palo Alto and Edgewave. These contracts provide for replacement of defective hardware or software but does not include onsite assistance to isolate network critical failures.

- (e) Telephone and onsite software/configuration support for Cisco Call Manager Express VoIP system.
 - NJSDA Maintains a Cisco SmartNet contract agreement. The existing Cisco contract provide for replacement of defective hardware or software but does not include onsite assistance to isolate network critical failures.

- (f) Telephone and onsite support for Symantec Backup and End Point Protection environments.
 - NJSDA maintains a software maintenance contract directly with Symantec for these environments but requires onsite assistance by the awardee of this agreement with repair or configuration should failures arise.

- (g) Telephone and onsite support for HP Store Once and DataProtector backup.
 - NJSDA maintains a 24x7 onsite hardware repair contract directly with HP for these devices but requires onsite assistance by the awardee of this agreement with repair or configuration should a failure arise.

- (h) Telephone and onsite support for our VMWare environment. The VMWare environment is comprised of both Physical and Virtual Server Hosts. The physical environment is running on an IBM servers and the HP 3PAR SAN.
 - NJSDA maintains a software maintenance contract directly with VMWare for these environments but requires onsite assistance by the awardee of this agreement with repair or configuration should failures arise.

- (i) Telephone and onsite support for our NetMail Archive environment.
 - NJSDA maintains a software maintenance contract directly with Netmail

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for these environments but requires onsite assistance by the awardee of this agreement with repair or configuration should failures arise.

- (j) Telephone and onsite support for our Esker FAX environment.
 - NJSDA maintains a software maintenance contract directly with Esker for these environments but requires onsite assistance by the awardee of this agreement with repair or configuration should failures arise.
- (k) Telephone and onsite support for our Oracle Contract Manager and P6 scheduling environments (aka Primavera CM and P6).
 - NJSDA maintains a software maintenance contracts directly with Oracle for these environments but requires onsite assistance by the awardee of this agreement with repair or configuration should failures arise.
- (l) Provide 24 x 7 hour telephone and on-site support for all server hardware and software.
- (m) Provide four-hour Network/Server Hardware Critical Care Maintenance (24 hours, 7 days a week) for the file servers.
- (n) Telephone and onsite Break-Fix Maintenance for Desktop PC's, Laptops, Printers, Plotters, Scanners, and other peripherals.
 - Workstations will be returned to an operational state including the operating system but not applications or data.
 - Printers and Peripheral hardware will be restored to an operational state.

Note: A maximum four-hour on-site response time is required on all hardware. A maximum of one-hour initial response time is required for all telephone support.

C.2 Server and Network hardware inventory: refer to Exhibit 1

C.3 Desktop and Workstation hardware inventory: refer to Exhibit 2

C.4 Laptop inventory: refer to Exhibit 3

C.5 Printer inventory: refer to Exhibit 4

C.6 Network software and operating systems environments listed below (Coverage 24 – 7 Sunday through Saturday 12:00 am to 11:59 pm including holidays)

Microsoft Applications and Services Platforms

- (a) Microsoft Active Directory
- (b) Microsoft Directory Synchronization Services
- (c) Microsoft Domain Name System (DNS)
- (d) Microsoft Exchange/Outlook
- (e) Microsoft HyperVisor
- (f) Microsoft Internet Information Services (IIS)
- (g) Microsoft SharePoint
- (h) Microsoft SQL Server
- (i) Microsoft Windows Deployment Services (WDS)
- (j) Microsoft Windows Server Update Services (WSUS)

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Other Applications and Services

- (a) AirWatch MDM
 - (b) Barracuda Spam Firewall
 - (c) Cisco Access Control Server
 - (d) Citrix Presentation Server and NetScaler Secure Gateway
 - (e) Citrix XenApps 6.0
 - (f) DocuWare eDCM
 - (g) EdgeWave iPrism web filter (formerly St. Bernard)
 - (h) Esker Fax Server
 - (i) HP DataProtector
 - (j) HP 3PAR
 - (k) NetMail Archive (formerly Messaging Architects - mPlus Archive)
 - (l) Oracle Contract Manager
 - (m) Oracle P6 Scheduling
 - (n) Oracle WebLogic Web Server
 - (o) Palo Alto Firewall
 - (p) Palo Alto Global Protect
 - (q) Symantec Backup Executive
 - (r) Symantec End Point Protection
 - (s) VMWare and VCenter
- C.7** Workstation software environment listed below (Coverage 9 – 5 Monday through Friday 9:00 am to 5:00 pm):
- (a) Microsoft Windows 7.0, 8.1 and 10 along with any future releases of Microsoft desktop operating systems
 - (b) Microsoft Office 2010 Suite and other future releases of Microsoft office suite

C.8 Universal Labor Plan for Urgent or Unanticipated Services

NJSDA is requesting labor rates for unanticipated Information System/Information Technology Services, which are critical and time-sensitive in nature. NJSDA may request supplemental staff onsite for short periods of time to complement or backfill NJSDA resources for normal day-to-day responsibilities or project specific activity.

The NJSDA requires labor rates for the following types of IT resources/services:

- a. **Help Desk Analyst** – provide computer, software or other technology help in person, over the telephone and via email.
- b. **Field Technician** – provide repairs to computer hardware.
- c. **Desktop Deployment Technician** – provide computer configuration, setup and deployment services.
- d. **Systems/Network Administrator** – provide various network support and administrative duties including but not limited to: create users accounts or services, triaging system-based issues, managing backup or system recovery.
- e. **IT Infrastructure Consultant** – Provide various support and administrative duties including but not limited to: triage or configuration

Network, Hardware and Software Support Services

of router, switches and network security systems.

- f. **IT Project Management** – Provide oversight on IT related projects to ensure that projects remain on schedule and within budgetary requirements.
- g. **IT Application Consultant** – Provide various support and administrative duties for specialized applications including but not limited to: triage or configuration of IIS, WebLogic or Oracle systems.
- h. **IT DBA Services** – Provide various support and administrative duties for SDA databases that include SQL Server 2008 R2, and 2012.

C.9 Methods and Service Level Agreement (SLA) Tracking

NJSDA staff must be able to contact its support provider and receive a response of any received request in order to measure compliance of the required SLA's.

Once a support request is assigned to the support provider, NJSDA requires the following:

- (a) Maximum one (1) hour initial response via telephone by a qualified technical resource.
- (b) Maximum four (4) hour on-site response with necessary parts on all Hardware Support.
- (c) Maximum four (4) hour on-site response by a qualified technical resource on all Network or Software Maintenance Support.
- (d) Onsite visits and telephone support must be documented in a work order format including:
 - (i) Date & Time NJSDA initiated support request
 - (ii) The nature and description of support request
 - (iii) Date & Time support request was received by Support Provider
 - (iv) Telephone response time provided by Support Provider
 - (v) Technician or Consultants Name providing support services
 - (vi) Onsite response time provided by Support Provider
 - (vii) Resolution Date & Time
 - (viii) Resolution description details

C.10 Modifications to Equipment Services

Throughout the Term of this Agreement, new equipment, software or operating systems may be purchased or old equipment may be decommissioned from service. The Consultant shall handle the modifications necessary to remove decommissioned equipment, credit NJSDA for the unused maintenance period, and add newly acquired equipment or network software.

C.11 Services Regularly Required

The Consultant shall provide the following Deliverables:

- A. Fixes, configurations, installations, and patches at all NJSDA locations.
- B. Record all service calls with the specific work that is performed and provide a monthly report.

Network, Hardware and Software Support Services

- C. Assign specific technical personnel to a call/problem and have the individual(s) assume accountability through resolution.
- D. Escalate calls to higher level if a call/problem persists and requires other resources, and notify NJSDA Information Systems management and staff upon escalation.
- E. Continually review service level timeframes through each step of the process to ensure that the consultant meets the following service level agreements:

i. Hardware Maintenance and Support Services

Server and Network Systems

- a. Maintenance and Support Services 24 hour by 7 day - Network, Servers and Network attached peripherals
 - i. 1 Hour initial responses
 - ii. 4 Hour on-site responses; same day onsite response with continuous effort applied through resolution.
 - iii. Response Sunday through Saturday 12:00 am to 11:59 pm including holidays.
 - iv. Hardware repairs require the use of OEM Parts.

Desktop/Laptop/Monitor/Printer

- a. Maintenance and Support Services 9 hour by 5 day - Desktop, Laptop, Monitor and Printer Hardware
 - i. 1 Business Hour initial responses
 - ii. 4 Business Hour on-site responses
 - iii. Next Business day onsite response
 - iv. Response Monday through Friday 9:00 am to 5:00 pm excluding NJSDA holidays
 - v. Hardware repairs require the use of OEM Parts

ii. Network, Operating System and Software Maintenance Services

Server/Network Systems

- a. Support Services 24 hour by 7 day - Server, Network and attached peripherals systems and Software
 - i. 1 Hour initial responses
 - ii. 4 Hour on-site responses with continuous effort applied through resolution.
 - iii. Responses Sunday through Saturday 12:00 am to 11:59 pm including holidays

Desktop/Laptop/Monitor/Printer

- a. Support Services 9 hour by 5 day - Desktop and peripherals Systems and Software
 - i. 1 Business Hour initial responses
 - ii. 4 Business Hour on-site responses
 - iii. Responses Monday through Friday 9:00 am to 5:00 pm excluding NJSDA holidays

Network, Hardware and Software Support Services

C.12 Exclusions

- A. Consultant shall not be required to repair hardware that is damaged by any of the following:
 - i. Fire;
 - ii. Exposure to or immersion in water or other liquids;
 - iii. Accidental or intentional misuse; or
 - iv. Unauthorized modification.

- B. Consultant shall not be required to repair hardware that is damaged cosmetically, as long as the device is operating properly.

Network, Hardware and Software Support Services

D. NJSDA OFFICE LOCATIONS

Currently, NJSDA is comprised of the two office locations listed below. Please note that NJSDA office locations may be added to or deleted from the NJSDA infrastructure over the course of this services agreement.

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

Trenton - Headquarters Office

32 East Front Street

Trenton, NJ 08625

Mailing Address: NJSDA, PO Box 991, Trenton, NJ 08625-0991

Main Phone (609) 943-5955

Newark – Satellite Office

375 McCarter Highway

Newark, NJ 07114

Mailing Address: NJSDA, PO Box 991, Trenton, NJ 08625-0991

Main Phone (609) 943-5955

Approximately 55 miles from Trenton office

Construction Job Sites and Trailers

NJSDA may be called upon to build schools in any of the 21 New Jersey Counties and may require onsite support at any facility to repair computer equipment on the particular job site.

Network, Hardware and Software Support Services

EXHIBIT 1

Server, Network and UPS Attached Peripheral Inventory

Product	Type	# of Units	SLA 24 - 7 Sunday through Saturday 12:00 am to 11:59 pm
Physical Server	ProLiant DL380 G4	1	1
Physical Server	ProLiant DL380 G5	4	4
Physical Server	IBM x3550 M3	4	4
Physical Server	System x3650 M3	1	1
Physical Server	System x3650 M4	5	5
Physical Server	HP Gen 9 Server	3	3

HP Gen 9 Servers include 5 year hardware support through January 2021 with HPE

Product	Type	# of Units	SLA 24 - 7 Sunday through Saturday 12:00 am to 11:59 pm
Physical Server VM	IBM x3550 M3	4	4
Physical Server VM	IBM x3650 M4	1	1
Virtual VMWare	Variety of O.S.'s Microsoft and Linux	13	13
Physical Server HV	IBM x3650 M4	6	6
Physical Server HV	HP Gen 9 Server	2	2
Virtual HyperVisor	Variety of O.S.'s Microsoft	40	40

Product	Type	# of Units	SLA 24 - 7 Sunday through Saturday 12:00 am to 11:59 pm
HP Storage Works MSL LTO6 Ultrium Library Dual Drive	Tape Library	2	2
HP G-2 Ultrium Autoloaders 1/8	Tape Library	2	2

Network, Hardware and Software Support Services

Product	Type	# of Units	SLA 24 - 7 Sunday through Saturday 12:00 am to 11:59 pm
APC Symmetra Power Array 20KVA	UPS - Trenton	2	2
APC Symmetra Power Array 12KVA	UPS - Newark	1	1

Network, Hardware and Software Support Services

EXHIBIT 2

Desktop and Workstation Inventory

Model	Description	SLA 9 - 5 Monday through Friday 9:00 am to 5:00 pm
HP Z620/Z820	Quad-Core Intel Xeon 5345 3.0GHz 2x4MB L2 Cache, 1333 FSB HT Tech 4GB Ram	16
HP 3130 (Scheduled to be replaced with HP EliteDesk 800 2016)	HP Pro 3130 Micro tower PC	50
HP 4000	HP Compaq 4000 Pro SFF PC	60
HP 6300	HP Compaq Pro 6300 SFF	55

Total of 181 Desktops

Network, Hardware and Software Support Services

EXHIBIT 3

Laptop Inventory

Model	Description	SLA 9 - 5 Monday through Friday 9:00 am to 5:00 pm
HP 620 (Scheduled to be replaced with EliteBook 840 G 2016)	HP 620 Laptop	20
HP 6550 (Scheduled to be replaced with Elitebook 840G 2016)	HP Pro-Book 6550b	40
HP 6570	HP Pro-Book 6570b	60
HP 1000G	HP EliteTAB 1000G	20
HP Elite 1012	HP Elite x2 1012 G1 Tablet	10

Total of 120 Laptops and 30 Tablets

Network, Hardware and Software Support Services

EXHIBIT 4

Printer Inventory

Network Printers:

Model	# of Units	9 - 5 Monday through Friday 9:00 am to 5:00 pm
HP LaserJet 5225	8 – Trenton	8
HP LaserJet 8150	2 – Newark	2
HP LaserJet 9050	9 – Trenton	9

Total of 19 Network Printers

Personal Printers:

Model	# of Units	9 - 5 Monday through Friday 9:00 am to 5:00 pm
HP LJ 1320dn	6	6
HP LJ 2200dn	2	2
HP LJ 2300dn	10	10
HP LJ 2420dn	2	2
HP LJ 3030	3	3
HP LJ 3055	5	5
HP LJ CM1312	1	1
HP LJ M2727nf	3	3
HP LJ P2015dn	10	10
HP LJ P2035	12	12

Total of 54 Personal Printers

Network Plotters:

Model	# of Units	9 - 5 Monday through Friday 9:00 am to 5:00 pm
HP Design T1110 (plotter)	1	1
HP Design T1110 (plotter with scanner)	1	1

Total of 2 Plotters

APPENDIX C

COMPENSATION – FEE PROPOSAL

{See Attached Sheets}

APPENDIX D-1

**DISCLOSURE TO OFFICE OF FISCAL INTEGRITY
GENERAL CONSENT AND WAIVER**

Contract #: GP-0236-R02

STATE OF: _____

COUNTY OF: _____

I, _____, of the City of _____, in the County of _____ and the State of _____ of full age, being duly sworn according to law on my oath, depose and say that:

A. I am _____ of the firm of _____, (the "Consultant"), which has been awarded the referenced contract (the "Agreement") for the School Construction Program, and that I execute said Agreement with full authority to do so; that said Consultant agrees to and hereby consents to permit the New Jersey State Police and or such other office designated by the Attorney General to perform the functions of the Office of Fiscal Integrity in School Construction in the Office of the State Attorney General, established pursuant to Public Law 2000, Chapter 72, Section 70, as amended (the "State Police"), access as described below, to:

All documents related to the Agreement, including but not limited to, prequalifying information, work product, and confidential memos and certifications required to be kept by any governmental agency, including but not limited to the Department of Community Affairs, the Department of Labor, the Department of Education, the Department of Environmental Protection, the Department of Treasury, the Division of Consumer Affairs, Licensing Boards, and the New Jersey Schools Development Authority (the "Authority").

All documents related to the Agreement, which are required to be kept by the Consultant, including but not limited to contracts, specifications, drawings, deliverables, change orders, alternate submissions, approvals/rejections, unit prices, product data, time of performance schedules, construction photographs, quality control management and reports, value engineering information, up-to-date project accounting system, intermediate and final audits, as-builts, close-out documentation.

All documents related to the payment of professionals in connection with the Agreement, including but not limited to surveyors, title abstractor/company, lawyers, Consultants, soils engineers, bond counsel, underwriters, financial and investment advisors, trustees, official printers, bond insurers.

B. The Consultant agrees to allow the State Police upon request, at all reasonable times, to inspect and photocopy any and all of the documents described above that are in its possession or custody, or are subject to its control. The Consultant agrees to make the requested documents available for inspection and photocopying within the State of New Jersey regardless where those documents are located prior to inspection.

C. The Consultant further certifies that there have been no changes in circumstance, conditions or status of the Consultant's prequalification with the Authority since the latest prequalification application was

filed by the Consultant with the Authority.

- D. The Consultant certifies that, if applicable, any change in the information provided by the Consultant in its prequalification application currently on file with the Authority will be immediately reported to the Authority.
- E. The Consultant certifies that, if applicable, it shall immediately notify the Authority and the State Police if any director, partner, officer, employee of the Consultant or any shareholder owning 5% or more of the Consultant's stock:
 - 1. Is the subject of investigation involving any violation of criminal law or other federal, state, or local law or regulation by any governmental agency; or
 - 2. Is arrested, indicted or named as an unindicted co-conspirator in any indictment or other accusatory instrument; or
 - 3. Is convicted of any crime under state or federal law, or of any disorderly persons offense or misdemeanor involving a business-related offense.
- F. The Consultant hereby waives any objection it might otherwise raise permitting the State Police to investigate, examine and inspect all activities related to the Agreement pursuant to Public Law 2000, Chapter 72, Section 70, as amended. The Consultant further releases and holds harmless the State Police, the Authority, and the State of New Jersey. All statements contained in the Consultant's Technical Proposal and Fee Proposal and in this waiver and consent are true and correct, and made with full knowledge that the Authority and the State of New Jersey rely upon the truth of the statements contained in this affidavit in awarding the Agreement.

Sworn and subscribed to before me

this _____ day of _____, 20__.

Signature of Principal

Notary Public of

Print Name of Principal

My commission expires: _____, 20__.

APPENDIX D-2

INTEGRITY AFFIDAVIT

Contract #: GP-0236-R02

STATE OF: _____

COUNTY OF: _____

I, _____, of the City of _____, in the County of _____ and the State of _____ of full age, being duly sworn according to law on my oath, depose and say that I am _____ of the firm of, (the "Consultant") for the School Construction Program (the "Program"); that my firm has entered into the contract stated above (the "Agreement") with the New Jersey Schools Development Authority (the "Authority") and that I execute the above-referenced Agreement, of which this Affidavit is a part, with full authority to do so; and that terms not otherwise defined herein shall have their meaning as set forth in such Agreement; AND

(NO GRATUITIES)

I SWEAR AND AFFIRM that the Consultant has not offered or tendered the payment of any fee, commission or compensation of any kind or the granting of any gift or gratuity of any kind, either directly or indirectly, whether or not in connection with the purchase, sale, or contract, to any person in the employ of the Authority, or the State of New Jersey having any duties or responsibilities in connection with the purchase or acquisition of any property or services by the Authority, or State of New Jersey, by or on behalf of any seller, supplier or Consultant of services, who has made, negotiated, solicited or offered to make any contract to sell or furnish real or personal property or services to the Authority, or the State of New Jersey. I further understand that it is a violation of law to offer, pay, or give to any employee of the Authority, or the State of New Jersey any fees, commission, compensation, gift or gratuity for or because of any official act or a violation of any official duty. Any person who does so may be subject to punishment; AND

(NO COLLUSION)

I SWEAR AND AFFIRM that the Consultant has not directly or indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free, competitive bidding in connection with the Program; that the prices in the Fee Proposal have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition; that the prices have not been knowingly disclosed directly or indirectly by the Consultant to any other firm submitting a Proposal, unless otherwise required by law; that no attempt has been made by the Consultant to induce any other person or business entity to submit or not submit a Proposal for the purpose of restricting competition; AND

(NO DISCRIMINATION)

I SWEAR AND AFFIRM that the Consultant will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, gender or sexual orientation and has complied and will continue to comply with all State and Federal laws and Executive Orders respecting non-discrimination; AND

(PREVAILING WAGE)

If applicable, I SWEAR AND AFFIRM that the Consultant shall or has complied with the New Jersey Contractor Registration Act, Public Laws 1999, Chapter 238 and the New Jersey Prevailing Wage Act, Laws of 1963, Chapter 150, and all amendments thereto, with respect to the Program and any contracts related to school construction entered into on behalf of the State of New Jersey, except those contracts not within the contemplation of these acts; AND

I SWEAR AND AFFIRM that all statements contained in the Consultant's Technical Proposal and Fee Proposal and this Affidavit are true and correct; and all such statements have been made with full knowledge that the Authority and the State of New Jersey rely upon the truth of the statements contained in this Affidavit in awarding the Agreement.

Sworn and subscribed to before me

this _____ day of _____, 20__.

Signature of Principal

Notary Public of

Print Name of Principal

My commission expires: _____, 20__.

APPENDIX E

INSURANCE CERTIFICATE(S)

{See Attached Sheets}

APPENDIX F

OTHER DOCUMENTATION

{See Attached Sheets}

- 1. BUSINESS REGISTRATION**
- 2. PL 2005, CHAPTER 51 APPROVAL**
- 3. EO129 CERTIFICATION**
- 4. ADDENDA**

ATTACHMENT B

NJSDA FORM 202 – KEY TEAM MEMBER RESUME

**NJSDA FORM 202
KEY TEAM MEMBER RESUME**

KEY TEAM MEMBER NAME AND FIRM:

YEARS OF EXPERIENCE:

YEARS WITH FIRM:

TECHNICAL SPECIALTIES:

PROFESSIONAL HISTORY:

EDUCATION:

PROFESSIONAL REGISTRATIONS, AFFILIATIONS & CERTIFICATIONS:

NJSDA FORM 202

KEY TEAM MEMBER RESUME (cont'd)

Key Team Member Name & Firm: _____

RELEVANT EXPERIENCE & QUALIFICATIONS:

ATTACHMENT C

NJSDA FEE PROPOSAL

**NJSDA FEE PROPOSAL
NETWORK, HARDWARE & SOFTWARE SUPPORT SERVICES**

	Year 1		Year 2		Year 3		Year 4	
Price Per Unit Support Services (annual fee)	SERVICE LEVEL 9 - 5 Monday through Friday 9:00 am to 5:00 pm	SERVICE LEVEL 24 - 7 Sunday through Saturday 12:00 am to 11:59 pm	SERVICE LEVEL 9 - 5 Monday through Friday 9:00 am to 5:00 pm	SERVICE LEVEL 24 - 7 Sunday through Saturday 12:00 am to 11:59 pm	SERVICE LEVEL 9 - 5 Monday through Friday 9:00 am to 5:00 pm	SERVICE LEVEL 24 - 7 Sunday through Saturday 12:00 am to 11:59 pm	SERVICE LEVEL 9 - 5 Monday through Friday 9:00 am to 5:00 pm	SERVICE LEVEL 24 - 7 Sunday through Saturday 12:00 am to 11:59 pm
Server Hardware Maintenance								
Server Software Support								
Network Support (Switches, Routers, VoIP and Firewalls)								
UPS Support								
Tape Library Maintenance								
Desktop/Workstation Hardware Maintenance								
Laptop Hardware Maintenance								
Display/Monitor Hardware Maintenance (all equipment above)								
Printer Hardware Maintenance								
Plotter Maintenance								

	Year 1		Year 2		Year 3		Year 4	
Loaded Hourly Labor Rates*	SERVICE LEVEL 9 - 5 Monday through Friday 9:00 am to 5:00 pm	SERVICE LEVEL Overtime Rate Monday to Friday 5:01 PM to 8:59 AM Saturday & Sunday 12:00 am to 11:59 pm	SERVICE LEVEL 9 - 5 Monday through Friday 9:00 am to 5:00 pm	SERVICE LEVEL Overtime Rate Monday to Friday 5:01 PM to 8:59 AM Saturday & Sunday 12:00 am to 11:59 pm	SERVICE LEVEL 9 - 5 Monday through Friday 9:00 am to 5:00 pm	SERVICE LEVEL Overtime Rate Monday to Friday 5:01 PM to 8:59 AM Saturday & Sunday 12:00 am to 11:59 pm	SERVICE LEVEL 9 - 5 Monday through Friday 9:00 am to 5:00 pm	SERVICE LEVEL Overtime Rate Monday to Friday 5:01 PM to 8:59 AM Saturday & Sunday 12:00 am to 11:59 pm
Help Desk Analyst								
Field Technician								
Desktop Deployment Technician								
Systems/Network Administrator								
IT Infrastructure Consultant								
IT Project Management								
IT Application Consultant								
IT DBA Services								

* NOTE: The Loaded Hourly Rate for staff is the rate at which the Authority shall pay for Services rendered as set forth in invoices, and must, therefore, include all costs the Consultant intends to recoup through compensation under the Agreement, including, but not necessarily limited to, the following: employee base salary, vacation, holiday, other leave pay, social security contributions, unemployment taxes, workers' compensation, travel expenses, and any other fringe benefits, payroll burden, and per diem, as well as an appropriately proportionate amount of company overhead and profit.

Addenda: The Bidder acknowledges receipt and incorporation into this bid of the following Addenda: Number: _____ Date: _____ Number: _____ Date: _____
 Bidder: _____ Signature: _____ Print Name: _____ Title: _____ Date: _____

ATTACHMENT D

MORAL INTEGRITY QUESTIONNAIRE



MORAL INTEGRITY QUESTIONNAIRE
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
PROCUREMENT DEPARTMENT
32 EAST FRONT STREET, P.O. BOX 991
TRENTON, N.J. 08625-0991

CHECK ONE: <input type="checkbox"/> OTHER <input type="checkbox"/> CONTRACTOR <input type="checkbox"/> PROFESSIONAL SERVICES	CHECK ONE: <input type="checkbox"/> INITIAL <input type="checkbox"/> RENEWAL	FEDERAL TAX ID# _____
BUSINESS LEGAL NAME AND ADDRESS: “ARE SATELLITE OFFICE(S) LOCATED IN NEW JERSEY”: If yes, please provide address(es):	TELEPHONE # _____	DUNS # (if known) _____
	FAX # _____	TYPE OF BUSINESS: <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> CORPORATION <input type="checkbox"/> L.L.C. <input type="checkbox"/> OTHER (SPECIFY) _____
	E-MAIL ADDRESS _____	
	WEB ADDRESS _____	

If the books and accounts of the Applicant Business Concern are not at the above address, disclose the address of the location where the books and accounts are kept: _____	NEW JERSEY DIVISION OF REVENUE & ENTERPRISE SERVICES <input type="checkbox"/> SBE REGISTRATION (Attach Copy) <input type="checkbox"/> MBE REGISTRATION (Attach Copy) <input type="checkbox"/> WBE REGISTRATION (Attach Copy) <input type="checkbox"/> VOB REGISTRATION (Attach Copy)
---	---

CONTACT PERSON

Name: _____ Title: _____

Phone Number: _____ Fax: _____ E-mail Address: _____

NOTE: Accurate, truthful and complete information will help speed the review of your questionnaire and expedite action on your Business Concern's application for Moral Integrity approval. If there is not enough space on this form to give a complete answer, attach additional sheets of paper. Please be sure that each additional sheet includes the Applicant Business Concern's name and Federal Tax ID Number to identify the page as yours and that you clearly identify the question you are answering. This application will not be sufficient to merit Moral Integrity approval if you fail to provide additional information if requested to resolve the questions about any of the disclosures made in this questionnaire.

FOR CORPORATIONS, LIMITED LIABILITY COMPANIES AND LIMITED PARTNERSHIPS ONLY

Name of Registered Agent in New Jersey: _____

Address of Registered Office in New Jersey: _____

If the Applicant Business Concern is a corporation, provide the following:

Date Incorporated: _____ State in which incorporated: _____

NJ Corporate ID: _____

IF NOT A N.J. CORPORATION, SUBMIT A COPY OF THE CERTIFICATE OF AUTHORITY TO PERFORM WORK IN N.J. AS ISSUED BY THE N.J. DEPARTMENT OF THE TREASURY, DIVISION OF REVENUE, BUSINESS SERVICES.

1. How long has the Applicant Business Concern done business under its present name? _____ years.
2. List each other name the Applicant Business Concern has done business under in the past ten (10) years:

D/B/A _____	Dates Name Used: _____
D/B/A _____	Dates Name Used: _____
D/B/A _____	Dates Name Used: _____
3. At any time during the past five (5) years, has the Applicant Business Concern shared office space, warehouse space, yard, plant or shop facilities, staff, equipment, telecommunications or other assets with any other business concern? (If yes, disclose the name of the other business concern and provide a description of the sharing arrangement, including the location of the facilities.)

YES NO

DISCLOSURE OF OWNERS AND KEY PERSONS

4. "Key Person" means any individual employed by the Applicant Business Concern in a supervisory capacity or empowered to make discretionary decisions with respect to bids and/or contracts with the State of New Jersey. "Key Person" also means any person who owns a beneficial interest of 10% or more in the business concern, and the managing members of limited liability companies and corporate directors and officers (e.g., president, vice presidents, secretary and treasurer.)

For purposes of this questionnaire, "supervisory capacity or empowered to make discretionary decisions" means able to bind the Applicant Business Concern to New Jersey bids and/or contracts of \$50,000 or more and/or authorized to sign checks to make payments of \$50,000 or more in connection with New Jersey contracts.

Use this table to enter identifying information for each individual who is a "Key Person" of the Applicant Business Concern. Identify any entity or business concern that owns a beneficial interest of 10% or more as well. For entities or business concerns, disregard birth date and provide federal tax identification number instead of social security number.

Name (Last, First, Middle)	Address	Birth Date (MM/DD/YYYY)	Social Security Number	Position	Ownership %

AT ANY TIME DURING THE PAST (10) YEARS HAS THE APPLICANT BUSINESS CONCERN:

5. Been indebted to an individual or entity, other than a bank or other commercial lending institution, in the cumulative amount of \$100,000 or more? (if yes, give details, including the name of each party to the transaction, the date and the amount of indebtedness.)

YES NO
6. Loaned monies generated by this business concern, in the cumulative amount of \$100,000 or more, to another business concern or individual? (If yes, give details, including the name of each party to the transaction, the date and the amount of indebtedness.)

YES NO
7. Had an injunction, order or lien entered against it in favor of any governmental agency including, but not limited to, judgments or liens based on taxes assessed or fines and penalties imposed by any government agency? If yes, give details, including the name of the government agency, caption, date, case number or docket number, and disposition. Be sure to note any judgments or liens that have not been fully satisfied.)

YES NO
8. Been a party in any civil litigation or administrative proceeding alleging violation of any of the following: antitrust statutes; racketeering statutes; environmental laws; laws banning workplace discrimination; laws governing wages, hours or labor standards (i.e. Dept. of Labor); laws governing the conduct of occupations, professions or regulated industries (i.e., OSHA); or any other law indicating a lack of business integrity or honesty? (If yes, give details, including the nature of the claims and defenses, the caption, date, case number or docket number, and name of the court or agency before which the case is pending or before which it was heard and current status.)

YES NO

9. Paid a fine or otherwise paid to settle any of the allegations listed in Question 8, whether with or without an admission of responsibility? (If yes, give details, including the caption, date, case number or docket number, and name of the court or agency before which the case was brought.)
- YES NO
10. Been denied any license, permit or other similar authorization required to engage in the business concern's trade(s) or professional discipline(s), or has any such license, permit or similar authorization been suspended or revoked by any agency of federal, state or local government? (If yes, give details, including name of the licensing or permitting agency, caption, date, case number or docket number, and disposition.)
- YES NO
11. Been suspended, debarred, disqualified, denied a classification rating or prequalification or otherwise been declared not responsible to bid on or to perform work on any public contract or subcontract? (If yes, give details, including name of the contracting agency, caption, date, case number or docket number and disposition.)
- YES NO
12. Been required by an agreement or settlement with any governmental agency (including any school board) to refrain from bidding or proposing on any public contract? (If yes, describe the agreement and give the name of the government agency, date, caption and case number or docket number, if any.)
- YES NO
13. Been required to engage a monitor or independent private sector inspection general (IPSIG) as a condition of being classified or prequalified, or as a condition of any contract award, or as a condition for being permitted to complete a contract? (If yes, describe the agreement and give the name of the government agency, date and the name of the monitor or IPSIG.)
- YES NO
14. Been indicted or otherwise charged as a defendant, or named as an unindicted co-conspirator, alleged to have committed any crime or offense other than a motor vehicle offense? (If yes, give details, including the conduct alleged, the caption, date, case number or docket number, and the name of the court before which the case is pending or before which it was heard.)
- YES NO
15. Been convicted, after trial or by plea, of any crime or offense other than a motor vehicle offense? (If yes, give details, including the crime or offense, the caption, date, case number or docket number, and name of the court before which the case was heard.)
- YES NO
16. Filed with, or submitted to, a government agency, or to any employee or representative thereof, any document which contained a false statement or false information? Filing or submission could be by any means, including telefax, e-mail, and any other form of electronic communication. (If yes, explain. Your explanation should include a description of the document(s), the date and the name of the government agency.)
- YES NO
17. Paid anyone other than its own key persons or its own employees commissions or finders fees to obtain contracts or work? (If yes, give details, including a description of the transaction, the name of each party to the transaction, the date and the amount of the commission or finders fee paid.)
- YES NO
18. Given, or offered to give money, gifts or anything of value, or any other benefit, to a labor official, public official, public employee or public servant with whom the Applicant Business Concern, or any affiliated entity disclosed in this questionnaire, conducted business? (If yes, give details, including the date(s), location(s), a description of the benefit(s) and the name(s) of the individual(s) to whom the benefits were given or offered.)
- YES NO
19. Agreed with another business concern or representative thereof to submit identical or complementary bids, prices or proposals or to otherwise not bid competitively or to withdraw or abstain from bidding or proposing? (If yes, give details, including date(s), location(s), description(s) of the contract(s) that were the subject of the bid(s), who put the contract(s) out to bid and the name(s) of the other individual(s) with whom the Applicant Business Concern or any affiliated entity disclosed in this questionnaire agreed.)
- YES NO

REQUIRED SUBMITTALS CHECKLIST

- Additional attachments necessary to support disclosures made in answer to any question.
- Notarized Affidavit of the Key Person (see Question #4) submitting this Moral Integrity Questionnaire on behalf of the Applicant Business Concern.

AFFIDAVIT

State of: _____

County of: _____

I, _____, hereby represent and state as follows:
(full name)

That I am _____ of _____, that I am duly authorized to
(title) *(business concern name and Federal Tax ID Number)*

submit this Moral Integrity Questionnaire ("Questionnaire") on behalf of the Applicant Business Concern, and that I have read and understood the nineteen (19) questions asked in the previous three (3) pages.

I represent and state that the information given in response to each questions is full, complete and truthful. Further, I represent and state that truthfully answering this Questionnaire is an event entirely within my control.

I recognize that all the information submitted is for the express purpose of inducing the State of New Jersey to award a contract and/or allow the Applicant Business Concern to participate in school facilities projects financed through the Educational Facilities Construction and Financing Act as a contractor, consultant or vendor. I understand and agree that the Questionnaire and any attachments filed with the State of New Jersey shall become the property of the State.

I acknowledge that the State of New Jersey may, by means it deems appropriate, determine the accuracy, truth and completeness of the statements made in this Questionnaire and any attachments submitted with it. Therefore, I authorize the State of New Jersey to contact any entity or person named in this Questionnaire for purposes of determining the accuracy, truth and completeness of the information supplied by me on behalf of the Applicant Business Concern. If required, a photocopy of this affidavit shall be considered as effective and valid as the original as evidence of the permission given by the Applicant Business Concern for others to release information to the State for purposes of verifying the accuracy, truth and completeness of the information supplied by me.

I represent that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment. Further, I am aware that a false statement or omission made in connection with this application may subject me to civil and criminal penalties available at law and is sufficient cause for denial of the application, revocation of a prior approval or termination for cause of any school facilities project contract that may be awarded to the Applicant Business Concern.

Sworn and subscribed to before me
on this _____ day of _____ 20____

SIGNATURE:

(Notary Public: Not an officer of the firm)
(Notary stamp/seal)

SIGNATURE

Name: _____
(PRINT OR TYPE)

SSN: _____



ATTACHMENT E

OWNERSHIP DISCLOSURE FORM

Download form at: <http://www.state.nj.us/treasury/purchase/forms/OwnershipFinal12-14.pdf>

ATTACHMENT F

DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM

ATTACHMENT G

SOURCE DISCLOSURE CERTIFICATION FORM

EXECUTIVE ORDER 129 CERTIFICATION
SOURCE DISCLOSURE CERTIFICATION FORM

Bidder: _____

Contract No.: GP-0236-R02

I hereby certify and say:

1. I have personal knowledge of the facts set forth herein and am authorized to make this Certification on behalf of the Bidder.
2. The Bidder submits this Certification as part of a bid proposal in response to the referenced solicitation issued by the New Jersey Schools Development Authority (the "Authority"), in accordance with the requirements of Executive Order 129, issued by Governor James E. McGreevey on September 9, 2004 (hereinafter "E.O. No. 129").
3. The following is a list of every location where services will be performed by the bidder and all subcontractors.

Bidder or Subcontractor	Description of Services	Performance Location(s) by Country

4. Any changes to the information set forth in this Certification during the term of any contract awarded under the referenced solicitation or extension thereof will be immediately reported by the Bidder to the NJSDA.
5. I understand that, after award of a contract to the Bidder, it is determined that the Bidder has shifted services declared above to be provided within the United States to sources outside the United States, prior to a written determination by the NJSDA that extraordinary circumstances require the shift of services or that the failure to shift the services would result in economic hardship to the State of New Jersey, the Bidder shall be deemed in breach of contract, which contract will be subject to termination for cause.
6. I further understand that this Certification is submitted on behalf of the Bidder in order to induce the Authority to accept a bid proposal, with knowledge that the Authority is relying upon the truth of the statements contained herein.

I certify that, to the best of my knowledge and belief, the foregoing statements by me are true. I am aware that if any of the statements are willfully false, I am subject to punishment.

Bidder: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

ATTACHMENT H

**RESPONSES TO SELECTED BIDDERS' QUESTIONS SUBMITTED IN
CONNECTION WITH CANCELLED PROCUREMENT GP-0236-R01**

**RESPONSES TO SELECTED BIDDERS' QUESTIONS SUBMITTED IN CONNECTION
WITH CANCELLED PROCUREMENT GP-0236-R01**

1. **QUESTION:** Is there a present service provider for similar services?

ANSWER: The present vendor is Vinci Systems, LLC.

2. **QUESTION:** Can you please provide the approximate spending for each job class covered in last contract?

ANSWER: The NJSDA does not maintain a breakdown of this information. For informational purposes only, see responses to Questions 3 and 6 below.

3. **QUESTION:** Can you please provide the current consultant's Pay Rate & Bill Rate working on the current contract?

ANSWER: See chart below setting forth the billable rates from the 2013 award:

Loaded Hourly Labor Rates	SERVICE LEVEL 9 - 5 Monday through Friday 9:00 am to 5:00 pm	SERVICE LEVEL Overtime Rate Monday to Friday 5:01 PM to 8:59 AM Saturday & Sunday 12:00 am to 11:59 pm
Help Desk Analyst	50/hr – 90/hr	1.5x Rate
Field Technician	75/hr – 115/hr	1.5x Rate
Desktop Deployment Technician	100/hr – 135/hr	1.5x Rate
Systems/Network Administrator	125/hr – 175/hr	1.5x Rate
IT Infrastructure Consultant	175/hr – 225/hr	1.5x Rate
IT Project Management	200/hr – 255/hr	1.5x Rate

The labor rates listed above are for Additional Services not included in the 2013 contract. However, for this procurement, NJSDA is asking for fully loaded pricing for all services listed in the RFP. Pricing should be broken down based upon the items listed on the NJSDA Fee Proposal form.

4. **QUESTION:** Is it single award or multiple?

ANSWER: The result of this procurement will be a contract awarded to a single vendor.

5. **QUESTION:** Can you please provide us how many workstations, servers, printers, etc. are currently in use?

ANSWER: Please see Exhibits 1 through 4 of the Scope of Services attached as Appendix B to the Agreement (Attachment A to the RFP).

6. **QUESTION:** How many tickets raised in a year?

ANSWER:

Year	Support Requests
2013 (April through Dec)	81
2014	79
2015	42
2016 (Jan through May)	26

7. **QUESTION:** How many incidents per month?

ANSWER: There have been less than 10 support calls dispatched monthly, but there are frequent emails sent between NJSDA technical staff and the support provider requesting technical advice regarding technical issues that arise on systems or for end users.

8. **QUESTION:** Can you categorize?

ANSWER: NJSDA has requested after hours support for critical core systems that do not behave as expected. Those issues have included problems with server hardware, network hardware, backup systems and UPS.

9. **QUESTION:** How many are outside of business hours?

ANSWER: About 10% of the formal NJSDA support requests referenced in Question 6 above occur after normal business hours and require same day response and/or support.

10. **QUESTION:** What mobile devices are being used?

ANSWER: NJSDA presently utilize a mix of Apple iPhones and Samsung Galaxy Smartphones along with HP and Samsung Tablets running Windows 8.1 Professional and Windows 10 Enterprise.

11. **QUESTION:** Are we just supporting Airwatch or the whole mobile device?

ANSWER: NJSDA expects that the successful bidder will provide support on the Airwatch environment as well as connections to devices. The Smartphone hardware is covered through agreements with the wireless provider.

12. **QUESTION:** Does NJSDA have a remote software for level 1 support? If not can we use our own?

ANSWER: NJSDA utilizes a combination of Numara's Track-IT and ConnectWare's ScreenConnect to provide remote support to our end users. No other software for this purpose is authorized for use at this time.

13. **QUESTION:** What help desk software are you using?

ANSWER: NJSDA utilizes Numara's Track-IT for both help desk tracking and auditing.

14. **QUESTION:** Due to the extreme age of the equipment, in the event that parts are no longer available, how would you like to proceed?

ANSWER: See section C.10 of the Scope of Services related to Modifications to Equipment Services. In addition, NJSDA is continually examining and replacing equipment that has surpassed its useful life. The successful bidder will notify the Authority, in advance, if there is equipment that will not be able to be repaired in the future, and provide supporting details explaining the reason.

NJSDA's past support providers have previously acquired and maintained spare parts to insure that equipment failures can be addressed in a timely manner based upon the SLA of the agreement. The successful bidder will notify the Authority in advance of invoicing for support that the successful bidder knows cannot be performed to completion.

15. **QUESTION:** Are printer consumable parts such as toner and maintenance kits to be covered under this contract?

ANSWER: NJSDA expects that printer maintenance kits are covered under this contract. NJSDA does not expect that toner is covered in this contract.

16. **QUESTION:** Can the oracle and help desk support be done remotely?

ANSWER: It is possible to provide some support activity remotely so long as the support is provided from ScreenConnect or other utility approved by NJSDA. However, provision of such remote support from outside of the United States may implicate the limiting provisions of N.J.S.A. 52-34-13.2 and Executive Order #129. Moreover, issues that are unable to be resolved remotely will require that the successful bidder dispatch prompt onsite support to resolve the technical problem at issue.